

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Review No.425 of 2016****IN****MA 175 of 2013**

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Mostt. Naimunesa, wife of Late Bigu Khalifa, resident of village - Saria, P.S. Amjhor, District - Rohtas

.... Petitioner/s

Versus

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

.... Respondent/s

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: 27-06-2018**

Instant review petition has been filed under Order-XLVII, Rule-1 of the C.P.C. praying therein to review the judgment dated 19.07.2016 passed in Misc. Appeal No.175 of 2013, on the limited issue relating to grant of interest over the compensation amount, which had already been paid as the appeal was allowed on account of absence of order on that score. As the aforesaid review petition has been filed after delay of one month and four days on account thereof, I.A. No.716 of 2017 has been filed with a prayer to condone the delay on the grounds so enumerated therein.

2. Heard both sides. It has been submitted on behalf of learned counsel for the petitioner that the provision happens to be beneficial legislation in order to provide compensation to the dependants/ legal heirs on account of unfortunate incident falling



under the banner of untoward incident costing the life of the deceased or, to the injured himself being as a railway passenger and under the garb of aforesaid eventuality, not only the fixed compensation amount so identified is payable rather interest incurred thereupon commencing from the date of accident is also to be calculated in the background of the fact that due to lapses on the part of the railway in getting the compensation paid at an earliest and forcing the dependants to ask for compensation by way of filing a petition before the tribunal, coaxed with the mental agony, frustration as well as hardship due to delay in payment to the grieved family on account of losing not only the family member rather the bread-earner.

3. It has further been submitted that from perusal of the judgment impugned, it is evident that while setting aside the order passed by the tribunal, whereupon allowing the appeal, no finding has been recorded relating to the interest. That being so, the judgment impugned needs re-consideration for the limited purpose, adjudicating upon the rate of interest. Furthermore, it has also been submitted that rate of interest has been more or less settled to be calculated from the date of accident till the date of judgment @ 6% and from the date of judgment to the date of realization @ 9%.

4. On the other hand, the learned counsel representing the Railway has objected by stating that there happens to be no laches on the part of the railway as in the facts and circumstances of the case as



well as tracing out fault at the end of the deceased, the railway was not in a position to identify the deceased to be a bonafide passenger which the family of deceased was very much conscious and that being so, no representation was made before the Department at an earliest. On the other hand, though the claim petition was filed on 11.07.2002 for the death having committed in an untoward incident on 06.05.2002, but due to non-cooperation of the petitioner, the matter remained pending for ten consecutive years and for that, O.P. cannot be held responsible.

5. It has further been submitted that the same happens to be reason behind that the act is silent over payment of interest although the other beneficial act does contain such provision. However, later on, the Apex Court had allowed the same, but it has to be considered in the facts and circumstances of each case independently otherwise, the department will have to pay the interest without any fault putting additional burden over the department.

6. It has also been submitted that payment of interest is not only to be seen through the angle of the dependent rather it has also to be seen at the end of the opposite party and further, whether there happens to be any kind of intentional, wilful activity with a purpose to defeat the interest of the claimant. That being so, ordinarily the opposite party should not be directed to pay interest unless and until, there happens to be specific finding that on account of



intentional act at the end of the opposite party to frustrate the spirit of the law, the opposite party should not be compelled to pay the interest. So, submitted that it is a fit case wherein prayer of the petitioner is found non-tenable in the eye of law and is accordingly, fit to be rejected.

7. In ***Union of India vs. Rina Devi reported in 2018(2) P.L.J.R. 447***, after discussing in detail the pros and cons involved in a claim case having been filed under the railway act on the ground of injuries or death occurred as a result of untoward incident, it has been held that the cause of action would accrue from the date of accident, but so far calculation is concerned, that has to be carried out on the date of pronouncement of judgment and so, the same has to be perceived in accordance thereof. In Para-15.4, it has been held:-

“15.4 Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the 33 Prabhakaran Vijaya Kumar (supra) para 12 Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of



delay. Seeming conflict in Rath i Menon (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given. Re: (ii) Application of Principle of Strict Liability –Concept of Self Inflicted Injury”

8. From the record, it is evident that judgment impugned has already attained its finality and further, instant review petition is also found barred by law of limitation as for that, no legal ground has been proliferated. That being so, instant petition is found de void of merit and is accordingly, rejected including I.A. No.716 of 2017.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	28.03.2018
Uploading Date	27.06.2018
Transmission Date	27.06.2018

