

(2008) 12 KAR CK 0007
In the Karnataka High Court
Case No : M.F.A. No. 15658 of 2007

Smt. S. Devamma @ Devi Bai and Thriveni

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 123 C (2), 124 A, 16

Citation : (2009) ACJ 2427 : (2009) ILR (Kar) 472 : (2009) 2 KarLJ 683

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : S. Nagaraja and Omkar Murthy G, for the Appellant; N.S. Sanjay Gowda, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—This appeal is by the claimants seeking modification of the judgment and order passed by the Railway Claims Tribunal, Bangalore Bench in O.A. No. 1/2002 dated 9-10-2007 ordering to pay the interest front the date of filing the application.

2. An application was filed by the mother and sister of the deceased as per Section 16 of the Railway Claims Tribunal Act, 1989 (for short "the Act") seeking to award compensation of Rs. 4,00,000/-, stating that on 30-08-2001 when the deceased-L.S. Prasanna Kumar was travelling by Train No. 262 Mysore-Arasikere Passenger from Mysore to Hassan, he fell down accidentally at Krishnarajanagar Railway station. It is also stated that he was a bonafide passenger holding season ticket No. 00354928.

3. The matter was contested by the Respondent-Railways contending that there is no cause of action as the application was not filed u/s 123(c)(2) or Section 124-A of Railway Act, 1989. A defence was also taken that the deceased attempted to board a running train at his own risk, hence sustained self-inflicted injuries and died. As such, the Railways is not liable to pay compensation.

According to the learned Counsel appearing for the respondent-Railways, there is a 150 Kms distance restriction for issue of season tickets. But, according to the inquest report, the deceased was possessing two season tickets one from Mysore to Hassan and another from Hassan to Mysore. Accordingly, the matter was contested on various grounds.

4. Based on the pleadings, relevant issues were raised.

5. During the course of enquiry, on behalf of the claimants, applicant No. 1, the mother of the deceased was examined and certain documents were produced. On behalf of the Railways, one of the Officer was examined and two documents were produced.

6. On the basis of the pleadings and evidence on record, the Railway Claims Tribunal, Bangalore Bench while answering Issue No. 1 held that the claimants are dependants within the meaning of Section 123(b) of the Act. Having so held, referring to the various documents produced, noting that the witnesses examined on behalf of the Railway is not an eye witness to the incident and also that it is not possible to see the site of incident from the station building, the Tribunal has opined that as per Section 123(c)(2) of the Act, death of the deceased was an untoward accident.

7. The Railway Claims Tribunal also noted that the incidents mentioned in the proviso to Section 124-A are exceptions to general Rule for payment of compensation. The Tribunal relying upon a reported decision of Andhra Pradesh High court, as held in AIR 2005 Ap V Eswaraiah J. UOI v. Aggole Dilleswara Rao held, that the accident occurred on account of untoward incident, and that incident is also covered in the definition of Section 123(c)(2) of the Railways Act, awarded compensation of Rs. 4,00,000/- with interest at 9% p.a. from the date of the order till the date of payment.

8. According to the claimants, the accident is of the year 2001. There is delay in disposing of the matter. Non payment of the compensation amount of Rs. 4,00,000/- within the prescribed time, would enure to the benefit of the Railways as such the claimants are put to hardship for want of compensation that would have earned interest.

9. Per contra, the learned Counsel appearing for the Railways has vehemently contended that the decision of the Division Bench of this court has awarded the rate of interest at 6% p.a. from the date of adjudication and not from the date of filing of the application. Accordingly, relying upon the decision reported in Smt. Leelavathamma Vs. Union of India (UOI), contended that this court in another case has only awarded interest from the date of determination and not from the date of filing the application.

10. Learned Counsel appearing for the claimants relied upon a Division Bench decision of Kerala High Court reported in Union of India (UOI) Vs. Smt. Brigeet Chacko and Another, on the point of interest. The Division Bench of the said court

referring to various decisions of the Apex Court, it has formed an opinion that it is well settled law that interest is payable from the date of application at such rate at the discretion of the Tribunals. It has also observed that while awarding interest, the Tribunal can consider the bank rate also. Wherein the interest was ordered to pay only from the date of institution of the case at the rate of 6% p-a. and the said order has been held to be correct by the Division Bench.

11. So far as awarding interest is concerned, in the case of Smt. Leelavathamma v. Union of India, cited supra, the situation was that during the pendency of the matter, there was an amendment to the Railways Act enhancing condensation amount from Rs. 2,00,000/- to Rs. 4,00,000/-. In the circumstances, as per the law prevailing, since there was enhancement of compensation by statutory amendment, that would enure to the benefit of the claimants due to pendency of the matter. It being one of the Sitting Judge in the said decision, we found, that it is justifiable to award interest from the date of determination as the benefit would enure to the claimants due to such amendment. As such, we thought it fit that the interest could be awarded only from the date of determination and not from the date of application, as the applicants were benefited by the delay in disposal of the said case. But, in the case on hand, the untoward accident was of the year 2001 i.e. subsequent to the amendment of the Railways Act, 1989. At the time of accident, the claimants were entitled for compensation of Rs. 4,00,000/- and death was due to untoward accident as required u/s 123(c)(2) and 124 of the Railway Claims Tribunal Act, 1989.

12. In the instant case, as is noted, the matter was disposed of during the year 2007. Admittedly there is a delay of six years in disposing of the matter, whereas within a year the matter could have been disposed of in the normal course. Due to delay, the claimants being the dependants of the deceased were made to suffer hardship and financial distress. In the circumstances, the ratio laid down by the Kerala High Court in the case of Union of India v. Smt. Brigeet Chacko and Anr. the said High Court held that it is well settled law that the interest can be awarded from the date of institution of the case at the discretion of the Tribunals.

13. In that view of the matter, I deem it proper to award interest at the rate of 9% from the date of institution of application till the date of actual payment.

14. Accordingly, the appeal is allowed.