

(2011) 02 CAL CK 0113
In the Calcutta High Court

Case No : F.M.A.T. No. 320 of 2010 and C.A.N. 8502 of 2010

Union of India (UOI)

APPELLANT

Vs

Smt. Manu Rani Ghose

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 17(2), 23
Railways Act, 1989 — Section 124A

Citation : (2011) 2 TAC 667

Hon'ble Judges : Prabhat Kumar Dey, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Soma Roy Chowdhury, for the Appellant; Krishanu Banik, for the Respondent

Final Decision : Dismissed

Judgement

Amit Talukdar and Prabhat Kumar Dey, JJ.—To husband out life's taper at the stage of loss of her husband persuaded her to approach the Railway Claims Tribunal (R.C.T.) for compensation as known u/s 124-A of the Railways Act (hereinafter referred to as the said Act).

2. While death claimed her soul mate in fortuitous circumstances as known to the provisions of the aforesaid section of the said Act, can time steal her claim for sustenance? It would be of primordial consideration of the parameters of this Appeal filed at the instance of the South Eastern Railway Administration through its General Manager.

3. Mrs. Soma Roy Chowdhury, the Railway Counsel in support of the Appeal, has placed before us the entire order passed by the learned Member (Technical) of the said RCT passed on 17th November 2009, in connection with No. LA. 05 of 2008 (O.A. (I Iu) 62/2008, whereby over ruling the objection raised by the Railway administration claim petition was admitted on merit. This has seen the Railway administration in appeal mainly on the ground that in the absence of sufficient cause being shown for the enormous delay for six and a half years it

was not incumbent upon the RCT to have acted on the said plea. For this purpose Mrs. Roy Chowdhury referred to the decisions in Union of India (UOI) Vs. Orissa State Electricity Board and Others, and Dewan Zainulabedeem v. Wajid Ali Chaudhury reported in AIR 2003 Gau. 15. She has also placed before us a decision of the Hon"ble Supreme Court "in M.K. Prasad Vs. P. Arumogam, and submitted that unless sufficient cause has been shown there is no scope for condonation of delay.

4. Inviting our attention to Sub-section (2) of Section 17 of the Railway Claims Tribunal Act (RCT Act for short), she has submitted that in view of Sub-section (2) there is a specific bar on filing of appeals beyond statutory period and the RCT in fact has caused a failure of justice of being oblivious of the said provisions and allowed the Respondent (Claimant before the RCT) to have her claim put on board. She has further submitted that the reason for delay which has been shown in the petition (Annexure "P2") is not sufficient nor can it be said that there was justified reasons for condoning it. Accordingly, she has prayed for dismissing the claim petition pending before the RCT in the circumstances that have been put on the file.

5. Shri Banik for the Respondent (Claimant before the RCT) has taken a preliminary objection. According to Shri Banik, in view of Section 23 of the RCT Act, no appeal would lie against an interlocutory order. He invited our attention to the extract of the Order No. 7 dated 17th November, 2009 and submitted that it was simply an interlocutory order awaiting final decision in the claim proceeding, whereby the delay was condoned and as there was clear bar for the Appellant to file the appeal, the same should be dismissed simply on that score.

6. Shri Banik has further submitted that since this is a piece of beneficial legislation a wider and liberal meaning should be attributed to the provision thereof and the order should be viewed from that angle. He has on the basis of his submissions shown that in the petition (Annexure T2") as reasonable cause has been shown they should be treated as sufficient cause and the same be left undisturbed. Shri Banik has distinguished the decisions of Union of India (supra), Dewan Jainul Abedin (supra) and M.K. Prasad (supra). He is of the opinion that in the light of the decisions that have been relied upon by Mrs. Roy Chowdhury the underlining quintessence that sufficient cause has to be shown so as to overcome the hurdle of limitation. According to Shri Banik, as the Respondent-Claimant has made out a prima facie case for compensation and delay has been sufficiently explained, rightly RCT has accepted her case and fixed the matter for framing of issue. He also argued that on merit written statement has been filed. As such, it would be deemed that the Appellant has accepted the question of claim.

7. Having applying our mind to the issue which has been raised within the scope of this Appeal in the light of the said decisions of Union of India (supra), Dewan Jainul Abedin (supra) and M.K. Prasad (supra) placed at the Bar, we are prima facie of the view that objection raised by Shri Banik, so far as application of

Section 23 of the said Act is concerned, is of much value. If we abide by the same there is no case and hence, there is no appeal before us. But that would be cutting short the entire issue without delving in the merit of the case which we can easily adopt as a short-cut method. But as a Court of First Appeal we feel it incumbent upon us to address the appeal on merit after sustaining the preliminary objection of Shri Banik in respect of Section 23 of the said Act.

8. In all the line of decisions as aforesaid that Mrs. Roy Chowdhury has relied upon quintessentially governing the fact with regard to the sufficient cause to be shown so as to condone rigours of limitation. In our close appreciation of the petition (Annexure "P2") we cannot pursue ourselves to the conclusion that sufficient cause has not been shown. It is her case that she lost her soul mate on 20th August, 2001 as reflected from her claim petition (Annexure "P1"). Grief having overcome this unfortunate widow over the period posterior to the loss of her soul mate cannot be counted by days and hours - it would be otherwise cruel to do so. She has explained that after receiving the advice she met her lawyer and was advised to file the appeal which she has done in the fashion that we have noticed through the averments made in the petition.

9. Now, question remains as to the same can be held to be sufficient cause. The Tribunal had done a very neat analysis of the entire facts leading to the filing of the petition. Firstly, the Tribunal was of the view that ignorance with regard to the statutory provisions cannot bar as acquiescence against the Respondent in such type of cases. Secondly, after having appraised of the practical situation that prevails in the field on the basis of total analysis condoned the delay and put the matter on the file for the purpose of framing of issue. This was on 17th November, 2009 and the date of framing issue was fixed on 11th January, 2010.

10. Delay to beat delay. Railway administration has been aggrieved with the delay in the claim petition. At the same process we cannot lose sight of the fact that although the order was passed on 17th November, 2009 the appeal was filed sometime on 26th February, 2010 and stay petition was taken out on 14th September, 2010. Delay v. delay. One countenances the other. Even if we do not enter into the periphery of the reasons behind the Tribunal, we find that the Railway Administration itself was guilty of at least eight months in filing the stay petition. Be that as it may, reverting back to the objection of Mrs. Roy Chowdhury in the light of Sub-section (2) of Section 17 of the RCT Act we find that sufficient cause which is sine qua non of that section having been made out in the prima facie fashion before the RCT, we of course in a first appeal although can enter into the facts of the same and assess its efficacy, would be slow to interfere with the said discretion which we would be of the humble view had been rightly exercised.

11. That apart, Shri Banik is quite right as evident from the order under appeal returned by RCT that while submitting its written statement the Railway administration has touched on the question of Merit which in a way, even though we would not comment upon the same, admits the existence of a case.

12. What would be the effect of delay in this type of situation? A grieving widow countenancing her fate on account of loss of her soul mate way back in 2001, is the condonation of delay in her coming to Tribunal to her benefit or she acquires any illegal advantage of the same? Delay has to be appreciated in this perspective and after having found that the same has been satisfactorily explained, we are of the considered view that the Appeal apart from the question of maintainability on the anvil of Section 23 of the RCT Act, has no merit otherwise.

13. Accordingly, the stay application being CAN 8502 of 2010 is dismissed. The dismissal of the stay application would render the main Appeal absolutely infructuous and accordingly, the Appeal is also dismissed. There will no order as to costs.

Urgent Xerox certified copy of this order if applied for, be supplied on priority basis.