

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

--

FAO No. 6778 of 2015

Date of decision: 18.09.2018

Mishro Devi

... Petitioners

Vs.

Union of India

...Respondents

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

Present: Mr. Subhash Sachdeva, Advocate, for the appellant.

Mr. Praveen Chander Goyal, 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 order dated 23.03.2015 of the Railway Claims Tribunal, Chandigarh Bench (for short, 'the Tribunal'), whereby the Tribunal as such has dismissed the claim application on the ground of inordinate long delay of two years and twelve days by placing reliance upon judgment of Supreme Court in *D.Gopainathan Pillai Vs. State of Kerala & Anr., 2007(2) SCC 322.*

Another ground for dismissing the application was that neither the counsel nor the applicant appeared before the Bench after filing of the said application though the matter had been adjourned on six consecutive occasions.

The record has been perused. The present case is of injury received by the appellant leading to the amputation of the left leg on account of the accident which took place on 22.06.2011. The application under Section 124-A of the Railways Act, 1989 was filed on 04.07.2014

along with application under Section 17(2) of the Act, read with Section 5 of the Limitation Act, 1963. In the application it has been averred that the appellant was admitted in General Hospital Bhiwani on 13.09.2013 and she was discharged on 25.09.2013. After the accident she had remained admitted in PGI Rohtak and General Hospital Bhiwani many times and several operations were performed on her by the doctors. She only came to know her right to file the claim application on 01.07.2014 and thus delay has taken place. Counsel for the appellant has also relied upon the discharge slip issued by the General Hospital, Bhiwani to show that she was discharged on 25.09.2013 and it was a case of amputation. The claim also was thus on account of amputation of the left leg below knee.

The application was contested by the Union of India on the ground that there was no plausible explanation as such and vague grounds have been taken. The provisions of Railway Claims Tribunal Act 1987 and the Railways Act, 1989 have been held to be a beneficial piece of legislation, by the Apex Court in *Union of India Vs. PrabhaKaran Vijaya Kumar & Ors., 2008(9) SCC 527* and *Jameela & Ors. Vs. Union of India, 2010 (12) SCC 443.*

The fact remains that the appellant was receiving treatment and suffered amputation in view of the fact that till September 2013 she was undergoing treatment. In such circumstances, the Tribunal has failed to exercise jurisdiction vested in it once sufficient cause was shown as such to show to condone the delay under Section 17(2) of the Act , which reads as under :-

“ 17(2) - Notwithstanding anything contained in sub-section

(1), 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 period.

The judgment which has been relied upon in **D.Gopainathan Pillai Vs. State of Kerala & Anr., 2007(2) SCC 322** is distinguishable as 3320 days of delay had been condoned in filing of an appeal against the award passed against the Government which was set aside by the Apex Court, which is not the case in the present situation. The Apex Court in **Collector, Land Acquisition, Anantnag Vs. M/s Katiji (1987) 2 SCC 107** has held that pedantic approach has not to be taken and each and every days delay is not to be explained. The issue of limitation has been dealt with by the Apex Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors. 2013 (12) SCC 649.**

Resultantly, this Court is of the opinion that the Tribunal should have exercised its jurisdiction vested in it by law. Needless to say there is no doubt that the appellant was also negligent in as much as there was no appearance on her behalf by her counsel on six dates and it was one of the reasons why the Tribunal has also dismissed the application. The Tribunal could have before proceeding further to pass the extreme order of dismissal imposed conditional costs for her non-appearance and put the appellant on caution. As noticed the appellant is handicapped having lost her leg and therefor it would be almost impossible for her to appear on each and every date of hearing. The mistake on part of the counsel should not prejudice the claimant's right in such a situation.

Keeping in view the above, the appeal is allowed and the delay in filing the claim application is condoned as sufficient cause is made out. The impugned order dated 23.03.2015 is set aside subject to payment of Rs.1000/- as costs to be deposited with the Punjab and Haryana High Court's Advocates Welfare Fund. The Tribunal should proceed to hear the matter on merits. Counsel shall put in appearance before the Tribunal on 29.10.2018.

September 18, 2018
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(G.S. SANDHAWALIA)
JUDGE

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