

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.426 of 2016

IN

MA 201 of 2013

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Mostt. Tarengna Devi @ Mostt. Taregna Devi, wife of Late Girija Prasad Singh,
resident of village-Ghatia, P.S. Kudra, District-Bhabhua.

.... Petitioner/s

Versus

The Union of India through the General Manager, Eastern Railway, Kolkata

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anant Kumar-1-Advocate

For the Respondent/s : Mr. Anil Kumar Sinha-(SC)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

Date: 8-11-2017

Instant petition by way of Civil Review has been filed by the petitioner/ appellant relating to order dated 25.07.2016 passed in connection with Misc. Appeal No.201 of 2013. The main grievance having raised on behalf of petitioner/ appellant is that while allowing appeal filed for grant of compensation under Railway Act on being refused by the Railway Claims Tribunal, Patna Bench in connection with Case No.0A 00355 of 2002, no order has been passed relating to interest incurred thereupon.

2. Highlighting the issue, it has been submitted that though there happens to be absence of relevant provision under the Railway Act as well as under Railway Claims Tribunal Act with regard to grant of interest, however, being subject to adjudication before the Hon'ble Apex Court in *Thazhathe Purayil Sarabi &*



others vs. Union of India and another reported in A.I.R. 2009 SC 3098, and the Apex Court after considering Interest Act as well as Section 34 of the C.P.C. given nod permitting grant of interest over compensation amount, which has also been relied upon at different occasion by the concerned Benches while allowing the prayer coupled with interest over the compensation amount. In the aforesaid eventuality, it has been submitted that the order impugned is to be reviewed to the extent of providing interest from the date of filing of application till realization of the compensation amount at least, at the rate of 9% per annum as observed by the Hon'ble Apex Court in the above referred judgment. The learned counsel for the petitioner/appellant has also referred the order dated 19.07.2012 passed in connection with Misc. Appeal No.148 of 2011 along with Misc. Appeal No.113 of 2011 along with Misc. Appeal No.129 of 2011 along with Misc. Appeal No.726 of 2008 conjointly wherein interest has been allowed relying upon *A.I.R. 2009 SC 3098*. Furthermore, with regard to power of review, the learned counsel for the petitioner/appellant also referred order dated 21.07.2015 passed in C.W.J.C. No.19179 of 2010 along with C.W.J.C. No.19228 of 2010 along with C.W.J.C. No.19302 of 2010. So, submitted that it is a fit case wherein the order impugned be reviewed to the extent of allowing interest from the date of filing of the petition to date of final payment.



3. Learned counsel representing Union of India (Railway) has submitted that the prayer of the petitioner is non-entertainable in the background of the fact that claim petition was dismissed by the Tribunal against which she (petitioner/ appellant) preferred an appeal, which has been allowed. Furthermore, though it was neither submitted nor found by the Bench to be appropriate to grant interest on account thereof, no order on that very score has been passed, though appeal was allowed. As such, prayer of the petitioner is found non-tenable in the eye of law.

4. With regard to death of her husband namely Girija Prasad Singh on 17.06.2002, a Police Constable, petitioner/ appellant/ applicant Mostt. Tarengna Devi @ Mostt. Taregna Devi, wife of the deceased filed Claim Petition on 25.10.2002 before the Railway Claims Tribunal bearing OA 00355 of 2002, which was dismissed by the Tribunal vide order dated 31.12.2012 against which Misc. Appeal No.201 of 2013 was filed and the same has finally been disposed of by the order impugned dated 25.07.2016, allowing the same. However, it was directed to parties to bear their own cost. No specific order has been passed relating to the interest. When the order impugned has been gone through in consonance with the L.C. Record, it gives a clear cut impression that apart from having the aforesaid plea not pressed as is evident from Para-2 of the petition, the appellate



Court on its own, did not find favour. The reason happens to be, from the successive order sheet of lower Court record, it is apparent that the Claim Petition contains dated 25.10.2002, but it was placed before the Tribunal on 31.10.2002, on which date, it was directed that the copy of the application be given to the respondent and further, reply be filed by 20.12.2002. Then thereafter, the order sheet happens to be blank and for the first time, it has been directed that put up before the Bench on 19.07.2012, on which date, the record did not come before the Tribunal rather it was placed on 19.08.2012 and then, the successive orders run upto the date of judgment. In the aforesaid background, it is difficult to ascertain whether it happens to be laches on the part of the Tribunal or at the end of O.P./ Respondent and further, on account of non-explanation at their end, it would be a blunder in case, interest is allowed for the intervening period. Had there been, due diligence at the end of the appellant, no such kind of activity would have visualized. Even during course of sailing of the appeal, as is evident, after filing of memo of appeal, defects were pointed out and the appellant took sufficient time in getting those defects removed.

5. In *Mrs. Elizebeth Mathew and others, Appellants v. Shri Vasdev and Delhi Transport Corporation, Respondent* reported in *A.I.R. 1990 Delhi 121*, it has been held:-



“15. The last submission made by the learned counsel for the appellants is that the Tribunal should also have allowed interest on the awarded amount from the date of the petition till payment. I have perused the record of the trial Court. I find that the delay in the decision of this case occurred mainly on account of the appellants. The issues were framed on 25-11-75 and the appellants took about 4 years to complete the evidence of four witnesses only. The order dated 5-2-79 on the file of the Tribunal also shows that on that date none appeared for the appellants and so the claim had to be dismissed in default for non-prosecution. It was only subsequently that counsel for the appellants appeared and requested for restoration and adjournment for evidence. The tribunal, therefore, showed indulgence and fixed the case of the appellants for remaining evidence. On none of the remaining dates for evidence, the appellants were able to examine their evidence and ultimately evidence of the appellants had to be closed by the order of the Tribunal dated 16-7-1979. The respondents completed their evidence in one date only i.e. 17-10-79. Therefore, taking all the circumstances into consideration since the respondents cannot be held guilty for the delay of the proceedings, I am of the view that no interest should be awarded in this case.”

6. Even in ***Thazhathe Purayil Sarabi & others vs. Union of India*** and another reported in ***A.I.R. 2009 SC 3098***, it has



been observed:-

“23. In the instant case, the claim for compensation accrued on 13th November, 1998, when Kunhi Moosa, the husband of the Appellant No.1, died on account of being thrown out of the moving train. The claim before the Railway Claims Tribunal, Ernakulam, (O.A.No.68/1999) was filed immediately thereafter in 1999. There was no delay on the part of the claimants/appellants in making the claim, which was ultimately granted for the maximum amount of Rs.4 lakhs on 26th March, 2007. Even if, the appellants may not be entitled to claim interest from the date of the accident, we are of the view that the claim to interest on the awarded sum has to be allowed from the date of the application till the date of recovery, since the appellant cannot be faulted for the delay of approximately 8 years in the making of the Award by the Railway Claims Tribunal. Had the Tribunal not delayed the matter for so long, the appellants would have been entitled to the beneficial interest of the amount awarded from a much earlier date and we see no reason why they should be deprived of such benefit. As we have indicated earlier, payment of interest is basically compensation for being denied the use of the money during the period which the same could have been made available to the claimants.”

7. As found from the L.C. Record, as discussed above, it is apparent that petitioner/ appellant could not be able to



flash, at whose fault delay in disposal of claim case had occurred.

8. Therefore, considering the laches at the end of the petitioner/ appellant, deprives her to enjoy the usufruct, whereupon instant petition is found devoid of merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	N.A.F.R.
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