

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11578 OF 2023

Mr. Shahid Husain ...Petitioner
S/o Mushir Husain Saiyad

V/s.

Union of India ...Respondent
Through General Manager,
Central Railway

Mr. Ashif Husain a/w Deepika Oswal, Kaif Ansari, for the
Petitioner.

CORAM : MADHAV J. JAMDAR, J.
DATED : OCTOBER 26, 2023

P.C.:

1. Heard Mr. Husain, learned counsel appearing for the
Petitioner.

2. The Petitioner is, *inter alia*, seeking the following reliefs :-

- “A) That, this Hon’ble Court exercising powers under
Article 226 and or Article 227 of the Constitution of
India, be pleased to issue writ of mandamus or any
other appropriate writ thereby directing the
registry of Ld. Railway Claim Tribunal, Mumbai to
number misc. application (enclosed at **EXHIBIT-D**)
and place the matter before the concerned court.
- B) That, this Hon’ble Court be further pleased to direct
the Railway Claims Tribunal Mumbai to decide the

misc. application (enclosed at **EXHIBIT-D**) within 4 weeks from the day of getting numbered.

OR IN THE ALTERNATIVE:-

- A1) That, this Hon'ble Court exercising powers under Article 226 and or Article 227 of the Constitution of India, be pleased to issue writ of mandamus or any other appropriate writ thereby directing the registry of Ld. Railway Claim Tribunal to disburse the accrued interest accumulated on the principal amount deposited by the respondent in OA(Ilu)/MCC/0777/2003.
- C) And for such further orders as the justice and convenience may deemed on-time to time, be passed in favour of the Appellant and against the Respondent;"

3. This Court, on 21st September 2023, passed the following order :-

- "1. Issue notice to the Respondent, returnable on **11th October 2023** at **2.30 p.m.**
2. In addition to the Court notice, the Petitioner to serve the Respondent by private notice and shall file affidavit of service before the returnable date.
3. Notice to indicate that, on the returnable date, subject to the convenience of the Court, the Writ Petition will be heard finally at the stage of admission.
4. It is made clear that, if the Union of India is not represented inspite of service, then the petition will be heard in its absence."

4. In spite of service to the Respondent-Union of India, none appeared for the Respondent-Union of India and, therefore, this Court has passed the order dated 11th October 2023:-

- "**1.** This Court by the order dated 21st September 2023 issued notice to the Respondent-Union of India and made the same returnable on 11th October 2023 at 2:30 p.m..
- 2.** In the said order, it is clarified that subject to the convenience of the Court, the Writ Petition will be heard finally at the stage of admission and it is further made clear that, if the Respondent-Union of India is not represented in spite of service, then the Petition will be heard in its absence.
- 3.** In spite of service, none appears for the Respondent-Union of India. For giving one more and last opportunity, stand over to **19th October 2023**. To be shown in the 'Supplementary Board' [fairly high on board].
- 4.** It is made clear that, on the next date, if the Respondent-Union of India is not represented, then the Petition will be heard in its absence. It is also clarified that, subject to the convenience of the Court, the Writ Petition will be heard finally at the stage of admission."

5. On 11th October 2023, no one appeared for the Respondent-Union of India and, therefore, the matter was adjourned to today for passing orders.

6. It is the claim of the Petitioner that the Petitioner sustained

injuries in an accident caused by a heavy rush in a local train at Sandhurst Road Railway Station on 4th October 2003. The Petitioner suffered the following injuries :-

- a. Amputation of Right leg (above knee)
- b. Amputation of Right hand (below elbow)
- c. Amputation of left Hand finger (IIIrd, IVth, Vth)
- d. Dislocation of left hip.

7. The Petitioner filed a Claim Application in 2003 before the learned Railway Claims Tribunal, Mumbai (for short “**the Tribunal**”) bearing Claim Application No.OA(IIu)/MCC/0777/2003 under Section 16 (1) r/w Section 13 (1-A) of the Railway Claims Tribunal Act, 1987 on 12th December 2003. The said Claim Application was decided in favour of the Petitioner by the Tribunal by the Judgment and Order dated 12th October 2006. The Tribunal, *inter alia*, passed the following operative order :-

“In view of our findings above, the application is decreed for Rs.4.0 lakhs to the applicant with interest @ 6% per annum from the date of this order till paid.”

8. The Respondent-Union of India challenged the said order of the Tribunal dated 12th October 2006, by filing the First Appeal No.566 of 2007. The said First Appeal has been admitted. A learned Single Judge by the order dated 21st March 2007 passed in the Civil Application No.1092 of 2007 issued notice and granted stay to the said order subject to the depositing of entire

amount awarded by the Tribunal. It further appears that there was a delay in depositing the said amount within a period of six weeks from 21st March 2007 and, therefore, the said amount of Rs.4,12,230/- has been deposited before the Tribunal. The said First Appeal was subsequently dismissed by a learned Single Judge by the Judgment and Order dated 26th April 2022. Thereafter, the Petitioner approached the registry of the Railway Claims Tribunal and sought disbursal of the awarded amount as deposited by the Respondent-Union of India, along with accrued interest. The registry of the Railway Claims Tribunal disbursed only an amount of Rs.4,12,230/-. Learned counsel appearing for the Petitioner states that the said amount is only the principal amount, as the aforesaid amount of Rs.4,12,230/- includes Rs.12,230/- which is the interest paid by the Union of India in view of the delay in depositing the said amount as per order dated 21st March 2007 passed by this Court and the same is not the interest as per order dated 12th October 2006 passed by the learned Tribunal. Thereafter, the Petitioner filed Miscellaneous Application on 13th July 2023 in O.A. No.777 of 2023 before the Tribunal, seeking disbursal of the said interest. However, till date, the said Miscellaneous Application has remained unnumbered by the registry of the Railway Claims Tribunal.

9. Thus, the factual position on record makes it clear that the

Tribunal by the Judgment and Order dated 12th October 2006 directed the payment of compensation of Rs.4,00,000/- to the Petitioner with interest at the rate of 6 % per annum from the date of the said order. A learned Single Judge by order dated 21st March 2007 passed in the Civil Application No.1092 of 2007 issued notice and granted stay to the said order subject to the depositing and, accordingly Rs.4,12,230/- is deposited before the Tribunal. Thereafter, the said First Appeal has been dismissed along with the Civil Application on 26th April 2022. Thus, it is clear that the Petitioner is entitled to the interest on said Rs.4,00,000/- from the date of the order of the Tribunal till payment.

10. In view of above, it is clear that the Tribunal and/or Union of India are under an obligation to pay to the Petitioner the said amount of Rs.4,00,000/- with interest at the rate of 6% per annum from the date of passing of the order by the learned Tribunal i.e. since 12th October 2006 till the date of payment. Learned counsel appearing for the Petitioner states that the said interest amount is about Rs.4,08,000/-.

11. In spite of service and in spite of giving opportunities, none appear for the Respondent-Union of India, as set out herein above. In any case, the order of learned Tribunal is very clear and the factual position on record clearly shows that the Petitioner is

entitled to receive an amount of Rs.4,08,000/-.

12. Accordingly, the registry of the Railway Claims Tribunal and/or the Union of India is directed to pay to the Petitioner an amount of Rs.4,08,000/- forthwith and, in any case, on or before 8th November 2023.

13. The Writ Petition is disposed of in the above terms with cost of Rs.10,000/-.

14. Place the Writ Petition for reporting compliance of this order on **9th November 2023** [fairly 'high on board'].

[MADHAV J. JAMDAR, J.]