

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.497 of 2014

Nageshwari Devi W/o Late Ramji Mistry @ Prasad Resident of Village
Sheikh Alam Chak, P.S. Jehanabad, District Jehanabad Bihar.

... .. Appellant/s

Versus

The Union Of India Through The General Manager, East Central Railway,
Hazipur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Krishna Mohan Murari
For the Respondent/s : Mr. Anshay Bahadur Mathur

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

Date : 29-09-2022

Heard learned counsel for the appellant and learned
counsel for the respondents.

The instant appeal has been preferred under section 23 of
the Railway Claims Tribunal Act, 1987 (hereinafter referred to
as 'the Act') against the order dated 15.05.2014 passed in case
no. M.A. (O.A.)0025/2014 whereby the learned Member
(Technical) was pleased to reject the claim application filed by
the claimant-appellant on the ground of delay.

A counter affidavit is filed on behalf of the respondents in
Court which is taken on record.

The facts in brief are that while the unmarried son of the
appellant got into the train EMU passenger train in the morning
of 6.6.2011 for traveling from Jehanabad to Patna Junction at
Jehanabad Railway Station, because of the train being crowded,
he somehow entered into the compartment but was standing at



the gate for want of accommodation. As a result of the jerk sustained from the entering passengers, he lost his balance and fell down from the slow moving train at platform no. 2 and sustained injuries. He was taken to the Sadar Hospital, Jehanabad for treatment from where he was referred to and subsequently admitted to the Patna Medical College and Hospital, Patna where he died in course of treatment. On the basis of the statement of the elder brother of the deceased, UD Case no. 31 of the 2011 was registered on 14.06.2011 and after investigation a report was submitted to the effect that the deceased had died as a result of fall from the running train.

It is the case of the claimant-appellant that the deceased was a bonafide passenger holding a proper ticket. The claim petition was filed by the claimant-widow mother of the deceased on 21.1.2014 and the same was registered in the Railway Claims Tribunal as Case no. MA (OA) 0025/2014.

It is submitted by learned counsel for the appellant that besides the application filed for payment of compensation under section 16 of the Act, a number of supporting documents including the certified copies of the fardebayan dated 6.6.2011, FIR, final report and inquest report together with the attested copy of the postmortem report, original family particulars certificate, attested copy of the identity card and photocopy of the passbook were also filed in support of the claim. It is further



submitted that as there was delay in filing of the application praying for compensation, an application under section 17B of the Act was made praying therein that the delay in filing of the application be condoned. The learned tribunal by its order 15.05.2014 rejected the said application and consequently the claim filed by the appellant. Thus the instant appeal.

It is submitted by learned counsel for the appellant that the learned Tribunal failed to consider that the widow applicant who was the mother of the deceased was an illiterate lady not being aware of the law of limitation etc.. The moment she learnt about the steps that she could take in the matter, she contacted a lawyer and the claim application was filed before the learned Tribunal. It is submitted that the delay was not inordinate in view of the facts of the case wherein, in the accident the widow has lost her son, the prayer for condonation of delay in filing of the application should have been considered sympathetically by the learned Tribunal. In support of his submission learned counsel for the appellant places reliance on the judgment of the Madras High Court in the case of M. Suseela v. Union of India (2014 ACJ 57).

Learned counsel appearing for the Railways opposes the instant appeal. Referring to the counter affidavit filed on behalf of the respondents, it is submitted that the claim of the appellant was rejected by the learned Member (Technical) of the Railway



Claims Tribunal on the ground of limitation. The prayer made by the applicant-appellant for condonation of delay as per section 17B of the Act has to be specific for condoning the delay of exact number of days whereas the application filed by the appellant was made praying for condonation of delay of about one year seven months. Further in reference to statement of the appellant made in her claim application, it is submitted that the same has been rightly rejected in absence of any documentary evidence or any valid explanation for the cause of delay. Further on merit of the case it is submitted that from perusal of the statement made in the claim application, the deceased was traveling on the foot rest/stairs of the compartment and fell down from the train due to his own negligence and recklessness. Thus, this injury can be classified as a self-inflicted injury and the appellant would not be entitled for compensation for accident claim as provided under section 124A of the Act. Learned counsel for the respondent in support of his submissions relies on the judgment of the Hon'ble Guwahati High Court in the case of Hulash Chandra Choraria v. Union of India & Ors. (AIR 2003 Gau 151) and of this Court in the case of Sudama Rai v. Bhagrashan Rai [2016 (1) PLJR 346].

