

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.1707 of 2016

1.Mohideen Fathimal
2.Jannathul Firthouse
3.Raikhan Begam ... Appellants

Vs.

The Union of India
owning South Western Railways,
Hubli, Karnataka. ... Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railways Claims Tribunal Act, 1987 against the order dated 28.07.2014 in I.A.No.78 of 2013 in Dy.No.398 of 2013 on the file of the Railway Claims Tribunal, Chennai.

For Appellants : Mr.V.Venkadasalam
For Respondent : Mr.U.Venkatesan

J U D G M E N T

Challenging the order passed in in I.A.No.78 of 2013 in Dy.No.398 of 2013 on the file of the Railway Claims Tribunal, Chennai Bench, the claimants have filed the above appeal.

2.The claimants have filed the application in I.A.No.78 of 2013 to condone the delay of 2844 days in filing the Claim Petition.

3.After contest, the Tribunal dismissed the application. Aggrieved over the same, the claimants have filed the above appeal.

4.Heard Mr.V.Venkadasalam, learned counsel for the appellants and Mr.U.Venkatesan, learned counsel for the respondent.

5.It is the case of the appellants that the 1st appellant's husband Mohammed Gani, while travelling by a Train on 05.03.2005, met with an untoward incident and had died in the accident.

6.The 1st appellant is the wife of the deceased and the appellants 2 & 3 are his daughters. After the death of her husband, the 1st appellant has been working as a Coolie to take

care of her daughters. Further, the 1st appellant has stated that in the month of September 2013, when she had been to Madurai to attend a family function, she came to know about the Railway Claims Tribunal through one of her relative and also claiming compensation for the accidental death while travelling in the Train. Thereafter, she, along with her sister's husband met the counsel and filed the Claim Petition along with the Death Certificate, Legal Heirship Certificate, Police Records, etc. The Railway authorities provided her the Inquest Report, Postmortem Report and Final Report in the month of November 2013. Since the appellants are illiterate, they did not know about the filing of the Claim Petition before the Railway Claims Tribunal. The respondent filed their counter and has stated that the appellants have not explained the reasons for the delay in a proper manner.

7.The learned counsel appearing for the appellants submitted that the Tribunal should have taken a liberal approach by condoning the delay in filing the Claim Petition when the appellants have satisfactorily explained the reasons for the delay.

8.The learned counsel for the appellants, in support of his contentions relied upon the following judgments:

(i) (1998) 7 Supreme Court Cases 123 [N.Balakrishnan Vs. M.Krishnamurthy] wherein the Apex Court held as follows:

"...

9.It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

(ii) 2015 (1) CTC 811 [Ajay Kumar Gulecha Vs. J.Vijayakumar and another] wherein this Court held as follows:

"...

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

(a) An Application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challan manner requires to be curbed, of course, within legal parameters."

The Hon'ble Supreme Court also referred to some of its Judgments regarding Law of Limitation. Paragraphs 10, 11 & 12 are usefully extracted as follows:

"10. In this context, we may refer with profit to the authority in *Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation* and another, MANU/SC/0141/2010 : 2010 (5) SCC 459, where a Two-Judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the Law of Limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

11. In Improvement Trust, Ludhiana v. Ujagar Singh and others, MANU/SC/0417/2010 : 2010 (6) SCC 786, it has been held that while considering an Application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

12. A reference to the principle stated in Balwant Singh (dead) v. Jagdish Singh and others, 2010 (8) SCC 685 would be quite fruitful. In the said case the Court referred to the pronouncements in Union of India v. Ram Charan, AIR 1964 SC 215; P.K. Ramachandran v. State of Kerala, 1997 (2) CTC 663 (SC) : 1997 (7) SCC 556; and Katari Suryanarayana v. Koppiseti Subba Rao, 2009 (4) CTC 286 (SC) : 2009 (11) SCC 183 and stated thus:

25. We may state that even if the term sufficient cause has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of reasonableness as it is understood in its general connotation.

