

**Bijali Devi Vs. Union of India**

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**Court :** Patna

**Decided On :** Aug-23-2013

**Appellant :** Bijali Devi

**Respondent :** Union of India

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT PATNA Miscellaneous Appeal  
No.552 of 2009

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Bijali Devi, W/O- Late Sadanand Mahto, resident of Village- Balchanda, Harira,  
P.O & P.S- Kursa Kanta, District- Araria. .... Applicant .... Appellant/s Versus Union  
of India, through the General Manager, N.E. Railway, Gorakhpur. .... Respondent  
..... Respondent/s

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Appearance : For the Appellant/s : Mr. Pravin Kumar Gupta Mr. Binay Kumar For  
the Respondent/s : Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN ORAL

JUDGMENT

Date:

23. 08-2013 This appeal under section 23(1) of the Railway Claims Tribunal Act,  
1987 (hereinafter referred to as the Act) is directed against the judgment and order

dated 5.3.2009 passed by the Railway Claims Tribunal, Patna Bench, Patna in Claim Case not O.A. 9900038 filed by the claimant who is the appellant before this Court, whereby the claim case was dismissed. The facts of the matter briefly stated are that the husband of the claimant, namely, Sadanand Mahto while travelling from Araria court to Delhi fell down from the train at the Gadhbaneli railway station on 31.1.1997 and was seriously injured. He was taken to the Sadar Hospital, Purnea where he died during the course of treatment on 5.2.1997. A case of unnatural death was registered by the G.R.P., Purnea on the basis of the statement given Patna High Court MA No.552 of 2009 dt.23-08-2013 2 by Ram Prasad Mahto, the father of the deceased at the Sadar Hospital, Purnea giving rise to U.D. Case No.2 of 1997. The registration of the case was followed by an inquest report and the postmortem report. The police after completing investigation into the matter submitted his final report on 23.2.1997. The sequence of events discussed above is matters on record. A claim case was set up by the widow of the deceased, namely, Bijali Devi which was filed on 5.3.1998 and was registered as O.A. 9900038 before the Railway Claims Tribunal, Patna Bench, Patna. The records of the claim case has been summoned under the orders of this Court and the order-sheets of the same manifest that since after the filing of the case, the matter was adjourned at the request of the railways until 18.2.2005 when the claimant-applicant moved the petition for condonation of delay and since there was no objection on the part of the railways the tribunal considering the legislative intendment of the application under section 124A of the Railways Act was pleased to condone the delay. An objection being raised as regarding the defect in parties, an amendment application was filed by the claimant-applicant on 5.10.2007 which was considered by the tribunal on 22.11.2007 and was allowed. The prayer to substitute North-Frontier Railway, Maligaon instead of North-Eastern Railway, Gorakhpur was Patna High Court MA No.552 of 2009 dt.23-08-2013 3 allowed and the claim application was directed to be amended accordingly. A second prayer regarding impleadment of parents of the deceased was directed to be considered in due course. Unfortunately the direction was not carried out but since under the same order whereby the amendment was allowed, i.e. 22.11.2007 notice had been issued to the proposed respondent, i.e. the North- Frontier Railway, they appeared and filed written statement contesting the claim. The records further

manifest that the issues were thereafter framed on 11.9.2008 and the applicant was directed to lead her evidence. The matter was thereafter posted on 21.10.2008, 10.11.2008 and 5.12.2008 for applicants evidence. By order dated 5.12.2008 the tribunal while allowing the prayer for adjournment of the applicant, has held that it was by way of last indulgence. The matter was posted to 13.1.2009 but could not be taken up as some maintenance works was going on in the court premises. The matter was adjourned to 17.2.2009 and since on that date there was no representation on behalf of the applicant, the evidence was closed and the matter was fixed for orders. By the judgment and order impugned dated 5.3.2009 the claim case has been dismissed for want of evidence and hence this appeal. I have heard Mr. Pravin Kumar Gupta, learned counsel appearing for the claimant-appellant and Mr. Anil Singh Patna High Court MA No.552 of 2009 dt.23-08-2013 4 learned counsel appearing for the respondent-Railways. Although extensive argument has been advanced by Mr. Gupta contesting the order passed by the tribunal and by Mr. Anil Singh supporting the impugned order but this Court does not deem it necessary to deal with the same in view of the clear stipulation underlying rule 18(1) of the Railway Claims Tribunal (Procedure) Rules, 1989 (hereinafter referred to as the Rules) framed under section 30 of the Railway Claims Tribunal Act, 1987 which read as follows:

18. Action on application for applicants default.- (1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit. It is not in contest that hearing in a case begins from the stage of framing of issues and leading of evidence. Reference in this regard is made to the following judgments of the Supreme Court: (i) (2012) 4 SCC 30.(Kanwar Singh Saini vs. High Court of Delhi). (ii) (2012) 2 SCC 19.(Rasiklal Manikchand Dhariwal vs. M.S.S. Food Products). Vide order passed on 11.9.2008 the issues were framed and the applicant was directed to lead her evidence. Patna High Court MA No.552 of 2009 dt.23-08-2013 5 The provisions of rule 18 are somewhat similar to the provisions underlying Order 17 rules 2 and 3 of the Code of Civil Procedure (hereinafter referred to as the Code) and vests power in the tribunal to dismiss the case on applicants default in appearance or

hear and dispose of the same on merits. In the present case no doubt the case was being adjourned for applicants evidence after framing of issues on 11.9.2008 and vide order passed on 5.12.2008 a last indulgence was given to the applicant for the purpose and the matter was fixed on 17.2.2009 after being adjourned from 13.1.2009. On 17.2.2009 the order reads thus: No representation for the applicant. Called absent. Evidence closed. For orders. Order reserved Since in the present case the evidence was yet to be adduced by the claimant in support of her claim, the tribunal certainly could not have proceeded to adjudicate the same on merits. Although the provisions of rule 18 does empower the tribunal to hear the matter and decide the same on merits even in absence of the applicant but the order dated 17.2.2009 manifests that even this circumstance does not stand satisfied inasmuch as no hearing had taken place on 17.2.2009. In the circumstances the tribunal at best could have dismissed the case for default. Be it the provisions of rule 18 of the Rules or Order Patna High Court MA No.552 of 2009 dt.23-08-201

17. rules 2 and 3 of the Code, the order in the circumstances set forth cannot be sustained and is accordingly set aside. The matter is remitted to the tribunal for consideration and disposal of the claim case afresh in accordance with law. Since the matter is of the year 1998, this Court would expect the claimant-appellant before this Court to discharge the obligation cast upon her under the order dated 22.11.2007 and appropriately amend the claim application within one week from the date of receipt/production of a copy of this order as also to conclude her evidence in a maximum of six opportunities to be granted by the tribunal after initiation of the hearing of the case. As I have already observed that the matter is very old the tribunal would endeavour to conclude the hearing within a maximum period of three months from the date of receipt/production of a copy of this order. This appeal is allowed. (Jyoti Saran, J) SKPathak/-

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