

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)Nos.2759 and 2760 of 2014

T. Yuvaraj

... Petitioner in
both CRPs

versus

1. Railways Claims Tribunal
Chennai Bench,
No.50 Mc Nichols Road,
Chetpet, Chennai – 3.

2. The Union of India owning
Southern Railway rep. By
its General Manager,
Chennai – 600 003.

... Respondents
in both CRPs

Prayer in C.R.P. PD No.2759 of 2014

Civil Revision Petition filed under Article 227 of the Constitution of India against I.A. No.16 of 2012 in Res. A 21 of 2010, dated 05.06.2012 passed by the Railways Claims Tribunal at Chennai.

Prayer in C.R.P. PD No.2760 of 2014

Civil Revision Petition filed under Article 227 of the Constitution of India against I.A. No.17 of 2012 in Res. A 21 of 2010, dated 05.06.2012 passed by the Railways Claims Tribunal at Chennai.

For petitioner
in both CRPs : Mr.T.C. Sajith Babu
for Prince Associates

For respondents
in both CRPs : Ms.T.P. Savitha for R2
R1 - Tribunal

COMMON ORDER

The instant Civil Revision Petitions have been filed under Article 227 of the Constitution of India, challenging the order dated 05.06.2012 passed by the Railways Claims Tribunal, Chennai, in I.A. Nos.16 and 17 of 2012 in Res. A. No.21 of 2010.

Brief facts leading to the filing of the instant Civil Revision Petitions :

2. The petitioner is the claimant before the Railways Claims Tribunal, who has sought for damages, as a result of the accident caused to him on 17.07.2007 while he was travelling in the Tirchirapalli – Tiruvarur passenger Train No.6876 from Trichy to Kumbakonam. The claim was filed with a delay of 594 days. The delay can be condoned by the Railway Claims Tribunal under Section 17(2) of the Railway Claims Tribunal Act, if the applicant satisfies the claims Tribunal that he has sufficient cause for not making the claim application within the prescribed period.

3. As seen from the affidavit filed in support of I.A. No.17 of 2010 seeking to condone the delay of 594 days, the petitioner has stated that due to the injury caused to him, he was admitted in Tanjore Government Hospital and he was in coma stage for a period of 35 days. Thereafter, he was unable to speak and recognise others for a long period of time and he was completely bedridden. He has also stated that it took more than 2 ½ years for him to recover from the injury. It is also stated that, in the meantime, his mother passed away, seeing his pathetic condition. In the said process, according to the petitioner, there was a delay of 594 days in filing the claim application.

4. By order dated 09.04.2010, the Railways Claims Tribunal dismissed the condone delay application filed by the petitioner for default, as the petitioner was not present on 09.04.2010 nor was any application moved for seeking an adjournment on his behalf on that date. Thereafter, the petitioner filed Res. A. No.21 of 2010 to restore I.A. No.17 of 2010, which was dismissed for default on 09.04.2010, along with a delay of 211 days. The reason given for the said delay of 211 days in filing an application to restore I.A. No.17 of 2010, which was dismissed for default on 09.04.2010 is that due to his mother's

death, he took time to recover from his sorrow and, therefore, he was unable to approach a lawyer to get legal assistance. The said application, viz., Res. A. No.21 of 2010, also came to be dismissed on 11.03.2011 by the Tribunal on the ground that the petitioner has given the same reason that was given in the affidavit filed in support of I.A. No.17 of 2010 seeking to condone delay of 594 days in filing the claim application. Further, the Tribunal has observed while dismissing Res. A. No.21 of 2010 that the petitioner has not filed any medical evidence in support of his illness for a long period of time. The Tribunal has further observed that the delay has not been properly explained by the petitioner. Thereafter, the petitioner filed the Review Petition under Rule 32 of the Railway Claims (Procedure) Rules, seeking for a review of the order, dated 11.03.2011 passed in Res. A. No.21 of 2010. Once again, there was a delay in filing the Review Petition and therefore, the petitioner has filed two applications (i) I.A. No.16 of 2012 seeking for a direction to condone the delay of 365 days in filing the Review Petition in Res. A. No.21 of 2010, which was dismissed on 11.03.2011 and ii) I.A. No.17 of 2012 seeking to review the order dated 11.03.2011 passed in Res. A. 21 of 2010 and to restore I.A. No.17 of 2010 dismissed for default on 09.04.2010.

