

(2003) 06 AP CK 0013

Andhra Pradesh High Court

Case No: CMA No. 235 of 1995

S. Appanna

APPELLANT

Vs

General Manager, S.E. Railway
and Others

RESPONDENT

Date of Decision: June 12, 2003

Acts Referred:

- Railway Claims Tribunal Act, 1987 - Section 16, 17

Citation: (2005) ACJ 663 : (2003) 4 ALD 470 : (2003) 4 ALD 407 : (2003) 2 AnWR 258

Hon'ble Judges: G. Yethirajulu, J

Bench: Single Bench

Advocate: P.B. Vijaya Kumar, for the Appellant; Gouri Shankar Sanghi, for the Respondent

Final Decision: Allowed

Judgement

G. Yethirajulu, J.

This appeal is preferred by the petitioner-claimant in O.A. No. 33 of 1993 on the file of Railway Claims Tribunal, Secunderabad, The petitioner met with a railway accident on 8-11-1987 while working as Constable in Railway Protection Force and attending to escort duty. His right leg was amputated upto the knee joint after prolonged treatment at Visakhapatnam and others places. According to the petitioner, the Railway Department took up his cause and moved the file to get compensation under the Workmen's Compensation Act and after a few years, the Department came to know that since the petitioner did not come within the definition of "workman", he is not entitled to compensation under the Workmen's Compensation Act. Therefore, steps were taken to make a claim under Railway Claims Tribunal Act, 1987. Since no action was taken at the end of the Railway Administration regarding payment of compensation, the petitioner issued a legal notice on 4-11-1992 and he received reply on 31-11-1992 informing that he will not come under the category of "workman". Later, on 28-3-1993 the petitioner approached the Railway Claims Tribunal seeking compensation for the permanent

disability suffered by him. The Railway Claims Tribunal dismissed the petition by observing that the pendency of the proceedings under the Workmen's Compensation Act, could not have prevented the petitioner from approaching the Railway Claims Tribunal for compensation for the injuries sustained by him and there was lack of diligence on the part of the applicant virtually amounting to negligence. There is no explanation as to why he delayed filing of application before the Tribunal for more than four months after he came to know that he was not eligible to get compensation under the Workmen's Compensation Act. Since the applicant failed to show-cause for not filing the application within the prescribed period of limitation, the application for condonation of delay was rejected.

2. The point for consideration is whether the delay caused in making the application can be condoned?

3. u/s 16 of the Railway Claims Tribunal Act, 1987 (for short "the Act"), an application has to be made in the prescribed form before the Railway Claims Tribunal for compensation. Section 17 of the Act prescribes limitation. Section 17(1)(b) reads as follows:

"(a) xxx

(b) under Sub-clause (ii) of Clause (a) of Sub-section (1) or, as the case may be, Sub-section (1-A) of Section 13 unless the application is made within one year of occurrence of the accident."

The proviso (2) to Section 17 reads as follows:

"Notwithstanding anything contained in Sub-section (1), an application may be entertained after the period specified in Sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period.

4. As seen from the wording of proviso (2), there is no statutory bar for the Railway Claims Tribunal to entertain the application for compensation after the period specified in Sub-section (1) if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. Immediately after the accident, the petitioner became unconscious and he was shifted to the hospital. He underwent treatment for a considerable period and he was fit to attend his duty on 5-8-1988. After reporting to duty on medical examination, the Railway authorities found him not fit for discharging the duties of a Constable of Railway Protection Force. Therefore, he was provided with alternative employment of last grade service in the Railway Department.

5. It is an undisputed fact that the right leg of the petitioner was amputated and he suffered permanent disability to the extent of 40%. He has to depend on somebody for his personal needs and he has to suffer the humiliation and crippledness for ever. The object of the Railway Claims Tribunal Act, 1987 is to extend the financial

help to the persons who are involved in the Railway accidents and the Act enable the victims or their representatives to approach the Railway Claims Tribunal for compensation against Railway administration. This is a social welfare legislation introduced by the Government of India with a view to come to the rescue of the victims or their dependents either due to loss of life or loss of earning capacity of the persons who met with an accident so that the family members do not come to the street with hunger. It is borne out by record that the Railway administration took up the cause of the claimant and moved the application under misconception that he can be helped by getting compensation under the Workmen's Compensation Act. The railway administration ought to have taken proper legal advice as to the proper forum to which the claimant is supposed to approach for compensation for the loss suffered by him. Ultimately, a few months before making the application, the Railway administration coolly conveyed to him that he is not entitled to any compensation under the Workmen's Compensation Act since he does not fall within the definition of "workman". In the light of those circumstances, the claimant having no other alternative approached the Tribunal to condone the delay caused thereby and to grant just and reasonable compensation.

6. In the light of the above circumstances, and in view of the enabling provision u/s 17 of the Act, a liberal view is taken without standing on technicalities, to condone the delay caused by the claimant in making the application u/s 16 of the Act.

7. In the above circumstances, the appeal is allowed and the delay caused in making the application is condoned. The Railway Claims Tribunal is directed to take the main application on file and dispose of the same as expeditiously as possible, in accordance with law. No costs.