(2016) 07 JH CK 0126

JHARKHAND HIGH COURT

Case No: Misc. Appeal No. 367 of 2015

Rajmatiya Devi		APPELLANT
	Vs	
Union of India		RESPONDENT

Date of Decision: July 14, 2016

Acts Referred:

- Railways Act, 1989 - Section 125

Citation: (2016) 4 JCR 552

Hon'ble Judges: Mr. Ravi Nath Verma, J.

Bench: Single Bench

Advocate: Mr. Vijay Kumar Sinha and Mr. S.K. Lala, Advocates, for the Respondent; Mr. Rajesh Kumar Jha, Advocate, for the Appellant

Final Decision: Dismissed

Judgement

Mr. Ravi Nath Verma, J. - The claimant-appellant has questioned the legality of judgment dated 27.03.2014 passed by Railway Claims Tribunal, Ranchi Bench in case no. OA(IIA)/RNC/2007/0034 whereby the claims tribunal has awarded Rs.4000/- as compensation amount with direction to the respondent-railway to pay the said amount within three months and if the awarded amount is not paid within the said period, the respondent-railway shall pay an interest of 9% from the date of submission of accounts particulars till actual payment made.

2. The facts of the case, as disclosed in the claim application, is that the claimant-Rajmatiya Devi had sustained grievous injuries while travelling from Ray to Daltonganj by train no.619 UP on 09.11.2005 dashed the passenger train near west cabin resulting therein the four bogies of the claimant''s train derailed from the track. In support of her claim, the claimant filed copy of F.I.R., copy of newspaper cutting and discharge slip of Sadar Hospital and claimed a compensation amount of Rs.3,00,000/- .

3. The respondent-railway upon notice filed written statement and opposed the grant of compensation on the ground that the railway has already given a sum of Rs.500/- to the claimant, since the injury sustained by the claimant was minor in nature. So the claim for grant of compensation of Rs.3,00,000/- is not maintainable.

4. The claims tribunal, after hearing both the sides and examining evidences available on record, framed the following issues:-

1. Whether Rajmatiya Devi, W/o Chhotan Mochi was a bona fide passenger as alleged?

2. Whether 619 UP passenger met with an accident on 09.11.2005?

3. Whether Rajmatiya Devi was a victim of the accident?

4. Whether the applicant has made petition to the respondent Railway for compensation?

5. Whether any compensation or relief has already been extended to the victim?

6. Whether the applicant is entitled for the compensation as claimed and other relief, if any?

The tribunal allowed a compensation of Rs.4000/- to the claimant by the impugned judgment with direction to the respondent-railway as indicated above.

5. Learned counsel for the appearing for the claimant-appellant while assailing the impugned judgment as bad in law and perverse, seriously contended that the learned tribunal without considering the injury of the claimant in right perspective erred in awarding a paltry sum of Rs.4000/- as compensation. It was also submitted that a certificate issued by Civil Surgeon, Samastipur dated 27.08.2012 was filed along with the claim application to show that the claimant had sustained grievous injury in the alleged accident and the deformity was reported to the extent of 66% but the learned tribunal erred in not relying upon the said document holding that such documentary evidence cannot be relied upon as the same was issued seven years after the accident.

6. Contrary to the aforesaid submissions, learned counsel representing the State seriously contended that not a chit of paper was produced by the claimant to show any injury and in the list of injured persons (R-1) the nature of injury of the claimant has been shown as minor. As such the claims tribunal rightly awarded the amount of Rs.4000/- to the appellant besides the ex-gratia payment of Rs.500/- .

7. I have gone through the entire records including the lower court record and find that the learned tribunal has examined the evidences available on record and has also discussed those evidences including the consolidated list prepared by the railways of the passengers injured (Ext. R-1) in the said accident. On perusal of the said list, it appears that in column of nature of injury against the name of the

claimant the injury is shown as minor though the claimant in the claim application has claimed that she was treated in hospital for three days but not a chit of paper has been brought on record by the claimant to show that she was ever treated for the injuries she sustained in the alleged accident. She claimed that right finger of her right hand and left ear had been amputated but nothing has been brought on record to show those injuries rather a certificate showing deformities to the extent of 66% was produced by the claimants but the said certificate was granted by the concerned authority almost after seven years i.e. on 27.08.2012 though the accident took place on 09.11.2005. The learned tribunal has rightly held that even if there was some deformity but it cannot be linked with accident which took place seven years before. It is true that the award of compensation arising out of a railway accident is for the benefit of the injured but the onus lies upon the claimants to show that she had sustained injury in the said accident. In the list (R-1), the respondent-railway had given names of more than 50 persons, who had received injuries of different nature i.e. serious and grievous injury in the said accident including the persons who have sustained minor injuries.

8. In view of the discussions made above, I do not find any illegality in the impugned judgment except that the tribunal has directed the respondent-railway to pay the compensation amount within three months and if the respondent-railway fails to pay the amount within three months only then the simple interest of 9% from the date of submission of accounts particulars till actual payment has been awarded. In the case, Thazhathe Purayil Sarabi and Others v. Union of India and Another: (2009) 7 SCC 372, the Hon''ble Supreme Court while deciding the similar issue of grant of interest, has, held in Para 28 as follows:-

"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 in 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 the agreement entered into between the parties or where the same is permissible by statute."

In another judgment 2011(4) TAC 873 (SC) (Mohamadi and Others v. Union of India), the Hon''ble Supreme Court relying upon the ratio decided in the above case Thazhathe Purayil Sarabi and Others (supra) in Para 5 held as follows:

"We, accordingly, set aside the order of the High Court and restore the Tribunal''s order in regard to the accrual of the interest with effect from the date of the application."

9. Hence, the claimant is entitled for the interest on the compensation amount from the date of filing of the claim application and not from the any other subsequent dates. The impugned judgment is modified to that extent and the respondent-railway is directed to pay the interest at the simple rate of 9% per annum from the date of filing of the claim application on the awarded compensation amount.

10. In the result, this miscellaneous appeal is dismissed with modification as indicated above.