

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2029 OF 2016

SUSHILABAI KANTRAO LALE AND ANR
VERSUS
THE UNION OF INDIA THR THE G.M., SOUTH CENTRAL RAILWAY,
RAIL NILAYAM SECUNDERABAD

...
Advocate for Appellants: Mr. P.P. Mandlik h/f Mr. Deshmukh Mohit R.
Advocate for Respondents Mr. M.N. Navandar
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CORAM : V. K. JADHAV, J.
DATED : 9th JUNE, 2016

PER COURT:-

1. Heard finally with consent of the parties.
2. Being aggrieved by order dated 9.6.2015, passed by the Railway Claims Tribunal, Mumbai Bench, the original claimants preferred this appeal.
3. Brief facts giving rise to the present appeal are as under:-
 - a) Deceased Kishor Lale was travelling by a train from Aurangabad to Lasur. When the said train reached near Islampurgaon, he fell down from the running train and sustained injuries. The appellants original claimants lodged claim before the Member, Railway Claims Tribunal, Bench at Mumbai for grant of

compensation under various heads. The notice of claim application was served upon the respondent and the respondent accordingly resisted the application by filing written statement. Consequently, the matter was posted for evidence. The said claim application came to be lodged in the year 2011 and issues came to be framed in the year 2013. The learned Member of the Tribunal dismissed the claim petition on 14.7.2014 for want of prosecution. Consequently, the appellants-original claimants had filed an application for restoration of claim application. However, learned Member of the Tribunal by its impugned order dated 9.6.2015 also dismissed the said restoration application for want of prosecution. Hence, this appeal.

4. Learned counsel for the appellants-original claimants submits that the claimants are old aged and illiterate persons. They are labour by occupation. They could not approach the counsel on account of various difficulties faced by them. Learned counsel submits that they have claimed compensation on account of death of their only son and their claim petition is thus required to be decided on merits.

5. Learned counsel for the respondent submits that even though the claim application bearing No. 0059 of 2011 was posted for evidence and listed on six different occasions before the Tribunal, the

same was adjourned, as none remained present before the Tribunal on behalf of appellants-original claimants. Thus, by order dated 14.7.2014 the learned Member of the Tribunal dismissed the said claim application. Further more, the restoration application came to be dismissed for want of prosecution. Learned counsel submits that the appellants-claimants are not diligent to prosecute the claim application and therefore, Tribunal has rightly dismissed restoration application for want of prosecution.

6. It appears that the appellants original claimants are old aged persons and they have lost their only son. The appellants-claimants are illiterate persons and they are labour by occupation. Furthermore, it appears that the advocate engaged by them was suffering from illness for considerable time. The counsel engaged by the appellants is residing at Aurangabad and he has to attend the proceedings before the Tribunal at Mumbai. Due to his ill health he was not in a position to travel such long distance and attend the matter. Considering the same and the fact that the claim application for grant of compensation is not decided on merits, it would be just and proper to set aside the impugned order dated 9.6.2015 passed by the learned Member of the tribunal. Hence, the following order:-

O R D E R

- I. Appeal is hereby allowed and disposed of.
- II. The impugned order dated 9.6.2015 passed by the Member, Railway Claims Tribunal, Mumbai is hereby quashed and set aside.
- III. Restoration application No. RES/MCC/2015/0028 in OA (IIU)/MCC/2011/0059 is hereby allowed in terms of its prayer clause. Consequently, The claim application bearing No. OA (IIU)/MCC/2011/0059 is restored to its original file.
- IV. The parties shall appear before the Tribunal on 7.7.2016.
In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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