
(2006) 11 OHC CK 0010
In the Orissa High Court

Prasant Kumar Choudhury

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Railway Claims Tribunal Act, 1987 — Section 13, 18, 23

Citation : (2008) ACJ 685 : AIR 2007 Ori 33

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Mahanty, J.—In the present appeal filed u/s 23 of the Railway Claims Tribunal Act, 1987, the appellant who was the claimant before the Railway Claims Tribunal, Bhubaneswar Bench has sought to challenge the order dated 28th August, 2002 passed by the Railway Claims Tribunal in Case No. OA/87 of 1998 to the extent of non-granting of pendente lite interest on the compensation awarded to the claimant-appellant.

2. The appellant filed a claim application before the Railway Claims Tribunal, Bhubaneswar Bench, inter alia, claiming for compensation on account of the injury sustained by him while travelling in a train. In the said application, the appellant claimed "compensation with interest at the rate of 12% per annum from the date of untoward incident till the date of payment". The Tribunal by its order dated 28-8-2002 partly allowed the claim application and directed as follows:

The claim application is allowed partly. The respondent-railway is directed to pay a compensation of Rs. 4 lakhs (Rupees four lakhs) only to the applicant, Prasant Kumar Choudhury, within 60 days by way of an A/c payee cheque failing which interest " 9% per annum shall be payable from the date of pronouncement of this order till the date of payment.

It is not in dispute in the present appeal that the Railway Authorities have complied with the said order and have paid the compensation within the period stipulated in the said order.

3. The present appellant has sought to challenge the order of the Railway Claims Tribunal to the extent of non-granting pendente lite interest. Learned Counsel for the appellant has placed reliance on various decisions to the effect that even though the Railway Claims Tribunal Act and the Rules framed thereunder do not contemplate any provision for awarding interest for the post-litigation period nevertheless interest can be awarded u/s 34 of the Civil Procedure Code. In support of her contention, learned Counsel for the appellant has placed reliance on the following decisions:

Union of India (UOI) Vs. Shri Bani Lal, ; Union of India (UOI) Vs. M. Thankaraj and etc. etc., .

Apart from the aforesaid citations, learned Counsel for the appellant submits that the aforesaid finding of various High Courts now stand affirmed by judgment of the Supreme Court in the case of N. Parameswaran Pillai and Another Vs. Union of India (UOI) and Another, and stated that the Hon"ble Apex Court in the aforesaid decision has awarded interest from the date of the petition till the date of actual payment.

4. Learned Counsel for the Railway Authorities submitted that the appellant has not made out any ground for modifying the order dated 28-8-2002 of the Tribunal and no justification exists for the appellant to claim pendente lite interest. Learned Counsel further submitted that under the provisions of the Railway Claims Tribunal Act, compensation payable to the appellant was to be determined by the Claims Tribunal and in the present case such amount having been determined by the order dated 28-8-2002 and the compensation amount having been paid within the period stipulated in the order, the Railway is not liable to pay any interest on the amount of compensation far less any pendente lite interest. Learned Counsel for the Railways further submitted that Section 34 of the CPC is not applicable to the Railway Claims Tribunal inasmuch as Section 18(3) of the Railway Claims Tribunal Act, 1987 restricts application of the CPC and, therefore, Railway Claims Tribunal Act being a special statute, Section 34 of the CPC cannot be invoked for the purpose of the claim for pendente lite interest. Learned Counsel for the Railways placed great reliance on a unreported Judgment of this Court in FAO No. 331 of 2005 whereby, the learned single Judge of this Court by his judgment dated 7-8-2006 has rejected the contention raised in the present appeal and held that interest can only be awarded under the Railway Claims Tribunal Act from the date of the award till the date of payment and not from the date of application (pendente lite interest).

