

Court No. - 2

Case :- WRIT - C No. - 8562 of 2022

Petitioner :- Nidhi Devi Alias Nidhi Devi Mishra

Respondent :- Union Of India Thru. Secy. Ministry Of Railways, New Delhi And Others

Counsel for Petitioner :- Ashish Mishra Atal

Counsel for Respondent :- A.S.G.I., Akansha Dubey

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Order on C.M. Application No. IA/1/2023: Application for Amendment)

Heard.

As regards the Amendment Application, we are of the view that Section 15 of The Railways Act, 1989 was not attracted to the facts of the case as the said provision is part of Chapter IV of The Railways Act, 1989 under the heading 'Construction and Maintenance of Works', therefore, rejection of the claim of the petitioner by the District Judge under the said provision does not come in the way of the petitioner in seeking the relief as prayed herein. We, therefore, **dismiss** the application.

(Order on Memo of Writ Petition)

After hearing the parties, what comes out is that there is evidence on record which was collected during inquiry ordered by the Railways itself that the railway barriers at the 'passing' fell all of a sudden, accidentally, therefore, we are of the prima facie opinion that the rejection of the claim of the petitioner was not justified.

Statement of Gate Man Sri Rahul Bansal, who was working on Gate No.45 A Hempur under the Station Superintendent, Hempur on 08.04.2018 i.e. the very crossing where the incident involving injury to the petitioner, copy of which is annexed as part of Annexure No.4 to the Writ Petition and reads as under:-

"बयान श्री राहुल बंसल कार्यरत गेट मैन गेट न० 45A हेमपुर अधीन स्टेशन अधीक्षक हेमपुर
बावत गेट डेसिंग दिनांक 8/4/2018

पूछताछ करने पर श्री राहुल बंसल ने बयान किया कि मैं स्टेशन अधीक्षक हेमपुर के अधीन गेट मैन के पद पर कार्यरत हू। आज दिनांक 8/4/2018 को मेरी ड्यूटी गेट न० 45 A हेमपुर पर समय 8/00 बजे से 20/00 बजे तक बतौर गेट मैन है। मेरी ड्यूटी के दौरान आज दिनांक 8/4/2018 को sm hmp के आदेश पर अप BCNE HL के लिए गेट को सड़क यातायात के लिए बन्द कर मालगाड़ी को गेट से पास किया। गाड़ी पास होने के उपरान्त मैं sm hmp के आदेश पर समय 14/52 बजे गेट को सड़क यातायात के लिए खोल रहा था गेट आधे से अधिक खुल पाया था उसी समय गेट का सीतापुर साइड पूरब दिशा का गेट बूम अचानक पैड स्टूल के पास से टूट कर पूरब से पश्चिम दिशा की ओर आ रहे मोटर साइकिल सवार के ऊपर गिर गया जिससे

मोटर साइकिल चालक एवम साथी महिला को काफी चोटे आ गई। मोटर साइकिल सवार दोनों घायलो को बाहरी लोगो द्वारा 108 एम्बुलेंस बुलाकर कर जिला-चिकित्सालय सीतापुर भेजा गया । मोटर साइकिल स्प्लेंडर प्लस नं० UP-34 AF 0637 है। मैंने घटना के बावत sm/hmp को अवगत कराया। मेरी ड्यूटी के दौरान उक्त घटना से पहले गेट सही काम कर रहा था और मेरी अपनी पूर्ण जानकारी मे गेट बूम से किसी वाहन द्वारा टक्कर नहीं लगी है। यही मेरा बयान है ।

हस्ताक्षर

(राहुल बंसल)

गेट मैन 45A हेमपुर

दिनांक:8-4-2-18"

The said statement has not been denied in the counter affidavit. Averments in Para 5 of the counter affidavit are perverse being contrary to the statement quoted above. The Statement of the said railway employee itself is sufficient to establish that the incident resulting in injuries to the petitioner took place on account of faulty functioning of the barrier installed by the Railways, therefore, for the Divisional Railway Manager, Northern Railway, Moradabad to say as he has done in the impugned order dated 04.12.2019 that the petitioner should have been more cautions and that the incident occurred on account of negligence of the motor cyclist cannot be accepted by any stretch of imagination. None of the evidence as collected during the inquiry ordered by the Railway Authorities has been discussed in the impugned order. The order is cryptic one which has been passed only to deny the petitioner's rightful claim to compensation. Not only it suffers from abject non application of mind to the facts of the case and the evidence collected during inquiry but also it displays a predetermination on the part of the Officer to absolve the Railways from any monetary liability in the matter.

Certain guidelines have been placed before us which are annexed alongwith a covering letter dated 05.11.2018. Prima facie it appears that the said guidelines were for settlement of claims for compensation on accidents applicable to the Ministry of Railways and Public Sector Undertakings under its control and would apply to the facts of this case also, therefore, reconsideration of the matter is required in the light of said guidelines.

We accordingly quash the order dated 04.12.2019 and direct the authority competent under the guidelines circulated vide letter dated 05.11.2018, which has been taken on record, to reconsider the matter and take a decision accordingly within three months, keeping in mind the observations recorded hereinabove.

The Writ Petition is **disposed of**.

(Om Prakash Shukla,J.) (Rajan Roy,J.)