

Smt Meena Devi Vs. The Union of India Through the General Manager Eastern Railway

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Court : Jharkhand

Decided On : Jan-06-2015

Appellant : Smt Meena Devi

Respondent : The Union of India Through the General Manager Eastern Railway

Judgement :

IN THE HIGH COURT OF JHARKHAND, RANCHI M.A.No. 331 of 2013 Smt.Meena Devi w/o Late Ramadhar Sharma resident of village Kanduwa P.O &PS Pinjoor Dist Jahanabad(Bihar) Appellant -- Versus -- The Union of India through General Manager Eastern Railway,3-Koelaghat street, Kolkata-700001. Respondent
CORAM :- HON'BLE MR. JUSTICE P.P. BHATT . For the appellant :- Mr.Krishna Mohan Murari Advocate. Mr.Arvind Kr. Mehta Advocate For the Respondent :- Mr. Ram Nivas Roy Advocate
4/6.1.2015 The present appeal has been preferred under section 23 of the Railway Claims Tribunal Act 1987 being aggrieved and dissatisfied with the part of the order dated 19.8.2013 passed in Case No. TAU/RNC/2003/0039 by the learned Member(Technical) of the Railway Claims Tribunal,Ranchi.

2. The facts of the case is in brief. The case of the appellant that the deceased along with three other colleagues were coming back to Patna after attending departmental meeting at Garhwa and as such all four persons namely, Binay Kumar,Arvind Kumar Gupta, Harendra Singh and Ramadhar Sharma(deceased)

were coming back to Patna by train No.3347 UP(Palamu Ext.).They were travelling in sleeper class S/4. All of a sudden 10-12 miscreants having armed with pistol entered into the compartment at Japla Railway station at about 1.00a.m and started looting the articles of the passengers on gun point. While the deceased protested the act of dacoity, he sustained bullet injuries on his eye and died before the train reached Navi Nagar Station. The miscreants fled away from the spot. While the train reached Dehri Railway Station, the dead body of the deceased was sent for post Mortem to Sadar Hospital Sasaram where he was declared dead due to shock and Haemorrhage by fire arms.

3. The learned counsel appearing for the appellant submitted that the present appeal is preferred by the appellant for limited purpose of getting amount of interest accrued on the awarded amount from the date of the filing of application. It is submitted that the learned Claim Tribunal while considering the claim of the appellant was pleased to direct the Railway authority to pay Rs. 4 lakhs towards compensation but has failed to appreciate that the amount of interest is also required to be awarded along with the said amount of compensation. It is further submitted that the law regarding award of interest has been crystallized by the Hon'ble Apex Court in its decision given in the case of Tahazhathe Purayil Sarabi and ors Vs Union of India and Anr reported in 2009 ACJ2444(SC). It is further submitted that view expressed in the aforesaid judgment has been followed in the case of Mohamadi and Ors Vs. Union of India reported in 2011 ACJ2356(SC). It is also pointed out that the aforesaid view has been relied upon by a coordinate Bench of this Court in M.A. No. 349 of 2013 and accordingly, respondent authority was directed to pay interest @6% per annum on the compensation amount from the date of filing of the claim application till the date of actual payment of compensation vide its order dated 11.11.2014.

4. As against this, the learned counsel appearing for the respondent-railway authority supported the judgment delivered by the Railway Claims Tribunal and submitted that the Railway Claim Tribunal, after careful consideration of the facts and circumstances involved in this case, has awarded the compensation of Rs. 4 lakhs to the applicant but no order of interest and cost of litigation has been passed. It is submitted that the appellant is not entitled to get interest @ 9% from

the Railway authority as the Railway Authority is not responsible for any delay. It is submitted that claim petition was filed in July,2002 but it was decided by the Railway Tribunal on 19.8.2013 and therefore, time consumed by the tribunal for taking decision in the matter,Railway authority cannot be held responsible for making payment of interest.

