

(1998) 02 MAD CK 0019

In the Madras High Court

Case No : C.M.A No. 973 of 1996 and C.M.P. No. 10434 of 1996

The Union of India

APPELLANT

Vs

A. Janardhanan and another

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 18(1), 22, 30, 34
Railway Claims Tribunal Act, 1987 — Section 13, 15, 18, 18(3), 23

Citation : AIR 1998 Mad 272

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : B.S. Gnanadesikan, for the Appellant; Karthikeyan, for the Respondent

Judgement

P. Sathasivam, J.—Aggrieved against the award of the Railway Claims Tribunal, Madras Branch in OAI/22/93 dated 30.06.1995,

Southern Railway represented by its General Manager, Chennai-3 has filed the present appeal u/s 23 of the Railway Claims Tribunal Act, 1987,

before this Court. The respondents herein applicants 1 and 2 before the Railway Claims Tribunal have made a claim for Rs. 2 lakhs as

compensation alleging that their son J. Sunil died in the railway accident which occurred on 01.06.1993 at 11.50 p.m. in train No. 6635 Kurla

Express at Samalpatti in Dharmapuri District. Apart from the above said amount of Rs. 2 lakhs the applicants have also claimed a sum of Rs.

1,200/- for the loss of one brief case and further cash of Rs. 700/-. The said application was resisted by the Railway contending that as per the

death list of passengers prepared during the accident and submitted by the Chief Medical Superintendent, Palghat, Southern Railway, the name of

J. Sunil, son of the applicants was not, found. However, they admitted that four dead bodies remained unidentified as per the said list.

2. The Railway Claims Tribunal after considering the case of both parties came to the conclusion that J. Sunil son of the applicants died in the train

accident which occurred on 1.6.1993 at 11.50 p.m. at Samalpatti in Dharmapuri District, accordingly passed an award for Rs. 2 lakhs as

compensation to the applicants with interest on the said amount at the rate of 12 per cent per annum from the date of application till the date of

recovery with costs.

3. Aggrieved by the said award the Southern Railway has filed the present appeal mainly questioning the grant of interest on the award amount at

the rate of 12 per cent per annum.

4. I have heard Mr. B.S. Gnanadesikan learned counsel appearing for the appellant and Mr. Karthikeyan learned counsel appearing for the

respondents.

5. Even at the out set Mr. B. S. Gnanadesikan learned counsel appearing for the appellant submitted that they are very much aggrieved only with

regard to award of interest for the compensation amount, since there is no provision in the Railway Claims Tribunal Act, 1987 and Railway Claims

Tribunal.(Procedure) Rules, 1989. According to him in the absence of any specific provision either in the Act or in the Rules regarding interest, it is

not open to the Tribunal to award interest. Hence according to him the award of the Tribunal in so far as the interest is concerned is liable to be set

aside. While spear- heading the above argument he has taken me through the various provisions of the Act and Rules. On the other hand Mr.

Karthikeyan learned counsel appearing for the respondents submitted that by virtue of the special Act viz., Railway Claims Tribunal Act the

aggrieved parties are barred from approaching the civil Court, hence even in the absence of any provision of the Act and Rules in the view of fact

that some of the provisions of the CPC are made applicable and in view of Section 34 of CPC the claimants are entitled to interest and the

Tribunal is justified in granting such interest.

6. I have carefully considered the rival submissions.

7. As stated earlier, even though the Southern Railway has disputed the fact that the son of the claimants died in the accident, the Railway Claims

Tribunal on the basis of the evidence came to the conclusion that their son viz., J. Sunil died in the train accident as contended by the applicants.

Hence, there is no need to discuss the above aspect further.

8. Now, I shall consider the only objection whether the claimants are entitled to interest for the compensation amount and whether the Tribunal is

empowered or competent to award such interest.

9. The Railway Claims Tribunal Act, 1987 came into force with effect from 28th December, 1987. The statement of objects and reasons shows

that the substantive liability of the railway administration for loss, destruction, damage, non- delivery of deterioration of goods entrusted to them for

carriage, and for death or injury, or loss, etc, to a passenger in a railway accident involving a passenger train is laid down in the Indian Railways

Act, 1890. The consignors/consignees and passengers or their representatives prefer claims compensation for loss of and damaged to, booked

goods and are not satisfied with the decisions of the railway administration file suits in the Courts of law. Claims for compensation for death of, or

injury, or loss, etc., to passengers in tram accidents are at present settled by Claims Commissioner. As the litigation in the Courts of law and before

the Claims Commissioner is very protracted, it has been decided to set up a specialised. Tribunal for speedy adjudication for such claims. The

setting up of such a Claims Tribunal with Benches in different parts of the country, and with judicial and technical members, will provide much relief

to the rail- users by way of expeditious payment of compensation to the victims of rail accidents and to those whose goods are lost damaged in

rail-transit. The Claims Tribunal will also expedite Settlement of disputes regarding refund of fares and freight charges. It will reduce the burden on

the various civil Courts in the country, thereby giving them more time to decide other cases speedily.

