

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.82 OF 2024

Mohamed Abdul Shaikh & Anr. : Appellants
Vs.
Union of India
Through the General Manager,
Railway Station, Mumbai : Respondent

Adv. Kuldip Singh a/w Abdul Kadir for the Appellants.
Adv. T. J. Pandian a/w Gautam Modanwal for the Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 5TH FEBRUARY, 2024

PC. :

1. Heard the parties for some time.
2. This Appeal takes exception to the judgment and order dated 16th March, 2009 passed by the Railway Claims Tribunal, Mumbai in case No.594 of 2004 only to the extent of not awarding interest from the date of Application. The Interest is granted only from the date of judgment. The learned Advocate for the Appellants vehemently submits that the provisions of grant of compensation needs to be seen from the date the Application is made. In the normal course the interest is always awarded

from the date of filing of the Application. In the present case the Application was filed on 17th November, 2004. The compensation awarded is Rs.4,00,000/- and interest is awarded from 16th March, 2009. The interest ought to have been awarded from the 17th November, 2004. He relies upon the judgment of the Hon'ble Apex Court reported in 2007 AIR (SCW) 1233 in the case of ***Alok Shanker Pandey Versus Union of India & Ors.***

3. He further relied upon the judgment of the Hon'ble Apex Court in Civil Appeal No.780 of 2005 in the case of ***Mohamadi & Others Versus Union of India***. In the case of Alok Shankar Pandey the Hon'ble Apex Court is held in para 8 is below:

“8. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.”

4. In the case of Mohamadi & Others Vs. Union of India the Tribunal had granted interest @ 9% p.a. from the date of Application. The

High Court had modified the tribunal's order directing to pay the interest from the date of judgment.

5. Learned Advocate for the Respondent vehemently opposes the Appeal stating that, there is no specific provision in the Act to grant interest from the date of Application. He submits that liability on the railway to pay interest comes only after the judgment is delivered. Before any liability is fixed, there is no question of grant of interest. The railway has to pay the compensation only after the judgment. No liability thus can be fastened prior to the date of judgment. He relied upon the judgment of this Court in the case of *Sanjay Sampatrao Gaikwad Vs. Union of India*, reported in AIR 2005 Bombay page 409. This Court on going through to the submission and the judgment of the Hon'ble Apex Court finds that when the amount of compensation is directed it should be from the date of Application itself as the entitlement has to be decided on the basis of his Application which is filed in the Court. Thus, it is entitlement of the Applicant to receive the amount on the date of the Application. The Hon'ble Apex Court has therefore considered this aspect and as held accordingly in the case of Alok Shankar Pandey. Considering all above position, this Court finds that the case is made to allow the Appeal.

6. In the facts of this case the learned Advocate for the

Respondent submits that though the Appeal was filed in 2009, it was dismissed for default in 2011. No Application was filed for restoration till 2015. It is only till 2023 the Appeal came to be restored of it's original status by order dated 6th December, 2023.

7. The Appellant would be entitled at least for the period from 2011 till the date of restoration.

8. The First Appeal is therefore allowed. The order passed by the Railway Administrative is modified the Clause No. I @ 9% p.a. from the date of default till the date of actual payment.

9. It is reported that the amount of compensation is already paid the interest to be paid only from the date of the Application till the date of payment of compensation.

10. Though the learned Advocate had submitted that the Appeal was dismissed and it was not immediately deposed of. This Court finds that in view of the para 8 of the Supreme Court this period also would not be excluded as the interest is to be paid for the reason that the said amount is utilized by the Railway.

(KISHORE C. SANT, J.)