
(2019) 06 BOM CK 0023
In the Bombay High Court
Case No : First Appeal No. 712 Of 2018

Saraswati Giri

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 11-06-2019

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 17(1), 17(2)

Citation : (2019) 06 BOM CK 0023

Hon'ble Judges : Anuja Prabhudessai, J

Bench : Single Bench

Advocate : Kuldip Singh, T. J. Pandian

Final Decision : Disposed Off

Judgement

Anuja Prabhudessai, J

1. Admit. Heard finally with consent of the learned counsel appearing for the respective parties.
2. The appellant herein has impugned the judgment and order dated 02/11/2017, whereby the learned Member of Railway Claims Tribunal, Mumbai Bench has dismissed the application No.MA/MCC/0019/2017 for condonation of delay.
3. Heard the learned counsel for the appellant and the learned counsel for the respondent. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.
4. The appellant herein had filed an application for compensation before Railway Claims Tribunal, in view of death of her son in a train accident on 30/11/2012. Since the said application was filed after the prescribed period of one year, it was accompanied with an application for condonation of delay of four years, 5 months and 27 days. In the affidavit in support of the application, the appellant had stated that she is an illiterate person hailing from backward area of Orissa. She

has stated that her husband had pre-deceased her son. There is no literate person in her community or locality who could guide her in filing the application. She has stated that on account of afore stated factors and due to financial constraints, she was unable to file an application within the prescribed period of limitation.

5. The Tribunal has observed that the approach of the appellant was casual and the reasons stated are vague, couched in general terms and are not convincing. The Railway Tribunal has concluded that the appellant has not shown sufficient cause for condoning the delay of over four years.

6. It is to be noted that the Railway Claims Tribunal Act, 1987 is a beneficial social welfare legislation. It was enacted with an avowed Object to set up the specialized Tribunal for speedy adjudication of accident and other claims against railways. Section 17(1) of the Railway Claims Tribunal Act mandates that the accident claim shall be filed within one year from the date of the accident. Sub-section 2 of section 17 empowers the Tribunal to condone the delay if the applicant is able to show sufficient cause for such condonation of delay. In the instant case , the appellant had filed an application after a period of over four years from the date of the accident. Suffice it to say that mere length of delay is not sufficient to reject the application but it is the cause of delay which has to be taken note of.

7. In the instant case, a perusal of the records reveals that the appellant had filed an application for compensation on account of death of her son who according to her was the sole earning member. The appellant is a native of Orissa. Her husband had pre-deceased her son. She is illiterate, poor and resides in a rural area. The affidavit filed by the appellant reveals that there are no educated persons in her community or locality who could guide her in filing the application.

8. It is pertinent to note that the Tribunal has not disbelieved or rejected the grounds stated by the appellant. The Tribunal has also Not attributed negligence or malafides to the appellant but has held that the approach of the appellant is casual and that the plea of illiteracy, poverty and lack of knowledge is not sufficient to condone the inordinate delay of over three years.

9. It may be mentioned that in manoranjan pradhan v/s. Union of india 2017 (1) mhlj 163, this Court has held as under :-

" 10. It is true that illiteracy, poverty, want of funds, ignorance of law cannot be, AS of right, held to be sufficient cause for condonation of delay, however, AS has been time And again ruled by the honourable Apex Court, it is imperative for the Courts or the tribunals that in the proceedings where rights of illiterate, poor, down-trodden Are involved, A more humane approach has to be Adopted And it should not be the endeavour of the Courts or the tribunals, or the Authorities to dismiss applications or petitions merely on technicalities without looking to the merits of the case. The railways Act is A beneficial legislation meant for providing

compensation to the victims or the legal representatives of the victims of the railway Accidents. As such, in such matters, the tribunal is not supposed to take A pedantic or hyper technical view but is expected to Adopt A humane And lenient approach. Its approach should be justice oriented. Acceptance of explanation furnished should be A normal course in such Matters unless there is some contrary evidence imputing the intention or the bona fides of the claimants making delay in approaching the Courts. "

10. In state of bihar And ors. V/s. Kameshwar prasad Singh And Anr. [2001 (1) SC SLJ 76], the Apex Court has held that power to condone the delay in approaching the Court has been conferred upon the Courts to enable to do substantial justice to parties by disposing the cases on merits. The Apex Court reiterated the principles laid down in Collector, Land Acquisition, Anantnag v/s. Mst. Katiji (1987) 111 SC 500 wherein it is held that the expression 'sufficient cause' is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of the Courts.

11. Similarly in Nand Kishore v/s. State of Punjab (1995) 6 SCC 614, the Apex Court has observed that if the explanation given does not smack malafides or is not shown to have been put forth as a part of dilatory strategy, the Court must show utmost consideration to the sutor.

12. In the instant case, the explanation offered by the appellant is Genuine and bonafide and constitute 'sufficient cause'. Hence, Tribunal was not justified in taking a pedantic approach and depriving the appellant from seeking remedy under a beneficial legislation.

13. Under the circumstances, the impugned order cannot be sustained. Hence, the following order :-

(a) The impugned order is set aside.

(b) The delay in filing the application is condoned. The application No.MA/MCC/0019/2017 is ordered to be registered.

(c) The Railway Tribunal is directed to dispose of the same on its own merits.

(d) It is made clear that this Court has not gone into the merits of the matter and all points and contentions of the parties including the issue of interest on amount of compensation for the period of delay, in the event the Claim Application is decided in favour of the applicant, are specifically kept open.