10. Chapter-II of the Act deals with Establishment of Railway Claims Tribunal and Benches thereof. Section 15 bars the other Courts to entertain

in relation to the matters referred to u/s 13. In other words the said section provides for exclusion of jurisdiction of all Courts and authorities with

regard to the matters mentioned in this Act. Section 18 deals with procedure and powers of Claims Tribunal. More particularly, Section 18(3) says

that in respect of procedural aspects while trying a claim it has to follow Civil

Procedure Code. Section 22 deals with execution of the order of the claims tribunal. It says any order made by the claims tribunal shall be executable by the claims tribunal as a decree of Civil court and for this purpose, shall have all the power of a Civil court. Likewise, it can also transmit any order made by it to a Civil court having legal jurisdiction on transmission can execute the order as if it were a decree made by that court. Section 30 enables the Central Government to frame rules to carry out the provisions of the Act. By virtue of that section Railway Claims Tribunal (Procedural) Rules, 1989 has been framed. Rule 20 speaks about the procedure and powers of the Tribunal. Rule 31(2) says that any order made by the tribunal shall be executable by the tribunal as a decree of Civil Court and the provisions of the CPC in so far as may be shall apply as they apply in respect of decree of a civil court. Rule 35 enables the tribunal to pass such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the end of justice. Finally, rule 44 speaks about the inherent powers of the Tribunal, which reads thus,

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the tribunal to make such orders as may be necessary for the end of justice or to prevent abuse of the process of the tribunal.

11. There is also yet another Rule viz., Railway Accidents (Compensation) Rules, 1990. By pointing out Rule 4, Mr. B.S. Gnanadesikan learned counsel appearing for the Southern Railway submitted that the total compensation payable under Rule 3 shall exceed Rs. 2 lakhs in respect of any one person. Part-I Schedule provided under Railway Accidents (Compensation) Rules, 1990 provides Rs. 2 lakhs for death. By pointing out Rule 3, 4 and Part-I Schedule appended thereto he submitted that for death of any one in a railway accident the maximum amount of compensation payable is only Rs. 2 lakhs. In such circumstance, he contended that in the absence of any provision for interest in the Act, Rules in view of the specific amount of compensation provided viz., Rs. 2 lakhs in the Schedule, the tribunal has no power to award interest. In this way he contended that the award of the Tribunal impugned in so far as interest on the said sum of Rs. 2 lakhs at the rate of 12 per cent per annum is unsustainable.

12. It is true that no where in the Act or in the Rules any provision is provided

for interest to the compensation amount. In so far as completion of the proceedings viz., summoning of witnesses, production of documents, execution and recovery of money, the relevant provisions of CPC are specifically made applicable in the Rules itself. Even though there is omission with regard to grant of interest, Section 34 of the CPC enables the Court to award interest. Prior to the enactment on Railway Claims Tribunals Act, 1987 by the Parliament the affected persons are entitled to file civil suit in the regular courts. If ultimately the civil Court comes to a conclusion that the aggrieved person is entitled to compensation from the Railways, it is open to it to award interest as per Section 34 of the Code of Civil Procedure. When such benefit is there when the aggrieved person goes before the civil Court, I am unable to accept that the legislature while bringing the special enactment in order to give speedy justice to the victims by way of appropriate compensation deliberately omitted interest for the compensation amount to be fixed by the Tribunals.

13. In this regard a reference to decision of Supreme Court reported in A.A. Haja Muniuddin v. Indian Railways (1993 AIR S.C.C. 361) is

worthwhile. In that case the appellant before the Supreme Court wanted to file compensation claim before the Claims Tribunal as an indigent

person by invoking Order 33 of the Code of Civil Procedure, since according to him he was not having any funds. After (sic)ding that since there is

no provision enabling the Claims Tribunal to follow Order 33 of the Code of Civil Procedure, ultimately it has rejected the request of the claimant.

The matter went to the Apex Court and their Lordships" after considering the entire provisions of the special Act viz., Railway Claims Tribunal

Act, 1987 have concluded that, even in the absence of specific provision in the Special Act and in spite of the fact that there is no enabling

provision to apply Order 33 of the CPC in the interest of justice ultimately held that,

The tribunal has the power to lay down its own procedure and as stated earlier Section 18(1) does not preclude It from invoking the provisions of

Order 33 of the CPC if the ends of justice so require. When an indigent person approaches the Tribunal for compensation for the wrong done to

him the Tribunal cannot refuse to exercise jurisdiction merely because he does not have the means to pay the fee. In such a situation we think the

ends of justice require that the tribunal should follow the procedure laid down in Order 33 of the CPC to do justice for Which it came to be established.

