

(2009) 11 DEL CK 0119
In the Delhi High Court
Case No : FAO. No. 228 of 2008

Smt. Brijesh Devi, Master Sachin and Master Sagar	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 17(1), 17(2), 23, 5

Citation : (2011) ACJ 1179

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : N.K. Gupta, for the Appellant; Sanjay Kr. Pathak, Sumeet Batra and Zubeda Begum, for the Respondent

Judgement

V.B. Gupta, J.—This appeal has been filed u/s 23 of the Railway Claims Tribunal Act, 1987 (for short as "Act.") by appellants against judgment dated 30th May, 2008 passed by Railway Claims Tribunal, Delhi (for short as "Tribunal."). Vide impugned judgment, application for condonation of delay of the appellants was dismissed.

2. Appellants filed claim petition seeking compensation on account of death of Parveen Kumar in an untoward railway accident on 1st June, 2004. Deceased was husband of appellant No. 1 and father of appellants No. 2 and 3. Along with claim petition, an application for condonation of delay was filed in which it was stated that appellants were under great sorrow due to untimely death of deceased. Appellant No. 1, visited G.R.P, P.P. Shahdara number of times to know about the preparation of inquest report but no satisfactory answer was given to her. After numerous visits, police of G.R.P, P.P., Shahdara supplied few documents on 15th May, 2005.

3. Thereafter, appellant No. 1 approached an advocate at Tis Hazari Court, Delhi and handed over all the documents which were demanded by him. That advocate told her that he has prepared the case and got the signatures of appellant No. 1 on various documents and also told her that he will file the case within one year

from the date of accident. He also told the appellant that they need not come and he will inform them about the progress of the case.

4. In the meanwhile, appellant received a letter dated 18th October, 2005, from one S.S. Shambuti, Pleader Railway Claims, who again got the signatures of appellant No. 1 on various documents and gave assurance about filing of the case but he never informed the appellants about the case. Appellants tried their best to find out that advocate on the address given but they failed to trace that advocate. Thereafter, appellant contacted the present counsel and got the case prepared. There is a delay of two years eight months and twenty eight days in filing the petition. This delay is neither deliberate nor intentional, rather it is due to the reasons stated above.

5. In reply, it is stated by respondent that there is a considerable delay in filing the petition and appellants cannot take benefit of the wrong if any, committed by their advocate. Considering the facts that appellants received documents on 15th May, 2005, they still took two years and eight months to file present petition, which shows that there is considerable delay and no sufficient ground is made out for condonation of delay.

6. It is contended by learned Counsel for appellants that appellants are poor and illiterate villagers and they did not have the knowledge of filing the claim petition within one year. They handed over all the documents to counsel who assured them that he will file the petition but unfortunately said counsel did not prepare the case nor did he file the claim petition. Appellants cannot be punished for the wrong committed by their advocate. Moreover, appellants No. 2 and 3 are minors and they cannot be punished for the wrong committed by appellant No. 1. Thus, delay in filing the petition should be condoned.

7. In support, learned Counsel for appellants cited following judgments;

- (i) Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others,
- (ii) M.K. Prasad Vs. P. Arumogam,
- (iii) N. Balakrishnan Vs. M. Krishnamurthy,
- (iv) Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and;
- (v) Nagarjuna Patnaik v. Jayaky construction and Anr. III (2007) ACC 130 Orissa High Court.

8. On the other hand, it is contended by learned Counsel for respondent that appellants have put entire blame on their earlier counsel but there is nothing on record to show that they ever took any action against their advocate. The explanation given for condonation of delay is neither plausible nor reasonable. In support, learned Counsel for respondent referred a decision of Supreme Court;

Lachhman Das Arora Vs. Ganeshi Lal and Others,

9. As per appellants. own case, they received the documents from police of G.R.P on 15th May, 2005 and handed over all documents to an advocate at Tis Hazari Court, Delhi. No name or other particulars of that advocate has been mentioned at all. Further, case of appellants is that they received a letter dated 18th October, 2005 from one Sh. S.S. Shambuti, who offered his services to appellants. This advocate got the signatures of appellant No. 1 on various documents and gave assurance to the appellants about filing of case.

