

(2008) 02 AP CK 0007

In the Andhra Pradesh High Court

Case No : CMA No's. 160 of 2003 and 2161, 3491, 3541 and 3860 of 2002

Union of India (UOI)

APPELLANT

Vs

Konduru Venkata Reddy

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34, 34(1), 34(2)
Consumer Protection Act, 1986 — Section 14
Motor Vehicles Act, 1988 — Section 140, 171
Railways Act, 1989 — Section 123, 123(C)(2), 124, 124A, 125

Citation : (2009) ACJ 1765 : AIR 2008 AP 211 : (2008) 5 ALD 272 : (2008) 5 ALT 172

Hon'ble Judges : G. Bhavani Prasad, J; B. Prakash Rao, J

Bench : Division Bench

Advocate : B. Parameswara Rao, T.S. Venkataramana, S. Chandra Sekhar and B.H.R. Chowdary, SC, for the Appellant;

Judgement

1. All these matters arising out of the claim at the instance of legal heirs of the deceased who died in an untoward incident while travelling in a passenger train are referred to this Court by a learned Single Judge of this Court for being answered on a common question as to "whether the claimants would be entitled to interest on the amount determined by the Railway Claims Tribunal from the date of the application."

2. For consideration of the aforesaid question, the background, in short, of all the cases giving rise to such claim is taken up from one of the appeals, i.e., CMA No. 3491 of 2002.

3. The first applicant is the wife of the deceased and applicant Nos. 2 to 5 are their children. They filed an application being OAA No. 104 of 1998 claiming compensation of Rs. 4,00,000/- on account of death of the deceased, by name, Sri K. Saraiah. The Railway Claims Tribunal, after conducting regular enquiry, allowed the said application, awarding compensation of Rs. 4,00,000/-, with

specific direction that the railway administration shall deposit the compensation amount within sixty days and if it fails to deposit the said amount within the stipulated time, the applicants/claimants are entitled to receive interest at 9% per annum from the date of the order only, on the amount of compensation.

4. Therefore, the claim now made by the applicants/claimants is for payment of interest from the date of the filing of the application, but, not restricting it from the date of expiry of period of sixty days from the date of the order.

5. The learned Single Judge, after taking into consideration various decisions of this Court and other High Courts, especially the view taken by a learned Single Judge of this Court in CMA No. 4701 of 2003 and batch, dated 23.7.2004, wherein it was held that no such interest would be awarded from the date of the application, did not agree with it.

6. At the outset, it would be relevant to take note of the relevant provisions of the Railways Act, 1989, (for short "the Act") regarding liability of the railway administration to pay compensation on account of death or injury to passengers due to accidents. Chapter XIII of the Act deals with the same, and after defining the expressions, "accident" "dependent" "untoward accident" etc., u/s 123(a) & (b) of the Act. The extent of liability of the railway administration is contemplated u/s 124 of the Act, which reads as under:

Section 124 : Extent of Liability.-When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages to respect thereof, the railway administration shall notwithstanding any thing contained in any other law be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train sustained as a result of such accident.

7. From a bare reading of the aforesaid provisions, it would appear that liability towards damages is sought to be fixed on the railway administration either on account of death or injury, wherever or whenever untoward incident occurs.

8. Section 124A of the Act contemplates liability towards compensation on account of untoward incidents as a result of wrongful Act, neglect or default on the part of the railway administration. It reads as follows:

Compensation on Account of Untoward Incidents.-When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as

would entitle a passenger who has been injured or the dependant of a passenger who has killed to maintain an action and recover damages in respect thereof, the railway administration shall notwithstanding anything contained in any other law be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to:

- (a) suicide or attempted suicide by him;
- (b) self inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

9. The application for claiming compensation is provided u/s 125 of the Act, which is extracted below:

Application for Compensation.-(1) An application for compensation under" Section 124 (or Section 124A) may be made to the Claims Tribunal:

- (a) by the person who has sustained the injury or suffered any loss, or
- (b) by any agent duly authorized by such person in this behalf; or
- (c) where such person is a minor, by his guardian, or
- (d) where death has resulted from the accident (or the untoward incident) by any dependant of the deceased or where such a dependant is a minor, by his guardian

(2) Every application by a dependant for compensation under this section shall be for the benefit of every other dependant.

10. Further provision is made for interim relief by railway administration u/s 126 of the Act which is as follows:

Interim Relief by Railway Administration.-(1) Where a person who has made an application for compensation u/s 125 desires to be paid interim relief, he may apply to the railway administration for payment of interim relief along with a copy of the application made under that section.

