

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 27.9.2019

FAO No. 5153 of 2006 (O&M)

Bala Devi and another

---Appellants

versus

Union of India

---Respondent

FAO No. 5154 of 2006 (O&M)

Kuldip Kaur and others

---Appellants

versus

Union of India

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Atul Yadav, Advocate
for the appellants**

**Mr. Jagdish Marwaha, Advocate,
for the Union of India**

Rekha Mittal, J.

This order will dispose of FAO Nos. 5153 and 5154 of 2006 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No. 5153 of 2006.

Counsel for the appellants would inform that Bala Devi and Ankit Kumar dependents of Kushal Pal Singh filed an application for grant of compensation in regard to death of Kushal Pal Singh in an untoward

incident.

Along with application for compensation, application under Section 5 of the Limitation Act, 1963 (in short “the Act”) seeking condonation of delay of 557 days in filing the claim application was filed. It is submitted that a plea was raised by the claimants that Bala Devi is a poor lady and she has no source of income, therefore, she was unable to file claim application in time resulting in delay of 557 days. It is further submitted that delay in filing the claim application was neither intentional nor mala fide. According to counsel, the provisions of Railways Act, 1989 (in short “ Railways Act”) providing for compensation are benevolent social legislation enacted with a view to pay pre-determined compensation to dependents of a bona fide passenger who sustained injuries in an untoward incident defined under the Railways Act. It is further argued that even if there was delay in filing application for compensation, there is no question of any prejudice being caused to the respondent and, at best, the respondent may raise a plea that liability to pay interest for the period of delay can not be fastened in case the claim is eventually successful and compensation is allowed. The last submission made by counsel is that in such like cases, the Tribunal should adopt a liberal and pragmatic approach so that the victim family is not denied compensation on technical consideration.

Counsel representing the respondent, on the contrary, has supported the impugned order with the submission that appellants failed to make out a case that there are sufficient grounds for condoning huge delay of 557 days in filing the claim application. It is further argued that as per provisions of the Railways Act, application for compensation is to be filed within a stipulated period of limitation and there is no provision in the

Railways Act authorizing the Tribunal to condone delay in filing the claim application.

I have heard counsel for the parties and perused the paper book particularly the order impugned.

Counsel for the respondent has not disputed that provisions of Railways Act providing for compensation are beneficial social legislation enacted with an avowed object to grant compensation to the victim or victim family for injury/death of a bona fide passenger in an untoward incident defined in the Railways Act. Equally settled is that provisions of the Railways Act deal with strict or no fault liability of Department of Railways, Union of India. There is nothing on record suggestive of the fact that delay in filing application for compensation is intentional much less lacking bona fide. Counsel for the respondent has failed to advance any arguments that because of delay in filing the claim application, the appellants have gained in any manner or prejudice has been caused to the respondent or third party.

The legislature, in its wisdom, amended provisions of the Motor Vehicles Act providing for time line to prefer claim before the Motor Accidents Claims Tribunal, constituted under Section 165 of the Motor Vehicles Act. No doubt, the legislature has not amended the provisions of the Railways Act envisaging the period within which the application for claim is required to be filed before the Railways Tribunal. Nevertheless, counsel for the respondent has not disputed that even in claims filed before the Tribunal, the Tribunal condones delay by invoking the provisions of Section 5 of the Act. In the given circumstances, absence of any provision in the Railways Act providing for condonation of delay in filing claim

application is of no consequence nor can the respondent be heard to say that in absence of any such provision providing for condonation of delay in the Railways Act, the claim is to be filed strictly within the stipulated period otherwise it would entail dismissal on the ground of limitation itself. Even in the instant case, no such finding has been recorded by the Tribunal that delay cannot be condoned under Section 5 of the Act.

As has been rightly argued by counsel for the appellants that keeping in view the legislative intent behind the provisions providing for compensation on the basis of strict/no fault liability, delay in filing claim application *ipso facto* should not operate to decide application for grant of compensation qua death of a breadwinner of the family, more particularly in the circumstances that there is nothing on record suggestive of the fact that delay in filing the claim is either intentional much less actuated by malice. The court or for that reason the Tribunal is required to adopt a liberal and non-pedantic approach while dealing with an application for condoning delay in filing claim application for grant of compensation in respect of injuries sustained by victim or on account of death of a bona fide passenger in an untoward incident. In this view of the matter, findings of the Tribunal that delay of each and every day has to be explained and reasons cited by the appellant that she is a poor widow having no source of income do not constitute sufficient cause cannot stand the test of judicial scrutiny. It may be true that no court fee is required to be affixed on an application for grant of compensation but the claimant(s) has to arrange funds for payment of counsel's fee. In this view of the matter, orders impugned can not be allowed to sustain and are accordingly set aside. As a natural corollary, applications for condonation of delay in filing the claim applications are

allowed. The matter is remitted to the Tribunal for decision of claim applications, in accordance with law. Parties through their counsel are directed to appear before the Tribunal on 30.10.2019.

(Rekha Mittal)
Judge

27.9.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No