5. Considering the aforesaid rival submissions advanced by the learned counsel for the appellants as well as Railway Authority and on perusal of the judgment and order passed in the claim petition it appears that the learned Railway Claims Tribunal has failed to appreciate the claim petition was filed by the claimant in July, 2002 but on account of bifurcation of undivided State of Bihar and on account of formation of the new Tribunal in the State of Jharkhand, the matter was transferred to the Railway Claim Tribunal at Ranchi and on account of non-availability of the Member(Technical) in the Railway Tribunal, timely decision could not be taken and therefore, the claim of the appellant with respect to interest was a justifiable claim and it could have been considered by the learned Railway Claim Tribunal in an appropriate manner but it appears from the order that this aspect of the matter has not been properly dealt with and considered by the learned Railway Claim Tribunal. In this context decisions referred to and relied upon by the learned counsel for the appellant are also applicable to the facts and circumstances of the present Case.

6. For ready reference the relevant paragraphs (i.e. Paragraph Nos.13 to

24) of the said judgment(i.e.2009 ACJ 2444 SC) are reproduced hereinbelow:- 13. Admittedly, neither the Railway Claims Tribunal Act, 1987, nor the Railways Act, 1989, make provision for payment of interest on any awarded amount. While Section 16 of the 1987 Act prescribes the procedure for making an application to the Claims Tribunal, the right to receive compensation is contained in Sections 124 and 124-A comprising Chapter XIII of the 1989 Act dealing with the liability of the Railway Administration for death and injury to passengers due to accidents. Even though there is no provision in either of the Acts for payment of interest on the awarded sum, there is no denying the fact that the right to claim compensation accrued on the date of the incident, although, compensation has been held in

Rathi Menons case (supra) is to be computed from the date of the Award of the Claims Tribunal. In cases where the statute does not make any specific provision for payment of interest on any awarded sum, the power of the Courts to grant interest can also be referred to from the provisions of the Interest Act, 1978 and the Code of Civil Procedure. Section 3 of the Interest Act 1978, which confers power on the Court to allow interest reads as follows : 3. Power of court to allow interest.- (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,- (a) If the proceedings relate to a debt payable by virtue of written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings; (b) If the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings: Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings interest shall not be allowed under this section for the period after such repayment. (2) Where, in any such proceedings as are mentioned in subsection (1), - (a) Judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and (b) The sum represents or includes damages in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death, then, the power conferred by that subsection shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages. (3) Nothing in this section, - (a) shall apply in relation to- (i) Any debt or damages upon which interest is payable as of right by virtue of any agreement; or (ii) Any debt or damages upon which payment of interest is barred, by virtue of any express agreement; (b) Shall affect- (i) The compensation recoverable for the

dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or (ii) The provisions of rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908); (c) Shall empower the court to award interest upon interest.

14. As will be evident from the aforesaid provisions, the same, inter alia, provided that in any proceedings for the recovery of any debt or damages the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages at a rate not exceeding the current rate of interest for the whole or part of the period from the date when the debt is payable to the date of the incident of the proceedings, if such debt was payable by virtue of a written instrument at a certain time or if the proceedings do not relate to any such debt, then, from the date mentioned in any written notice given by the person making a claim to the person liable that interest would be claimed from the date of institution of the proceedings.

15. As indicated hereinbefore, apart from the provisions of the Interest Act, Section 34 of the Civil Procedure Code also empowers the Court to order interest on a decree for payment of money in the following manner :

34. Interest.-(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, 2(with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from) the date of the decree to the date of payment, or to such earlier date as the Court thinks fit: (Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions. Explanation I.-In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970). Explanation II.-For the purposes of

this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.) (2) Where such a decree is silent with respect to the payment of further interest 3(on such principal sum) from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

16. It is, therefore, clear that the Court, while making a decree for payment of money is entitled to grant interest at the current rate of interest or contractual rate as it deems reasonable to be paid on the principal sum adjudged to be payable and/or awarded, from the date of claim or from the date of the order or decree for recovery of the outstanding dues. There is also hardly any room for doubt that interest may be claimed on any amount decreed or awarded for the period during which the money was due and yet remained unpaid to the claimants.

17. The Courts are consistent in their view that normally when a money decree is passed, it is most essential that interest be granted for the period during which the money was due, but could not be utilized by the person in whose favour an order of recovery of money was passed. As has been frequently explained by this Court and various High Courts, interest is essentially a compensation payable on account of denial of the right to utilise the money due, which has been, in fact, utilized by the person withholding the same. Accordingly, payment of interest follows as a matter of course when a money decree is passed. The only question to be decided is since when is such interest payable on such a decree. Though, there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the date of institution of the proceedings till the recovery of the amount, the other view is that such interest is payable only when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of proceedings for recovery of the dues, where the same is provided for by the terms of the agreement entered into between the parties or where the same is permissible by statute.

