

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Civil Review No. 32 of 2021

Union of India through General Manager, South Eastern Railway, Garden Reach, P.O. & P.S. Garden Reach, Kolkata

... **Petitioner**

-Versus-

1. Smt. Hamidun Nisha, aged 48 years, wife of deceased Sheikh Mahmood
2. Sheikh Sarfaraz, aged about 22 years, son of deceased Sheikh Mahmood
3. Sheikh Sahbaz, aged about 20 years, son of deceased Sheikh Mahmood
All residents of Village/Mohalla, Gumadera, P.O. & P.S. Belpahar, District-Jharsuguda (Odisha)

... **Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Ravi Prakash, C.G.C.

For the Respondents : Mr. Dharmendra Kumar Malityar, Advocate

09/21.03.2025 Heard Mr. Ravi Prakash, learned counsel for the petitioner and Mr. Dharmendra Kumar Malityar, learned counsel for the respondents.

2. The present civil review petition is barred by the limitation of 876 days.
3. Learned counsel for the petitioner submits that I.A. No.916 of 2025 has been filed for condonation of delay of 876 days in preferring the present civil review petition.
4. This civil review petition has been filed to review the judgment and order dated 08.03.2021 and 24.05.2021 passed in M.A. No.197 of 2018 by the Coordinate Bench of this Court, whereby, the respondents/claimants were awarded a sum of Rs.8 Lakhs along with interest @ 7.5% per annum from the date of claim application till the date of indemnifying the award.
5. Learned counsel for the petitioner submits that the learned Coordinate Bench relying on the judgment passed in the case of ***Union of India v. Radha Yadav***, reported in ***(2019) 3 SCC 410*** disposed of the said M.A. with direction to the Railway to pay award of Rs.8 Lakhs along with interest @ 7.5% per annum from the date of filing of claim application till the date of

indemnifying the award to the claimants. He submits that the award should be Rs.4 Lakhs as the incident took place before the amendment in the year 2017 and by the amendment of 2017, Rule of 1990 was modified enhancing the awarded amount from Rs.4 Lakhs to Rs.8 Lakhs. He submits that at the time when accident took place, the awarded amount should be Rs.4 Lakhs as per the existing Rule 1990, whereas, the claimants are awarded Rs.8 Lakhs and in view of that, the award of Rs.4 Lakhs was required to be issued, however, the award of Rs.8 Lakhs was issued, which is not correct and, therefore, that part of the order may kindly be modified and the awarded amount may be slashed to Rs.4 Lakhs. He further submits that the judgment passed in the case of ***Radha Yadav (supra)*** was decided following the judgment passed in the case of ***Union of India v. Rina Devi***, reported in ***(2019) 3 SCC 572***. He submits that in view of the direction given in the case of ***Rina Devi (supra)***, the judgment and order passed in the said M.A. may kindly be modified to that effect. According to him, in above two judgments it has been held that if the amount calculated less than the amount prescribed as on the date of the award, the claimant would be entitled for higher amount. On these grounds, he submits that the judgment and order dated 08.03.2021 and 24.05.2021 passed in the said M.A. may kindly be modified.

6. On the other hand, learned counsel for the respondents opposed the prayer and submits that the learned Coordinate Bench has rightly passed the order and it is within the spirit of Railway Claims Tribunal Act, 1987 and that is the welfare legislation and in view of that the interpretation on the aforesaid two judgments, on which, reliance has been placed by the learned counsel

for the petitioner has been correctly interpreted by the Coordinate Bench while passing the said judgment. On these grounds, he submits that there is nothing to decide in this petition as there is no error apparent on the record.

7. The Coordinate Bench of this Court vide judgment dated 08.03.2021 has been pleased to direct the Railways to pay a sum of Rs.8 Lakhs along with interest @ 7.5% per annum from the date of filing of claim application till the date of indemnifying the award and that direction has been issued based on the aforesaid two judgments on which reliance has been placed by the learned counsel for the petitioner. The Railway Claims Tribunal has dismissed the claim application filed by the claimants, who are respondents herein and they have preferred M.A. No.197 of 2018 before this Court and challenged the said order passed by the Tribunal and pursuant to that the said M.A. was decided and that was based on untoward incident.

