

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No.226 of 2022

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1. Smt. Pratima Devi, aged about 52 years, gender-female w/o Late Shankh Nath Dubey
 2. Subhash Kumar, aged about 24 years, gender-male, s/o-Late Sankh Nath Dubey
 3. Vikash Dubey, aged about 22 years, gender-male, s/o Late Sankh Nath Dubey
- All are resident of village-Khiribar, P.O.:Purvdiha, P.S.
Chainpur, Dist. Palamu (Jharkhand)-822102

.... Applicants/Appellant(s)

Versus

The Union of India, through the General Manager, East Central Railway, Hazipur, PO & PS-Hazipur, Dist. Vaishali(Bihar)-844101

.... Respondent(s)

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mr. Krishna Mohan Murari, Adv.
Mr. Ganesh Ram, Adv.

For the UOI : Mr. Awanish Ranjan Mishra, CGC

JUDGMENT

C.A.V. ON 02/11/2023

Pronounced On 20/12/2023

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed under section 23 of the Railway Claims Tribunal Act, 1987 by the appellants/claimants being aggrieved and dissatisfied with the part of order dated 27.09.2022 passed by the Railway Claims Tribunal, Ranchi Bench in case No.OA (IIU)/RNC/20/2021, whereby and whereunder the appellants have been awarded compensation amount of Rs.8 lakhs on account of death of Sankh Nath Dubey in an untoward incident involving accidental fall from the train. The tribunal has awarded interest @ 6 % on the award amount of Rs.8 lakhs from the date of condonation of delay in filing the application i.e. 17.03.2021.
3. Learned counsel for the appellants has assailed the impugned order of the Railway Claims Tribunal, Ranchi mainly on following grounds:

(a) Major part of the awarded compensation amount is directed to be fixed deposited for three years which is contrary to the settled principle of law as held by this court in M.A. No.633/2019 vide order dated 04.01.2021 and also the Hon'ble Apex Court in S.L.P.(C) No.20206-20221/2021 (Annexure Nos.1/A and 2)

(b) The second ground is that the grant of interest @ 6 % per annum by the learned Tribunal is fit to be increased/enhanced to the tune of 12 % per annum from the date of accident itself i.e. 25/26.02.2018 instead of 17.03.2021 i.e. from the date of admission of the application after condonation of delay.

4. Learned counsel appearing for the Union of India through Railway has opposed the aforesaid contentions of the appellants and submitted that the applicants have filed the claim application on 02.08.2019, although, alleged untoward incident took place on 25/26.02.2018. The delay was condoned vide order dated 17.03.2021 and the application was admitted for hearing, hence, the appellants are not entitled for interest from the date of incident. It is also contended that the prevalent rate of simple interest @ 6 % per annum is also just and reasonable.

It is further contended that the learned Tribunal keeping in view the ratio of the judgment in *Gita Vs. Union of India, passed by Hon'ble Delhi High Court* and consequent notification, Government of India issued on 3rd June, 2020 amending Railway Accident and Untoward Incidents (Compensation) Amendments Rule, 2020, Rule 5 has passed the appropriate order regarding disbursement of the award amount. As such, there is no illegality or infirmity in the impugned order calling for any interference and this appeal has no merits and fit to be dismissed.

5. I have given anxious consideration to the points of arguments raised by both parties and also perused the impugned judgment/award passed by the learned Railway Tribunal. It

appears that present appellant No.1 is the widow of the deceased Sankh Nath Dubey and appellant Nos.2 and 3 are major sons of the deceased aged about 21 years and 19 years respectively. The deceased was coming to his native place by Tata Jammu Tavi Train No.13101 and boarded the train at Tata with valid journey ticket for Garhwa Road Railway Station. The deceased accidentally fell down from the train in the intervening night on 25/26.02.2018, while alighting from the train, resulting his death on the spot due to injuries sustained in this untoward incident. In this regard, the station master on duty has issued memo to GRPS, Daltonganj and on that basis fardebayan was lodged by Narendra Kumar Dubey and U.D. Case bearing No. 11/2018 was registered.

6. The claim petition was filed by the present appellants on 02.08.2019 along with an application under Rule 17 (2) of the Railway Claims Tribunal Act, 1987 for condonation of delay of five months in filing the claim application. The learned Tribunal found that reasons shown for delay in filing application are sufficient to condone the delay. Accordingly, vide order dated 17.03.2021 the delay of five months was condoned and application was admitted for hearing. After conclusion of trial, the learned Tribunal considering the evidence adduced by the parties arrived at conclusion that the deceased was a victim of untoward incident, that happened during course of a journey in the train in question. Therefore, the applicants are entitled to get compensation under Section 124 A of the Railways Act, 1989. It was also held that the deceased was bonafide passenger and the applicants are dependent on the deceased. Hence, they are entitled for compensation vide Ministry of Railway (Railway Board Notification dated 22nd December, 2016 under GSR 1165) to the tune of Rs.8 lakhs along with interest @ 6 % from the date of admission of condonation (17.03.2021) till date of this judgment without cost.

The Tribunal has distributed the compensation amount in following manner:

- (i) Shri Pratima Devi, aged 49 years, wife of the deceased
----- Rs.4 Lakhs
- (ii) Subhash Kumar, aged about 21 years, son of deceased
----- Rs.2 lakhs
- (iii) Vikash Dubey, aged 19 years, son of deceased
----- Rs.2 lakhs

7. It was further directed that the applicant No.1 is permitted to withdraw only 10 % of awarded amount i.e. Rs.40,000/- along with the proportionate share in interest, if any. The balance amount of Rs.3,60,000/- shall be split into 36 fixed deposit of Rs.10,000/- each and invested for a period of 1 to 36 months in the ascending order. The bank shall release the amount with accumulated interest upon maturity of each of these deposits to the credit of bank A/C of the applicant No.1.

