

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE EIGHTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL No: 815 of 2012

Appeal Under Section 23 of Railway Act against the Judgment and Decree dated 22-09-2010 made in OAA.No.343 of 2002 on the file of the Court of the Railway Claims Tribunal Secunderabad Bench.

Between:

1. Nethekar Chandrakala, W/o.late Bhadrinarayana, aged 50 years, Occ: Housewife
2. Nethikar Bindyarani, D/o.late Bhadrinarayana, aged 28 years, Occ: Household
3. Nethikar Rajitha, D/o.late Bhadrinarayana, aged about 29 years, Occ: Household
4. Nethikar Rajani, D/o.late Bhadrinarayana, aged 28 years, Occ: Household
5. Nethikar Raghavi, D/o.late Bhadrinarayana, aged about 25 years, Occ: Household

A5 is declared as major vide Court Order dated 30-11-2012 in CMP.No.1486 of 2012.

6. Nethikar Bhavishyarani, D/o.late Bhadrinarayana, aged about 27 years, Occ: Household
7. Nethikar Basanth Kumar, D/o.late Bhadrinarayana, aged about 29 years, Occ: Nil,

All R/o.H.No.3-185/11, Ravindranager, Station Road, Miryalguda, Nalgonda District.

...APPELLANTS

AND

Union of India, rep. by General Manager, South Central Railway, Secunderabad.

...RESPONDENT

Counsel for the Appellants: Mr. CHANDRASEKHAR REDDY GOPIREDDY

Counsel for the Respondent: SRI K MANI DEEPIKA

The Court delivered the following: JUDGMENT

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL No.815 OF 2012

JUDGMENT:

1. This Civil Miscellaneous Appeal is filed by the applicants under Section 23 of the Railway Claims Tribunal Act, 1978 (for short 'Act') aggrieved by the order dated 22.09.2010 in OAA No.343 of 2002 passed by the Railway Claims Tribunal Secunderabad Bench at Secunderabad (hereinafter referred to as 'Tribunal'), wherein the claim application filed by the applicants claiming compensation for death of one Nethikar Bhadri Narayana (hereinafter referred to as 'deceased'), was allowed granting compensation of Rs.4,00,000/- along with interest at 9% per annum from the date of order till realization. Dissatisfied with the said order, the present appeal is filed at the instance of the applicants before the Tribunal.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the Tribunal.

3. The brief facts of the case of applicants are that on 25.11.2002 at about 07:05 PM, the deceased purchased general train ticket by paying Rs.45/- at Miryalguda railway station to go to Guntur and boarded train bearing No.7054 Hyderabad-Chennai

express and his cousin one Gogiker Kishan accompanied the deceased to the railway station for send off and when the train moved the said Kishan went back to his home. However, when the said train crossed the platform of Miryalguda railway station due to heavy rush, the deceased was thrown out from the general compartment. He was crushed by the said train and was dragged for some distance. Due to the said untoward incident, the deceased died on the spot. Hence, the present application is filed by the dependants of the deceased seeking compensation for the death of the deceased.

4. The respondent railways filed written statement denying the averments made in the claim application contending that the deceased was not a *bona fide* passenger of train bearing No.7054 on 25.11.2002. It is further contended that merely because the dead body of the deceased was found by the side of the track with injuries, it cannot be presumed that the deceased has fallen down from the train carrying passengers. It is also stated that the alleged incident, if any, was caused by the criminal acts of the deceased then, such acts disentitle the applicants from claiming any compensation for such self inflicted injuries. Hence, prayed to dismiss the claim application.

5. Based on the pleadings of the parties, the Tribunal framed the following issues for consideration:

1. Whether the applicants are dependents of the deceased?
2. Whether deceased was a *bona fide* passenger of the train No. 7054 Hyderabad-Chennai express travelling from Miryalguda to Guntur on 25.11.2002?
3. Whether the deceased died as a result of an untoward incident of accidental fall from the said train?
4. Whether the applicants are entitled to claim compensation of Rs.4 lakhs?
5. To what relief?"

