Usman vs.union of India

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SooperKanoon Citation : sooperkanoon.com/1224267

Court : Delhi

Decided On : Jul-26-2019

Appellant : Usman

Respondent : Union of India

Judgement :

$~ 32 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

26. h July, 2019 Review Petition 150/2018 and CM APPL.26377/2017, 14114/2018 In FAO182016 USMAN Through: Mr.D. ..... Appellant Sabharwal, Mr.Ashwani Pathak, Advocates versus UNION OF INDIA ..... Respondent Through: Mr.J.K. Singh, Standing Counsel with Mr.Varun Bhadola, Mr.Saurabh Sharma, Advocates for Railways CORAM: HON'BLE MR. JUSTICE J.R. MIDHA JUDGMENT (ORAL) CM Appl. 14114/2018 1. The application is allowed and delay in filing the review petition is condoned. Reviw Pet.150/2018 2. The appellant is seeking review of the judgment dated 20th February, 2017 on the ground that the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 were revised with effect from 1st January 2017 by the Railway Accidents and Untoward Incidents (Compensation) Rules, 2016 whereby the compensation amount for death was enhanced from Rs.4 lakh to Rs.8 lakh. FAO182016 Page 1 of 5 3. In Union of India v. Rina Devi, 2018 SCC OnLine SC507 the Supreme Court interpreted the Railway Accidents and Untoward Incidents (Compensation) Rules, 2016 and held that if the compensation amount under the pre-amended rules along with interest is more than the enhanced compensation of Rs.8,00,000/-

, the claimants would be entitled to the higher amount. The relevant portion of the Supreme Court judgment is reproduced hereunder:

15. 3. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation. 15.4. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in Rathi Menon (supra) and Kalandi Charan explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo(supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given. Sahoo (supra) stands (Emphasis Supplied) FAO182016 Page 2 of 5 4. In Pappi v. U.O.I., OA(II)U/1037/2011 decided on 10th May, 2018, the Railways Claims Tribunal (Lucknow Branch)has elucidated the principles laid down in Rina Devi (supra) as under :-

"legislation lakhs, being a beneficial If the liability to pay arises on the date of accident then in respect of accident which has taken place before 01.01.2017 (i.e. when through a notification amount was enhanced to Rs eight lakhs), the liability was for Rs four lakhs.If interest at 9% were to be worked out till the date of award and if the amount reckoned is found to be less than eight the compensation payable will be only eight lakhs with 9% interest from the date of the award. On the other hand, if the computation results in a figure which is more than eight lakhs as now prescribed, then the tribunal will award four lakhs with interest at 9% from the date of accident till the payment is made. On a computation for our own guidance, we notice that in every case where an accident has taken place 11 yrs. 1 month and 10 days before the date when the adjudication is done, it will mean that compensation at 9% on four lakhs will exceed eight lakhs as is now provided. Consequently, in such cases where accident has taken place before 1.1.2017, compensation that could be awarded would be on the basis of the amount prescribed (that is, 4 lacs) as on the date of accident with interest. In all other cases the compensation shall be Rs eight lakhs with interest at 9% from the date of the award. It cannot be interest from the date of accident on Rs eight lakhs for accident taking place before 01.01.2017 only because we have compared the sums of what the compensation would be, if the amount were to be worked out on four lakhs and eight lakhs respectively and adopt the amount which is more, that is beneficial to the claimants. The qualifying period of 11 yrs. 1 month and 10 days must be seen as the period when interest is calculated. There could be occasions where we deny interest because of the conduct of the applicant or because there has been enormous unexplained delay in filing the application and FAO182016 Page 3 of 5 we may have reserved the issue of interest to be considered at the time of judgement even while allowing the application after condonation of delay. In all such cases there is no warrant for awarding interest from the date of accident. Since in this case the accident has occurred before 1.1.2017 and the amount of 4 lacs with interest at 9 % from the date of accident will yield less than Rs 4 lacs towards component of interest and the total will be less than Rs 8 lacs, there shall be an award for Rs.8,00,000/- being the higher amount with interest @ 9% from the date of award till the date of payment. (Emphasis Supplied) In the present case, the untoward incident occurred on 18th June, 2013 5. i.e. prior to 1st January, 2017 when the Railway Accidents and Untoward Incidents (Compensation) Rules, 2016 came into force. The amount of Rs.4 lakhs with interest at 9 % per annum from the date of accident till date of judgement would yield less than Rs.4 lakhs towards interest component and the total amount would be less than Rs.8,00,000/-. In that view of the matter, applying the principles laid down in Rina Devi (supra), the claimants are held entitled to Rs.8,00,000/-, being the higher amount.

6. In pursuance to the judgement dated 20th February, 2019, the respondent deposited a sum of Rs. 5,36,610/- with UCO Bank, Delhi High Court Branch after deducting TDS amount of Rs.34,152/-. Vide order dated 29th March, 2017, this Court directed the respondent to deposit the TDS amount of Rs.34,152/- as the interest amount did not exceed Rs.50,000/- per year. On 19th January, 2018, the respondent deposited the TDS amount of Rs.34,152/-. As such, till date the applicant has received Rs.5,70,762/- (Rs. 5,36,610/- + Rs.34,152/-) which is less than Rs.8,00,000/- and the applicant are entitled further entitled amount of Rs.2,29,238/- (Rs.8,00,000/- - FAO182016 Page 4 of 5 Rs.5,70,762/-) in terms of principles laid down in Rina Devi (supra).

7. The application is allowed and the Railways is directed to deposit Rs.2,29,238/- with the Registrar General of this Court within six weeks. If the aforesaid amount is not deposited within six weeks, the appellants shall be entitled to interest @ 9% from the date of this judgment till the date of payment. Pending application is disposed of. List for disbursement of compensation amount on 01st November, 8.

9. 2019.

10. Copy of this judgment be given dasti to counsels for the parties under signatures of the Court Master. JULY26 2018 dk J.R.MIDHA, J.