10. Accident in question is alleged to have taken place on 1st June, 2004. Appellants filed claim for compensation before Tribunal on 29th February, 2008. Having regard to the date of accident, appellants ought to have filed the claim petition before Tribunal on or before 1st June, 2005. They however, filed the claim petition before Tribunal on 29th February, 2008. Thus, there is a delay of two years, eight months and twenty eight days in filing the claim application.

11. In various judgments referred by learned Counsel for parties, it has been laid down that "Court has to exercise discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause., the principle of advancing substantial justice is of prime importance." The Tribunal dealing with" sufficient cause. has observed;

The applicants have attempted to explain the delay by stating that after a number of visits, the concerned police had supplied few documents on 15.5.2005, and, thereafter they had contacted one advocate, who did not file the application in time, though, he had promised, and, thereafter they received a letter dated 18.10.2005 from one S.S. Shambuti, who, however, could not be contacted and ultimately they contacted the present advocate and filed the application for compensation and in the process there was a delay of more than two years. The respondent railway administration has strongly objected for condoning such an inordinate delay on the ground that the same has not been satisfactorily explained by the applicants. Section 17(2) of the R.C.T Act confers powers on the Railway Claims Tribunal to condone the delay in filing claims after the period specified in Sub-section (1) of Section 17, if the applicant satisfies the Tribunal that they had sufficient cause for not making the application before the Tribunal within the period prescribed in Section 17(1) of the R.C.T. Act. Therefore, it is incumbent or obligatory upon the applicants to show that they had sufficient cause for not making the claim application within the period prescribed. In the instant case, the applicants have filed a photocopy of the letter dated 18.10.2003 alleged to have been written by one S.S. Shambuti and the contents thereof reads as under;

Apke shok santapt pariwar ko pramantma dukh sehan karne ki shakti de tatha atma ko shanti de. Apke priyajan ki mrutyu train- accident me ho gai hai uska muawza railway se aap logo ko dilane me pairavi avum kanooni madad karunga. Is hetu apke pas patra/ patravahak ko sambhandit farm ke sath bhej raha hun. Farm ke us sthan per jahan avedak ke hastakshar hetu jagah chuta hai vahan mritak ki patni ya mata/pita apna hastakshar ya bayen anguthe ki nishan bana

de.

The above contents of the letter alleged to have been received by the applicants would clearly indicate that the said Sh. S.S. Shambhuti had voluntarily offered his services to the applicants by supplying them with the necessary performa application etc. and does not in any way indicate that the applicants had either earlier approached some other advocate or the said Sh. S.S. Shambhuti at any point of time. It would appear as if the necessary initiative was taken by the said S.S. Shambhuti and there was no attempt on the part of the applicants to make any efforts to seek for compensation. Therefore, the explanation put forth by the applicants in their application stands diluted by contents of the above said letter. That being so, the explanation put forth by the applicants in their application does not appear to be genuine and bona fide. At any rate, the causes shown for condonation of such an inordinate delay have no acceptable value in the face of the above contents of the letter alleged to have been written by one S.S. Shambhuti to the applicants. Therefore, on the facts and in the circumstances of the case, it cannot be said that the applicants have shown sufficient and reasonable cause to condone such an inordinate delay in filing the claim application.

12. Letter dated 18.10.2005 shows that Mr. S.S. Shambhuti offered his service as advocate. On the basis of said letter, it cannot be said that he was appointed as a lawyer by the appellants. Appellants thus cannot put blame of negligence on that lawyer when there is no proof whatsoever to show that said lawyer was ever engaged by them in the matter.

13. Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., observed;

The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone

14. As already stated above, the appellants had received all relevant papers on 15th May, 2005 and one S.S. Shambhuti offered his services to file the claim petition as far as back on 18th October, 2005, but appellants slept over the matter and filed compensation claim only on 29th February, 2008. Thus, there is no explanation for this inordinate delay of two years, eight months and twenty eight days, in filing the claim petition. Under these circumstances, there is no reason to disagree with the findings of the Tribunal.

15. Hence, present appeal is not maintainable and same is dismissed.

16. Parties shall bear their own costs.

17. Trial court record be sent back.