

A

A.A. HAJA MUNIYUDDIN

v.

INDIAN RAILWAYS

NOVEMBER 17, 1992

B

[A.M. AHMADI AND M.M. PUNCHHI, JJ.]

C

Railway Claims Tribunal Act, 1987—Section 16(2), and Rule 6 of the Railway Claims Tribunal (Procedure) Rules, 1989—Claim petition—Fee—Applicability of Order XXXIII, CPC—Indigent person—Whether can claim—Claims Tribunal's power in regulating procedure.

Code of Civil Procedure, 1908—Order XXXIII—Indigent person—Whether can claim under the Railway Claims Tribunal Act, 1987.

D

The appellant dispatched marble slabs by rail under railway risk. The marble slabs reached the destination in broken condition.

E

The appellant moved a claim petition for Rs. 1,05,000 before the Railway Claims Tribunal established under the Railway Claims Tribunal Act, 1987. Under Section 16(2) of the Act r/w Rule 6 of the Railway Claims Tribunal (Procedure) Rules, 1989, the appellant was required to pay a fee of Rs. 2,055 on the claim application. The appellant did not have the means to pay the requisite fee. He paid a fee of Rs. 150 on the application and prayed that he be permitted to prosecute the claim as an indigent person.

F

The Tribunal held that Order XXXIII of the Code of Civil Procedure had no application to claims under the Act and rejected his prayer.

Against the order of the Tribunal, the present appeal by special leave was preferred to this Court.

G

On the question, whether an indigent person who was not possessed of sufficient means to enable him to pay the fee prescribed under Section 16(2) of the Railway Claims Tribunal Act could be permitted to prefer his claim as an indigent person under Order XXXIII of the Code of Civil Procedure, allowing the appeal, this Court,

H

HELD: 1.1. Nowhere in the Railway Claims Tribunal Act, 1987 is

there any provision which runs counter to or is inconsistent with the provisions of Order XXXIII of the Code of Civil Procedure, 1908. Although the Act and the Rules do not specifically provide for the application of Order XXXIII of the Code, there is nothing in the Act or the Rules which precludes the Tribunal from following that procedure if the ends of justice so require. [78-G]

1.2. The Tribunal has the power to lay down its own procedure. Section 18(1) does not preclude it from invoking the provisions of Order XXXIII of the Code if the ends of justice so require. When an indigent person approaches the Tribunal for compensation for the wrong done to him, the Tribunal cannot refuse to exercise jurisdiction merely because he does not have the means to pay the fee. [79-H, 80-A]

1.3. Access to justice cannot be denied to an individual merely because he does not have the means to pay the prescribed fee. Such a view would leave indigent persons without a remedy. [79-C]

1.4. The provisions of the Act and the Rules must be broadly interpreted to ensure access to justice. If a claimant is left without redress even if he has a valid claim against the railway administration merely because he is an indigent person, it would be a sad day and the poor will lose confidence in the system. [79-D]

1.5. Section 18(1) only says that the Claims Tribunal 'shall not be bound' by the procedure laid down by the Code but does not go so far as to say that it 'shall be precluded' from invoking the provisions laid down by the Code even if the same are not inconsistent with the Act and the Rules. [79-E]

1.6. The Tribunal adopted a narrow interpretation of the relevant provisions of the Act in coming to the conclusion that the Act as well as the Rules did not permit invocation of Order XXXIII of the Code. The view taken by the Tribunal results in a person not having the means to pay the fee prescribed for preferring a claim being left without a remedy. Such a view would result in gross injustice. [79-G]

1.7. In the present case, the ends of justice require that the Tribunal should follow the procedure laid down in Order XXXIII of the Code to do justice for which it came to be established. [80-B]

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4865 of 1992.

From the Judgment and Order dated 8.8.1990 of the Madras High Court in C.R.P. No. 2064 of 1990. .

3 Ms. Sandhya Ramachandra for the Appellant.

Dr. Anand Prakash, Hemant Sharma, V.K. Verma and B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

C AHMADI, J. Special leave granted.

The short question which arises for determination in this appeal is whether an indigent person who is not possessed of sufficient means to enable him to pay the fee prescribed by Sub-section (2) of Section 16 of the Railway Claims Tribunal Act, 1987 (hereinafter called 'the Act') can be permitted to prefer his claim as an indigent person on the principle embodied in order XXXIII of the Code of Civil Procedure, 1908 (hereinafter called 'the Code'). The brief facts giving rise to this appeal are as under.