18. Accordingly, we are unable to sustain the order of the Railway Claims Tribunal directing payment of interest on default of the payment of the principal sum within a period of 45 days. As we have indicated hereinbefore, when there is no specific provision for grant of interest on any amount due, the Court and even Tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil Procedure Code.

19. In *Jagdish Rai & Brothers vs. Union of India* ((1999) 3 SCC257, this Court, while considering grant of interest in respect of an amount awarded in an arbitration proceeding under Section 9 of the Arbitration Act, 1940 read with Section 34 of the Civil Procedure Code, observed that there are four stages of grant of interest. Firstly, from the stage of accrual of cause of action till the filing of the arbitration proceedings; secondly, during pendency of the proceedings before the arbitrator; thirdly, future interest arising between the date of the award and the date of the decree; and fourthly, interest arising from the date of the decree till realization of the award. This Court held that although the claim for interest had been made before the Court in which proceedings for making the Award the Rule of the Court were pending, the High Court ought to have further examined whether the appellant was entitled to any interest after the decree was made in terms of the award. This Court went on to observe that the Courts have taken a view that the award of interest under Section 34 of the Civil Procedure Code is a matter of procedure and ought to be granted in all cases where there is a decree for money unless there are strong reasons to decline the same. In the said case, this Court modified the decree of the Court of the Subordinate Judge by including a direction for payment of interest @12% per annum from the date when the award was made the Decree of the Court of the Subordinate Judge, till realization.

20. A similar view was expressed by a Three Judge Bench of this Court in *Hindustan Construction Co. Ltd. vs. State of Jammu & Kashmir* ((1992) 4 SCC217.

21. Though, both the two aforesaid cases were in relation to Awards having been made under the Arbitration Act, a principle has been enunciated that in cases where a money award is made, the principles of Section 34 of the Civil Procedure

Code and Section 3 of the Interest Act could be invoked to award interest from the date of the Award till the realisation thereof.

22. In the instant case, the claim for compensation accrued on 13th November, 1998, when Kunhi Moosa, the husband of the Appellant No.1, died on account of being thrown out of the moving train. The claim before the Railway Claims Tribunal, Ernakulam, (O.A.No.68/1999) was filed immediately thereafter in 1999. There was no delay on the part of the claimants/appellants in making the claim, which was ultimately granted for the maximum amount of Rs.4 lakhs on 26th March, 2007. Even if, the appellants may not be entitled to claim interest from the date of the accident, we are of the view that the claim to interest on the awarded sum has to be allowed from the date of the application till the date of recovery, since the appellant cannot be faulted for the delay of approximately 8 years in the making of the Award by the Railway Claims Tribunal. Had the Tribunal not delayed the matter for so long, the appellants would have been entitled to the beneficial interest of the amount awarded from a much earlier date and we see no reason why they should be deprived of such benefit. As we have indicated earlier, payment of interest is basically compensation for being denied the use of the money during the period which the same could have been made available to the claimants.

23. In our view, both the Tribunal, as also the High Court, were wrong in not granting any interest whatsoever to the appellants, except by way of a default clause, which is contrary to the established principles relating to payment of interest on money claims.

24. We, therefore, allow the appeal and modify the order of the High Court dated 24.5.2007 affirming the order of the Trial Court and direct that the awarded sum will carry interest @6% simple interest per annum from the date of the application till the date of the Award and, thereafter, at the rate of 9% per annum till the date of actual payment of the same.

7. The above referred decision has been followed by the Hon'ble Apex Court in a subsequent decision delivered in the year 2011. The above referred Apex Court's decisions have also been followed by a coordinate Bench of this Court in M.A. No.

349 of 2013 and accordingly, respondent authority was directed to pay interest @ 6% per annum .

8. Having regard to the aforesaid legal proposition of law, in the instant case the claimant is eligible and entitled to get interest @6% per annum from the date of filing of the claim petition. Accordingly, this appeal is allowed and the railway authority is directed to pay amount of interest @ 6% per annum accrued on the awarded amount from the date of the claim petition till actual payment is made. The payment shall be made within two months from the date of communication of this order.

9. Accordingly, this appeal stands allowed. (P.P. BHATT, J.) SD

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