

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28.08.2018

JUDGMENT PRONOUNCED ON : 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Civil Miscellaneous Appeal No.1989 of 2007

A.M. Kothandaraman
S/o A.R. Mugunthasamy
New Athikuppam Village
Bommikuppam Post
Thirupathur Taluk - 635 653

.. Appellant

Vs

Union of India owning
Southern Railway
Rep by its General Manager
Chennai - 600 003

... Respondent

Prayer:

Civil Miscellaneous Appeal is filed under Section 23(1) of the Railway Claims Tribunal act 1987, challenging the order passed in CMP No.12 of 2005 dated 13.02.2007 on the file of Railway Claim Tribunal at Chennai Bench.

For Appellant : Mr.S. Parthasarathy

For Respondents : Ms.T.P.Savitha
(Railway Standing Counsel)

J U D G M E N T

Challenging the order passed in CMP No.12 of 2005 on the file of Railway Claims Tribunal at Chennai Bench, the claimant has filed the above appeal. The claimant filed the claim petition claiming a total compensation of Rs.4,00,000/- for the injuries sustained by him. The contention of the petitioner is, by falling down from the moving train and on account of hit by an electric pole situated near St.Thomas Mount Railway Station and not regaining the consciousness for more than 3 weeks. The claimant filed the claim petition after the delay of 1547 days. The Claimant filed a Civil Miscellaneous Petition in 12 of 2005, which was dismissed by the Tribunal

against which the claimant filed this appeal.

2) The brief facts about the appeal filed by the claimant /Appellant is that on 10.02.2000, when the claimant after attending his regular work in the Tamil Nadu Exservicemen Board, Kodambakkam, while he was returning back to Vandalur through EMU by boarding the said crowded EMU at Kodambakkam Railway Station after purchasing a ticket from Kodambakkam to Vandalur at about 9.00pm, when the said EMU was nearing St. Thomas Mount Railway Station, he was hit by an electric pole and accidentally fell down from the moving train and became unconscious. After regaining the consciousness, he realised that he had admitted at Government General Hospital, Chennai with heavy bandage around his head. Though he was discharged from the said Hospital, he was advised to take complete rest atleast for 6 months or one year as the case may be and visit the General Hospital frequently to get medicines. After the accident, he sustained fracture on the left sided parietal, temporal and occipital bones. Consequently, the appellant developed transient loss of memory with loss of consciousness or loss of memory for a period of one month with weakening of right sided upper limb. Till date, he is continuously taking treatment by consulting various neuro surgeons and had spent Rs.1,00,000/- towards cost of medicines. In this circumstances, the claimant has stated that he could not meet his Counsel at Chennai for filing the Claim petition before the Tribunal. Hence, there is a delay of 2738 days in filing the claim petition.

3) The respondent filed a Counter statement stating that for any accident, the application for claiming compensation have been filed within 1 year from the date of accident. In this case, the appellant has not offered any convincing explanation for the inordinate delay in filing the application. The reason stated in the affidavit cannot be accepted as a valid excuse for condone the delay of 1547 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.

4) I have heard Mr.S. Parthasarathy, learned Counsel for the appellant and Ms. T.P. Savitha (Railway Standing Counsel), learned Counsel for the respondent and perused the records carefully.

5) On careful consideration of the materials available on record and the submissions made by the learned counsels on either side, it could be seen that the claimant sustained grievous injuries on his head, which resulted so many complications in his day to day life. He was taking treatment for more than 1 year. He could not move around anywhere without any assistance. 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 Raghunathpur 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 the 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 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 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 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.

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 refiling can only be construed, in the absence of any valid explanation, as gross negligence on the part of the petitioners.

6) Further, the learned 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 13.02.2007 passed in CMP No. 12 of 2005 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 any interest on the compensation, if any awarded by the Tribunal for the delay of 1547 days. With these observations, this Civil Miscellaneous Appeal is allowed. No Costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vrn

1. The Railway Claims Tribunal,
Chennai Bench.
2. The Section Officer,
VR Section, High Court,
Madras-104. (2 Copies)

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.63264

+1cc to Ms.T.P.Savitha, Advocate, S.R.No.63050

CMA.No.1989 of 2007

NM(CO)
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