

(2011) 08 KAR CK 0129

In the Karnataka High Court

Case No : MFA No. 2221 of 2010 and Miscellaneous Cvl No. 5439 of 2010

Smt. Venktalaxmamma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-08-2011

Acts Referred:

Limitation Act, 1963 — Section 5

Railway Claims Tribunal Act, 1987 — Section 16

Citation : (2011) 08 KAR CK 0129

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : M.A. Malvi and M.K. Hiremathad, for the Appellant; N.S. Sanjay Gowda, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—In view of the limited question which has arisen for consideration, with the consent of learned Counsel on

both sides, the appeal is taken up for final hearing. Learned Counsel on both sides submitted that, in the facts and circumstances of the case it is

unnecessary to summon the record of the case from the Railway Claims Tribunal.

2. Appellant was the Applicant in O.A 64/2004 on the file of Railway Claims Tribunal (for short "the Tribunal"), Bangalore Bench. Said

application was filed u/s 16 of Railway Claims Tribunal Act, claiming compensation from the Respondent-Railway Administration for the death of

one K. Subbaraya Shetty in an untoward incident which occurred on 26.08.2004 while he was travelling as a passenger in train No. 522. The

application was opposed by the Respondent. Issues were framed and the matter was enquired into by the Tribunal. Keeping in view the rival

contentions and upon appreciation of the record of the case, the application was allowed and the Respondent was directed to pay the

compensation together With interest thereon at 9% from the date of order till the date of actual payment. The said order has not been questioned

by the Respondent. This appeal is by the Applicant to modify the order passed by the Tribunal and to award interest from the date of accident till

the date of order on the compensation amount determined and ordered to be paid.

3. There is delay of 699 days in filing the appeal. Seeking condonation, Misc. Cvl. 5439/2010 has been filed. In the affidavit accompanying the

application, the reasons for the delay has been stated. The Respondent has filed statement of objections, interalia contending that, there is

inordinate delay which has not been satisfactorily-explained and has sought dismissal of the application and consequently to reject the appeal.

4. Heard the teamed counsel on both sides and perused the record. The points for determination are:

1. Whether sufficient cause for the condonation of delay in filing the appeal has been shown?

2. Whether the Appellant is entitled to be awarded interest on the determined compensation amount from the date of filing of the claim application

till the date of passing of the order/award by the Tribunal?

5. The occurrence of the untoward incident and the liability of the Respondent to pay the compensation amount as found and determined by the

Tribunal has not been questioned by the Respondent. The claim for payment of interest from the date of fiving of the application before the Tribunal

till the date of passing of the order is well-founded, in view of the ratio of the decision in the case of Tahazhathe Purayil Sarabi and Others Vs.

Union of India (UOI) and Another, .

Re: Point No. 1

6. Section 5 of the Limitation Act, 1963, confers discretion on the Court to condone the delay if sufficient cause is made out. It has been held by

the Apex Court in catena of decisions that, the expression ""sufficient cause"" appearing in Section 5 of the Limitation Act must receive a liberal

construction so as to advance substantial justice. Delay is condoned in the interest of justice where gross negligence or deliberate inaction or lack

of bona fides is not imputable to the party seeking condonation of delay. It has also been held that, acceptability of explanation of delay is the sole

criterion and the length of delay is not relevant In the case of N. Balakrishnan Vs. M. Krishnamurthy, , it has been held as follows:

9. It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion

can be exercised only if the delay is within a certain limit. Length of delay is no matter acceptability of the explanation is the only criterion.

Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a

very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result, of

positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the

exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court rehires to condone

the delay. In such cases the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to

come to its own finding even untrammelled by the conclusion of the lower court.

7. The Appellant in the affidavit filed along with the Misc. Cvl. petition has stated the reasons for the delay in filing this appeal. Even though the

Appellant appears not to be as vigilant as she ought to have been, yet her conduct does not warrant to hold that she is a scheming litigant or there

was deliberate delay on her part. The Appellant has suffered the loss and the claim of the Appellant was found to be meritorious by the Tribunal

and was allowed. However, the Tribunal did not award interest on the compensation amount from the date the application was filed for ordering

payment of compensation till the order was passed. The Respondent has not been able to show any want of bonafides on the part of the Appellant

in the matter of filing the appeal with delay. Keeping in view the circumstances of the case, in my opinion, sufficient cause has been made out for

the delay in filing the appeal. The cause shown in the affidavit being acceptable, Misc. Cvl. petition No. 5439/2010 is allowed and the delay

condoned.

Re; Point No. 2

8. The Appellant's claim for payment of interest i.e., from the date the application was filed before the Tribunal till the impugned order was passed is concerned, is squarely covered by a decision of the Apex Court in the case of Thazhathe Purayil Sarabi (supra), wherein it has been held that, even if the Appellants may not be entitled to claim interest from the date of the accident, the claim to interest on the awarded sum has to be allowed from the date of the application till the date of recovery as payment of interest is basically a compensation payable for being denied for usage of money during the period in which the same would have been made available to the claimants.

9. In the instant case, it is not the case of the Respondent that the Appellant did not prosecute the application filed before the Tribunal diligently and the Applicant was the cause for the delay in disposal of the application. The delay in disposal of the application by the Tribunal being not on account of any acts attributable to the Appellant, the Tribunal is not justified in not awarding interest on the compensation amount from the date the application was filed till the order was passed by it, directing the Respondent to pay the determined compensation amount.

In the result, the appeal is allowed and, the impugned order is modified.

The Respondent is directed to pay interest on the compensation amount of Rs. 4,00,000/- at the rate of 6% p.a from the date the application was filed in the Tribunal, till the impugned order was passed. The impugned order in all other aspects remains intact.

In the facts and circumstances of the case, parties are directed to bear their respective costs.

Draw award accordingly.