8. In light of Section 124-A of the Railway Claims Tribunal Act, 1987, it has to be understood as to mean "as may be prescribed from time to time" and this aspect of the matter has been considered by the Hon'ble Supreme Court in the case of ***Rathi Menon v. Union of India***, reported in **(2001) 3 SCC 714**, wherein, it has been held in paragraphs 23 and 25 as under:

"23. The collocation of the words as may be prescribed in Section 124-A of the Act is to be understood as to mean as may be prescribed from time to time. The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of rules. This delegation to the Central Government indicates that it was difficult for the Parliament to fix the amount because compensation amount is a varying phenomenon and the Government would be in a far advantageous position to ascertain what would be the just and reasonable compensation in respect of a myriad different kinds of injuries by taking into account very many factors. What the

legislature wanted was that the victim of the accident must be paid compensation and the amount must represent a reality which means the amount should be fair and reasonable compensation. Government have the better wherewithals to ascertain and fix such amount. It is for the said reason that the Parliament left it to the Government to discharge that function. Section 124 and 124-A of the Act speak the same language that the Railway Administration shall be liable to pay compensation. As pointed above, it is the liability of the Railway Administration to pay compensation to such extent as may be prescribed. Hence the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the claimant.

25. *In this context we may look at Section 128(1) also. It says that the right of any person to claim compensation before the Claims Tribunal as indicated in Section 124 or 124A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. But there is an interdict that no person shall be entitled to claim compensation for more than once in respect of the same accident. This means that the party has two alternatives, one is to avail himself of his civil remedy to claim compensation based on common law or any other statutory provision, and the other is to apply before the Claims Tribunal under Section 124 or 124-A of the Act. As he cannot avail himself of both the remedies he has to choose one between the two. The provisions in Chapter XIII of the Act are intended to provide a speedier remedy to the victims of accident and untoward incidents. If he were to choose the latter that does not mean that he should be prepared to get a lesser amount. He is given the assurance by the legislature that Central Government is saddled with the task of prescribing fair and just compensation in the rules from time to time. The provisions are not intended to give a gain to the Railway Administration but they are meant to afford just and reasonable compensation to the victims in a speedier measure. If a person files a suit the amount of compensation will depend upon what the court considers just and reasonable on the date of determination. Hence when he goes before the Claims Tribunal claiming compensation the determination of the amount should be as on the date of such determination.”*

- 9.** In view of the above judgment of the Hon'ble Supreme Court, it is well settled that the injury resulting from an untoward incident, the relevant date for determination of compensation amount is date of determination by the Tribunal and not the date of incident. The relevance of date of incident is only

that the right to claim compensation is acquired by the injured on such dates and in view of that even if the incident occurred before amendment of Rules and Schedule to act raising compensation payable, the claimants should be entitled to benefit of higher rates prevailing post amendment.

10. In view of the above judgment of the Hon'ble Supreme Court, the power of Central Government to decide compensation was also considered. In view of that, if a person files a case before the Claims Tribunal claiming compensation, the determination of the amount should be as on the date of such determination.

11. So far as question of interest is concerned, it is true that the same need not be claimed specifically. The interest is granted by way of compensation but, as has been held by the Hon'ble Supreme Court in the case of ***Abati Bezbaruah v. Dy. Director General, Geological Survey of India***, reported in ***(2003) 3 SCC 148***, the same must be a reasonable one.

12. In view of the above, this Court finds that the learned Coordinate Bench has rightly passed the said judgment relying on the judgments of ***Rina Devi*** and ***Radha Yadav (supra)***.

13. In course of hearing, the Court has asked the learned counsel for the petitioner to point out according to him what is the calculation, he has stated that he has not been able to do so. This further suggests that in a very casual way, this civil review petition has been filed.

14. Further, it is well settled that if any apparent error on the record is there, the civil review petition can be filed and, as such, the Court finds that there is no illegality and no case of review is made out.

15. On merit itself, the petitioner has not been able to establish his case and this civil review petition is barred by 876 days and in the said I.A., only ground is taken that in taking decision and in filing review, such delay has occurred, in view of that, the Court finds that even for condonation of delay of 876 days, proper explanation is not there.

16. In view of the above facts, reasons and analysis, this civil review petition is dismissed.

17. Consequently, I.A., meant for condonation of delay, is also dismissed.

18. The petitioner-South Eastern Railway will satisfy the award forthwith.

(Sanjay Kumar Dwivedi, J.)

Ajay/ **A.F.R.**