In the eventuality of the applicant No.1 seeking pre-mature liquidation of the maturity, she will be at liberty for appearing before the tribunal citing reasons for the same upon which the Tribunal may consider the matter in terms of clause 5.3 of the Gazette of 3rd June, 2020.

Similarly, the applicant Nos.2 and 3 were also permitted to withdraw 10 % of the awarded amount i.e. Rs.20,000/- each and the balance amount of Rs.1,80,000/- shall be invested in shape of fixed deposit for two years in the respective names of applicants subject to pre-mature liquidation of fixed deposit under clause 5.3 of the Gazette of 3rd June, 2020.

8. The respondent-Railway was directed to deposit the amount awarded with Registry of the bench within a period of 30 days from the date of communication of award, failing which 9 % interest will be payable to the claimants from the date of default till deposit of the said amount.

9. So far payment of compensation by the Railway Claim Tribunal is concerned, the question before the Hon'ble Apex Court

in the case of (*Rathi Menon Vs. Union of India (2001) 3 SCC 714*) as regards to relevant date from which compensation would be payable under the relevant provisions of the Railways Act, 1989. While construing the provision of section 124 A of the aforesaid Act under which the claim for compensation had been made, it was held that reference to the expression “pay compensation as to such extent as may be prescribed” indicated that the right to claim compensation from the railway administration would be acquired by the injured from the date of said incident, which principle was also considered in the case of *Pratap Narayan Singh Deo vs. Sri Nivas Sabata and Another (1976) SCC 289*.

10. In the case of *Tejinder Singh Gujral vs. Indrajit Singh & another (2007) 1 SCC 508*, which was a case under Motor Vehicle Act. While considering, the question of payment of interest on such compensation also fell for consideration and it was held that grant of interest was discretionary and was not required to be claimed separately. It was held that interest is granted by way of compensation and has to be reasonable depending upon the facts of the case and taking into account all relevant factors. In the said case, the interest awarded 9 % per annum was not interfered with by the Division Bench of the High Court upon reference to the provision of section 166 of Motor Vehicle Act, 1988 and Section 34 of Civil Procedure Code.

11. In the case of *Union of India Vs. Rina Devi (2019) 3 SCC 572*, it was held by the Hon'ble Apex Court while dealing with the case under Railway Claims Tribunal, held that in absence of specific statutory provision, interest can be awarded from the date of accident itself, when the liability of the Railways arises up to the date of payment, without any difference in the stages. The legal proposition in this regard is at par with the case of the accident claims in the Motor Vehicle Act, 1988 and conflicting views stand resolved in this manner.

12. In the instant case the claim petition was barred by the limitation but the delay was condoned without imposing any cost on being satisfied that the reasons for delay has been sufficiently explained by claimants. Therefore, the observation of the tribunal that the payment of interest will be from the date of condonation of delay is not sustainable under law. Further, in view of the inflation in money and the rate of interest recently being awarded and affirmed by Hon'ble Apex Court to the extent of @ 9 % per annum is fair and reasonable which may be awarded in the facts and circumstances of the case from the date of incident. As such impugned award is liable to be modified to the extent of payment of interest @ 9 % from the date of incident i.e. 25/26.02.2018 till the date of payment.

13. The next point for consideration is regarding direction for fix deposit of compensation amount. It is based upon the Government of India notification of 3rd June, 2020 amending Railway Accidents and Untoward Accident (Compensation) Amendment Rules, 2020 adding Rule 5 which reads as under:

Mode of Payment

Rule 5.1- The tribunal may, in order to protect the sum awarded to the claimant, having due regard to the illiteracy or other disabling factor impairing judicious use of such sum, issue direction for disbursing the award in terms of annuities, fixed deposit or other suitable mode as shall subserve justice.

Rule 5.2- If any of the claimants is a minor or person of unsound mind, the tribunal may give liberty to the guardian *ad litem* to use interest approval on the deposit that shall be made during the minority for maintenance.

Rule 5.3- Nothing in this rule shall limit the power of the tribunal to make modification of the mode of disbursal for reasons to be stated in writing depending upon the exigencies requiring liquidation of any corpus created for annuity for pre mature closer to fix deposit for the benefit of claimant.

14. It appears that the learned tribunal taking into consideration the aforesaid rule while making the order of fixed deposit of compensation amount to the extent of 90 % in respect of claimant Nos.2 and 3 for two years has further directed that in the eventuality of the applicants desiring to liquidate the fixed deposits pre maturely due to any exigency, then they will be at liberty to approach the tribunal citing reasons, whereupon the tribunal may consider the modification in the mode of disbursement in terms of the clause 5.3 of the Gazette notification dated 06.03.2020.

15. From perusal of record as well as impugned order it does not transpire that the appellants have ever presented any application showing good cause for pre-mature withdrawal of the compensation amount before the learned tribunal, hence, there appears no illegality or infirmity in the impugned order of directing the compensation amount to be deposited in fixed deposits after disbursal of 10 % with proportionate rate of interest. As such, the appellants shall be at liberty to apply before the learned tribunal for disbursal of entire amount showing their exigencies.

16. In view of the above discussion and reasons, this appeal is partly allowed to be extent mentioned above. The Tribunal has awarded maximum amount of compensation as per Rules but withholding interest from the date of accident to the date of condonation of delay is not justified under law. Therefore, the appellants are held entitled for simple interest @ 9 % per annum from the date of accident i.e. 25/26.02.2018 till the date of actual payment.

(Pradeep Kumar Srivastava, J.)