5. I have gone through the judgment rendered by the Hon"ble Single Judge of this Court in FAO No. 331 of 2005, The question of pendente lite interest has been dealt with in paragraph 9 of the said judgment, which reads as follows:

So far as interest is concerned it is contended by the learned Counsel for the appellant that Railways Act, 1989 and the Railway Claims Tribunal Act, 1987 or the Rules framed thereunder do not provide for payment of interest on compensation. In this connection, reliance is placed by the learned Counsel for the appellant on a decision of the Apex court in the case of Rathin Menon Vs. Union of India, The Apex Court in the aforesaid case allowed interest from the date of award, whereas in the present case interest has been awarded from the date of filing of the application. Miss Panda, learned Counsel for the claimant-respondents could not cite any provision or decision to say that the Tribunal was competent to grant interest both pendente lite and future. I am, therefore, of the view that so far as interest is concerned, same should be imposed from the date of award till the date of payment and not from the date of application.

It would be apparent from a reading of the aforesaid paragraph that the learned Single Judge proceeded on the basis of the submissions made by the learned Counsel in the said case who had apparently failed to point out any provision of law or produce any decision to show that the Railway Claims Tribunal was competent to grant interest both, pendente lite and future. In the present case, learned Counsel for the appellant placed a great reliance on Section 34, C.P.C. apart from placing reliance on various decisions referred to above. Relevant portion of Section 34, CPC is quoted herein below:

34. interest:

(1) Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree....

6. In view of the submissions advanced by the learned Counsel for the appellant in the present case, I am duty-bound to make an assessment of the contentions advanced by and on behalf of the rival parties.

In the case of Union of India (UOI) Vs. M. Thankaraj and etc. etc., , A Division Bench of Kerala High Court while dealing with a matter arising out of a judgment of the Railway Claims Tribunal, were of the view that the claimant is entitled to the interest from the date of filing of the petition before the Tribunal up to the date on which the compensation amount was directed to be paid by the Tribunal. While coming to the aforesaid conclusion, their Lordships of Kerala High Court relied upon the view taken by a Division Bench of Madhya Pradesh High Court in the case of Union of India (UOI) Vs. Smt. Laxmipati and Another, wherein it has been held that even if Section 34 of CPC has not been expressly made applicable to the proceedings before the Commissioner under the Indian Railways Act, 1890, there is no reason to hold that principles of Section 34 of CPC would be inapplicable. Their Lordships of Kerala High Court also placed reliance on a similar view taken by Madras High Court in the case of Union of India (UOI) Vs. A. Janardhanan and Another, . Their Lordships also referred to the judgment of

the Supreme Court in the case of A.A. Haja Muniuddian Vs. Indian Railways, wherein the Supreme Court has occasion to consider the question whether the provisions of Order 33 of the CPC would be applicable to the proceedings before the Railway Claims Tribunal and came to hold that although the Railway Claims Tribunal Act and the Rules framed thereunder do not specifically provide for application of Section 34 of the Code of Civil Procedure, there is nothing in the Act or the Rules* which precludes the Tribunal from following that procedure if the ends of justice so required. Nowhere in the Act is there any provision which runs counter to or is inconsistent with the provisions of Order 33 of the Civil Procedure Code. Applying the said principle of the Apex Court, a Division Bench of the Kerala High Court came to hold that even though Section 34, C.P.C, as such, is not applicable, the principles contained therein can be made applicable to the proceedings before the Railway Claims Tribunal.

The Delhi High Court in the case of Union of India (UOI) Vs. Shri Bani Lal, , has also come to the conclusion that there is no prohibition either in Railways Act or in Railway Claims Tribunal Act to award interest on compensation and that the Tribunal has power to award interest during the pendency of the proceeding before it.

