

(2011) 08 KAR CK 0146

Karnataka High Court

Case No: MFA No. 2099 of 2010 and Miscellaneous Cvl. No. 5053 of 2010

Smt. Jayanthi, M.J. Balaji
Venkatesh and M.J. Raghunathan
(Since both are Minors, rep. by
her mother Smt. Jayanthi)

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Aug. 22, 2011

Acts Referred:

- Limitation Act, 1963 - Section 5
- Railway Claims Tribunal Act, 1987 - Section 16

Hon'ble Judges: A.N. Venugopala Gowda, J

Bench: Single Bench

Advocate: M.A. Malvi and M.R. Hiremathad, for the Appellant; N.S. Sanjay Gowda, for the Respondent

Final Decision: Allowed

Judgement

A.N. Venugopala Gowda, J.

In view of the limited question which has arisen for consideration, with the consent of learned Counsel on both sides, the appeal is taken up for final hearing. Learned counsel on both sides submitted that, in the facts and circumstances of the case, it is unnecessary to summon the record of the case from the Railway Claims Tribunal.

2. Appellants were the Applicants in O.A 82/2003 on the file of Railway Claims Tribunal (for short "the Tribunal"), Bangalore Bench. Said application was filed u/s 16 of Railway Claims Tribunal Act, claiming compensation from the Respondent-Railway Administration for the death of one M.V. Jagannathan, in an untoward incident, which occurred on 05.10.2002 while he was travelling as a passenger by CST bound fast suburban Train. The application was opposed by the Respondent. Issues were framed and the matter was enquired into by the Tribunal

Keeping in view the rival contentions and upon; appreciation of the record of the case, the application was allowed and the Respondent was directed to pay the compensation together with interest thereon at 9% from the date of order till the date of actual payment. The said order has not been questioned by the Respondent. This appeal is by the Applicants, to modify the order passed by the Tribunal and to award interest from the date of accident till the date of order, on the compensation amount determined and ordered to be paid.

3. There is delay of 892 days in filing the appeal. Seeking condonation, Misc. Cvl. 5053/2010 has been filed. In the affidavit accompanying the application, the reasons for the delay has been stated. The Respondent has filed statement of objections, inter alia contending that, there is inordinate delay, which has not been satisfactorily explained and has sought dismissal of the application and consequently to reject the appeal.

4. Heard the learned Counsel on both sides and perused the record. The points for determination are:

1. Whether sufficient cause for the condonation of delay in filing the appeal has been shown?

2. Whether the Appellants are entitled to be awarded interest on the determined compensation amount from the date of filing of the claim application till the date of passing of the order/award by the Tribunal?

5. The occurrence of the untoward incident and the liability of the Respondent to pay the compensation amount as found and determined by the Tribunal has not been questioned by the Respondent. The claim for payment of interest from the date of filing of the application before the Tribunal till the date of passing of the order is well-founded, in view of the ratio of the decision in the case of [Tahazhathe Purayil Sarabi and Others Vs. Union of India \(UOI\) and Another](#), .

Re : Point No. 1

6. Section 5 of the Limitation Act, 1963, confers discretion on the Court to condone the delay if sufficient cause is made out. It has been held by the Apex Court in catena of decisions that, the expression "sufficient cause" appearing in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice. Delay is condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay. It has also been held that, acceptability of explanation of delay is the sole criterion and the length of delay is not relevant. In the case of [N. Balakrishnan Vs. M. Krishnamurthy](#), , it has been held as follows:

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that, such discretion can be exercised only if the delay is within a certain limit; Length of delay is no matter acceptability of

the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation, whereas in certain, other cases, delay of a very long range can be condoned, as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise, of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such, superior court to come to its own finding even, untrammelled by the conclusion of the lower court.

7. The Appellants in the affidavit filed along with the Misc. Cvl. petition have stated the reasons, for the delay in filing this appeal. Even though the 1st Appellant appear not to be as vigilant as she ought to have been, yet her conduct does not warrant to hold that they are scheming litigants or there was deliberate delay on their part. Appellants 2 and 3 are minors and had the legal disability to prosecute the matter on their own, The Appellants had suffered the loss and the claim of the Appellants was found to be meritorious by the Tribunal and was allowed. However, the Tribunal did not award interest on the compensation amount from the date the application was filed for ordering payment of compensation till the order was passed. The Respondent has not been able to show any want of bonafides on the part of the Appellants in the matter of filing the appeal with delay. Keeping in view the circumstances of the case in my opinion, sufficient cause has been made out for the delay in filing the appeal, The cause shown in the affidavit being acceptable, Misc. Cvl. petition No. 5053/2010 is allowed and the delay condoned.

Re : Point No. 2

8. The Appellants claim for payment of interest i.e., from the date the application was filed before the Tribunal, till the impugned order was passed is concerned, is squarely covered by a decision of the Apex Court in the case of Thazhathe Purayil Sarabi (supra), wherein it has been held that, even if the Appellants may not be entitled to claim interest from the date of the accident, the claim to interest on the awarded sum has to be allowed from the date of the application till the date of recovery, as payment of interest is basically a compensation payable for being denied for usage of money during the period in which the same would have been made available to the claimants.

9. In the instant case, it is not the case of the Respondent that the Appellants did not prosecute the application filed before the Tribunal diligently and the Applicants were the cause for the delay in disposal of the application. The delay in disposal of the application by the Tribunal being not on account of any acts attributable to the Appellants, the Tribunal is not justified in not awarding interest on the compensation amount from the date the application was filed till the order was;

passed by it, directing the Respondent to pay the determined compensation amount.

In the result, the appeal is allowed and the impugned order is modified.

The Respondent is directed to pay interest on the compensation amount of Rs. 4,00,000/- at the rate of 6% p.a from the date the application was filed in the Tribunal, till the impugned order was passed, The impugned order in all other aspects remains intact.

In the facts and circumstances of the case, parties are directed to bear their respective costs.

Draw award accordingly.