

(2003) 11 DEL CK 0090
In the Delhi High Court
Case No : FAO No. 527 of 1999

Union of India (UOI)

APPELLANT

Vs

Shri Bani Lal

RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Interest Act, 1978 — Section 3, 5
Railways Act, 1989 — Section 124A, 127

Citation : (2004) 3 ACC 152 : (2005) ACJ 1763 : (2004) 112 DLT 928 : (2004) 72 DRJ 44

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Jagjit Singh, for the Appellant; D.N. Kaushal, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—This appeal is directed against the judgment of the Railway Claims Tribunal whereby the tribunal has awarded compensation of Rs. 2 lakhs in favor of the dependents of the deceased. The respondents-claimants have also been held entitled to interest @ 10% per annum from the date of filing of the claim application till realisation.

2. The only ground taken in appeal is that the tribunal did not have jurisdiction to award interest. It is submitted by learned counsel for the appellant that the tribunal could award interest only if the Act specifically authorises the tribunal to award such interest and in the absence of any such provision, the tribunal could not award pendente lite interest. For this reliance is placed upon the judgment of the Bombay High Court in Union of India (UOI) Vs. Sanjay Sampatrao Gaikwad etc., . In this case, it was held that the compensation claimed by the applicants had to be determined u/s 127 of the Railways Act and the same did not become payable as soon as the claim was lodged by the applicant/passenger. It was held that the claim for compensation was in the form of damages and till the damages

are ascertained by the appropriate forum it cannot be said that the amount of compensation becomes payable till it is determined or decided. It was held that it was not an existing right of the claimant to get whatever is claimed in the application. The amount of compensation becomes payable after it is determined by the tribunal and if thereafter the Railways fail to pay, it can be directed to pay interest from the date of the order of the determination but it cannot be directed to pay interest before the claim is ascertained or decided or determined by the tribunal. It was held that the liability of the Railway administration would commence after the compensation amount is determined and not therefore. The observation of the Bombay High Court in *Iron and Hardware (India) Co. v. Shamlal and Brother* 1904 (6) B L R 473 were relied upon in that judgment to hold that interest can be payable only on the amount, which has been ascertained but not on the amount which is yet to be ascertained. It was held that at the first instance, the tribunal has to determine the question of liability and then to determine the amount of compensation. After doing so it can award interest from the date of the decision but not prior thereto.

3. With due respect to the Hon'ble Judge who has delivered the said judgment, I am unable to agree with the same. The provision of Interest Act were not brought to the notice of the Bombay High Court when the aforesaid judgment was given. u/s 3 of the Interest Act in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say - (a) if the proceedings relate to a debt payable by virtue of written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings; and (b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings. u/s 5 of the Interest Act nothing in the Act shall affect the provisions of Section 34 of the CPC. The Court is defined in Section 2(a) of the Act and includes a "tribunal" and an "arbitrator". Since the Court has been defined in the Interest Act to include a "tribunal" and an "arbitrator", in my opinion, the tribunal while deciding damages payable to a person under the provisions of the Railways Act, has the jurisdiction to award interest u/s 3 of the Interest Act.

4. In a Division Bench judgment of the Karnataka High Court reported as *D.B. Avalakki and another v. Union of India and others* 2 (2000) ACC 764, it was held that there was no specific provision in the Railways Act either empowering or disentitling the tribunal from ordering interest on the amount of compensation awarded by it but since it has been made incumbent on the tribunal to exercise powers of a Civil Court in relation to grant of compensation and since it pertains to substantive right of the claimant, the tribunal, in not passing the appropriate

orders, ordering interest would be deemed to have erred in not exercising the said jurisdiction. The Karnataka High Court has, Therefore, held that the tribunal while awarding compensation under the Act was required to order for interest u/s 34 of the CPC but while awarding interest, the tribunal has to take into consideration as to for whose fault the proceedings were/delayed and then pass an appropriate order about payment of interest.

5. Moreover, in the present case, except to determine as to whether the accident was caused because of "untoward incident" and whether the deceased or the injured was a bonafide passenger, the tribunal is not required to make any further determination. The compensation payable in the case of death of a passenger is already determined in the Schedule to the Railways Act. Once the tribunal holds that the deceased was a bonafide passenger and had died because of "untoward incident", no further determination is required to be made and compensation mentioned in the Schedule is to be paid. Since the amount is already determined, there is no question of further determination as has been held by the Bombay High Court.

6. For the foregoing reasons, I am of the considered opinion that as there is no prohibition either in the Railways Act or in the Railway Claims Tribunal Act to the award of interest on compensation to the persons who have filed claims for compensation for injury or death because of "untoward incident", in my opinion, the tribunal has the power to award interest during the pendency of proceedings before it. Since the respondents have been dragged into litigation, they have also to be compensated with costs, which they might have incurred in filing their claim before the tribunal and I, Therefore, do not find any infirmity in the impugned order awarding costs in favor of the respondent.

7. As the tribunal had the jurisdiction to award interest on the compensation payable u/s 124-A of the Railways Act and also costs, I do not find any infirmity in the judgment of the tribunal awarding interest @ 9% per annum on the compensation payable to the respondent or imposing costs upon the appellant. There are thus no merits in this appeal and the same is, accordingly, dismissed.