

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 671 OF 2015****IN****MISC. APPLICATION NO. 09 OF 2014****IN****ORIGINAL APPLICATION NO. 1222 OF 2006**

1. Shri. Kiran Damodar Paygode
2. Shri. Santosh Damodar Paygode } APPELLANTS

V/S.

2. The Union of India, represented by
the General Manager. } RESPONDENT

* * * *

Mr. Mohan Rao, Advocate for the appellant.

**Mr. T.J. Pandian a/w. Mr. Dheer Sampat,
Advocate for the respondent.**

Coram : Sandeep K. Shinde, J.

Date of Reserved On : 7th April, 2022.

Date of Pronounced On: 10th June, 2022.

JUDGMENT :

1. This Appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (R.C.T. Act" for short) questions the legality and correctness of order dated 18th July, 2014

passed by the Railway Claims Tribunal at Mumbai.

2. Brief reference to facts may be necessary to assess the precise case of the appellant.

. Damodar Ganpat Paygode died due to accidental falling from the train carrying passengers. His mother- Lakshmibai, wife- Indubai and two sons-Kiran Paygode and Santosh Paygode (appellants herein), all "dependents" within the meaning of Section 123(b) of the Railways Act, 1989 were granted compensation in the sum of Rs.4,00,000/-under Section 124A of the Railways Act, 1989 by the Railway Claims Tribunal, at Mumbai, vide order dated 16th March, 2009. It appears, compensation in the sum of Rs.1,54,994/- was awarded to, Indubai Damodar Paygode and Rs.1,00,000/- to Lakshmi Ganpat Paygode. However, before receiving the compensation, Lakshmibai and Indubai, both passed away on 2nd July, 2009 and 10th July,

2009. Record reveals, compensation amount, sent to Indubai and Lakshmibai by post was returned "unclaimed", reporting recipients were dead. It is appellant's case that, due to inadvertence, they did not lay their claim over the unclaimed compensation. In the circumstances, the appellants moved Misc. Application No. 9/2014 purportedly filed under Order 21 Rule 16 of the Code of Civil Procedure read with Rule 26(1) of the Railway Claims Tribunal (Procedure) Rules, 1989 ("R.C.T. Rules" for short). Purport of the application was that, after the death of Lakshmibai and Indubai, unclaimed compensation of Rs.1,54,994/- and Rs.1,00,000/- stood transferred, to them, by 'operation of law', being legal heirs and representatives of Indubai and Lakshmibai. On this premise, appellants requested the Tribunal to direct Railway Administration, to pay Rs.2,54,994/- to them. The learned Member of the Tribunal, vide order dated 18th July, 2014 rejected the

application on two grounds; namely, (I) that application purportedly filed under Rule 26(1) of the R.C.T. Rules was beyond the period of 90 days and (ii) since appellants have received their share in compensation, they were no more "dependents". Feeling aggrieved by that order, this Appeal is preferred.

3. Heard learned Counsel for the parties.

4. Herein, Tribunal had granted compensation to the appellants and Lakshmibai (grandmother of appellants) and Indubai (mother of the appellants). Unfortunately, Lakshmibai and Indubai died before receiving their share in the compensation. In the circumstances, appellants sought their impleadment as legal representatives of Lakshmibai and Indubai and accordingly moved an application under Rule 26 of the R.C.T. Rules, which reads as under :

"26. Substitution of legal representatives.-(1) In the case of death of a party during the pendency of

the proceedings before Tribunal, the legal representatives of the deceased party may apply within ninety days of the date of such death for being brought on record.

(2) Where no application is received from the legal representatives within the period specified in sub-rule (1), the proceedings shall abate:

Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased."

That, since the application moved by the appellants was beyond the period of 90 days, and although the Tribunal is/was empowered to condone the delay, upon showing sufficient cause, delay was not condoned. Moreso, Tribunal did not assign reasons, while refusing to condone the delay. As a result, Misc. Application No.9/2014 was rejected. Any way, Misc. Application was moved, for seeking two reliefs;

(a)to condone the delay and after condoning it;

(b) to direct the Railway Administration to pay Rs.3,54,994/-, the amount due and payable to Lakshmibai and Indubai to the appellants, being their heirs and legal representatives.

