IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO.106 OF 2023
IN FA/4510/2017

UNION OF INDIA

THROUGH ITS GENERAL MANAGER, SOUTH CENTRAL RAILWAY, SECUNDERABAD

VERSUS

MIRA WD/O JAGANNATH VIBHUTE AND OTHERS

...

Mr. M.N. Navandar, Advocate for applicant

Mr. M.P. Ambekar, Advocate for respondents

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21st APRIL, 2023

<u>ORDER</u> :

1 By this review application the Union of India seeks to review the Judgment and order passed by this Court in First Appeal No.4510 of 2017 on 19.09.2019 to the extent of interest awarded. This Court while setting aside the Judgment and Award passed by learned Railway Claims Tribunal had directed the present review applicant to pay compensation of Rs.8,00,000/- together with interest.

2 Heard learned Advocate Mr. M.N. Navandar for the applicant and learned Advocate Mr. M.P. Ambekar for respondents.

3 It has been vehemently submitted by the review applicant that this Court erred in applying **Thazhathe Purayil Sarabi and others vs. Union of India and another** [**AIR 2009 SC 3098**], however, that case was in respect of interest, but mainly the compensation has been granted by following the decision in **Rathi Menon vs. Union of India and another** [AIR 2001 SC 1333] and **N. Parameswaran Pillai vs. Union of India and another** [AIR 2002 SC 1834]. Further, in **Union of India vs. Rina Devi** [AIR 2018 SC 2362] and **Union of India vs. Radha Yadav** [AIR 2019 SC 1410] Hon'ble Supreme Court has considered the liability of the Railway Authority to pay compensation. It has been then observed that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated and if the amount so calculated is less than the amount prescribed as on the date of the Award, then, the claimant would be entitled to higher of these two amounts. Therefore, taking into consideration these pronouncements the respondent would be entitled to claim only amount of Rs.8,00,000/- without any interest and, therefore, the Judgment and order passed by this Court in First Appeal No.4510 of 2017 deserves to be modified/reviewed to that extent.

4 Learned Advocate for the respondents has opposed the review application and submitted that there is no error apparent on the face of the record. This Court has rightly awarded the interest. In fact, when the claim was made, at that time, the statutory compensation was Rs.4,00,000/- and in the meantime, that is, during the pendency of the claim before the Tribunal the amount of statutory compensation was increased to Rs.8,00,000/-. Under such circumstance, they were entitled to get the interest and accordingly relying upon **Thazhathe Purayil Sarabi** (supra) the interest has been awarded. Learned Advocate for the respondents also suggested that at least on the amount of Rs.4,00,000/-, which the appellants were entitled to from the date of untoward incident, it should be granted.

5 At the outset, as regards the maintainability of review application is concerned, unless it is shown that there is error apparent on the face of the record, it cannot be entertained. In State of **West Bengal and others vs. Kamal Sengupta and another** [**(2009) 8 SCC 612**] it has been observed that -

> "The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position."

Here, the error that has been tried to be pointed out is in view of the pronouncements of the Hon'ble Apex Court in **Rina Devi** (supra) and **Radha Yadav** (supra). Out of them in **Rina Devi** (supra) cited before this Court it was considered only for the view as to what is untoward incident. However, **Radha Yadav** (supra) was not cited and it appears that this Court lost sight of taking note of the said decision. When the legal position which has been crystallized by Hon'ble Apex Court, then, this Court is bound to follow the same and any order in ignorance of the said will have to be reviewed. In **Radha Yadav** (supra) following are the observations :

> "The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of **Rina Devi** (AIR 2018 SC 2362) is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate

> of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.

Thus, it is even explained by giving illustration then it can be said that the point is not *res integra.* The interest will have to be calculated on that basis as explained therein. In this case the liability to pay the amount of compensation as against the review applicant had arisen before the amendment was brought in and therefore, the basic figure would be as per the Schedule, as was in existence before the amendment and on such figure reasonable rate of interest would be calculated. Therefore, in this case, where there is death claim, the interest has been awarded on the amount of Rs.4,00,000/-, which was the basic figure of compensation prior to the amendment in the schedule. Therefore, the claimants were not entitled to get interest on the amount which was enhanced in the schedule that had come into force from 01.01.2017 i.e. the entire amount of Rs.8,00,000/-. Rather calculation would show that they were entitled to get only the amount of Rs.8,00,000/- without interest. Hence, now, the said Judgment and order deserves to be reviewed.

6 For the aforesaid reasons, following order is passed.

ORDER

1 The review application stands partly allowed.

2 The Judgment and order passed by this Court in First Appeal No.4510/2017 on 19.09.2019 is reviewed.

3 The order of interest @ 6% per annum from the date of application till the date of Award i.e. 19.09.2019 and the interest @ 9% per annum from the date of Award till the date of actual payment of the same to the applicants stands quashed and set aside.

4 Costs of Rs.10,000/- (Rupees Ten Thousand only) stands rejected.

5 Decree be drawn accordingly.

(Smt. Vibha Kankanwadi, J.)

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