26. The Law of Limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the Applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its

rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

(iii)2016 (3) CTC 268 [Adhilakshmi and others Vs. Union of India, owning Southern Railway, rep by its General Manager, Southern Railway, Chennai - 600 003.] wherein this Court held as follows:

"...

11.In legal terms, it may appear to be an inordinate delay, but not in the life of an illiterate woman, whose relatives and neighbours, were no better in education and who has had to take such a long time to take stock of a great tragedy which plucked the flower from her locks, besides reducing her an young widow with three minor children to take care of. Simply, she was thrown into the winds with no one to fall back. The great loss made her weak mentally, financially and socially.

12.What could have been the motive of the first petitioner in approaching the Court belatedly? Who stands to gain by this belated application? Whether, in any way, she stands to gain because of this delay?

13.The first petitioner would have been the happiest person, if she is able to get the compensation at the earliest, more than anyone else. Under such circumstances, if there is a delay, then it must be only on account of want of knowledge, as alleged by her, because earlier remedy would have given complete financial support to her. The forsaken society in which she was living may be the cause for that, for which, she cannot be punished."

(iv)2012 (2) MWN (Civil) 863 [M.Suseela Vs. The Union of India, owning Southern Railway, rep by its General Manager] wherein this Court held as follows:

"...

8.At one point of time, in these matters, the Courts have expected explanation for each day of delay. Length of delay was given a prominent place. Now, there is a shift in this approach. Courts have adopted a liberal and pragmatic approach. Courts refrained from viewing the delay with tinged glasses. At the same time, they did not allow vexatious and stale matters to enter the portals of Courts and take away the public time. Now, in appropriate cases, Courts have considered even poverty and illiteracy are also sufficient grounds

to condone the delay. It is to be noted that refusal to condone the delay should not result in closing the doors of justice to real seekers of justice. It is also a matter of "Access to Justice". What is important is whether there is a case to be explored. Now, it is not the length of time but substance matters. A meritorious case shall not be denied adjudication on account of any technical plea or procedural wrangles.

9.Suseela, the appellant is a widow. She is not highly educated. she is an illiterate. She is not employed anywhere. She belongs to lower strata of society. She battles for her daily existence/sustenance. She has lost one of her beloved son under most tragic circumstances. None of her other siblings supports her. She is struggling lonely to get justice for her son's death.

10.Let us not have strict approach in these matters. After all by giving an opportunity to adjudicate her claim no prejudice would be caused to the respondent. If she succeeds in her claim, the cause of justice is advanced."

9.Countering the submissions made by Mr.V.Venkadasalam, the learned counsel for the appellants, Mr.U.Venkatesan, the learned counsel for the respondent submitted that the Tribunal had rightly dismissed the petition for the reason that the claimants have not explained the reasons for the delay in a proper manner. Further, the learned counsel submitted that in the absence of sufficient cause shown by the appellants, the Tribunal had rightly dismissed the petition.

10.In support of his contention, the learned counsel for the respondent relied upon the following judgments:

(i) (2013) 12 Supreme Court Cases 649 [Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others] wherein the Hon'ble Supreme Court held as follows:

15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be

applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be scrupulously scrutinized and the approach should

be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

(ii) An unreported judgment of the Andhra Pradesh High Court dated 12.12.2011 made in Civil Revision Petition No.5900 of 2010 [Union of India rep by General Manager, South Central Railway, Secunderabad Vs. Mekanthoti Mohan Rao and others] wherein the Andhra Pradesh High Court held as follows:

"...

