

08.1. 2024
item No4
n.b.
ct. no. 551

FMAT(IR) 16 of 2023
with
CAN 1 of 2023

Hosneyara Bibi & Anr.
Vs.
Union of India

Ms. Oindrila Sinha,
Mr. Manas Dutta Chowdhury,
.....for the appellant.
Mr. Dayashankar Mishra,
Mr. Ashok Prasad,
.... For the Union of India.

Delay condoned.

The instant appeal has been preferred against the judgment and award dated 12.3.2021 passed by the Hon'ble Vice Chairman of Railway Claims Tribunal, Kolkata Bench in M.A./Kol/07/2020.

The learned Tribunal has rejected the application under Section 17(2) of the Railway Claims Tribunal Act 1987 read with Rule 44 of the Railway Claims Tribunal. (Procedure Rules 1989).

The brief fact of the application is that the present appellants are the parents of their son who allegedly died in an untoward railway accident on 19.7.2023. The parent has preferred an application for compensation before the learned Tribunal on 27.12.2019. They filed an application for condonation of delay of 1997 days under Section 17(2) of the Railway Tribunals Act 1987. The

learned tribunal has proceeded to hear the application under Section 17(2) first. The application for delay was contested by the Railway Authority. The learned Tribunal after hearing the parties, has passed the impugned order on 12.3.2021 and rejected the prayer of condonation of delay filed by the petitioner. Hence this instant appeal has been preferred.

Learned advocate appearing on behalf of the appellants submits that the appellants are the poor person who lost their son in an untoward railway accident. The incident happened at Patna. They are residing at remote village of Malda District. It could not possible for the appellants to collect the entire report from Patna DRM and the concerned railway station manager, promptly. They had taken several steps and also approached several persons to collect the railway papers. They could only file application for compensation before the learned Tribunal not before 27.12.2019. There was delay of 1997 days in preferring the instant claim. There are no intentional or laches on part of the appellants/petitioners to file the instant claim application in delay. They were suffered from mental shock and agony due to loss of their son. They filed the application for condonation of delay.

The railway authority in reply argued that there is an inordinate delay in preferring the instant claim application and there are no sufficient ground or

satisfactory reason to condone such delay. They have also argued that the application under Section 17(2) of the Railway Claims Tribunal Act, 1987 does not mention any reason for such inordinate delay. The long delay of five years and six months has never been explained in the petition itself. Thus, they prayed before the learned Tribunal for rejection of the application.

After considering the entire facts and after observing the decision of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee Vs. Raghunathpur Nafar Academy & Ors. reported in (2013) 12 SCC 649*** and in the case of ***Brijesh Kumar & Ors. Vs. State of Haryana & Ors.***, the learned Tribunal is of the view that if the application for condonation of delay be allowed, the interest of respondents would be prejudiced. Learned Tribunal is also of the view that the inordinate delay in preferring the instant application was not properly clarified in the application itself.

Heard the learned advocate, perused the impugned order passed by the learned Tribunal, it appears that the alleged accident happened in Patna and the present petitioners/appellants were residing at Malda. It is true that the application filed under Section 17(2) of the said Act has not explained day to day delay and on such delay occurred for more than five years and six months. The only ground was assigned in the application that the

claimants are the poor person. They had suffered extreme mental shock/agony due to loss of their son.

In dealing with the matter, the learned Tribunal is of the opinion that the Hon'ble Supreme Court **in *Esha Bhattacharjee(supra)*** has observed that concept of liberal approach has to be encapsulated the conception of reasonableness and it cannot be allowed a totally fettered free play. It also observed by the Hon'ble Supreme Court in ***Esha Bhattacharjee*** that the conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.

Let consider the relevant factors in case before the learned Tribunal in the claim case arising out of an untoward railway accident. The fact goes to show that the present appellants are the poor village people and they lost their son. It further appears that the police final report from DRM has to be collected before filing of the case. It is well-known to that the only Railway Tribunal is situated in Kolkata.

Thus, it is the burden over the petitioners to approach to Patna for collecting the entire document of accident and, thereafter they had to approach to Kolkata for filing the instant application. The Hon'ble Supreme Court in ***Brijesh Kumar*** has observed that "the Court should not adopt an injustice oriented approach in rejecting the application for condonation of delay." In this case, it appears to me that the case of the claimant is

otherwise meritorious in comparison of police final report as DRM report. The prayer of Claim of the petitioners/appellants actually not at all considered on merit by the learned Tribunal. At this juncture, if the application for condonation of delay is not allowed, the injustice would be occurred upon the appellants. However, the respondent's interest in respect of contesting the claim of the present claimants is always there before the learned Tribunal at the time of hearing of the instant matter.

Considering the same, I think it necessary that a reasonable liberal approach has to be taken by the learned Tribunal in disposing of the application. In considering the same, I find that the order passed by the learned Tribunal on 12.09.2021 appears to be improper and injustice upon the present claimant. If the prayer of the claimant is denied at its initial stage, the sole purpose of the Legislation would be frustrated.

Accordingly, the instant appeal got merit and the same is allowed. The prayer for condoning the delay in preferring the claim application is hereby allowed.

The learned Tribunal is hereby directed to proceed according to law and dispose of the application after awarding the parties reasonable opportunity according to law.

Thus, the application is FMAT (IR) 16 of 2023 disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)