

(2008) 07 OHC CK 0085

In the Orissa High Court

Ramahari Behera and Another and Birendra Kumar Pathak
and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

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

Citation : (2008) 106 CLT 888 : (2008) 2 OLR 817

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanju Panda, J.—As common questions of law and facts involve in both these appeals, they are being disposed of by this common judgment.

These appeals are preferred u/s 23(1) of the Railway Claims Tribunal Act, 1987 by the claimants against two different awards made by the Railway Claims Tribunals, Bhubaneswar in O.A. No. 83 of 1999 dated 25.10.2004 and O.A. No. 41 of 2002 dated 15.10.2004.

2. The brief facts of each case are as follows;

FAQ No. 16 of 2005

On Sadakanta Behera, the deceased, while travelling from Howrah to Balasore in Dhauli Express on 4.12.1998, to sudden jerk, he fell down from the train near about Jaleswar station. Thereafter, the injured was shifted to S.C.B. Medical College and Hospital, Cuttack with the help of staff of Jaleswar Railway Station and others and on the next date he succumbed to the injury. The parents of the deceased filed the claim application and they have proved the tickets and other police papers. The railway authorities filed their written statement in usual manner. The claimants also filed two affidavits. The Tribunal after analyzing the materials available before it accepted the proved evidence of claimants that the

deceased was a bona fide passenger and died in an untoward incident awarded the statutory compensation of Rs. 4 lakhs with interest " 6% from the date of the order.

In this appeal, the claimants have challenged being aggrieved by the award in respect of payment of interest.

FAQ No. 17 of 2005

One Suman Pathak while travelling in 2842- Coromondal Express on 27.3.2002, fell down from the train between Jaleswar and Laxmannath Road Railway Station near village Chamardig while washing her face and died on the spot. The railway authorities filed their written statement in usual manner. The claimant also filed the affidavit. In support of the claim, the claimant produced the inquest panchanama, post mortem report and attested copy of the railway journey ticket (EFT No. 480881) dated 26.2.2002 in exchange for a military warrant (No.74PA-183540 dated 26.3.2002) from Visakhapatnam to Gorakhpur.

The Tribunal after analyzing the materials available before it awarded the statutory compensation of Rs. 4 lakhs without any interest on the compensation amount. In FAQ No. 17 of 2005, the claimants have challenged the award regarding non-payment of interest.

In both these appeals the question of law arises to be considered is whether the Tribunal was right in awarding 6% interest on the awarded amount from the date of the award ?

It is stated by the learned Counsel for the Railway Authority that they have not filed any appeal challenging the award as stated above.

3. The apex Court in the case of N. Parameswaran Pillai and Another Vs. Union of India (UOI) and Another, while dealing with the judgment of a Division Bench of Kerala High Court upheld the award of the Railway Tribunal and directed that the claimants are entitled the interest from the date of application till the date of payment (pendente lite interest). In the said decision the apex Court has also taken into consideration the case of Rathi Menon Vs. Union of India, This Court in the case of Prasant Kumar Choudhury Vs. Union of India (UOI), after taking into consideration the decision of the apex Court as well as various High Courts has also allowed the interest on the compensation awarded by the Railway Tribunal from the date of filing of the application.

4. As there is no prohibition either in the Railways Act or Railway Claims Tribunal Act to award the interest on the compensation in case of injury or death which is an untoward incident, the Tribunal can award interest taking into consideration the provision contained in Section 34 of the C.P.C. and compensation amount and the discretion must be exercised judiciously. The Tribunal has not given any reason not to award the interest on the compensation and the Railway have also not challenged the award of compensation by filing appeal. Award of interest pendente lite and future is discretion with the Court or Tribunal. The discretion

should be exercised fairly judiciously and for reasons and not in an arbitrary and fanciful manner. Taking into consideration the above principles and the decision of the apex Court as stated hereinabove paragraphs, this Court directs that the claimants are entitled to interest " 4% from the date of application till date of payment taking into consideration the facts and circumstances of the case. This view was taken, taking into consideration the reason given in FAO No. 424 of 2005 decided on 28.7.2008.

The appeals are allowed accordingly. No costs.