(2) Where, on the receipt of an application made under Sub-section (1) and after making such inquiry as it may deem fit the railway administration is satisfied that circumstances exist which require relief to be afforded to the applicant immediately, it may pending determination by the Claims Tribunal of the actual

amount of compensation payable u/s 124 (or Section 124A) pay to any person who has sustained the injury or suffered any loss, or where death has resulted from the accident to any dependant of the deceased such sum as it considers reasonable for affording such relief so however, that the sum paid shall not exceed the amount of compensation payable at such rates as may be prescribed.

(3) The railway administration shall, as soon as may be, after making an order regarding payment of interim relief under Sub-section (2), send a copy thereof to the Claims Tribunal

(4) Any sum paid by the railway administration under Sub-section (2) shall be taken into account by the Claims Tribunal while determining the amount of compensation payable

11. Ultimately, rate of compensation, namely, the quantum of amount to which the claimants are entitled to, is provided u/s 127 of the Act, which reads thus:

Determination of compensation in respect of any injury or loss of goods.-(1) Subject to such rules as may be made, the rates of compensation payable in respect of any injury shall be determined by the Claims Tribunal.

(2) The compensation payable in respect of any loss of goods shall be such as the Claims Tribunal may, having regard to the circumstances of the case, determine to be reasonable.

12. Apart from the aforesaid provisions under the Chapter XIII of the Act, Sections 128 and 129 of the Act provide that the right of any person to claim compensation under the enabling provision shall not affect to recover compensation under the Workmen's Compensation Act, 1923 or any other laws for the time being in force and powers to make such rules by the Central Government in respect of the matters in the said chapter respectively.

13. On a bare reading of the aforesaid provisions, it is clear that a comprehensive enquiry is contemplated for determination of quantum of compensation. However, the striking feature of these provisions is unlike the provisions of Section 171 of the Motor Vehicles Act, which specifically provides for award of interest wherever any claim is allowed by Claims Tribunal. But, no similar provision has been made for such award of interest on the amount of compensation determined by the Railways Claims Tribunal under the provisions of the Railways Act, 1989. This has given rise to different approaches by the Courts in regard to entitlement of interest and liability to be fixed on the railway administration.

14. In CMA No. 4701 of 2003 and Batch, dated 23.7.2004, Durgavathi Devi and Others Vs. Union of India (UOI), , a learned Single Judge of this Court, after referring to the various decisions in Union of India (UOI) Vs. Smt. Laxmipati and Another, , Union of India (UOI) Vs. A. Janardhanan and Another, , Union of India (UOI) Vs. M. Thankaraj and etc. etc., and Godisela Rajamma and Others Vs. Union of India (UOI), , has held that Section 34 of CPC is not directly applicable,

and there is nothing in the Railways Act disabling the Tribunal from awarding interest. However, it was held that no right exists to claim or award interest as a matter of course and it is always in the discretion of the Court to award interest depending on the facts and circumstances of each case, subject to the limits specified under Sub-sections (1) and (2) of Section 34 of CPC, and, therefore, directed that in case the compensation awarded by the Tribunal is not paid within two months from the date of the order, it shall carry interest from the date of filing of the OP.

15. In *Union of India v. Baburao Koddekar and Anr.* 2002 (4) ALD 843 (DB), a Division Bench of this Court had considered only the question as to nature of procedure to be followed by the Railways Claims Tribunal and the issue regarding, whether a platform ticket holder is a bonafide passenger and whether it is obligatory on the part of the claimant to prove negligence of the railways, and, held that provisions of CPC are not applicable and even such platform ticket holder is a bona fide passenger and there is no requirement on the part of the claimant to prove negligence or default on the part of the railways. In the aforesaid decision, the question as to entitlement of interest on the compensation awarded had not come up for consideration.

16. In *Union of India (UOI), South Central Railways Vs. Kurukundu Balakrishnaiah and Others*, , a Full Bench of this Court while considering the question as to whether a passenger trying to board or alight from a running train or standing near the door, jumped from the compartment, crossing the railway track or leaning out of the carriage and during the course of such circumstance had fallen down and was either injured or had died, was entitled to compensation from the railways u/s 124A of the Act or not, has held that general principles of negligence apply even in the case of deciding an untoward incident and the principle of absolute liability u/s 140 of Motor Vehicles Act, 1988 cannot be imported into provisions of Section 124A of the Act, and, such injury does not fall under the expression "accidental falling of any passengers" and there is no obligation u/s 124A of the Act on the part of the railways to pay compensation for death or injury suffered by a passenger even if such death or injury was a result of negligence or carelessness of the passenger. Again in this Case also, question of entitlement of interest had not come up for consideration.

