
(2011) 01 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1336 of 2010

Smt. Veena Rao Phalke

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Interest Act, 1978 — Section 3
Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2011) 3 MPHT 68

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Anoop Shrivastava, for the Appellant; O.P. Namdeo, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—I.A. No. 1336/2010 is an application for condonation of delay in filing this appeal u/s 23 of the Railway Claims Tribunal Act, 1987. It is contended therein that the claim case was preferred by the appellant after death of her husband who while travelling as a bonafide passenger met with an untoward incident to which he succumbed. It is urged that after death of her husband there is no male member in the family and the local Counsel who was entrusted with the brief did not advise appellant properly as such she could not file appeal within time stipulated under the statute. It is urged that, delay is bonafide and appellant is interested in prosecuting appeal. It is further urged that since the appellant was pitched against the circumstances which were beyond her control, therefore, also the delay in filing the appeal may be condoned.

2. Learned Counsel appearing for respondent on his turn has orally objected to the application for condonation of delay.

3. Having regard to the contentions put-forth in the application and the

averments of the learned Counsel for the parties, this Court is of considered opinion that good ground is made out for condoning the delay in filing the appeal.

4. Accordingly, the delay is condoned.

5. I.A. No. 7048/2010 is disposed of accordingly.

6. The appeal is admitted for hearing.

7. With consent the matter is heard finally.

8. As apparent, the appeal is directed against the award dated 18-2-2009 passed by the Railway Claims Tribunal, Bench at Bhopal in Case No. O.A. II/287/2004; wherein, the Tribunal awarded a compensation of Rs. 4,00,000/- along with interest @ 7% per annum. However, the grant of interest has been deferred for a period of two months. It is this part of the order which the appellant is aggrieved of.

9. It is urged that the Tribunal fell in patent error in deferring the grant of interest on the award. It is contended that the interest ought to have been granted to the appellant from the date of institution of proceeding before the Tribunal and not from any deferred date.

10. The issue as to whether the interest is to be ordered from the date of filing of application or from the date of award is no more *res Integra* and has been settled at rest by the judgment rendered by the Supreme Court in *Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another*, wherein, it is held by Their Lordships:--

16. It is, therefore, clear that the Court, while making a decree for payment of money is entitled to grant interest at the current rate of interest or contractual rate as it deems reasonable to be paid on the principal sum adjudged to be payable and/or awarded, from the date of claim or from the date of the order or decree for recovery of the outstanding dues. There is also hardly any room for doubt that interest may be claimed on any amount decreed or awarded for the period during which the money was due and yet remained unpaid to the claimants.

17-18. The Courts are consistent in their view that normally when a money decree is passed, it is most essential that interest be granted for the period during which the money was due, but could not be utilized by the person in whose favour an order of recovery of money was passed. As has been frequently explained by this Court and various High Courts, interest is essentially a compensation payable on account of denial of the right to utilize the money due, which has been, in fact, utilized by the person withholding the same. Accordingly, payment of interest follows as a matter of course when a money decree is passed. The only question to be decided is since when is such interest payable on such a decree. Though there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the

date of institution of the proceedings in the recovery of the amount, the other view is that such interest is payable only, when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of proceedings for recovery of the dues, where the same is provided for by the terms of the agreement entered into between the parties or where the same is permissible by statute.

19. Accordingly, we are unable to sustain the order of the Railway Claims Tribunal directing payment of interest on default of the payment of the principal sum within a period of 45 days. As we have indicated, hereinbefore, when there is no specific provision for grant of interest on any amount due, the Court and even Tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil Procedure Code.

11. In *Siddha Muni Shukla and others Vs. Union of India and another*, M.A. No. 2868/2006, decided on 1-11-2006, Division Bench of this Court observed:--

On the scrutiny of the award, it is clear as a day that the interest has been granted on a condition that if the respondent would pay compensation within 60 days, no interest would be leviable. It is trite law that this would not amount to grant of interest. Mr. Dubey has submitted that the interest may be granted from the date of presentation of the application before the Tribunal, i.e., from 16-9-2002. To buttress his aforesaid submission, he has placed reliance on the decision rendered in the case of *Union of India (UOI) Vs. Smt. Laxmipati and Another*,

Recently, this Court in the case of *Union of India Vs. Rami Bai*, in M.A. No. 1220 of 2006 after referring to various decisions rendered in the cases of *Ambica Quarry Works Vs. State of Gujarat and Others*, , *Ramesh Chand Daga Vs. Rameshwari Bai*, , *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, , *P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others*, , and *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc.*, , has expressed the opinion as under:--

Only to show that in the absence of any prohibition interest can be awarded as an accessory or incidental to the sum awarded as due and payable. On the scrutiny of the Act and the Rules, it is clearly evincible that is no prohibition. The Division Bench of this Court in the case of *Smt. Laxmipati (supra)*, has dealt with the provisions of the Act. Rules and the conception of grant of interest. The Division Bench had addressed itself with regard to the claims for unliquidated damages. The Division Bench decision is a binding precedent on us and we do not find any reason to differ with the same. In fact, we respectfully concur with the said view. We may state here, Mr. Upadhyaya laboured hard to persuade us that the law laid down in the case of *Laxmipati (supra)*, requires reconsideration in view of the law laid down in the case of *Sanjay Sapatrao Gaikwad (supra)* and

Rathi Memon (supra). We have already dealt with the decision rendered in the case of Rathi Menon (supra), and expressed the opinion that the Apex Court has not laid down the law that interest can only be granted from the date of order passed by the Railway Claims Tribunal. As far as the law laid down in the case of Sanjay Sampatrao Gaikwad (supra), with due respect has not persuaded us to express a different note than that has been stated in the case of Laxmipati (supra).

12. In view of above exposition of law in respect of grant of interest in a claim for compensation that it must be from the date of institution of the proceeding, the present appeal is allowed and the order dated 18-2-2009 of the Tribunal is modified to the extent that appellants shall be entitled for interest at the rate of 7% from the date of institution of proceedings before the Railway Claims Tribunal till the date of realization.

13. Remaining order passed by the Railway Claims Tribunal is upheld. In the result, the appeal is allowed to the extent above. However, no costs.