

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

Coram

The Hon'ble Mr. Justice M.DURAI SWAMY

C.M.A. No.2124 of 2015

L.Sulthana

.. Appellant/Petitioner/
Applicant

Vs

The Union of India Owning
Southern Railway rep. by its
General Manager, Chennai - 3.

.. Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railway Tribunal Act against the order passed by the Railway Claims Tribunal, Chennai Bench in I.A.No.61 of 2015 in Dy. No.83 of 2015 dated 26.08.2015.

For Appellant

.. Mr.S.Parthasarathy

For Respondent

.. Ms.T.P.Savitha
Senior Counsel for Railway

JUDGMENT

Challenging the order passed in I.A.No.61 of 2015 in Dy. No.83 of 2015 on the file of the Railway Claims Tribunal, Chennai Bench, Chennai, the claimant has filed the above appeal.

2.The claimant filed the claim petition in Dy. No.83 of 2015 claiming a total compensation of Rs.4 lakhs for the injuries sustained by her out of the accident by falling from the train. The claimant filed the claim petition after a delay of 2738 days. To condone the delay of 2738 days in filing the claim petition, the claimant filed I.A.No.61 of 2015, which was dismissed by the Tribunal, against which, the claimant filed the appeal.

3.It is the case of the claimant/appellant that on 27.03.2006, she and her father came to Krishnarajapuram railway station for proceeding to Ambur and also took train ticket. The claimant and her father boarded the passenger train and when the

train reached Ambur and when it was slowly entering into Ambur railway station, she tried to alight from the said train and slipped from the said train and fell in between the train and the railway track in the said station and was ran over by the said train. Out of the said accident, the claimant's both legs were crushed and she was immediately taken to Government Hospital, Ambur, where she got treatment. Thereafter, the claimant was transferred to the Government Hospital, Vellore, where both her legs were amputated. Even after continuous medical treatment for three years, the wounds did not heal. Further, she could not move around without the help of a person. In these circumstances, the claimant has stated that she could not meet her lawyer at Chennai for filing the claim petition before the Tribunal. Hence there is a delay of 2738 days in filing the claim petition.

4.The respondent filed a counter stating that the claimant should have filed the claim petition within one year from the date of accident and the reasons given in the affidavit filed in support of the petition cannot be accepted. Further, the respondent has stated that the claimant has to explain the reasons for the delay in a satisfactory manner. The Tribunal took into consideration the case of both parties and not satisfied with the reasons stated by her, dismissed the application.

5.Heard the learned counsel appearing for the appellant and the learned standing counsel appearing for the respondent.

6.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 the claimant had suffered serious injuries on both her legs, which resulted in amputation of both her legs. She has stated that she was taking treatment for more than three years and that she could not move around anywhere without the assistance of a person. When the claimant's legs were amputated and she was not in a position to move around to contact her counsel to file the claim petition, the Tribunal could have taken a sympathetic view and could have condoned the delay. Learned counsel appearing for the appellant, in support of his contention, relied upon the judgment in Adhilakshmi Vs. Union of India (2016 (3) CTC 268), wherein this Court has held as follows:

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.

7. Further, the learned counsel appearing for the appellant submitted that the claimant shall not claim interest for the delay period of 2738 days in the event of the Tribunal awarding any compensation.

8. Countering the submissions made by the learned counsel appearing for the appellant, Ms. T. P. Savitha, learned standing counsel appearing for the respondent submitted that the Tribunal has rightly dismissed the application for the reason that the claimant has not satisfactorily explained the reasons for the delay. In support of her contention, the learned counsel relied upon the following judgments:

(i) In *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur* (2013 (5) CTC 547), the Apex Court has 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 carefully 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.

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-challant manner requires to be curbed, of course, within legal parameters.

(ii) In H.Dohil Constructions Co. Pvt. Ltd., Vs. Nahar Exports Ltd., (2015 (5) CTC 534), the Apex Court has held as follows:

23. When we apply those principles to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-

furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the court fee at the time of the filing of appeal papers on 6-9-2007, the reasons, which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

9. There is no dispute that if a party seeking for condonation of delay failed to give sufficient cause for the condonation of delay, the delay could not be condoned. In other words, only if the party seeking for condonation of delay gives sufficient cause, the delay could be condoned. In the case on hand, the claimant's both legs were amputated and she was not in a position to move around without the help of a person. That being the case, the appellant cannot be expected to file the claim petition in time, that too, when she lost both her legs.

10. In these circumstances, the ratio laid down in the judgments relied upon by the learned counsel appearing for the respondent are not applicable to the facts and circumstances of

the present case. The ratio laid down in the judgment relied upon by the learned counsel appearing for the appellant squarely applies to the present case. Since the claimant has satisfactorily explained the reasons for the delay, I am inclined to condone the same. Accordingly, the order dated 26.08.2015 passed in I.A. No.61 of 2015 in Dy No.83 of 2015 is set aside. The application in I.A.No.61 of 2015 stands allowed. The Railway Claims Tribunal, Chennai Bench, Chennai is directed to dispose of the claim petition as expeditiously as possible. However, as submitted by the learned counsel appearing for the appellant, the claimant is not entitled to claim any interest on the compensation, if any awarded by the Tribunal, for the delay period of 2738 days.

11.With these observations, the civil miscellaneous appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager,
Southern Railway, Chennai - 3.

2.The Railway Claims Tribunal,
Chennai Bench, Chennai.

3.The Record Keeper, V.R. Section,
High court, Madras.

+1cc to Mr.S.PARTHASARATHY Advocate, S.R.No. 85520

+1cc to Mr.T.P.SAVITHA, Advocate, S.R.No. 85687

C.M.A.No.2124 of 2015

CA(CO)
TR(03/01/2018)

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