

Union of India (UOI) Vs Sumathy Sajeevan, Sreejith and Sruthy

Court: High Court Of Kerala

Date of Decision: June 28, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 34

Interest Act, 1978 â€” Section 3

Railway Claims Tribunal Act, 1987 â€” Section 16

Railways Act, 1989 â€” Section 124A, 125

Hon'ble Judges: R. Basant, J; K. Surendra Mohan, J

Bench: Division Bench

Advocate: T.P.M. Ibrahim Khan, SC, Railways, for the Appellant; Dilip J. Akkara, for the Respondent

Judgement

R. Basant, J.

These appeals are directed against the same impugned order passed by the Railway Claims Tribunal u/s 124A of the

Railways Act read with Section 16 of the Railway Claims Tribunal Act. The claimants are the wife and two minor children of deceased Sajeevan

who was found dead with injuries on the railway track. He was travelling from Chennai on that day. According to the claimants, he was travelling

from Chennai to Aluva and he was found lying dead with injuries on the railway track after Angamali before Aluva. Angamali was the last stop of

the train and Aluva was the next stop where deceased Sajeevan allegedly wanted to get down. The claimants alleged that the deceased was the

victim of an untoward incident. He must have accidentally fallen from the train, they contended.

2. The claimants filed an application with a petition to condone the delay. The delay was condoned by the Tribunal. The Respondent/Railway

resisted the claim on various pleas. It was contended that the ticket having not been recovered, it cannot be assumed that he was a bona fide

passenger with ticket. It was further contended that the accident must have taken place after the deceased got down from the train and was

walking along the railway track. Thus, in short, the contention was that the death did not take place as a result of injury suffered in any untoward

incident.

3. Parties went to trial on these contentions. On the side of the claimants, the 1st claimant/wife/widow examined herself as P.W.1. She had not

witnessed the incident. She confirmed that he was travelling from Chennai to Aluva. His father had fallen sick and he had to hurriedly proceed to

Vypeen from Aluva. In short, her evidence conveys that there was no necessity whatsoever for deceased Sajeevan to get down at Angamali and

walk along the railway track.

4. On the side of the claimants, a witness was examined as P.W.2. He was a co-passenger along with deceased Sajeevan. He explained that

Sajeevan was travelling along with him till they reached Angamali and after Angamali, Sajeevan had got up from his seat to get down at the next

station i.e., Aluva. His seat was allegedly offered to P.W.2.

5. Exts.A1 to A9 were marked on the side of the claimants. A crime was registered by the police. Final report was filed after investigation. The

police, it appears, had come to the conclusion that the deceased after getting down from train was walking along the railway track when he was

run over by a train. The claimants evidently had produced the relevant police documents to show that the police had come to such a conclusion

irrationally and no data whatsoever.

6. On the side of the Respondent/Railway, Ext.R1 investigation report submitted by the Officer of the Force was produced. That is only a

reiteration of the contents of the final report submitted by the police after investigation.

7. The Tribunal, on an anxious evaluation of all the relevant circumstances, came to the conclusion relying on the evidence of P.W.1 that the

deceased was travelling from Chennai to Aluva with a valid ticket. The inability of the claimants to produce the ticket was not reckoned by the

Tribunal as relevant in any manner.

8. On the more important question as to whether the deceased had suffered injuries in an untoward incident or when he was walking along the

track after getting down at Angamali, the Tribunal chose to believe the evidence of P.W.2. The Tribunal also relied on the broad probabilities that

emanated from the evidence of P.W.1. The deceased had to alight at Aluva to proceed to Vypeen to meet his ailing father. There was no necessity

whatsoever for the deceased to get down at Angamali. More over, the evidence of P.W.2 clearly indicated that the deceased got up from his seat

after Angamali to get down at Aluva, the next stop. There was no semblance of data to suggest that the deceased could have got down at

Angamali and would have chosen to walk along the railway track.

9. The learned Standing Counsel for the Railway assails this finding of the Tribunal. But we find that the finding of the Tribunal is in tandem with

broad probabilities that are revealed from the evidence of P.W.1 and the specific evidence tendered by P.W.2. The finding of the Tribunal, we

find, is cogent, reasonable and acceptable. There is no semblance of a suggestion that any article carried by the deceased on his return journey

from Chennai was available at the place where he was found dead. That is an indication certainly, though not conclusive in itself, to suggest that he

had not got out from the train and was not walking along the railway track. At any rate, we find no necessity to disagree with the conclusion of the

Tribunal. The challenge raised by the Railway must therefore fail.