5. By a common order dated 05.06.2012 passed by the Tribunal in I.A. Nos.16 and 17 of 2012, the Tribunal rejected both the applications on the ground that production of disability certificate will not be of much help to the petitioner as the injuries are non-scheduled injuries in nature under the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 and the Tribunal is only bound by the relevant provisions of the Railways Act, 1989 with regard to payment of compensation. Further, the Tribunal has rejected the condone delay application on the ground that previously also, same reasons were given by the petitioner for condonation of delay and any person seeking condonation of delay has to explain the circumstances with cogent and convincing reasons and since the Tribunal has already held that the reasons given by the petitioner were not convincing by its earlier dated 11.03.2011, the Tribunal cannot entertain the condone delay application on the same ground once again. Aggrieved by the dismissal of I.A Nos.16 and 17 of 2012 in Res. A. No.21 of 2010, the instant Civil Revision Petitions have been filed under Article 227 of Constitution of India

6. Heard Mr.T.C. Sajith Babu, learned counsel for the petitioner and Ms.T.P. Savitha, learned Standing Counsel appearing for the second respondent/ Railways.

Discussion :-

7. Admittedly, the claim has been filed as a result of an accident caused to the petitioner while he was travelling in the Tiruchipalli – Tiruvarur passenger Train No.6876 from Trichy to Kumbakonam. It is the case of the petitioner that while he was standing near the door of the train, the door suddenly closed in a jerk and knocked him out of the train, after which, he was thrown out. Thereafter, he became unconscious near Budalore Railway station and immediately, he was admitted in the Tanjore Government Hospital. According to the petitioner, he was in coma stage for a period of 35 days and after undergoing treatment, he partially recovered. According to him, before his recovery from the injury, he was unable to speak and recognise others and was also bedridden. It is his case that thereafter he took treatment as an out patient in Tanjore Government Hospital and it took more than 2-½ years for his recovery. Further, it is his case that his mother passed away seeing his pathetic condition. With these averments, the petitioner filed the claim petition along with a condone delay application viz., I.A. No.17 of 2010, seeking to condone delay of 594 days in filing the claim application before the Railway Claims Tribunal.

8. As per Section 17(1) (b) of the Railway Claims Tribunal Act, a claim will have to be filed within a period of one year from the date of the cause of action. But, according to the petitioner, only due to the reasons stated above, there was a delay of 594 days in filing the claim. However, due to the non appearance of the petitioner or his counsel, the condone delay application viz. I.A. No.17 of 2010, came to be dismissed for default on 09.04.2010, by the order of the Railways Claims Tribunal. Thereafter, the petitioner has filed an application to restore I.A. No.17 of 2010, which was dismissed for default on 09.04.2010 in Res. A. No.21 of 2010. The reasons given in Res. A. No.21 of 2010 were more or less the same reasons given in the earlier condone delay application. By order dated 11.03.2011, the restoration application, viz., Res. A. No.21 of 2010, also came to be dismissed by the Tribunal on the ground that no sufficient reasons have been given by the petitioner for condonation of delay of 211 days in filing an application to restore the application, which was dismissed for default on 09.04.2010. Further, the Tribunal has observed that the same reasons have been given in I.A. No.17 of 2010 also and further the Tribunal has also observed that the production of disability certificate would not be beneficial to the petitioner, as the injuries sustained by the petitioner are non scheduled injuries under the

Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. With these reasons, both the applications came to be dismissed on 11.03.2011. Thereafter, the petitioner filed a Review Petition along with the condone delay petition seeking to review the order dated 11.03.2011 passed in Res. A. No.21 of 2010. The Review Petition was also filed with a delay of 365 days. The said Review Petition was filed under Rule 32 of the Railway Claims Tribunal (Procedure) Rules, 1989, which reads as under :-

(1) Any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed or from which appeal is allowed, but has not been preferred and who on account of some mistake or error apparent on the fact of the record, or for any other sufficient reason, desires to obtain a review of the order made against him, may apply for review of a final order not being an interlocutory order to the Tribunal.

