

THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

CIVIL MICELLANESOUS APPEAL No.184 of 2023

JUDGMENT

The present Civil Miscellaneous Appeal is filed against the order dated 12.01.2023 passed in M.A.No.10 of 2022 in DDR.No.64 of 2022 by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad (for short 'Tribunal'), wherein, the Tribunal dismissed said application filed by the appellants to condone the delay of 2545 days in filing the claim petition.

2. In the affidavit filed in support of M.A.No.10 of 2022 in DDR.No.64 of 2022, it is stated that the husband of appellant No.1 herein (deceased) along with his two friends viz., Balkishan and Rankumar, had purchased a common journey ticket on 02.08.2014 vide PNR.No.4265156234, in train No.11206, NZB, LTT express train, for the journey dated 03.08.2014 at 23.15 hours from Nizamabad to go to Mumbai; that deceased was working in a private Manganese factory at Jamadapur and surrounding villages and the head office of the said mining factory is situated at Mumbai and thus, the

deceased had to travel Mumbai on his official work and his friends accompanied him for their personal work.

3. It is further stated that on 03.08.2014, the deceased along with his two friends boarded train for onward journey to Mumbai and thereafter, as the deceased could not appear on his bed, his two friends searched for him and enquired about him. On enquiry, the ticket collector informed them that one passenger fallen down from the same train near Raipur village, within the territorial limits of Partur Police Station and immediately, they got down from the train in the next station and went to Partur Police Station and they came to know that on 04.08.2014, at about 03.30 to 04.00 hours, the deceased accidentally fallen down from the running train and immediately he was shifted to one Deepak Hospital, Jalna for treatment and therefore, they rushed to Jalna. The deceased has taken treatment for about three days at Jalna Hospital and then he was referred to Sigma Hospital Aurangabad and admitted as inpatient, however, he succumbed to injuries on 25.08.2014.

4. It is further stated that due to sudden death of her husband, appellant No.1 was under shock and suffered with neurological problems and she had been taking treatment since 2014 in various hospitals; that she belong to poor family and had spent more than Rs.10,00,000/- for treatment of her husband, who is the bread winner of their family and due his death, they have been facing extreme financial problems. It is also stated that because of her health problems, particularly mental depression and neurological problems as well as extreme financial problems, she could not approach the Tribunal within time for filing the claim petition and further, due to illiteracy and ignorance, they were not aware of filing claim petition before the Tribunal and thus, prayed to condone the delay of 2545 days for filing the claim petition.

5. The respondent has filed counter affidavit denying the allegations of the appellants. The respondent disputed and denied that the deceased boarded the train No.11206 for onward journey to Mumbai along with his two friends; that he fell down from the train at Raipur village; that he was shifted to Deepak Hospital Jalna for treatment and then referred to Sigma Hospital Aurangabad and that he expired on 25.08.2014. It also

denied that appellant No.1 was under shock and suffered health problems, for that she had been taking treatment in various hospitals, due to which, she could not approach the Tribunal within time for filing the claim petition and that they were unaware of time for filing claim petition. It is specifically stated that the appellants have not filed any document in support of their contentions and further, they failed to explain day to day delay in not filing the claim petition within time.

6. Heard Mr.S.Chandra Sekhar, learned counsel for the appellants and Mr. Krishna Kishore Kovvuri, learned counsel for the respondent.

7. Learned counsel for appellants would submit that appellant No.1 is an illiterate and not aware of filing of the claim petition and that due to sudden shock and neurological problems due to death of her husband, she could not approach the Tribunal within time. Though the appellants filed documents evidencing her treatment in various hospitals for the years 2015 to 2022, the Tribunal had erroneously dismissed the application filed to condone the delay.

8. He further contended that the Tribunal, vide its order dated 04.01.2023, in M.A.No.13 of 2022 in D.D.R.No.85 of 2022, had condoned the delay of 1647 days in filing the claim petition; that the same Tribunal in another case, vide its order dated 12.08.2021, in M.A.No.11 of 2021 in D.D.R.No.28 of 2021, had condoned the delay of 2225 days in filing the claim petition. He also contended that this Court vide its order 11.10.2018, in C.M.A.No.370 of 2014, had condoned the delay of 2757 days in filing the claim petition and in similar facts, in another case, this Court vide its order dated 12.10.2011, in C.M.A.No.5900 of 2010, had condoned the delay of 2578 days in filing the claim application .

9. *Per contra*, learned counsel for the respondent would contend that the appellants failed to explain abnormal delay of 2545 days in filing claim petition. He further submitted that the Tribunal, based on the materials placed on record with regard to medical treatment and other contentions raised by the appellants, had rightly dismissed the application and the same does not warrant any interference by this Court.

Consideration:

10. The point for consideration is whether the appellants made out any case to interfere with the order dated 12.01.2023 passed by the Railway Claims Tribunal dismissing the application filed to condone the delay.

11. As could be seen from the material placed on record, the husband of appellant No.1 travelled in train No.11206 on 03.08.2014; that he fallen down from the train, shifted to one Deepak Hospital, Jalna and then shifted to Sigma hospital and later expired on 25.08.2014. The Tribunal observed that being a beneficial legislation, a lot of leeway has been given to the applicants, who are generally illiterate, financially poor, suffer from ill-health and who are unable to understand the working of the system and thus most times delay has been condoned. However, in this case, appellant No.1 is not financially weak as could be seen from medical records that she underwent treatment in various corporate hospitals and also does not appear to be illiterate and finally, dismissed the application with an observation that the respondent would not be able to get the documents at this belated stage as the records would be

destroyed after a specific period of preservation date and it would become difficult for the respondent to produce any witness from their side since most may have retired and got transferred etc.

