

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 27.08.2018

JUDGMENT PRONOUNCED ON : 02.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.2517 of 2011

G. Sankar

...Appellant /Petitioner

Vs

Union of India,
Owning Southern Railway,
rep. By its General Manager,
Chennai.

...Respondent /Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 23(1) of the Railway Claims Tribunal Act 1987, Challenging the order passed in I.A.No.59 of 2010 in OA Diary. No. 208 of 2010 dated 25.01.2011 on the file of the Railway Claim Tribunal at Chennai.

For Appellant : Mr. T.Rajamohan

For Respondents: Ms. T.P. Savitha

J U D G M E N T

Aggrieved over the order passed by the Railway Claims Tribunal, Chennai bench in IA.No.59 of 2010 in OA Diary No. 208 of 2010 dated 25.01.2011, the appellant who is the petitioner in I.A.No. 59 of 2010 filed this appeal praying to set aside the order passed by the Railway Claim Tribunal.

2) In the Claim Tribunal the petitioner has filed an application to condone the delay of 1409 days in filing O.A. Diary No. 208 of 2010. the said application has been numbered in IA No. 59 of 2010 and after elaborate enquiry the said application was dismissed by the Claim tribunal. Aggrieved over the order passed by the claim tribunal the petitioner/applicant is before this Court with this Civil Miscellaneous Appeal.

The case of the applicant in the claims Tribunal is as follows:

3) The appellant has lost his son Kumaresan in an accident happened on 27.01.2006 in an untoward incident of fall down from the train between Kadambathur and Senji Panapakam

Railway Stations. Due to the delay in obtaining the death certificate of his son, legal heir certificate and records created by the Police Officers are not available immediately after the accident. Hence, the claim application before the Claim Tribunal has not been filed within a period of one year stipulated as per the Act. So, he filed application before the Tribunal praying to condone the delay of 1409 days, and the same was dismissed.

4) In the impugned order passed by the Claim Tribunal, for the reason that the appellant did not mention the date in which the application was filed for obtaining death certificate and legal heir ship certificate, since, the delay of 1409 days, which worths about more than 4 years, which incidentally excludes the period of one year provided in the Act for filing the application and accordingly hold that the appellant did not show the sufficient cause for not filing the application within such period and finally the application was dismissed.

5) Now, the appellant / applicant approached this court by mentioning the same reason attributed before the claim Tribunal.

6) Opposing the claim made by the applicant, the learned counsel appearing for the respondent made submissions that for claiming compensation, applications have been filed within 1 year from the date of accident. In this case, the appellant had not offered any convincing explanation for the inordinate delay in filing the application. The reason stated in the appeal memorandum cannot be accepted as a valid excuse for condone the delay of 1409 days in filing the original application. It is also denied by the respondent that there is no willful latches on the part of the applicant.

7) I have heard Mr.T.Rajamohan, learned Counsel for the applicant and Ms.T.P.Savitha (Railway Standing Counsel), learned Counsel for the respondent and perused the records carefully.

8) On careful consideration of the materials available on records and the submissions made by the learned counsels on either side, it could be seen that the son of applicant Kumaresan met an accident on 27.01.2006 by falling down from the train between Kadambathur and Senji Panapakkam Railway Stations. According to the appellant, only due to the non availability of the death certificate and legal heir certificate and also due to the ignorance of knowledge, he could not be filed the application within the time.

9) The 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) and Esha

Bhattacharjee Vs. Managing Committee of Ragunathpur reported in (2013 (5) CTC 547). In the Judgment of Adhilakshmi Vs Union of India (2016 (3) CTC 268), it was held as follows:

"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 cause for that, for which, she cannot be punished."

In the judgment of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur (2013 (5) CTC 547), it was held that

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 destination between

inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the later 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 in 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 within 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.

When we apply those principles to the case on hand, it has to be stated that the failure of the petitioners in not showing due diligence in filing of the appeals and the enormous time taken in the re-filing can only be construed, in the absence of any valid explanation, as gross negligence on the part of the petitioners.

