

**North Eastern Railway and ors. Vs. Devkala Devi**

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**Court :** Patna

**Decided On :** Feb-12-2007

**Judge :** S.N. Hussain, J.

**Appellant :** North Eastern Railway and ors.

**Respondent :** Devkala Devi

**Disposition :** Appeal dismissed

**Judgement :**

**S.N. Hussain, J.**

1. Heard learned Counsel for the appellants and learned Counsel for the respondent.

This appeal is directed against the order dated 20.6.2002, passed by the Deputy Labour Commissioner-cum-Commissioner for Workmen's Compensation, Darbhanga Division, Darbhanga in the Case No. W.C. 05 of 2001 by which he has directed the appellants to deposit 50 per cent of the amount of compensation of Rs. 1,42,680 which came to Rs. 71,340 as fine/penalty.

2. It is not in dispute that the husband of the respondent was an employee of the Railways and he died on duty on 28.8.2000, after which his widow, namely the respondent, filed the aforementioned case before the aforesaid Deputy Labour

Commissioner. It is also not in dispute that according to the calculation of appellant authorities the amount of compensation was Rs. 1,11,304 which was deposited on 18.5.2002, but during the pendency of the claim case it was recalculated and they found that it was Rs. 1,42,680 and hence within the time allowed by the court, the authorities deposited the balance amount on 6.6.2002. It is also not in dispute that the said respondent-claimant brought on record of the case a letter dated 18.11.2000, Annexure 1 said to be issued by the Senior Personnel Officer, North Eastern Railway, Gorakhpur stating that Rs. 2,07,500 was sanctioned as compensation and relying upon the said letter produced by the claimant, the said authority passed order dated 16.4.2002 directing payment of compensation amount of Rs. 2,07,500 with 50 per cent fine for delayed payment. Since the order was passed behind the back of the appellant, he filed a petition for review on 28.5.2002 in the same court claiming that the said letter of Senior Personnel Officer produced by claimant was a forged document as railway authority of Gorakhpur had no jurisdiction with respect to the place which was under Samastipur Division. Considering the said fact and the circumstances and after hearing the parties, the authority concerned passed the impugned order dated 20.6.2002 holding that the said letter dated 18.11.2000 produced by the claimant was a forged letter and the amount of compensation was rightly found to be Rs. 1,42,680. It was also held that the fine/penalty on the said amount would be only Rs. 71,340 which was half of the amount of compensation and was payable by the appellants to the claimant.

3. The second part of the said order with regard to payment of fine/penalty is under dispute in this appeal. The claimant has not challenged the reduction of the amount of compensation from Rs. 2,07,500 to Rs. 1,42,680. Learned Counsel for the appellants submits that the said amount of Rs. 1,42,680 was deposited as per the direction of the authority concerned on 18.5.2002 and 6.6.2002 and hence there was no occasion for charging any fine or penalty as there was no delay in the payment of the said amount.

4. On the other hand, learned Counsel for the respondent states that the authority concerned had no power of review under the provisions of Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act' for the sake of brevity)

and hence the authority concerned passing the impugned order had no power of review which is apparent from the decision in *Basudeo Rai v. Jagarnath Singh* 1987 ACJ 55 (Patna). He further submits that according to proviso to Section 30 of the Act only after deposit of the amount allowed by the authority concerned, appellant could have challenged the impugned order. In the said circumstances, he submits that there is no necessity of interfering with the impugned order.

5. Considering the entire facts and circumstances of the case as well as the materials on record and the provisions of law it is quite apparent that the husband of the claimant died on 28.8.2000, whereas the claim case was filed in the year 2001 and payment of Rs. 1,42,680 was made on 18.5.2002 and 6.6.2002. According to Section 4-A (1) of the Act it was the duty of the employer for payment of compensation under Section 4 of the Act as soon as it had fallen due but from the aforesaid facts it is quite apparent that it was delayed and was paid only after the authority concerned directed the employer to pay the same. Furthermore, no explanation is there for the delay caused in the said payment.

6. According to Section 4-A(3)(b) of the Act, the employer in addition to the amount of compensation has to pay amount not exceeding 50 per cent of the amount of compensation by way of penalty.

7. In the said circumstances, I do not find any illegality in the impugned order and accordingly, this misc. appeal is dismissed.

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