E The appellant despatched marble slabs from Makrana Railway Station for carriage by rail under railway risk to Ramanathapuram. The wagon carrying the marble slabs met with an accident. The marble slabs reached the station of destination in broken pieces. Treating the damage as a total loss, the appellant preferred a claim for Rs. 1,05,000 before the Railway Claims Tribunal established under Section 3 of the Act. The appellant was required to pay a fee of Rs. 2,055 on the said claim- application under Sub-section (2) of Section 16 of the Act read with Rule 6 of the Railway Claims Tribunal (Procedure) Rules, 1989 (hereinafter called 'the Rules'). However, since the appellant did not have the means to pay the requisite fee, he lodged the claim-application on a fee of Rs. 150 only and prayed that he may be permitted to prosecute the claim as an indigent person. The Tribunal however, came to the conclusion that since Order XXXIII of the Code had no application to claims preferred under the provisions of the Act, the appellant cannot be permitted to prosecute the application as such. The Tribunal, therefore, spurned the appellant's request. It is against I the said order of the Tribunal that the present appeal by special leave has

been brought to this Court. A

In order to appreciate the contention urged before us it would be advantageous to bear in mind the scheme of the Act. The Act was enacted to *inter alia* provide for the establishment of a Railway Claims Tribunal for enquiring into and determining claims against the railway administration for loss, destruction, damage, deterioration or non-delivery of goods entrusted to it to be carried by railways and for matters connected therewith or incidental thereto. Section 3 provides for the establishment of a Railway Claims Tribunal. Section 13 which confers jurisdiction reads as under : B

"13. Jurisdiction, powers and authority of Claims Tribunal. C

- (1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act, - D

(a) relating to the responsibility of the railway administration as carriers under Chapter VII of the Railways Act in respect of claims for -

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway; E

(ii) compensation payable under Section 82-A of the Railways Act or the rules made thereunder; and F

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway. G

(2) The provisions of the Railways Act and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act."

Section 15 provides that on or from the appointed day, no court or other H

A authority shall have, or be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in Sub-section (1) of Section 13. We now come to Section 16 which reads as under:

B "16. Application to Claims Tribunal. - (1) A person seeking any relief in respect of the matters referred to in sub-section (1) of Section 13 may make an application to the Claims Tribunal.

C (2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee in respect of the filing of such application and by such other fees for the service or execution of processes as may be prescribed.

D Provided that no such fee shall be payable in respect of an application under sub-clause (ii) of clause (a) of sub-section (1) of Section 13."

E Section 18(1) provides that the Claims Tribunal shall not be bound by the procedure laid down by the Code, but shall be guided by the principles of natural justice and, subject to the other provisions of the Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure. Sub-section (3) of Section 18 then provides as under :

F "18(3). The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :-

G (a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

H (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such

- record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions:
- (g) dismissing an application for default or deciding it *ex parte*;
- (h) setting aside any order or dismissal of any application for default or any order passed by it *ex parte*;
- (i) any other matter which may be prescribed."

Section 24 provides for the transfer of every suit, claim or other legal proceeding (other than an appeal) pending before any Court, Claims Commissioner or other authority immediately before the appointed day, being a suit, claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after the appointed day, within the jurisdiction of the Claims Tribunal, shall stand transferred on that day to the Claims Tribunal. It is, therefore, obvious that every suit pending before any court before the appointed day would stand transferred to the Claims Tribunal if the cause of action thereof is one that would have been, if it had arisen after the appointed day, within the jurisdiction of the Claims Tribunal. Section 28 lays down that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 30 empowers the Central Government to make rules. In exercise of this power the Central Government made the rules referred to above and brought them into force from the appointed day i.e. the date with effect from which the Claims Tribunal came to be established under Section 3 of the Act. Rule 6 which is relevant for our purpose provides that every application made under Sub-section (1) of Section 16 for seeking relief in respect of matters, other than claim of compensation for death or injuries to passengers, shall be accompanied by a fee as specified in Schedule II. Rule 44 lays down that nothing in the Rules shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