. From the proceedings, three facts are discernible, (i) that Miscellaneous Application was moved in execution proceedings; (ii) the unclaimed compensation, then payable to Lakshmibai and Indubai, that, remained unpaid due to their untimely death, constitute the "estate"; (iii) the appellants would claim estate of Lakshmibai and Indubai, being their dependents and legal heirs. Therefore, First question is, Whether the appellants were entitled to seek enforcement of compensation order passed in favour of the deceased dependents ?; Second question is "Whether the appellants-original co-applicants and dependents would cease to be the dependents upon receiving part of the

compensation awarded under Section 124A of the Railways Act and third question is, "Whether the Tribunal is empowered to execute order granting compensation in respect of unclaimed amount due to deceased dependents that remained unpaid.

5. Insofar as, first two questions are concerned, it is not in dispute that, appellants are/were "dependents" within the meaning of Section 123b of the Railways Act. It would be appropriate to notice that, language of Section 124 and 124A imposes liability on Railways to pay compensation. Section 125(D) of the Railways Act, deals with claims arising in respect of death, which resulted from the accident or untoward incidents. In such a case, dependents of deceased alone are entitled to make an application for claim. Thus, in the event of death of passenger, only dependents and not mere legal heirs/legal representatives

can claim compensation. In context of facts, somewhat similar question arose for consideration in the case of Krishnakumar G. V/s. Union of India before the Kerala High Court. In that case, although the petitioner was not the "dependent", but sole legal heir of deceased injured passenger, had sought recovery of amount that had fallen due under Section 124 of the Railways Act and which remained unpaid. The Bench, after analysing the scheme of Chapter-XIII of the Railways Act, held that, "when the dependent of the deceased, is given right to claim compensation by filing an application, the expression "dependent" in the context, must certainly be held to refer to those who represent the estate of the deceased dependent, where death has occurred subsequent to vesting of right. To construe otherwise, would render the provision, unjust".

6. In para-23 of the said judgment, the Division Bench has held :

"23. In this context, we again note that there is no specific stipulations in chapter-XIII of the Railways Act as to what is to happen when the dependent of a victim of an accident expires. The law is silent on that aspect. Perhaps, more importantly, we must note that there is no specific provision in Chapter-XIII which can lead us to the inference that there would be abatement or extinction of the claims of a dependent on his death. While considering whether the right to claim compensation under [Section 124A](#) read with [Section 123\(b\)](#) and [125\(d\)](#) can lead to the conclusion that only the dependent and not the legal heirs of the deceased dependent would be entitled to claim compensation, it is important that we note that there is no specific statutory stipulation suggesting abatement or extinction of the claim in the event of death of a dependent/claimant. The vested rights of a dependent obviously cannot vanish into thin air or disappear merely because death of the dependent takes place. This is all the more so because we do not find any provisions in Chapter- XIII which can suggest that a dependent where the context so requires cannot include the legal heirs of a deceased dependent.

7. The Bench, thereafter had recourse to Section 146 of the Code of Civil Procedure and held :

"27. We have gone through all the statutory stipulations in chapter-XIII. We are unable to find any specific provision or any necessary implication which can suggest that what can be claimed by a dependent cannot be claimed (or his claim cannot be

continued) by the legal representatives of a dependent. We conclude by holding that the expression 'dependent' in [Section 125\(1\)\(d\)](#) must necessarily include the legal representative of the estate of the deceased dependent, if such dependent prior to his death is entitled to make such an application.

8. I am in agreement with the ratio laid down by the Division Bench of the Kerala High Court in the case of *KrishnaKumar* (supra). Therefore, it is to be held, the appellants being "dependents" within the meaning of Section 123(b) of the Railways Act, it would be absurd to hold that, they ceased to be the dependents upon receiving share in the compensation awarded by the Tribunal. Therefore, I hold, appellants were entitled to recover the compensation that had fallen due to Lakshmibai and Indubai, but remained unpaid. The questions are answered accordingly.