10. The next controversy is about the interest payable. The Tribunal had awarded interest at the rate of 7.5% per annum. The death had taken

place on 14/5/2002. The application was made u/s 125 along with an application for condonation of delay on 29/8/05. After condoning the delay

in filing the application, the Tribunal had registered the Original Application on 9/8/07. The Tribunal, in these circumstances, directed payment of

interest at the rate of 7.5% per annum with effect from 9/8/07 only. The learned Counsel for the claimants contends that the Tribunal had erred

grossly in so directing payment of interests only from the date of registration of the Original Application. That is an artificial and irrelevant date for

the purpose of awarding interest. The accident had taken place on 14/5/02. The claim petition along with the prayer for condonation of delay was

filed on 29/8/05. At any rate, the Tribunal had no justification to postpone the date of payment of interest to 9/8/07 and not award interest from

29/8/05 the date on which the claim was formally lodged before the Tribunal. The learned Counsel for the claimants contends that the delay from

29/8/05 to 9/8/07 was not, at any rate, attributable to the claimants and hence the course adopted by the Tribunal of directing payment of interest

only from the date of registration of the O.A. is not legally sustainable.

11. The learned Counsel Appellants/claimants relies on the decision in *Sunderlal v. Union of India* 2009 (4) KLT SN 77 Case No. 72 in support

of his contention.

12. We are in complete agreement with the learned Counsel for the Appellants/claimants. The date 9/8/07 fixed by the Tribunal has no reasonable

and rational nexus to the award of interest. Certainly, interest must have been awarded from the date on which the claim was lodged - even

assuming that the claim is not maintainable from the date of the accident because of the lapse on the part of the claimants of not having preferred

the claim in time. We are in agreement with the learned Counsel for the claimants that interest must, at any rate, have been awarded from the date

of the application i.e., 29/8/05.

13. The learned Counsel for the Railways contends that, at any rate, the award of interest at the rate of 7.5% per annum is not justified. The

learned Counsel relies on Section 34 of the Code of Criminal Procedure. and points out that normally interest should have been awarded at a rate

not exceeding 6% per annum. The learned Counsel relies on the decision in Thazhathe Purayil Sarabi v. Union of India 2009 (4) KLT 370 (SC).

14. In the said decision the Supreme Court had awarded interest at the rate of 6% per annum from the date of the claim petition to the date of the

award and at 9% per annum thereafter. The Tribunal had not awarded any interest in that case and the Supreme Court felt that a conjoint reading

of Section 3 of the Interest Act and Section 34 of the Code of Criminal Procedure must certainly clothe the Tribunal with jurisdiction to award

interest though no specific provision is available in the relevant Statute authorising payment of interest. The learned Counsel submits that, at any

rate, interest above the rate of 6% per annum is not justified from the date of the claim to the date of the award. The learned counsel for the

claimants, on the contrary, contends that such a plea has not been raised by the Railways in their Memorandum of Appeal.

15. We take note of Section 3 of the Interest Act which permits the courts to allow interest to the person entitled to the amount at a rate not

exceeding the current rate of interest. In Sarabi (supra), the Supreme Court has not laid down the proposition that interest above the rate of 6%

per annum cannot or should not be awarded. The Supreme Court drew inspiration from Section 3 of the Interest Act and in that view of the

matter, we are of the opinion that the award of interest granted at the rate of 7.5% per annum from the date of the claim petition to the date of

payment is eminently justified. In Sarabi (supra) the Supreme Court had in fact awarded interest at the rate of 9% per annum for one segment of

time. Sarabi cannot be pressed into service in support of the contention that interest above 6% cannot ever be granted. Normally, in the absence of

valid reasons contra, interest must be awarded by the Railways Claims Tribunal in the claims staked u/s 125 of the Railways Act at the current rate

of interest payable by banks in respect of deposits from the date of the claim to the date of payment.

16. In the result:

(a) M.F.A. No. 57/2010 is dismissed.

(b) M.F.A. No. 199/2010 is allowed.

(c) It is directed that interest shall be payable at the rate of 7.5% per annum as directed by the Tribunal from the date of the claim petition i.e.,

29/8/05 to the date of the payment.

(d) The impugned order is upheld in all other respects.