10) It is not the case of the respondent that the son of the complainant not met with an accident. Further, considering the circumstances found in and around the appellant shows that he is an illiterate and leading a painful life in the society. Further, deciding the claim application by the respondent did not make any cause prejudice to the respondent. Even though, the delay now stated by the appellant is higher inside considering the situation of the appellant it is necessary to allow this application.

11) Further more, the learned counsel appearing for the appellant submitted that the claimant shall not claim any interest for the period of delay, in the event of the Tribunal awarded any compensation. Accordingly, the order dated 25.01.2011 in I.A.No.59 of 2010 and in OA Diary . No. 208 of 2010 is set aside. The appeal filed by the petitioner in this appeal is allowed. The Railway Claims Tribunal, Chennai Bench is directed to dispose the claim petition as expeditiously as possible. The claimant is not entitled to any interest on the compensation, if any awarded by the Tribunal for the delay of 1409 days. With these observations, this Civil Miscellaneous Appeal is allowed. No Costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Railway Claims Tribunal,Chennai.

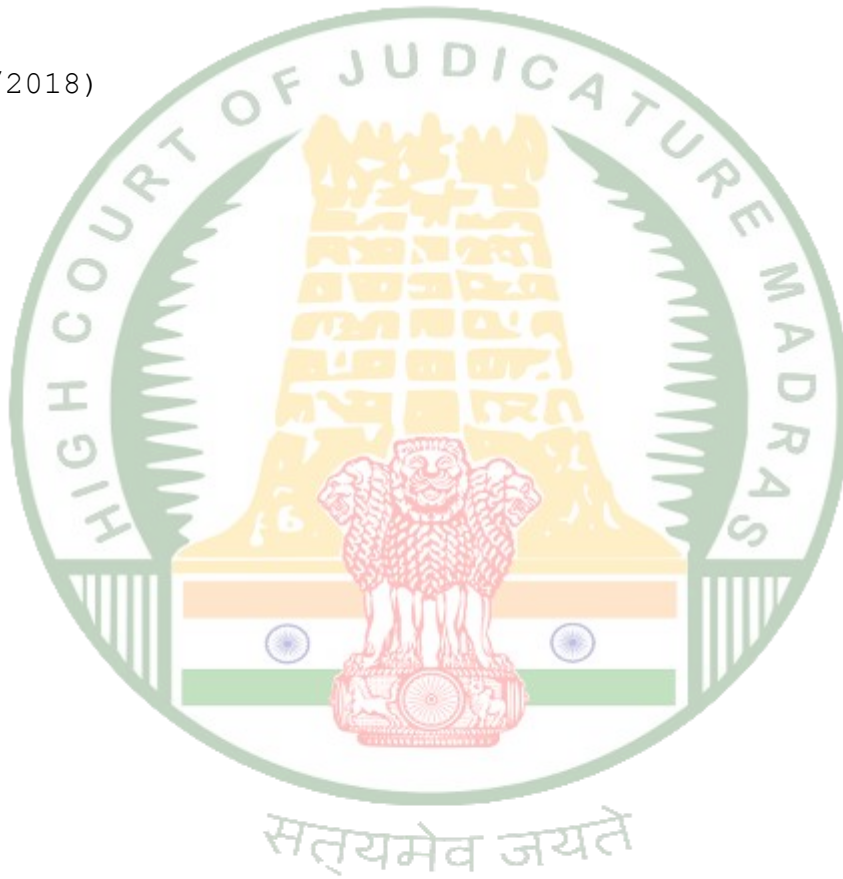
2.Union of India,
Owning Southern Railway,
The General Manager,
Chennai.

+1cc to Mr.T.P.Savitha, Advocate, S.R.No.76041

+1cc to Mr.T.Rajamohan, Advocate, S.R.No.75795

C. M. A. No.2517 of 2011

KJ(CO)
GSP(18/12/2018)



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