9. Insofar as, powers of the Railway Claims Tribunal to execute the decree (third question) is concerned, the scheme of the R.C.T. Rules, provides that, once order granting compensation

is passed and signed by the Tribunal, it is executable by the Tribunal in terms of sub-Rule (2) of Rule 31 of the R.C.T. Rules, as a Decree of Civil court and thereupon the provisions of Civil Procedure Code, shall apply as they apply in respect of a decree of Civil Court. Rule 31A of the R.C.T. Rules, provides that an order of the Tribunal may be executed by the Bench which passed it, if the respondent is within the territorial jurisdiction of the said Bench, or by any other Bench or to Court to which it is sent, for execution, when the respondent is having its office within the territorial jurisdiction of such Bench or Court as the case may be. Rule 31B, prescribes an application to be made to the Tribunal, for execution, in Form-IX; whereas, Section 22 of Railway Claims Tribunal Act, empowers Claims Tribunal to execute its orders as a Decree of Civil Court and for this purpose the Claims Tribunal is invested with all powers of Civil Courts. In this case, appellants are claiming that by

operation of law (Personal Succession Law), they are the 'transferees', of compensation payable to deceased, Lakshmibai and Indubai, awarded by the R.C.T., vide order dated 16th March, 2000. Whereas, under Rule 26 of the RCT Rules, legal representatives may seek their impleadment in pending proceedings in case of death of a party during the pendency of proceedings before the Tribunal. The expression "pendency of proceedings" would obviously include "execution proceedings". Herein, the appellants were claiming that by operation of law (personal succession law), they were transferees of the decree and thus have right to receive compensation due to deceased of Lakshmibai and Indubai, in terms of Order 21 Rule 16 of the Civil Procedure Code, which reads as under :

"O.21.R.16. 16. Application for execution by transferee of decree.

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree in

transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

[*Explanation.*— Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.

10. Thus, upon collective reading of Section 123(b) of Railways Act with Rule 26 of RCT rules with provisions of Order 21 Rule 16 of CPC, in my considered opinion, the Tribunal is invested with powers to execute its order as a Decree in accordance with the provisions of the Civil Procedure Code. In that view of the

matter, Misc. Application No.9/2014 moved under Rule 26(1) of the R.C.T. Rules, is to be construed as an application in execution proceedings made under Rule 31(2) read with Section 22 of the R.C.T. Act.

11. In this case, Misc. Application No.9/2014 moved by the appellants was rejected, having found, application did not disclose "sufficient cause", to condone the delay. Law is, if sufficient cause is not proved, nothing further has to be done but, the application for condoning the delay has to be dismissed on that ground alone. Yet, learned Tribunal held and recorded finding that appellants were not entitled to recover the amount due to Indubai and Lakshmibai, reason being, upon receiving their share in the compensation, they ceased to be the "dependents", without first examining the Scheme of the Act and its powers. Thereby Tribunal, fell in error in exercise of its jurisdiction.

12. In any case, having regard to the facts of the case, I am inclined to condone the delay. Accordingly, the delay is condoned. However, before concluding the Appeal, it may be stated that, Miscellaneous Application moved by the appellants, was in capacity as "dependents" of deceased passenger and legal representatives of Lakshmibai and Indubai. Nextly, every application moved by the dependents for compensation under Section 124 is for the benefit of every other dependent in terms of Section 125(2) of the Railways Act. For the aforesaid reasons, the impugned order dated 18th July, 2014 declining to condone the delay and consequently rejecting the Miscellaneous Application, is quashed and set aside and Misc. Application No. 09/2014 is restored to file. As a consequence, Appeal is partly allowed. Hence, the following order :

O R D E R

(i) Misc. Application No. 09/2014 in O.A. No.1222/2006 is restored to the file of Railway Claims Tribunal at Mumbai.

(ii) Learned Member, Railway Claims Tribunal shall list Misc. Application No. 09/2014 for consideration on 11th July, 2022 and decide the same in accordance with law, being mindful of its powers to execute its order as a decree of Civil Court and fact that every application by a defendant for compensation under Section 124 or 124A of the Railways Act, 1989 is for the benefit of every other defendant.

(iii) The Tribunal shall make endeavour to decide the application in accordance with law preferably

on/or before 30th August, 2022.

Registry to transmit the records and proceedings in O.A. No.1222/2006 to the Railway Claims Tribunal, Mumbai Bench.

(iv) Parties to the appeal shall appear before the Railway Claims Tribunal on 11th July, 2022.

13. Appeal is allowed and disposed of in the aforesaid terms.

**NEETA
SHAILESH
SAWANT**

(SANDEEP K. SHINDE, J.)

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