

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

-.-

FAO 2085 of 1998 (O&M)

Date of decision: 04.09.2019

Union of India

.....Appellant

Versus

Punjab State Civil Supplies Corporation Limited

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Vikas Chatrath, Advocate
for the appellant

Ms Deepali Puri, Advocate
for the respondent

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Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against award dated 01.06.1998 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal') whereby application filed by the respondent - Punjab State Civil Supplies Corporation Limited (in short, PUNSUP) raising claim of Rs.45,312/- was partly allowed and the respondent was held entitled to receive a sum of Rs.42,338.40 with proportionate costs and interest @ 12% per annum from the date of filing of application i.e. 08.09.1997 till realization but interest would be @ 15% per annum from the date of order till payment, in case the payment is not made within 60 days from the order.

Counsel for the appellant has assailed the impugned judgment primarily on three counts. The first submission made by counsel is that

application was filed by the respondent for condoning delay with effect from 29.07.1997 till 05.09.1997. It is argued that in the application, there is no reference to the number of days of delay which were sought to be condoned. The application is supported by an affidavit of Shri S.M. Dubey, Senior Assistant, PUNSUP but there is no document on record whereby Shri S.M. Dubey was authorized to file his affidavit in support of application. In addition, it is argued that application for compensation has been filed under the signatures of Shri R.S. Jha, Secretary-cum-Manager (Legal) PUNSUP and there is no explanation as to why application for condonation of delay is not supported by an affidavit of Shri R.S. Jha. It is vehemently argued that the Tribunal has grossly erred by allowing application for condonation of delay.

Counsel for the appellant has assailed the award by making two fold submissions. It is argued that in view of findings of the Tribunal on issue No. 3, pertaining to entitlement of respondent to recover the amount claimed in the application, there is reference to assessment report purported to be prepared by the Railways Administration but no such assessment report is available at present on records with the Court. Another submission made by counsel is that though the awarded amount shall carry interest @ 12% per annum but a penal clause has been provided by raising rate of interest @ 15% per annum in case payment is not made within 60 days from the date of order and the same cannot stand the test of judicial scrutiny.

Counsel representing the PUNSUP, on the contrary, has supported the impugned award and so also the order condoning delay. It is argued that since it has been specifically mentioned in the application that

the claim was to be filed on 29.07.1997 and the same has been filed on

08.09.1997, the mere fact that exact number of days has not been mentioned in the application would be of no consequence. It is further argued that no such objection was raised by the appellant that application for condonation of delay is not supported by an affidavit of Shri R.S. Jha or it is supported by an affidavit of Shri S.M. Dubey or Shri S.M. Dubey was not competent to file an affidavit in support of application for condonation of delay, therefore, the appellant cannot be allowed to raise this factual controversy for the first time in the appeal. Counsel has submitted that original assessment report was produced by the Railways Administration, as has been referred under findings on issue No. 3. The records have burnt in a fire incident, therefore, some of the documents are not available at present. It is argued that no such plea has been raised in the grounds of appeal with regard to non-production of assessment report, as such, the appellant cannot derive any advantage of its contention qua non-availability of assessment report in the reconstructed records.

With regard to penal interest, counsel for the respondent is not in a position to justify imposing penal interest. However, counsel would apprise the Court that the appellant has already discharged its liability in view of the award passed by the Tribunal

The application for condonation of delay makes specific reference with regard to date on which the claim was required to be filed and date on which it was filed, therefore, it was merely a matter of calculation as to the number of days in respect whereof, there is delay in filing the claim application and the Tribunal on making calculation has condoned delay of 42 days. This is not plea of the appellant that delay was for a period of more than 42 days. Similarly, no question was raised by the

appellant in respect of affidavit of Shri S.M. Dubey or his competence to file the same. In this view of the matter, contentions raised by the appellant to assail order condoning delay are not meritorious and accordingly rejected.

The findings of the Tribunal under issue No. 3 make reference to assessment report at two places. It has been noticed that the original assessment report has been produced by the Railways Authorities. In the given circumstances, the appellant cannot derive any advantage to its contention from the factum of non-availability of original assessment report as records have burnt in a fire incident.

So far as allowing interest @ 15% per annum on failure to pay the amount within 60 days, the same cannot be allowed to sustain when examined in the light of judgment of Hon'ble the Supreme Court *National Insurance Company Limited vs Keshav Bahadur and others, 2004 ACJ 648*. That being so, interest shall be payable at the rate of 12% per annum in view of observations made by the Tribunal with effect from date of filing of the claim application *i.e.* 08.9.1997 till realization.

In view of what has been discussed herein-above, the appeal is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

04.09.2019
Mohan Bimbura

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