IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1005 of 2008
Date of decision: 17th March, 2020

Manjit Kumar Bhola & others

… Appellants

Versus

Union of India

… Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Aditya Singh, Advocate for
Mr. S.S. Khurana, Advocate for the appellants.

Mr. Nitin Kumar, Advocate for
Mr. Karaminder Singh, Advocate for the respondent.

FATEH DEEP SINGH, J.

The present appellants filed against respondent Union of India a claim petition seeking compensation on account of death of Satnam Singh Bhola, father and husband of the appellants. It is claimed that the untoward incident took place on 07.07.1990 and the appellants filed the claim petition on 01.12.2006, after a period of more than 16 years. The Railway Claims Tribunal, Chandigarh Bench, Chandigarh through impugned findings dated 07.06.2007 dismissed the condonation application moved by the then claimants (present appellants) on account of inordinate delay. The same is subject matter of challenge in this appeal.

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Heard Mr. Aditya Singh, Advocate on behalf of Mr.S.S. Khurana, Advocate representing the appellants; Mr. Nitin Kumar, Advocate appearing on behalf of Mr. Karaminder Singh, Advocate for the respondent and perused the records.

It is duly conceded at the bar by the two sides that the accident has occurred in the month of July 1990 whereas with the amendment of Railways Act 1989, definition of 'untoward incident' was incorporated by way of Section 123(C) with effect from 01.08.1994 whereas prior thereto in the un-amended Railways Act Section 82-C provided that liability of Railway Administration arises in respect of an accident that occurs as a result of either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, and the same is to be lodged within three months from the date of occurrence of the accident and which provided for that the Claims Commissioner has the power to condone the delay on good cause being shown and entertain the petition if the same was made within one year of such occurrence.

It is the own admitted stand of the appellants that applicant No.1 namely Manjeet Kumar Bhola became major on 10.05.2005 whereas applicant No.2 Gagan Kumar Bhola was still a minor at the time of the filing of claim petition and had filed the same through his mother and natural guardian Pawan Rani. Assuming it to be so, as has been pleaded before the Tribunal, the petition which stands dismissed by the

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impugned findings has been filed after almost 15 years delay for which no worthwhile explanation is forthcoming. More so, on the day of filing of the claim petition, one of the claimants was still a minor and who has taken the plea of minority as one of the grounds for not filing the claim petition within prescribed time.

The arguments of Mr. Aditya Singh, Advocate on behalf of Mr.S.S. Khurana, Advocate representing the appellants that the amendment to the Railways Act prescribing period of limitation have to be for retrospective effect being a welfare statute have been stoutly opposed by Mr. Nitin Kumar, Advocate appearing on behalf of Mr.Karaminder Singh, Advocate representing the respondent on the grounds that the claim has come about after 16 years and has sought to seek dismissal of the appeal.

Appreciating the submissions, in view of the catena of case law and in the light of provisions contained in the old enactment and the new enactment, it cannot at all be said that the provisions of Section 124A are required to be given retrospective operation and since the provisions are giving and conferring a substantial right for the first time to certain class of victims for which the respondent Railways is being saddled with obligations and therefore, such provisions cannot be given retrospective effect unless or until provided for in the amended provisions. Thus, in the light of what has been detailed and discussed above, there is a yawning gap between the occurrence and the filing of

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the claim petition and nothing is substantially brought on the record to prove the minority of one of the claimants is another distressing feature for the appellants. This Court does not find any illegality or perversity in the impugned findings and thus the same are upheld. The appeal being hopelessly without merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

March 17, 2020
rps

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

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