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Reghuprasad Vs Union of India

M.F.A. No. 171 of 2005

Court: High Court Of Kerala

Date of Decision: Aug. 5, 2013

Citation: (2014) 1 ACC 616 : (2014) 1 KHC 1 : (2014) 1 KLJ 172 : (2014) 1 KLT 19

Hon'ble Judges: K.M. Joseph, J; A. Hariprasad, J

Bench: Division Bench

Advocate: V.K. Balachandran, S. Shyam and M. Dinesh, for the Appellant; N.B. Sunil Nath, for the Respondent

Judgement

K.M. Joseph, J.
Appellant is the applicant before the Railway Claims Tribunal, Ernakulam Bench under S. 16 of the Railway Claims

Tribunal Act, 1987. It is his case that he fell from Ernakulam-Quilon Push Pull train No. 355 at the Platform No. 4 of Quilon Railway Station on

24.4.2001 and sustained injuries. He fell in between the train and the platform, the train ran over his left leg and as a result, he suffered traumatic

amputation of left leg below knee. He claimed compensation of Rs. 4,90,000/-. The Tribunal after raising various issues found that the appellant

was a bona fide passenger, that there was no merit in the contention of the respondent that this incident occurred due to rash and negligent act of

the appellant and that the respondent could not escape from its liability under any of the exemptions given under S. 124A of the Railways

(Amendment) Act. As far as issue No. 4 was concerned, which is whether the appellant was entitled to get compensation from the respondent, if

so, what amount the Tribunal found that the appellant was entitled to Rs. 2,15,000/-. In arriving at the said conclusion the Tribunal relied on Ext.

A3 Card issued from the Department of Orthopaedics, SP Fort Hospital, Thiruvananthapuram. It is found that he was admitted there on

30.5.2003 and discharged on 4.6.2003 and diagnosed as having discharging sinus (L) leg B/K amputee. It was stated therein that sinogram was

done for the sinus present at stump and was advised to attend the hospital on 12.6.2003 for suture removal.

2. The Tribunal also directed payment of interest at 6% from the date of registration of the case, i.e., from 3.6.2003 till payment. Being aggrieved,

the appellant is before us.

3. We heard the learned counsel for the appellant and the learned counsel for the respondent. Learned counsel for the appellant would submit that

the Tribunal erred in not awarding compensation for the pain and suffering under sub-rule (3) of the Railway Accidents and Untoward Incidents

(Compensation) Rules, 1990 (hereinafter referred to as "the Rules"). He would submit that the appellant had to undergo hospitalisation and even

after the amputation he had to undergo treatment and therefore he underwent pain and suffering which was wrongfully refused. Per contra the

learned counsel for the respondent would support the order.

4. In order to appreciate the contention of the appellant we think it necessary to refer to R. 3 of the rules.

3. Amount of compensation.- (1) The amount of compensation payable in respect of death or injures, shall be as specified in the Schedule.

(2) The amount of compensation payable for an injury not specified in Part II or Part III of the Schedule but which, in the opinion of the Claims

Tribunal is such as to deprive a person of all capacity to do any work, shall be rupees four lakhs.

(3) The amount of compensation payable in respect of any injury other than an injury specified in the Schedule or referred to in sub-rule (2)

resulting in pain and suffering, shall be such as the Claims Tribunal may after taking into consideration medical evidence, besides other

circumstances of the case, determine to be reasonable:

Provided that if more than one injury is caused by the same accident, compensation shall be payable in respect of each such injury:

Provided further that the total compensation in respect of all such injuries shall not exceed rupees eighty thousand.

(4) Where compensation has been paid for any injury which is less than the amount which would have been payable as compensation if the injured

person had died and the person subsequently dies as a result of the injury, a further compensation equal to the difference between the amount

payable for death and the already paid shall become payable.

(5) Compensation for loss, destruction or deterioration of goods or animals shall be paid to such extent as the Claims Tribunal may, in all the

circumstances of the case, determine to be reasonable.

5. Rule 3(1) of the Rules says that compensation shall be paid in respect of the injuries as specified in the Schedule. Part I of the Schedule provides

for compensation in cases of death. Part II deals with various injuries which apparently in relation to injuries in Part III are serious injuries. We find

that for all the 6 items which are mentioned in Part II, Rs. 4,00,000/- is uniformly provided as the compensation. In Part III, there are various

injuries mentioned and we notice that the least amount which is provided is Serial No. 34, which is Rs. 32,000/-. The highest amount is Rs.

3,60,000/- in respect of serial Nos. 11 and 16. Sub-rule (2) of R. 3 is intended to cover a situation where a claim is raised for compensation in

respect of injuries which are not mentioned in Part II or Part III of the Schedule. There is a further rider and that is that the Tribunal must come to

the opinion that the injury was such as to deprive the claimant of all capacity to do any work. It is only when there is an injury or injuries which are

not included in either Part II or Part III of the Schedule and which are such as to deprive the claimant of all the capacity to do any work, the

Tribunal is enabled to award at the maximum a sum of Rs. 4,00,000/- as compensation. Then we pass on to sub-rule (3). Sub-rule (3) provides

for award of compensation in respect of any injury. There are however two exceptions which are carved out. They are:-

1. Injuries which are mentioned in Schedule which obviously means injuries in Part II and Part III of the Schedule.

2. Injuries which are mentioned in sub-rule (2).

6. If such injuries are proved and it is shown that such injuries have resulted in pain and suffering, then R. 3(3) is attracted. The compensation is to

be awarded in respect of each injuries. The total compensation under R. 3(3) however cannot exceed Rs. 80,000/-.

7. Once we find that the aforesaid is the interpretation of the rules, we will pass on to the application of the said rule to the facts of the case. We

would have to examine as to whether the appellant has suffered any injury which is not mentioned in Part II or Part III of the Schedule or an injury

which is not mentioned in sub-rule (2). There is no medical evidence available that the appellant has suffered any injury other than the injury which

resulted in the amputation of his left leg below knee and for which he stands awarded compensation of Rs. 2,00,000/- under Serial No. 20 of Part

III of the Schedule. It is clear that the rule maker has intended that in respect of scheduled injury the entire claim which would comprehend also the

claim for pain and suffering in respect there to would stand embraced by the maximum compensation which is shown in the Schedule.

8. No doubt, learned counsel for the appellant would submit that the appellant has given oral evidence to loss of sensitivity of nose and loss of taste

for food items. But we find that there is no medical evidence for any injury other than the injury which resulted in the amputation and for which the

full compensation payable under the Schedule as already been awarded. In the absence of evidence of any injury other than the Schedule injury we

are unable to award any compensation under sub-rule (3) of R. 3 of the Rules. In fact, learned counsel for the respondent points out that over and

above the Tribunal has in fact awarded Rs. 15,000/- more. The appellant is not entitled to seek any further compensation. Another contention

raised by the appellant is regarding the rate of interest. The appellant is awarded interest at the rate of 6%. He would point out that the rate of

interest is low. Having considered the matter and heard the counsel, we increase the rate of interest to 7% instead of 6%. In this regard, the appeal

will stand allowed and the award will stand modified. Accordingly, the appeal is partly allowed as follows:-

We uphold the amount of compensation at Rs. 2,15,000/-. The rate of interest is enhanced from 6% to 7%. It will be payable from the date of

registration of the case, i.e., 3.6.2003 till payment. The enhanced rate of interest need be paid only in respect of Rs. 2,00,000/-, i.e., the

compensation which really the appellant was entitled in law.