7. Learned Counsel for the Railways contended that in terms of Section 18 of the Railway Claims Tribunal Act, 1987, there has been restricted application of the CPC and further that Section 34 of the CPC has not been made applicable to the Railway Claims Tribunal. Section 18 of the Railway Claims Tribunal Act is quoted hereinbelow:

18. Procedure and powers of Claims Tribunal : (1) The Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.
xx xx

On a plain reading of the aforesaid provision, it is not possible to accept the contentions of the learned Counsel for the Railway since there exists no specific bar to the application of the CPC in the aforesaid provision of law. On the contrary, the said provision basically unshackles the Tribunal from the procedural laws mandated in the Code while at the same time maintaining the requirement of compliance of natural justice. The provision is clearly "enabling" the provision and not a "disabling" provision. This provision does not specifically take away from the Tribunal the power and authority to exercise any or all provisions of C.P.C, and therefore, it is clear that Section 34, C.P.C. continues to be vested in the authority of the Railway Claims Tribunal on the contrary, Section 13(1) of the 1987 Act vests the Claims Tribunal with the authority to exercise all such jurisdiction, powers and authority, as were exercisable by any "Civil Court", which obviously would include the power to grant interest u/s 34 of the Code of Civil Procedure.

8. Learned Counsel for the Railway Authorities apart from placing reliance on the judgment of the learned single Judge of this Court in FAO No. 331 of 2005 also placed reliance on the judgment of the Hon''ble Supreme Court in the case of *Rathi Menon Vs. Union of India*, , since the said judgment has also been relied upon and discussed in the judgment dated 7-8-2006 in FAO No. 331 of 2005 by the learned single Judge in paragraph 9 of the judgment referred to above, holding that the Hon''ble Apex Court in the aforesaid case allowed interest only from the date of the award and not pendente lite.

9. In this respect, learned Counsel for the appellant contended that in the case of *Rathi Menon (supra)*, the Hon''ble Apex Court was not dealing with the question whether a claimant was entitled to pendente lite interest or not. To distinguish the aforesaid case, learned Counsel for the appellant placed reliance on a latter judgment of the Apex Court, in the case of *N. Parameswaran Pillai and Another Vs. Union of India (UOI) and Another*, . In the aforesaid decision rendered by the Apex Court, their Lordships were dealing with the challenge to the judgment of a Division Bench of the Kerala High Court, where, while upholding the award of the Tribunal awarding compensation of Rs. 2 lakhs also declared that the claimant is entitled to interest " 12% per annum from the date of the petition till the date of payment (pendente lite interest). In this case Hon''ble Apex Court took into consideration its earlier judgment in *Rathi Menon Vs. Union of India*, and while directing enhancement of compensation amount, i.e., from Rs. 2 lakhs to Rs. 4 lakhs also affirmed the direction for interest as awarded by the High Court. The Hon''ble Apex Court concluded the judgment by stating that if the original award of Rs. 2 lakhs as awarded by the Tribunal has already been paid, the appellants would be entitled to interest on the balance amount of Rs. 2 lakhs from the date of the petition till the actual payment....

10. I am of the view that the judgment of the learned single Judge of this Court in FAO No. 331 of 2005, is clearly distinguishable in view of the fact that the learned single Judge's attention in that case was not drawn to any provision of law nor to any decision on the basis of which it could have been held that learned Tribunal was competent to grant interest, not only pendente lite but also future. In the present appeal, on the contrary, the learned Counsel for the present appellant drew the attention of the Court to Section 34, C.P.C. as the source of authority for grant of pendente lite and placed reliance on various judgments of different High Courts as well as the Supreme Court referred hereinabove on the selfsame issue.

11. From a reading of the decisions noted hereinabove, the principle of law that would emanate is that although the Railway Claims Tribunal Act, 1987, does not specifically vest the Tribunal with the authority to grant pendente lite interest, yet the power and authority to grant such pendente lite interest flows from Section 13(1) of the Railway Claims Tribunal Act, 1987 read with Section 34 of the Code of Civil Procedure, 1908.

12. In view of the discussions made hereinabove, I am of the view that the claim

of the appellant for interest from the date of the petition before the Tribunal till the date of actual payment of compensation is fully justified in law. In view of such findings, the appeal is allowed with a direction that the interest " 12% per annum be paid to the appellant on the compensation amount awarded in his favour, from the date of filing of the petition before the Railway Claims Tribunal till the date of actual payment of compensation. The interest may be computed and paid to the appellant within a period of three months.

With the aforesaid directions, this appeal is allowed.