

(2013) 07 CAL CK 0124
In the Calcutta High Court
Case No : FMA No. 1606 of 2013

Usha Shaw

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Railway Claims Tribunal Act, 1987 — Section 16

Citation : (2013) 3 ACC 512 : (2014) 1 CHN 393

Hon'ble Judges : Mrinal Kanti Chaudhuri, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Rajendra Kumar Mittal and Mr. Narin Mittal, for the Appellant;Mahendra Prasad Gupta, Advocate for the Railway, for the Respondent

Final Decision : Disposed Off

Judgement

Ashim Kumar Banerjee, J.—These two appeals would relate to the issue of interest pendente lite and interest on judgment. The learned Tribunal declined to award any interest pendente lite on the ground, the parties were dragging the issue. The Tribunal did not assign any reason why it did not award any interest on judgment. The Railway Claims Tribunal Act did not provide any interest being paid for a delayed compensation. Section 16 would permit accidental claims to be lodged either by the victim himself for his injury or through his next to kin in case of death. In both these cases the claimants made a claim for compensation in a death case. Tribunal allowed the same. The Railway paid it that the claimants accepted. After receipt of compensation both of them approached us by preferring appeal on interest component that we heard on the above mentioned dates. Mr. Rajendra Kumar Mittal, learned counsel appearing for the claimants/appellants would contend, the Tribunal should have awarded interest. The Tribunal made adverse remarks as against the parties without giving an opportunity to confront such allegation. In any event, such observation was restricted to interest pendente lite only.

2. Per contra, Mr. Mahendra Prasad Gupta, learned counsel appearing for the Railway would contend, interest was not a matter of right. The claimants would have to prove that they were diligent enough to pursue their claim, otherwise the Tribunal was free to reject it as had been done in the present case.

3. The parties cited the following decisions:

1. Mainura Bibi Vs. Union of India and Others,

2. Thazhathe Purayil Sarabi & Ors. Vs. Union of India & Anr. reported in 2010 1 T.A.C. 420;

3. Indian Council for Enviro-Legal Action Vs. Union of India (UOI) and Others,

4. Secretary/General Manager Chennai Central Cooperative Bank Ltd. and Another Vs. S. Kamalaveni Sundaram,

4. We have considered the rival contentions, the decision of the Tribunal as also the Lower Court records that we brought through the department. Mr. Mittal would inform us, as per the practice of the Tribunal three copies were filed, one would be directly sent to the Railway by the Tribunal in addition to the claimants' obligation to serve the copy upon the Railway. In the instant case (Usha Shaw), the accident occurred on August 30, 2009. The claimant filed application on September 15, 2009. The Tribunal sent the summons to the Railway on September 22, 2009 that the Railway received on October 1, 2009. The respondent filed written objection on November 26, 2010, meaning thereby, they took more than a year to file the written objection. The Tribunal issued subpoena on the Officer-in-Charge, Howrah Police Station to produce certified copy of FIR and other related papers connected with the unnatural death. Such summon was served on June, 27, 2011. A copy of the same was filed before the Tribunal. The claimant filed the affidavit of evidence. On April 14, 2011 the Howrah Police Station possibly did not appear. Hence, the claimant filed an application to the Tribunal for a direction upon the Superintendent of Police to ensure presence of the Police Station representative along with the records. Evidence was recorded in 2011. Ultimately, the Tribunal delivered its judgment on April 27, 2012. From the orders passed from time to time it could not be conclusively said, the parties delayed the case. In the case of Anil Burai, the claim application was filed on November 12, 2009. The case was put up for the first time before the Tribunal on February 23, 2011. The prayer for inspection was made. Ultimately, the Railway filed written statement on June 14, 2011 after about one and half years. The Tribunal heard the matter and delivered the judgment on June 15, 2012. In this case also the Tribunal observed, both sides dragged the case that would debar the claim to get any interest pendente lite. The Tribunal did not assign any reason while not awarding any interest on judgment.

5. We have considered the rival contentions made before us as also the cases cited, we fully agree with Mr. Gupta when he would say, interest was not a matter of right. However, it is ordinarily granted for the reasons as elaborately

discussed by the Apex Court decision in the case of Chennai, Central Cooperative Bank Ltd. (supra). Paragraph 12 and 13 of this decision being relevant herein are quoted below:

We are not persuaded by the submission that by not filing the plaint immediately after it was returned or for the delay in re-presenting the plaint, the landlady did not gain anything and although she was entitled to interest at the rate of 18% per annum on the arrears of rent, the High Court only awarded interest at the rate of 12% and thereby struck a balance on equity. Whether the landlady gained anything or not by the delay in re-presenting the plaint is not material but what is material is that interest is awardable pendente lite taking into consideration the facts and circumstances of the case and not as a matter of course.

Section 34 of the Code of Civil Procedure, 1908 (CPC) empowers the court to award interest for the period from the date of the suit to the date of the decree and from the date of the decree to the date of payment where the decree is for payment of money. Section 34 CPC does not empower the court to award pre-suit interest. The pre-suit interest would ordinarily depend on the contract (express or implied) between the parties or some statutory provisions or the mercantile usage. Be that as it may, we do not find that on equitable considerations the landlady is entitled to interest for the period 20-1-2000 to 20-7-2005.

6. Similarly, our Division Bench in the case of Mainura Bibi (supra) held, "it was the duty of the Tribunal to award interest. It is not a penalty but a normal accretion of the capital". The Division Bench further observed, "it would be against principle of natural justice to deprive the award holder the benefit of interest". In the instant case, the Tribunal did not assign any reason whatsoever while declining to award interest on judgment. Section 34 of the CPC would empower the Court to exercise discretion to award interest on the claim amount that was found due and payable for both the stages, post-suit and post-decree. We are not concerned with the pre-suit stage, as the issue is not pressed before us. We do not find any logic that was advanced by the Tribunal on interest on judgment. We fully agree with the Division Bench, awarding the same would be normal.

7. On the issue of interest pendente lite, on a careful perusal of the records of the Tribunal, we find, the Railway delayed in filing the written statement, at least in the case of Usha Shaw, they filed it after about fifteen months from the date of receipt. In the other case they filed it one and half years after the commencement of the case. We are not sure when the Railway received the copy. Tribunal in the order-sheet never recorded any lackadaisical approach of the parties. A mere passing reference made in the judgment by which the parties were caught unaware, would be a glaring example of deprivation of the principle of natural justice. Even if the Tribunal was right in saying so, the delay could be attributable to the Railways and not the claimant. When the Apex Court observed, "awarding of interest is a normal action" contributory negligence would

also attract awarding of interest.

8. The appeals succeed and are allowed. In both cases the appellants would be entitled to interest at the rate of six percent per annum on and from the respective dates of the filing of the claim petition before the Tribunal till the date of actual deposits/payments whichever would be earlier.

9. The appeals are disposed of accordingly without any order as to costs.

10. Urgent certified copy of this judgment, if applied for, be given to the parties on their usual undertaking.

Mrinal Kanti Chaudhuri, J.

I agree.