The above conclusion of the Apex Court supports the view that in the interest of justice if the victims are going to be benefited in a deserving case,

it is open to the tribunal to award interest as per Section 34 of the Code of Civil Procedure.

14. Similar question arose in a case before the Madhya Pradesh High Court in Union of India (UOI) Vs. Smt. Laxmipati and Another, . The

Division Bench in the said decision after considering the entire provisions of the Act and Rules came to the following conclusion:

Section 34, Civil Procedure Code, deals with interest for the post-litigation period. Where decree is for payment of money, the Court may order

interest at a reasonable rate on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged

for any period prior to the institution of the suit. It is unnecessary to refer to the other details of the provision. It is true that the Indian Railways Act,

1890, or the Rules framed thereunder do not contain an express provision making Section 34, Civil Procedure Code, applicable to proceedings

before the Claims Commissioner But for the provisions in the Indian Railways Act, 1890, the claimant would have resorted to a suit for

damages in a civil Court. Had such a suit been filed, the civil Court was in a position to award post-litigation interest. The provisions under the

Indian Railways Act, 1890, had the object of changing the forum from civil Court to the Claims Commissioner with a view to provide a cheaper

and more expeditious remedy for the claimants. It could not be that the legislature intended that a benefit which the claimant would have derived at

the hands of the civil Court should be taken away by the mere change of forum. Under the 1950 Rules, a person shall not be qualified for

appointment as Claims Commissioner unless he has been or is qualified for appointment as a Judge of the High Court, or is/has been exercising

powers of a District Judge, or is or has been exercising the powers of a District Magistrate.

....The Act provided a right of appeal to the High Court by the claimant but not by the Government or the Railways. To deny the post-litigation

interest would amount to depriving the claimant of compensation for delay in obtaining relief for no fault of his. We hold that even though Section

34, Civil Procedure Code, has not been expressly made applicable to the proceedings before the Claims Commissioner, there is no reason to hold

that the principles of Section 34, Civil Procedure Code, would be inapplicable.

The issue involved in that decision is similar one. There also the Tribunal awarded interest and the same was questioned before the Madhya

Pradesh High Court. Ultimately, the Division Bench has held,

We hold that the Claims Commissioner had power to award interest on the basis of principles of Section 34, Code of Civil Procedure. The

incident took place on 15.9.84. The application was filed in 1985.

....The decision was given on 24.7.86. There is no reason why the claimant should be deprived of the benefit of interest during the pendency of

proceedings, merely because the proceedings lingered on for more than a year.

With respect, I am in agreement with the above view. In the light of the law laid down by the Apex Court in the above referred case A.A. Haja

Muniuddian Vs. Indian Railways, and the Division Bench decision of the Madhya Pradesh High Court Union of India (UOI) Vs. Smt. Laxmipati

and Another, , considering the objects and reasons for establishing a Railway Claims Tribunal and in view of the delay in disposal, I hold that the

claimants are entitled to interest for the compensation amount. The maximum amount prescribed under Part-I Schedule to Rule 3 is applicable with

regard to the compensation amount. Interest and other incidental costs need not be clubbed with the amount of compensation. In our case

admittedly the accident took place on 1.6.93, the application was presented by the parents of the deceased on 30.9.93, the Railway Claims

Tribunal Madras Bench has passed the impugned award only on 30.6.96 i.e., after two years from the date of accident. In such circumstances, the

award of interest by the Tribunal is fully justified. It have already referred to Rule 44 which enables the Tribunal to pass such orders as may be

necessary for the ends of justice. Here by acceptable evidence, the claimants viz., parents have proved that their son J. Sunil had died in the

railway accident which occurred on 1.6.93 in Kurla Express at Samalpatti in Dharmapuri District. Their claim application was lingering for a period

of two years before the Tribunal. In such circumstance, I am of the view that

ends of justice would be met by granting interest at the rate of 12 per cent per annum from the date of the application for the amount of compensation. Further, to deny the post-litigation interest would amount to depriving the claimants of compensation for delay in obtaining relief for no fault of them. Accordingly, I hold that even though Section 34 of the CPC has not been expressly made applicable to the proceedings before the Claims Commissioner, in the absence of any specific bar and in the interest of justice, considering the plight of victims, there is no reason to hold that the principles of Section 34 of the CPC would be inapplicable. I therefore decline to interfere and accordingly dismiss the appeal, but in the circumstances without costs. Consequently, CMP. No. 10434 of 1996 is also dismissed.