A It will be seen from the scheme of the Act that on its coming into
force from the appointed day, all suits pending in the civil court would
stand transferred to the Claims Tribunal if the cause of action of the suit
would have fallen within the jurisdiction of the Tribunal after the appointed
day. Therefore, even a suit filed under the provisions of Order XXXIII
B would stand transferred to the Claims Tribunal and the Claims Tribunal
would be required to dispose it of as such. That is because Section 13
specifically provides that the Claims Tribunal shall exercise, on or from the
appointed day all such jurisdiction, powers and authority as were exer-
cisable immediately before that day by any civil court provided the same
C relates to the recovery of compensation for loss, destruction, damage,
deterioration or non-delivery of goods entrusted to the railways for carriage
by railway. Section 15 bars the jurisdiction of the civil court to entertain
and try such suits on and from the appointed day. In other words after the
appointed day the Claims Tribunal alone would have jurisdiction to enter-
D tain and try claims referred to in clauses (a) & (b) of Sub-section (1) of
Section 13 of the Act. Section 18 then sets out the procedure to be followed
by the Claims Tribunal. Sub-section (1) of Section 18 states that the Claims
Tribunal shall not be bound by the procedure laid down by the Code but
shall be guided by the principles of natural justice and shall have powers
to regulate its own procedure. It is true that Sub-section (1) of Section 18
E in term states that the Claims Tribunal shall not be bound by the procedure
laid down by the Code but that does not mean that it is precluded from
invoking the procedure laid down by the code even if the ends of justice
so require. The Sub-section further states that the Tribunal shall have
powers to regulate its own procedure and Sub-section (3) of Section 18
F enumerates the matters in respect whereof the Claims Tribunal is per-
mitted to exercise the same powers vested in a civil court under the Code
while trying a suit. Rule 44 in terms states that nothing in the Rules shall
be deemed to limit or otherwise affect the inherent power of the Tribunal
to make such orders as may be necessary for the ends of justice. Nowhere
G in the Act is there any provision which runs counter to or is inconsistent
with the provisions of Order XXXIII of the Code. Although the Act and
the Rules do not specifically provide for the application of Order XXXIII
of the Code, there is nothing in the Act or the Rules which precludes the
Tribunal from following that procedure if the ends of justice so require. If
H the view taken by the Tribunal is accepted as laying down the correct law,

A
the result would be that a claimant who has a genuine claim for compensation under the provisions of the Act would be denied access to the Claims Tribunal if he is an indigent person and does not have the means to pay the fee required on the claim-application. Before the establishment of the Claims Tribunal he would have been able to file the suit invoking Order XXXIII of the Code as an indigent person. Now that a special Claims Tribunal has been established under the Act, can it be said that indigent persons who do not have the means to pay the fee required on the claim-application are altogether debarred from seeking compensation from the railway administration for the wrong done to them? Access to justice B
cannot be denied to an individual merely because he does not have the means to pay the prescribed fee. Such a view would leave indigent persons without a remedy. It is, therefore, essential that the provisions of the Act C
and the Rules must be broadly interpreted to ensure access to justice. If a claimant is left without redress even if he has a valid claim against the railway administration merely because he is an indigent person, it would D
be a sad day and the poor will lose confidence in the system. No one can be heard to say, much less the railway administration, that even though the claimant has a genuine claim for compensation against the railway administration, he must forgo the same if he does not have the means to pay the requisite fee. Such an interpretation which denies justice must be E
avoided. Section 18(1) only says that the Claims Tribunal 'shall not be bound' by the procedure laid down by the Code but does not go so far as to say that it 'shall be precluded' from invoking the provisions laid down by the Code even if the same is not inconsistent with the Act and the Rules. F
Since the Claims Tribunal is empowered to regulate its own procedure, there is nothing in the Act and the Rules which precludes the invocation of Order XXXIII of the Code. A view which advances the cause of justice must be preferred to the one which defeats it. We are, therefore, of the opinion that the Tribunal adopted a narrow interpretation of the relevant provisions of the Act in coming to the conclusion that the Act as well as G
the Rules did not permit invocation of Order XXXIII of the Code. The view taken by the Tribunal results in a person not having the means to pay the fee prescribed for preferring a claim being left without a remedy. Such a view would result in gross injustice. The Tribunal has the power to lay down its own procedure and as stated earlier Section 18(1) does not H
preclude it from invoking the provisions of Order XXXIII of the Code if

- A the ends of justice so require. When an indigent person approaches the Tribunal for compensation for the wrong done to him, the Tribunal cannot refuse to exercise jurisdiction merely because he does not have the means to pay the fee. In such a situation we think the ends of justice require that the Tribunal should follow the procedure laid down in Order XXXIII of
- B the Code to do justice for which it came to be established.

In the result we allow this appeal, set aside the order of the Claims Tribunal and remit the matter to the Claims Tribunal to deal with the appellant's claim-application in the light of the principle enunciated hereinabove. In the facts and circumstances of the case there will be no

- C order as to costs.

V.P.R.

Appeal allowed.