(2009) 06 CAL CK 0059

In the Calcutta High Court

Case No : F.M.A.T. No. 674 of 2008 and C.A.N. 4686 of 2008

Mainura Bibi APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34
Railways Act, 1989 — Section 126, 18

Citation : AIR 2009 Cal 214 : (2009) 4 CALLT 1 : (2010) 8 RCR(Civil) 2328

Hon'ble Judges : Prasenjit Mandal, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Kazi M. Rahman, for the Appellant; Soumendra Nath Das, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—All these three appeals were heard together as common question of law is involved in these three appeals.

2. All these three appeals are directed against three different awards passed by the Railway Claims Tribunal awarding compensation in favour of the claimants thereby directing the Railway Authority to pay the awarded amount within a stipulated period with a condition that in default of payment of the amount within 60 days from the date of passing the award, the same should carry simple interest @ 6% p.a. from the date of award till realisation.

3. Being dissatisfied, the claimants have preferred the present three appeals.

4. The grievance of the learned advocate appearing on behalf of the appellants in these three appeals is that the learned Tribunal ought to have awarded interest on the awarded sum from the date of filing of the application till actual deposit at least at the rate by which the nationalised banks grant interest for deposit of amount for one year or more irrespective of the fact whether there was default on the part of the Railway in paying the awarded sum within sixty days from the

date of award. In other words, according to the appellants, for the delayed disposal of the proceeding, the claimants should not suffer and interest should be payable as a matter of right.

5. The learned advocate appearing on behalf of the Railway Authority, on the other hand, has opposed the aforesaid contention advanced by the learned advocate for the appellants and has contended that either in the Railways Act or the Railway Claims Tribunal Act, there is no provision for grant of interest on the awarded amount and as such, as a matter of right the claimants cannot claim interest on the awarded sum. It was further contended that the Railway Authority acts for the benefits of the public and as such, it should not be penalised by directing it to pay the amount of interest on the awarded amount for the delayed disposal of the proceedings.

6. Therefore, the only question that falls for determination in these three appeals is whether in the absence of any provision for grant of interest on the awarded amount in the Railways Act or the Railway Claims Tribunal Act, the Tribunal below acted illegally in not awarding interest on the awarded sum from the date of filing of the application when the claims of the appellants were found to be genuine ones.

7. After hearing the learned Counsel for the parties and after going through the provisions contained in the Railway Claims Tribunal Act or the Railways Act, we find that there is no provision in those Acts for grant of interest on the awarded sum. According to Section 18 of the former Act, the Tribunal while exercising power under the Act would not be bound by the provision of the CPC but will be guided by the principles of natural justice. Therefore, the provision contained in Section 34 of the CPC authorising the Court to grant pendente lite interest in terms does not apply to the proceedings before the Tribunal. But the principle of grant of interest on the decretal amount is based on equity. At this stage, we may profitably refer to the following observations of the Supreme Court in the case of South Eastern Coalfields Ltd. Vs. State of M.P. and Others, at paragraph 19 of the judgement:

Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (See: Chitty on Contracts, Addition 1999, Vol. II, Part 38-248, at page 712). Interest in equity has been held to be payable on a market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.

8. Moreover, in a recent decision of the Supreme Court in the case of Alok Shanker Pandey Vs. Union of India (UOI) and Others, , the Apex Court made the following observations about the object of grant of interest:

It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.

(Emphasis supplied by us)

9. Applying the aforesaid principles to the facts of these cases, we hold that Section 18 of the Act having directed the Tribunal to follow the principles of natural justice, it should follow the principles of Section 34 of the CPC which is enacted by following the principles of justice, equity, and good conscience. According to the provisions of the Railway Claims Tribunal Act and the Railways Act, the compensation for death due to untoward incident which is a fixed amount of Rs. 4 lakh was payable on the death of the victim. The moment an application was filed for compensation it was a duty of the Railway to verify the allegation made in the complaint, and if on verification it was found to be a genuine claim, to concede before the Tribunal the claim of the appellant. Because of the frivolous contest made by the Railway Authority, the victim got the relief belatedly and in the process, she lost the interest which she could enjoy by investing the money. Section 126 of the Railways Act even authorises the Railway Authority to grant interim relief to the claimant not exceeding the amount which is payable by way of final compensation before the final decision by the Tribunal if the Railway Authority is satisfied with the claim of the applicant notwithstanding the pendency of the application before the Tribunal.

10. Therefore, it was the duty of the Tribunal to award interest on the determined sum from the date of the application till the deposit of the amount at the rate which a Nationalised Bank used to grant for a deposit of one year or more at the relevant point of time. As pointed out by the Apex Court, it is not a penalty but is a normal accretion on the capital and it will be against the principles of natural justice to deprive the award holder of such benefit.

11. We, accordingly, allow all these three appeals and modify the awards impugned by directing that the respective appellants would get interest on the awarded sum from the date of filing of the claim-application till the deposit of the amount by the Railway Authority at the rate of 8% per annum. The appeals are, thus, allowed to the extent indicated above.

12. Let the awarded amount, as modified herein, be deposited before the Tribunal within a month from today.

13. In the facts and circumstances, there will be, however, no order as to costs.

Bhaskar Bhattacharya, J.

14. I agree.