6. The applicants, in order to substantiate their claim got examined A.Ws.1 and 2 and got marked Exs.A-1 to A-7. On behalf of the respondent, R.W.1 was examined and Ex.R-1 was got marked.

7. The Tribunal, after considering both oral and documentary evidence placed on record, has allowed the claim application granting compensation of Rs.4,00,000/- along with interest at 9% per annum from the date of order till the date of realization. Dissatisfied with the said order, the present appeal is at the instance of the applicants before the Tribunal.

8. Heard, the learned counsel for the applicants and the learned Standing counsel for the respondent and perused the entire record.
9. The main contention of the learned counsel for the applicants/appellants is that the claim application was filed on 16.12.2002 and the impugned order was passed on 22.09.2010 i.e., nearly after eight years. However, the Tribunal has erred in granting interest on the compensation amount only from the date of order till the date of realization. The Tribunal ought to have granted interest at 7.5% from the date of the claim application till the date of realization. Hence, he prayed to allow the appeal granting interest as prayed for.
10. *Per contra*, the learned standing counsel for the respondent contended that the present claim application has been dismissed for default and for non-appearance on several occasions due to which there was delay in passing the final order by the Tribunal. The said delay is attributed to the applicants only. Hence, considering the same, the Tribunal has not awarded any interest from the date of claim application in the impugned order. Hence, prayed to dismiss the present appeal.

11. Now the point for consideration is as follows:

“Whether the applicants are entitled for interest on compensation granted by the Tribunal as prayed for?”

Point:-

12. This Court perused the documents and evidence placed on record by both the sides. Applicant No.1 was examined as A.W.1 reiterating the contents of the claim application and A.W.2, who is the cousin of the deceased, was also examined to prove the case set up by the applicants. The applicants relied upon Exs.A-1 to A-7 to prove their case. On the other hand, the respondent got examined R.W.1, who is guard of the train bearing No.7054 Hyderabad-Chennai express and got marked Ex.R-1. The Tribunal after considering the evidence and documents has awarded compensation of Rs.4,00,000/- to the applicants.

13. The sole contention of the learned counsel for the appellants/applicants is that the Tribunal has not granted interest from the date of claim application and only granted from the date of order. In this regard, the learned counsel for the appellants/applicants filed a memo dated 12.12.2019 before this Court showing the period of delay caused in deciding the claim application before the Tribunal as 10 months. As per the said memo, OAA No.343 of 2002 was filed on 16.12.2002 by the

applicants seeking compensation for death of the deceased. Before the Tribunal, the matter was listed on 03.02.2005 for framing of issues, but as the member of the Tribunal was on leave, the matter was posted on 04.03.2005 and as there was no representation for the applicants on the said date, the matter was dismissed for default. Immediately, on 05.05.2005 the applicants filed restoration petition *vide* I.A.No.211 of 2005. The said application was allowed on 05.08.2005 and the claim application was restored. Accordingly, issues were framed and the trial commenced on 21.09.2005 and after completion of trial and after hearing both sides, the matter was reserved for orders on 08.06.2007. However, the claim application was reopened by the applicants for carrying on certain amendments and after carrying on said amendments, the matter was posted to 09.06.2008. On the said date, the learned counsel for the applicants did not appear and the matter was posted to 04.07.2008. Even on, 04.07.2008 there was no representation for the applicants. Hence, the matter was posted for dismissal on 18.09.2008 and on the said date, the matter was dismissed for default for second time. Later on, the applicants came up with condone delay and restoration petitions *vide* I.A.Nos.475 and 476 of 2009 before the Tribunal on 21.01.2009. The said petitions were allowed on

07.04.2010 conditionally and the Tribunal heard both sides and passed the impugned order on 22.09.2010.