12. On perusal of the affidavit filed by the appellants in support of M.A.No.10 of 2022 in D.D.R.No.64 of 2022, it appears that appellant No.1 was under shock and had to take treatment for depression and neurological problems, which occurred due to sudden death of her husband and medical records of various hospitals were also placed on record, which is evident from the paragraph No.5 of the impugned order dated 12.01.2023. It is specifically contended that appellant No.1 is an illiterate and not aware of the procedure and time limit for filing claim petition before the Tribunal. Further, nothing has been placed on record by the respondent to dispute the contentions of the appellants except saying that applicant failed to explain abnormal delay of 2545 days in filing the claim petition before the Tribunal.

13. As rightly observed by the Tribunal in paragraph No. 6 of the Tribunal that the Railway Act, 1989 being beneficial

legislation and taking into consideration the illiteracy, ill-health, a lot of leeway has been given to the applicants and thus most times delay has been condoned. However, in the present case, the Tribunal has taken different view only on the ground that the respondent would not be able to get the documents at this belated stage as the records would be destroyed after a specific period of preservation date and it would be difficult for the respondent to produce any witness from their side since most may have retired, got transferred etc.,

14. In considered opinion of this Court said reason given by the Tribunal is unsustainable and the same cannot be basis for dismissal of the application and thereby, rejecting the claim petition at threshold without going into the merits, may result in injustice to appellant No.1, who had already suffered financially, neurologically and other health problems on account of sudden death of her husband.

15. Further, the same bench has passed orders condoning the delay of 1647 and 2225 days in M.A.No.13 of 2022 in

D.D.R.No.85 of 2022 and M.A.No.11 of 2021 in D.D.R.No.28 of 2021 respectively.

16. Learned counsel for the appellants relied upon the following decisions in support of contentions of the appellants:

(i) The learned Single Judge of erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, in the case of ***Mariyamma and other Vs. Union of India, represented by the General Manager, South Central Railway, Secunderabad*** in ***C.M.A.No.370 of 2014***, dated 11.10.2018, condoned the delay of 2757 days in filing the claim petition with an observation that the Railway Act, 1989, is a beneficial legislation;

(ii) The learned Single Judge of the Andhra Pradesh High Court, in the case of ***Union of India, represented by General Manager, South Central Railway, Secunderabad Vs. Mekanthoti Mohand Rao and others*** in ***C.R.P.No.5900 of 2010***, dated 12.10.2011, condoned the delay of 2578 days in filing the claim petition observing that delay in filing the application was not deliberate or wanton and there was no negligence;

(iii) The learned Single Judge of the Madras High Court, in the case of ***M.Suseela Vs. Union of India*** reported in ***2012 LawSuit (Mad) 587*** dated 15.06.2012, condoned the delay of 2136 days in filing claim application by observing that refusal to condone the delay should not result in closing the doors of justice to real seekers of justice and that length of time is not criteria but the substance matters and that meritorious case shall not be denied adjudication on account of any technical plea or procedural wrangles;

(iv) The High Court of Bomay in the case of ***Sulochana Vs. Union of India, through General Manager, South East Central railway, Bilaspur***, condoned the delay of 567 days in filing the claim petition observing the judgment of the Hon'ble Apex Court in the case of ***Manoharan Vs. Sivarajan - 2014 4 SCC 163*** that the purpose of the provision of limitation is not to destroy the rights and that the primary function of the Court is to adjudicate disputes between the parties and to advance substantial justice. It is further observed that when the matters of compensation under the aforesaid Act arise, it is public money that is ultimately involved. Therefore, in order to address the said concern, it would be appropriate to hold that while the

delay in filing the claim application deserved to be condoned and the appellant ought not to be permitted to enjoy interest on amount of compensation for the period of delay, in the event, the claim application is decided in her favour by the Tribunal.

17. The applications of this nature have to be considered liberally since the family of the deceased are in great distress for loss of bread winner of their family and if the delay application is rejected at threshold it would result injustice to the applicants. Consequences of allowing delay application would only result in adjudication of application on its merits and the respondents would get opportunity of opposing the application on merits. Therefore, in considered opinion of this Court, the Tribunal erred in rejecting the application on the ground of delay instead of deciding the matter on merits.

18. In the light of the above facts and circumstances and in considered opinion of this Court, the application to condone the delay in filing the claim petition deserved to be allowed and accordingly, the delay of 2545 days in filing the claim petition is condoned. Consequently, the Railway Claims Tribunal is directed to number the claim petition and decide the same in

accordance with law. However, the appellants are not entitled to interest for the delay period of 2545 days in the event of claim application decided in favour of the appellants by the Tribunal.

19. With the above direction, the Civil Miscellaneous Appeal is allowed.

Pending miscellaneous applications, if any, shall stand closed.

LAXMI NARAYANA ALISHETTY,J

Date: 22.01.2024
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THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

CIVIL MICELLANESOUS APPEAL No.184 of 2023

22.01.2024

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