17. From the above two decisions, however, it follows that the provisions of CPC cannot be made applicable, and, the claims for compensation on account of untoward incidents under the provisions of the Railways Act, 1989 and Motor Vehicles Act cannot be put on same pedestal and no comparison can be done either way.

18. In *Rathi Menon v. Union of India* 2001 SCC 1311, the apex Court, while dealing with Sections 124A, 123(C)(2), 125, 127 and 129 of the Act, for the purpose of determination of compensation on account of injury resulting from untoward incident, held that relevant date for determination of compensation amount is date of determination by Tribunal and not the date of incident and

relevance of date of incident is only that the right to claim compensation is acquired on such date. Further, it was observed as follows:

According to Section 128(1) right of any person to claim compensation before the Claims Tribunal as indicated in Section 124 or 124A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. But there is an interdict that no person shall be entitled to claim compensation more than once in respect of the same accident. The provisions in Chapter XIII of the Act are intended to provide a speedier remedy to the victims of accidents and untoward incidents. If he were to choose the latter that does not mean that he should be prepared to get a lesser amount. He is given the assurance by the Legislature that the Central Government is saddled with the task of prescribing fair and just compensation in the Rules from time to time. The provisions are not intended to give a gain to the Railway Administration but they are meant to afford just and reasonable compensation to the victims as a speedier measure. If a person files a suit the amount of compensation will depend upon what the Court considers just and reasonable on the date of determination. Hence when he goes before the Claims Tribunal claiming compensation the determination of the amount should be as on the date of such determination

19. From the principles as emerge from the pronouncements referred to above, and, the provisions of the Act under Chapter XIII, there being no specific provision in the Railways Act, 1989, providing for award of interest, it emerges that entire enquiry is summary in nature, unaffected by the remedies provided under other laws, and, the provisions of CPC cannot squarely be made applicable, which includes Section 34. With regard to award of interest, it is now well established that the same cannot be claimed as a matter of right unless the Statute specifically provides it or provided for under the specific terms of contract.

20. In *Sovintorg (India) Ltd. Vs. State Bank of India, New Delhi*, , while dealing with the provisions of the Consumer Protection Act, 1986, the Supreme Court held that provision u/s 34 CPC cannot specifically be made applicable to the proceedings under the Consumer Protection Act, 1986. The Supreme Court further observed as follows:

The general submission that appellant was entitled to the payment of interest minimum at the rate of 19.4 per cent per annum from the Bank which collected amount of his cheque but did not deposit in his account would not be tenable in view of the provision of Section 14 of the Consumer Protection Act. There was no contract between the parties regarding payment of interest on a delayed deposit or on account of delay on the part of the Bank to render the services. Interest cannot be claimed u/s 34 of CPC as its provisions have not been specifically made applicable to the proceedings under the Act. However, the general provision of the Section 34 being based upon justice, equity and good conscience would authorize the Redressal Forums and Commissions to also grant interest appropriately under the circumstance of each case. Interest may also be

awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable grounds.

21. For applicability of provisions of the Interest Act 1978, necessarily, there should be a demand, and, if no such demand is spelt out, it can therefore be said that the provisions of the Interest Act, 1978 can come into operation. In all these cases, nothing has been brought to our notice that there was any such demand prior to laying the claim before the Tribunal. Even otherwise, such claim could pertain only to the period prior to the filing of the application.

22. From the aforesaid discussion, it emerges that the Tribunal is at its discretion to take into consideration the facts and circumstances of each case for award of interest, but not as a right. We are in agreement with the view taken by learned Single Judge in CMA No. 4701 of 2003 and batch, (referred supra), that the Railways Claims Tribunal has discretion to determine compensation, to which, the claimants/ applicants are entitled to and it is only on such determination of the compensation payable to the claimants, the Tribunal can prescribe some time for its payment and then alone, in default, can award such rate of interest as it thinks fit. Thus the liability towards interest can be fastened only on the date of determination of the compensation, but not from the date of the filing of the application before the Tribunal. thus, answer the question accordingly. Office is directed to post these appeals before the regular Court.