Having heard learned counsel for the parties and taking into consideration the submissions made together with the material on record as also the lower court records, the facts not



in dispute are that the son of the widow-applicant namely Rajiv Kumar who was traveling from Jehanabad to Patna by EMU passenger train on 6.6.2011 met with an accident at the Jehanabad Railway Station and subsequently died at PMCH in course of treatment. U.D. Case no. 31 of 20100 was registered on 14.6.2011 wherein final report was submitted to the effect that the death of the deceased had taken place as a result of the injury sustained on having fallen from the train. The death having taken place as a result of injuries in course of treatment as a result of the train accident was also stated in the inquest report. The postmortem report also supported the case of the applicant in so far as in the opinion of the doctor, the cause of death was head injury, haemorrhage and shock as a result of hard and blunt object and its impact. The certified copies of all the documents ie. the FIR, the final report, the inquest report and the postmortem report were filed and were available before the learned Tribunal.

From the record it further transpires that as a result of the delay in filing of the claim application, an application under section 17B of the Act was filed praying for condoning the delay of about one year seven months in filing of the claim application. In the said application, it was explained by the widow applicant that being socially and economically disabled as also virtually illiterate to the extent that she could only put



her signature, she was not aware of the prescribed period of limitation etc. in filing the claim application. On coming to know about the same, she contacted her lawyer, collected the relevant documents and got the application filed without any further delay.

In the case of M. Sushila (supra) the Madras High Court while dealing with the matter of condonation of delay in filing of claim application, has held as follows:

“8. At one point of time, in these matters, the Courts have expected explanation for each day of delay. Length of delay was given a prominent place. Now, there is a shift in this approach. Courts have adopted a liberal and pragmatic approach. Courts refrained from viewing the delay with tinged glasses. At the same time, they did not allow vexatious and stale matters to enter the portals of Courts and take away the public time. Now, in appropriate cases, Courts have considered even poverty and illiteracy are also sufficient grounds to condone the delay. It is to be noted that refusal to condone the delay should not result in closing the doors of justice to real seekers of justice. It is also a matter of "Access to Justice". What is important is whether there is a case to be explored. Now, it is not the length of time but substance matters. A meritorious case shall not be denied adjudication on account of any technical plea or procedural wrangles.

9. Suseela, the appellant is a widow. She is not highly educated. she is an illiterate. She is not employed anywhere. She belongs to lower strata of society. She battles for her daily existence/sustenance.



She has lost one of her beloved son under most tragic circumstances. None of her other siblings supports her. She is struggling lonely to get justice for her son's death."

On perusal of the Lower Court records including the documents filed on behalf of the applicant/appellant as stated herein above together with the contents of the FIR and the final report submitted in the UD case, it appears that the appellant has a reasonable case to be placed and considered by the learned Tribunal on merits. Thus, in view of the facts and circumstances of the case, in the opinion of the Court, the learned Tribunal committed an error in rejecting the explanation furnished by the appellant in her application praying for condonation of delay and thus rejecting the claim application itself.

In view of the facts stated above, the order of the learned Tribunal dated 15.5.2014, impugned herein is set aside. The delay in filing of the claim case is condoned. The matter (Case no. MA (OA) 0025/2014) is remitted back to the Railway Claims Tribunal, Patna to consider the same on its merit and to decide the same in accordance with law within a period of three months of the appearance of the applicant or her counsel.

The appeal stands allowed.

The applicant or her counsel will appear before the learned Tribunal on 4.11.2022 on which date they will be



informed by the learned Tribunal about the next date fixed on which date their application will be taken up and decided on merits.

Let the lower Court records be sent back immediately to the learned Tribunal.

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

