

09.1. 2024
item No.11
n.b.
ct. no. 551

FMA 2 of 2022

Kanika Debnath.

Vs.

Union of India.

Mr. Joyanta Banerjee,
Mr. Sandip Bandhopadhyay,
Ms. Suxmini Basu Roy,
Mr. Argha Bhattacharjee,,
..... for the appellant.
Mr. Sukanta Ghosh
..... for the Union of India.

The instant appeal has been preferred against the judgment and order dated 25.10.2021 passed by the Railway Claims Tribunal, Kolkata Bench, at Kolkata in OA(IIU)/KOL/2017/0359.

The brief fact of the case is that the present appellant being the claimants filed a claim application before the learned Tribunal for getting compensation on the ground that their predecessor was died in untoward rail accident. The appellant was proceeding the claim case before the learned Tribunal but they could not appear on 20.6.2012 and 20.12.2018 and also on 6.2.2019. Consequently, the claim case was dismissed for default vide order dated 6.2.2019. After such dismissal, the restoration application was filed by the claimant along with an application under Section 5 of the Limitation Act on 19.3.2021.

After hearing the parties, the learned Tribunal has passed the impugned order dated 25.10.2021 and dismissed the application for restoration by holding that order dated 6.2.2019 stands good. Hence this appeal.

Learned advocate for the appellant submits that the learned Tribunal has not considered the merits of the case and only the restoration application was dismissed without assigning any reason. Ultimately, claimant has suffered immense due to negligence on the part of learned advocate before the learned Tribunal. There are no intention or laches on behalf of the claimant to proceed with this matter but they were properly informed by Learned advocate on record regarding the proceeding before the learned Tribunal. Thus, they could not have been instructed by the learned advocate on record appear on the fixed date. Learned advocate for the appellant submits that merit of the case has to be dealt with by the learned Tribunal rather to dismiss the claim case on some financial grounds. The impugned award passed by the learned Tribunal is not justified one and liable to be set aside by restoring instant claim case.

Learned advocate appearing on behalf of the Railway authority has raised strong objection and submits that the conduct of the claimant would show that they are not at all diligent to proceed with this matter. There were several directions by the concerned Tribunal to act upon but they have not complied with such direction since year 2018.

The claim case was pending since 11.2.2018 to 6.2.2019 without any step of the claimant. He further argued that always the learned advocate are not responsible for the conduct of the claimant himself. He further argued that it is the tendency of the learned advocate to make any person a scape goat due to conduct of the claimant of this case. He further argued that the impugned order passed by the learned Tribunal is a specific order and the learned Tribunal has assigned his reason for disallowing the restoration application and there is not perversity. Thus, the order need not be interfered with.

Heard the learned advocates perused the materials on record, the only question whether a claim case can be disposed of in a fashion of dismissed for default of a party. The instant legislation is no doubt beneficial legislation. The learned Tribunal must have disposed of claims application on merit. It is the directive of the Hon'ble Supreme Court in several occasion that a claim case must not be dispose of only some preliminary reasons without assigning merits of this case. However in considering the impugned order passed by the learned Tribunal dated 25.10.2021, it appears that the learned Tribunal is of view that though the case was dismissed for default on 6.2.2019 but the restoration petition was only filed on 19.3.2021. There is not cogent reason why such inordinate delay has caused. Learned advocate for the

railway authority is also of view that delay has not explained properly by the application for restoration.

Having heard the learned advocate for the railway authority and also considering the impugned order passed by the learned tribunal it appears that, learned Tribunal has misguided himself in considering the entire situation. The Covid pandemic starts since 2020 and the period, i.e. 6.2.2019 to 19.3.2021 intervene the Covid Pandemic period. Hon'ble Supreme Court in Suo Moto petitions has clarified that the period of Covid Pandemic and limitation thereof has to be dealt with very leniently.

Considering the same I find merit to entertain the instant appeal and it is allowed.

Learned Tribunal is directed to dispose of the matter on merit. The impugned order passed by the learned Tribunal dated 25.10.2021 is hereby set aside. The order of dismissal dated 6.2.2019 is hereby considered and also set aside.

The claim application be registered in its original file and number. The claimant is directed to appear before the learned Tribunal on 19.2.2024 and to comply the direction made by the learned Tribunal on 20.12.2018.

The learned Tribunal is also directed to dispose of the matter within three months from the date of passing of this order.

Lower Court Record be send down immediately.

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

(**Subhendu Samanta, J.**)