

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.72 of 2021

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1. Akhtari Begum W/o Md. Unus Resident of Village- Sisabari, Dhapitola, P.O.- Karbalahat Sisabari, P.S.- Routa, District- Purnea.
 2. Md. Unus S/o Late Md. Saleem Resident of Village- Sisabari, Dhapitola, P.O.- Karbalahat Sisabari, P.S.- Routa, District- Purnea.

... .. Appellant/s

Versus

Union of India through the G.M., East Central Railway, Hajipur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mrs.Sarita Bajaj, Advocate
For the Respondent/s	:	Mr.Dr. K. N. Singh, (Asg)
For Railway	:	Mr. Sujit Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 05-12-2022

Heard Mrs. Sarita Bajaj, learned counsel for the appellant and Mr. Sujit Kumar Sinha, learned counsel who represents the Railways.

2. The present appeal is directed against the order dated 31.1.2020 in O.A./O.C./M.A. No. 00017 of 2019 by the Railways Claims Tribunal, Patna Bench, Patna (henceforth for short 'the Tribunal') by which the claim of the applicants for compensation was rejected on the ground of limitation/delay of 4 years and 9 months.

3. The matrix of facts giving rise to the present appeal is/are as follows:

4. On 30.3.2013, the deceased namely Md. Azad



was travelling with his younger brother from Delhi to Katihar in North-East Express after buying second class ticket. However, due to excessive crowd and jerk of the train, he fell down and died that led to U.D. Case No. 03 of 2013 dated 31.3.2013 by the Maheshkhut Railway Police. The post mortem of the dead body was done at Khagaria Sadar Hospital and ticket of the train journey was also produced by the younger brother namely Hitesh Sham.

5. Thereafter, the claimant's parents being rustic persons having little knowledge of the procedure after recovery from the shock visited the local authorities including the Block Development Officer for compensation.

6. Subsequently, upon knowledge that an appropriate claim petition has to be filed before 'the Tribunal' met one Viveka Nand Keshri, Advocate in September, 2013 for filing the claim application. Accordingly on the advice of the Mr. Keshri, on 10.9.2013, they applied for the documents and subsequently got certified copy of the U.D. Case No. 103 of 2013 as also the 'Fardbeyan'. All the documents were handed over to Mr. Keshri, an Advocate of the Naugachia Civil Court.

7. In 2015, upon query, the concerned Advocate's clerk informed that the petition has already been filed. However,



it was only in 2017-18 that the claimants-appellant herein came to know that not only the petition could not be filed, even Mr. Viveka Nand Keshri died in 2017 and a certificate to this effect was also issued by the Local Bar Association, Naugachia.

8. Accordingly, parents contacted other lawyer whereafter the claim petition was filed.

9. On 31.1.2020, 'the learned Tribunal' took up the matter and after holding that the accident occurred on 31.3.2013 (actually the accident took place on 30.3.2013) whereas the petition was filed on 2.1.2019 and accordingly, the same was rejected on the ground of delay.

10. Heard learned counsel for the parties.

11. The admitted facts are that:

(i) the accident took place on 30.3.2013 that led to death to the son of the appellant herein;

(ii) he was travelling on North-East Express on a valid second class ticket which was also provided by the younger brother of the deceased who was part of the said journey.

12. As such, the son of the appellant (deceased) was a bonafide passenger and thus the claim against the Railways by the parents was on sound ground.



13. So far as the delay in filing the petition is concerned, Mrs. Sarita Bajaj, learned counsel for the appellants submit that it can be seen from the record itself, the parents being rustic persons, had no knowledge where to file claim petition and accordingly kept on visiting the local State Government Officials and later after procuring the certified copies of the relevant documents, the same was handed over to Mr. Viveka Nand Keshri, Advocate.

14. Later, his 'Munshi' kept on assuring that the petition has been filed but the same was never filed. Thus, they were kept on dark. Subsequently, Viveka Nand Keshri also died.

15. It was in these circumstances that despite the fact that the parents suffered because of the death of their son, genuine delay occurred which was fully explained but was ignored by 'the learned Tribunal'.

16. Mr. Sujit Kumar Sinha, learned counsel for the Railways on the other hand submits that the delay of 4 years and 9 months in filing the claim was the reason which led to the dismissal of the claim petition of the appellant. 'The Tribunal' was thus justified in passing the order in question.

17. Heard learned counsel for the parties.



18. This Court having gone through the rival submissions is of the considered view that the appellants have fully explained the delay stating therein that:

(i) being the rustic persons they did not knew about the forum where to file the petition for compensation;

(ii) they kept on visiting the local authorities including the Block Development Officer and did not know that the petition has to be filed before 'the Tribunal'.

(iii) upon knowledge, they procured the documents and handed over to Mr. Viveka Nand Keshri who unfortunately died;

(iv) it was in these circumstances that there was delay in filing the claim.

19. Further, 'the learned Tribunal' failed to take into account that the appellants son, a bonafide passenger do met with the accident and died and in the circumstances, the explanation should have been taken into account.

20. Learned counsel for the appellants has drawn attention of this Court to the Division Bench judgment/order of



Patna High Court in **Rashmuni Vs. Union of India** reported in **2017 (1) PLJR 309** where the matter was referred by the learned Single Judge on following points:

A whether the Appellate Court has got power to condone delay while entertaining the appeal or the period prescribed under Section 23(3) of the Railways Claims Tribunal?

21. It was answered in following terms:

5. The argument of the learned counsel for the Railways is that in terms of sub-section (2) of Section 29 of the Limitation Act, where there is no provision in any Central or State Act, the provisions of the Limitation Act would apply. Though sub-section 3 of Section 23 contemplates limitation to file an appeal, but merely because there is no specific power conferred on the appellant Court to condone the delay, it cannot be inferred that the Court does not



have power to condone the delay. An appeal against an order of the Tribunal lies to the High Court. The procedure of filing appeal as provided under the Civil Procedure Code would be applicable in the appeals to be preferred before the High Court in view of Section 141 of the Code of Civil Procedure. Therefore, in the absence of any prohibition in the Act against the condonation of delay, the appellate court would have power to condone the delay in filing the appeal.

6. The judgments referred to by the learned Single Bench in the order dated 2nd August, 2016 in M.A. No. 118 of 2013 taking a contrary view that the Limitation Act will not be applicable as judgments have been considered by the Division Bench of the Gujarat High Court. We



respectfully agree with the view expressed by the Gujarat High Court in the matter of Gujarat State Electricity Corporation Limited (supra) and held that the appellate court in appeal under Section 23 of the Act has power to condone the delay.

7. Since the question of law has been decided, the matter be placed before the learned Single Bench for decision on merits in accordance with law.

22. Taking into account the fact that the delay has been fully explained by the appellants, this Court holds that 'the Tribunal' was not justified in rejecting the claim only on the ground of limitation.

23. Thus considering all the facts, this Court is of the definite opinion that 'the learned Tribunal' erred in rejecting the claim of the applicant-parents herein on the simple ground of limitation in view of the fact that delay was explained by them and further the accident did take place that resulted into death of their son.



Thus, the order dated 31.01.2020 passed in O.A./O.C./M.A. No. 00017 of 2019 by 'the learned Tribunal' is hereby set aside.

24. The matter is remanded back for deciding it afresh and expeditiously taking into account that accident took place in 2013 and it is high time that the case is finally taken to its logical end.

25. With the aforesaid observations, the M.A. No. 72 of 2021 is hereby allowed.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	AFR
CAV DATE	NA
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