

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**FAO No.6830 of 2016 (O&M)
Date of Decision:10.07.2018**

Kimti Lal and another ...Appellants

Versus

Union of India ...Respondents

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

Present: Mr. Upender Prasher, Advocate
for the appellants.

Mr. Aarti Goyal, Advocate for
Mr. Parveen Chander Goyal, Advocate
for the respondents.

G.S. SANDHAWALIA, J. (ORAL)

The present appeal has been filed under Section 23 of the Railways Claims Tribunal Act, 1987 (in short '1987 Act') by the claimants on account of the dismissal of the petition on 28.01.2016. The reason for dismissal is that nobody was appearing and the issues were framed on 27.07.2015 in the absence of the claimant and his counsel and on 20.10.2015 also none had appeared. Thus, the appeal was dismissed for non-prosecution.

It is not disputed that thereafter immediately an application for restoration was filed along with affidavit of the counsel. The application has been dismissed on 04.04.2016 on the ground that affidavit had not been attested by any Notary or Oath Commissioner and application was not properly verified. Resultantly, the order of dismissal was brought on record and the restoration application has also been dismissed.

The record also would go on to show that the Tribunal is correct in recording fact that there has been gross negligence as such and lack of interest on the part of the counsel prosecuting the petition is writ large. However, keeping in view the fact that the party should not be prejudiced on account of lapse of the counsel and the fact that it is a death case, this Court is of the opinion that the costs should have been imposed as such firstly to put the counsel and the parties to notice.

Keeping in view the fact that the litigation as such is beneficial piece of litigation and the family of the deceased has lost a member of the family on account of accident/incident while travelling on train. It is also settled principle that the Courts should keep in mind that they have to impart substantial justice. The affidavit of the counsel as such and that he could not appear and his application for adjournment of the case which could not be placed on record are reason for dismissal and the Tribunal has stuck to the initial dismissal though the application was filed within one month after the initial dismissal order.

In such circumstances, the Tribunal could have given adequate opportunity as such to rectify the mistakes and impose costs for the lapse of the counsel. Resultantly, the present appeal is allowed and the impugned orders dated 28.01.2016 and 04.04.2016 are set aside subject to deposit of costs of Rs.5000/- with the Welfare Fund of the Bar Association of Punjab & Haryana High Court Lawyers Association, Chandigarh.

(G.S. SANDHAWALIA)
JUDGE

10.07.2018
pvd

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No