14. On the other hand, the learned standing counsel for the respondent railways contended that the applicants have not evinced proper interest in prosecuting the matter before the Tribunal. As a result, the claim application was dismissed for default on two occasions. The delay of eight years caused to decide the claim application was purely attributed to the applicants. Considering the same, the Tribunal has not awarded any interest on the amount granted to the applicants towards compensation from the date of the claim application. However, the Tribunal considerably granted interest on the compensation amount from the date of impugned order till the date of realization, which is just and reasonable.

15. It is pertinent to state that as per the decision of the Apex Court in the case of **Kamukayi v. Union of India**¹, the applicants are entitled for interest at 7 % per annum on the compensation amount granted to them by the Tribunal from the date of claim application till the date of realization.

¹ 2023 SCC OnLine SC 642

16. In the present case, it is true that the claim application was dismissed for default on two occasions. However, it is the duty of the learned counsel for the applicants, who appeared before the Tribunal, to attend before the Tribunal and see that the proceedings of the Tribunal are conducted without any delay. Furthermore, it appears in the present case, the learned counsel for the applicants, before the Tribunal, has not promptly appeared before the Tribunal. It is the duty of the counsel to appear before the Tribunal after accepting Vakalath from his clients. The applicants, who have suffered from the loss, due to the death of the deceased, cannot be held liable for the irresponsibility of their counsel. The applicants cannot be deprived with their entitlement of interest for eight long years as the matter falls under beneficial legislation. Hence, this Court is of the considered opinion that as per the decision of Apex Court in the case of **Kamukayi** (cited supra), the applicants are entitled for the interest at 7% per annum on the compensation granted by the Tribunal from the date of claim application till the date of realization. However, this Court is of the opinion that the interest at 7% per annum shall be granted from the date of claim application till the date of realization excluding the interest for period, for which delay was caused, due to dismissal of the claim application.

17. The learned standing counsel for the respondent has not disputed the memo dated 12.12.2019 filed by the learned counsel for the applicants/appellants. As per the said memo, the claim application was initially dismissed for default on 04.03.2005 and the restoration petition was filed on 05.05.2005. The delay caused was 62 days. Secondly, the claim application was dismissed for default on 18.09.2008 and the petitions for condoning the delay and restoration were filed on 21.01.2009. The delay caused was 125 days. Hence, the total delay caused comes to 6 and half months. Thus, in all the delay caused to get the claim application restored was determined by the learned counsel for the applicants/appellants in the said memo dated 12.12.2019 comes to 10 months. The said memo was not disputed by the learned standing counsel for respondent and further, no contrary evidence or calculation was placed before this Court. Therefore, this Court is inclined to exclude the interest for the period of 10 months, while calculating interest at 7% per annum from the date of claim application till the date of realization on the amount of compensation granted by the Tribunal to the applicants.

18. In the result, the Civil Miscellaneous Appeal is allowed by granting interest at 7% per annum from the date of claim application till the date of realization on the amount of compensation awarded by the Tribunal in the impugned order, excluding the interest, for the period of 10 months, for which delay was caused due to dismissal of the claim application. There shall be no order as to costs. Miscellaneous applications, if any pending, shall stand closed.

SD/- C.V. MALLIKARJUNA VARMA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Railway Claims Tribunal Secunderabad Bench. (with records)
2. One CC to Mr. CHANDRASEKHAR REDDY GOPIREDDY, Advocate [OPUC]
3. One CC to SRI K. MANI DEEPIKA, Advocate [OPUC]
4. Two CD Copies

kam/jak

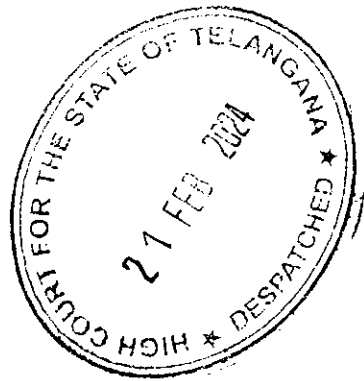


HIGH COURT

DATED:08/01/2024

JUDGMENT

CMA.No.815 of 2012



ALLOWING THE CMA

⑥
MA
9/2/24.