9. The reason for the delay given by the petitioner in the affidavit filed in support of the condone delay application for filing the Review Petition is the same reason as was given earlier. According to the petitioner, due to the serious injury caused to him, he has been continuously taking treatment, which resulted in the delay and he was unable to approach a lawyer for getting appropriate legal assistance.

10. By order 05.06.2012, the Tribunal also dismissed I.A. Nos.16 and 17 of 2012 thereby, rejecting the condone delay application and the application for review, on the ground that the

injury sustained by the petitioner is a non scheduled injury under the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 and therefore, the claim made before the Railway Claims Tribunal is not maintainable and further, it was observed that the petitioner has not given sufficient reasons for condonation of the delay in filing the Review Petition on time.

11. Admittedly, no counter affidavit was filed by the 2nd respondent in I.A. Nos.17 of 2010, 16 and 17 of 2012. Therefore, the reasons given by the petitioner for not filing either the claim application in time or for not filing the restoration application in time or for not filing the review application on time, have not been rebutted by the 2nd respondent / Railways before the Tribunal by filing a counter affidavit. However, the Tribunal, on its own, has come to the conclusion that sufficient reasons have not been given by the petitioner for condonation of the delay in filing the claim or for filing the review application. Even without a counter affidavit filed by the 2nd respondent, the Tribunal has on its own come to the conclusion that the petitioner has sustained a non scheduled injury under the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 and hence, the claim is not maintainable under the Railway Claims Tribunal Act.

12. Admittedly, injuries have been sustained by the petitioner, but whether the said injuries are covered under the Railways Act or the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 can be adjudicated by the Tribunal only on merits. In as much as the provision for compensation in the Railways Act is a beneficial piece of legislation, it should be given a liberal and expansive interpretation and not a narrow and technical one. This being the case, the Tribunal ought to have considered the objects of the benevolent legislation, while deciding the condone delay applications as well as the Review Petition filed by the petitioner. However, as seen from the impugned order, the Tribunal has rejected the applications on the ground that sufficient reasons have not been given by the petitioner for condonation of delay. As seen from the affidavits filed in support of I.A. No.17 of 2010, Res. A. No.21 of 2010 and I.A. Nos.16 and 17 of 2012, it is the case of the petitioner that he sustained serious head injury, which caused fracture to his parietal bone in the head, which resulted in coma and, hence, he was hospitalised for a long number of days. Further, it is his case that he was bedridden and recovered partially from his injuries only after 2-½

years. These facts ought to have been considered by the Tribunal, but the same has not been duly considered.

13. The learned Standing Counsel appearing for the second respondent/ Railways would submit that the petitioner is not entitled for the claim, as the injury allegedly suffered by the petitioner, is a non scheduled injury under Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. This can be considered by the Tribunal, when it is deciding the matter on merits. It is always left open to the 2nd respondent to raise all defences, in accordance with law to dispute the claim made by the petitioner when the claim application is heard on merits. At this stage, this Court is only concerned whether the reasons given by the petitioner for condonation of the delay ought to have been condoned by the Railway Claims Tribunal or not.

14. For the foregoing reasons, this Court is of the considered view that the Tribunal ought to have allowed I.A. Nos.16 and 17 of 2012, considering the fact that the delay has been properly explained by the petitioner, considering the fact that the Railways Act and if such is a beneficial Legislation to protect the interest of the injured claimants like that of the petitioner.

ABDUL QUDDHOSE, J.

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15. In the result, the impugned orders both dated 05.06.2012 passed by the Railways Claims Tribunal, Chennai Bench in I.A. Nos.16 and 17 of 2012 in Res. A.No.21 of 2010, are hereby set aside. Accordingly, Civil Revision Petitions are allowed and first respondent is directed to take on file the claim filed by the petitioner and adjudicate the claim on merits and in accordance with law.

09.07.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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To
The Railways Claims Tribunal,
Chennai.

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