

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-:-

FAO No. 3537 of 2016 (O&M)

Date of decision: 04.07.2018

Lok Chand & Ors.

... Appellants

Vs.

Union of India

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Lalit Kumar, Advocate, for
Mr. Johan Kumar, Advocate, for the appellant.

Mr. Amit Kumar, Advocate, for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act') is directed against the award dated 26.03.2015 of Railway Claims Tribunal, Chandigarh (for short, 'the Tribunal'), whereby the Tribunal as such has refused to condone the delay of more than 5 years in filing of the claim petition on the ground that there are several mistakes in the application and exact number of days have not been mentioned. No documentary evidence as such had been given and the application for condonation of delay had not been signed. Resultantly, reliance had been placed upon the judgment of the Apex Court *D.Gopainathan Pillai Vs. State of Kerala & Anr., 2007(2) SCC 322* that such a delay could not be condoned on the sympathetic ground and the long period had not been convincingly explained by the applicant.

The claim petition before the Tribunal was filed on 04.07.2014

on account of death of Smt. Vedbati on 01.08.2007, which took place in Faridabad, New Town Railway Station. As per Section 17(1)(b) of the Act, the Tribunal shall not admit the application if the application was filed after one year of the incident. However, under sub-clause (2) an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such a period. Under Section 18, the Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules. As per Sub-clause (2) every application is to be decided as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents, written representations and affidavits and after hearing such oral arguments as may be advanced.

In view of the procedure prescribed in the Act the Tribunal as such is exercising summary jurisdiction which has been held to be a beneficial piece of legislation, which is the view taken by the Apex Court in Civil Appeal No. 4945 of 2018 **Union of India Vs. Rina Devi** decided on 09.05.2018. In the present case the appellants are legal heirs of the deceased who is stated to have expired on account of accident while traveling as a bonafide passenger and in the application it has been averred that she was having a valid ticket as such from Sakur Basti to Ballabhgarh. The deceased was a house-wife and appellant Nos. 2 and 3 are minors, who have lost their mother in the untoward accident which has allegedly taken place while she was traveling. In such circumstances, the technical view as such

which has been taken by the Tribunal, is not justified as such. The effort of the Tribunal should be to advance the interest of justice and decide the case on merits. No doubt applicants/appellants have been causal also in their approach and as much as appropriate application specifying the period as such of the delay and not signing the application as such have taken place as observed by the Tribunal. However in the miscellaneous application also which was filed subsequently for condoning the delay they have mentioned that they were under depression due to the death of Vedbati. In such circumstances, the supplementary application for condoning the delay dated 31.02.2015 was also filed which has also been disposed of by the Tribunal along with the impugned order. The Tribunal had sufficient cause to condone the delay and the parties can be put to terms regarding the interest element also in the final order on account of their lapse. Therefore, this Court is of the opinion that the order as such is not sustainable.

The Apex Court in **Collector, Land Acquisition, Anantnag Vs. M/s Katiji (1987) 2, SCC 107 and G.Ramegowda Major & Ors. Vs. Spl. Land Acquisition 1988(2) SCC 142** has held that a pedantic approach has not to be taken and each and every days delay is not to be explained. The circumstances of having lost a family member who had to contribute to the house-hold is the sufficient cause as such which was prima-facie brought on record and the Tribunal should have been more liberal in condoning the delay and not dismissing the application at the threshold.

Reliance placed on **D.Gopainathan Pillai's** case (supra) also in the facts and circumstances is not justified. In the said case there was 9 years of delay by the State for setting aside of the award and the trial Court

had also observed that there was gross of negligence on part of the officer's but the State should not be penalised. The order was upheld by the High Court but set aside by the Apex Court on the ground that the delay was not properly, satisfactorily and convincingly explained and therefore resort to sympathetic grounds could not be done. As noticed the present case arises out of a beneficial piece of legislation and therefore, the said judgment could not be applicable on the ground of delay.

Resultantly, the present appeal is allowed. Impugned order dated 26.03.2015 is set aside. The Tribunal shall decide the delay application afresh, after giving the appellants time to rectify the deficiencies, if any in the same.

July 04, 2018
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(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No