7. Even assuming for a moment that the claimant in fact, entrusted the matter to Sri Srinivasarao, Advocate in the year 2002 and therefore, they were under the impression that the case was filed, still there is total lack of diligence in pursuing the matter for a long period of 8 years which remains unexplained. Their claim that they were making enquiries with the Advocate and that he was informing them that the case was pending remains vague and baseless and in the absence of any dates of such communication being furnished and in the absence of anything in writing evidencing passage of such communication between the claimants and their counsel. The delay of 2578 days in filing the present claim application in the year 2010 in respect of the accident that occurred in 2002 cannot be easily condoned in the absence of satisfactory explanation. It is well established that the discretionary power of condoning the delay cannot be exercised in favour of a party, who is totally lacking in diligence and is guilty of laches and inaction. No prudent person of average diligence even if illiterate would have kept quiet for such a long period of 8 years without making any enquiry to know the stage or result of the case. The plea of the claimants that they are making enquiries with their Advocate and he kept on telling that the case was pending cannot be believed at all."

(iii) (2015) 6 Supreme Court Cases 600 [Union of India and others Vs. Shri Hanuman Industries and another] wherein the Apex Court held as follows:

"...

20. The gravamen of the authorities pertaining to delay highlight in unison that the same has to be explained by cogent, convincing and persuasive explanation to justify condonation thereof. The legal dictat being so fundamental that a detailed treatment of the discussions relied upon by the respondents in this regard is not warranted."

11. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that there is a delay of 2844 days in filing the Claim Petition. The appellants should have filed the Claim Petition within one year from the date of accident (i.e.) on or before 05.03.2006. In the Claim Petition, the appellants have stated that the deceased was travelling in the Train, he left for Bangalore by Tuticorin-Bangalore Express for onward journey to Nepani. The deceased was working as a Clerk with M/s. Syed Beedi Company. The deceased was holding a reserved II Class ticket bearing PNR No. 413-6208398. When the Train was proceeding between Tumkur and Malla Chandra Railway Station, while going near the wash-basin, due to high speed and jerk, he accidentally fell down from the running Train and suffered crush injury and the body was cut into two pieces and died at the place of occurrence. After the death of her husband, the 1st appellant was working as a Coolie to take care of herself and her two daughters.

12. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel on either side, primarily, for condonation of the delay, the party seeking for condonation of the delay should explain the reasons in a satisfactory manner. In the absence of sufficient cause shown by the appellants, the delay cannot be condoned. In the case on hand, as already stated, the accident had occurred on 05.03.2005 and the appellants should have filed the appeal within one year from the date of the accident. According to the appellants, the 1st appellant is an illiterate woman, therefore, she was not aware about the filing of the Claim Petition before the Railway Claims Tribunal. Further, she has stated that only when she went to Madurai to attend a function, she was informed in the month of September 2013 that she could file a Claim Petition before the Railway Claims Tribunal, claiming compensation for the death of her husband. Thereafter, she secured all the documents and handed over the papers to her counsel for filing the Claim Petition, which resulted in the delay of 2844 days. It cannot be stated that the appellants would stand to gain because of the delay in filing the Claim Petition. Only because of her incapacity, she has not filed the Claim Petition in time. The reasoning given by the appellants for condonation of the delay cannot be ignored. The 1st appellant is a Coolie by profession and one cannot expect her to know about the Railway Claims Tribunal and the Claim Petition filed therein. Since the appellants have satisfactorily explained the reasons for the delay, the Tribunal should have condoned the same.

13. The ratio laid down in the judgments relied upon by the learned counsel for the appellants squarely applies to the present case.

14. Since the Claim Petition has been filed after a delay of 2844 days, they are not entitled for interest during the

said period. The claimants can claim interest only from the date of numbering of the Claim Petition.

15. For the reasons stated above, the order passed by the Railway Claims Tribunal, Chennai Bench in I.A.No.78 of 2013 in Dy.No.398 of 2013 is set aside and the application in I.A.No.78 of 2013 is allowed. In the event of the Tribunal coming to the conclusion that the appellants are entitled for compensation, the Tribunal shall award interest only from the date of numbering of the Claim Petition. The Tribunal shall dispose of the Claim Petition as expeditiously as possible. The Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Railway Claims Tribunal,
Chennai.

2. The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to Mr.V. Venkadasalam, Advocate Sr.87273

+ 1 cc to Mr. U. Venkatesan, Advocate SR.87305
(issue copy on payment of court fee for the CA.)

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