
(2011) 01 P&H CK 0185
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1796 of 2010 (O and M)

Shiv Nath Paswan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 01 P&H CK 0185

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Judgement

Rajesh Bindal, J.—Challenge in the present appeal is to the order dated 23.12.2008, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), whereby the application filed by the Appellant for restoration of Original Application No. OA-II/ 3/2006, which was dismissed in default on 17.1.2008, was dismissed.

2. Learned Counsel for the Appellant submitted that it is a hard case in which the father of the Appellant expired and for payment of compensation, claim petition was filed before the Tribunal. As the accident had taken place within the jurisdiction of the Tribunal at Chandigarh and the Appellant in the present case belongs to Bihar, counsel from Bihar only was engaged, who though initially attended some hearings, but thereafter neither attended the hearings nor informed the Appellant, as a result of which the petition was dismissed in default on 17.1.2008. Immediately when the Appellant came to know about the dismissal of the petition claiming compensation, application for restoration thereof was filed on 11.7.2008, which was dismissed as barred by time. Considering the aforesaid facts, it was submitted that application for restoration filed by the Appellant deserves to be accepted and the claim petition be decided on merits.

3. On the other hand, learned Counsel for the Respondent submitted that it is a case of gross negligence of the Appellant as well as his counsel. Even if the counsel had not appeared on 17.1.2008, when the case was dismissed in default,

the Appellant also was equally negligent. The application was filed only on 11.7.2008, i.e., nearly 6 months thereafter. There is no reason forthcoming as to why the Appellant did not pursue his case diligently. As the cause shown for restoration and that too which was prayed for belatedly was not sufficient, the Tribunal has rightly dismissed the application.

4. Having heard learned Counsel for the parties, in my opinion, the present appeal deserves to be allowed. From the facts of the case, it is evident that it is a very hard case. The father of the Appellant expired. The claim petition was filed in the Tribunal at Chandigarh. The Appellant being an illiterate person and resident of Bihar engaged a counsel from Bihar only to pursue his case before the Tribunal. If he had not appeared before the Tribunal and on account of which the claim petition was dismissed in default, the Appellant should not be made to suffer only because there was some delay in filing the application for restoration thereof, as the same was filed when he came to know about the dismissal of the claim petition. He was not to gain anything by sleeping over the matter, once it came to his notice that the claim petition had been dismissed by the Tribunal.

5. Considering the aforesaid facts, the impugned order passed by the Tribunal is set aside and the matter is remitted back to the Tribunal for fresh consideration on merits. The parties are directed to appear before the Tribunal on 25.2.2011 for further proceedings. As the claim petition was filed way back in the year 2006, the Tribunal is directed to dispose of the same expeditiously, preferably within a period of six months from the next date of hearing.

6. The appeal stands disposed of.