

(2014) 01 RAJ CK 0041
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1052/2002

Ajay Arora

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Constitution of India, 1950 — Article 141
Interest Act, 1978 — Section 3
Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2014) 01 RAJ CK 0041

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Deepak Goyal, Advocates for the Appellant

Judgement

Alok Sharma, J.—This civil misc. appeal under Section 23 of the Railway Claims Tribunal Act, 1987 has been filed against the order dated 14.03.2002, passed by the Railway Claims Tribunal, Jaipur Bench (hereinafter "the Tribunal") by which the appellant-applicant (hereinafter "the applicant") was awarded an amount of Rs. 72,000/- as compensation for injuries sustained by him in a train accident.

2. The brief facts of the case are that the applicant was travelling by Frontier Mail, Train No. 2903, from New Delhi to Amritsar on 26.11.1998. The said train met with a major accident near Khanna (Punjab). As a result of the accident, the applicant sustained multiple injuries including Compound Grade-III, Fracture Shaft Humerus (L) as well as head injuries. The applicant also developed heart disease, anorexia, amnesia and other neurological disorders, as a result of the shock and trauma from the injuries suffered in the accident. For treatment the applicant stated to have incurred substantial expenditure. It was stated that the applicant was carrying Rs. 50,000/-, which was lost in the accident. In the aggregate, the applicant made a claim for compensation of Rs. 13,80,200/- together with cost and interest @ 18% p.a. from the date of accident.

3. The respondent-Railway filed written statement to the claim. The factum of the accident and the injuries sustained by the applicant as alleged were admitted. The quantum of compensation claimed by the applicant was however resisted stating that the applicant had only sustained simple injuries. The claim first laid before the Railway Claims Tribunal, Chandigarh Bench, was subsequently transferred to Jaipur Bench.

4. On the pleadings of the parties, the learned Tribunal framed four issues which were as under:

"(1) Whether the applicant was a bona fide passenger?

(2) What is the nature and extent of injuries suffered by the applicant?

(3) To what amount of compensation, if any, the applicant is entitled?

(4) Relief?"

5. On consideration of the matter, the learned tribunal decided issue No. 1 in favour of applicant holding that he was indeed travelling on the train as a bona fide passenger. On issue No. 2, the learned Tribunal found that from the evidence on record as well as from the oral evidence, it was established beyond an iota of doubt that the applicant had sustained fracture of shaft humerus (left side) with haemorrhagic contusion in right parietal and left frontal region. Fracture of shaft humerus (left side) was a scheduled injury under Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (hereinafter "the Rules of 1990"). It was also found that the applicant had sustained injuries on his head, neck, which were not grave injuries but serious enough, owing to which the Tribunal found that the applicant had developed neurological and cardiological problems. On the issue of compensation to which the applicant was entitled, the Tribunal found that the fracture of humerus as a scheduled injury at item No. 34 under Part III of the Rules of 1990 entitled the applicant under the Rules of 1990 for a compensation of Rs. 32,000/-. In respect of the non-scheduled injuries i.e. injuries on the neck and head of the applicant consequent to which he was found to have suffered neurological problems, the Tribunal found that they were injuries covered under Rule 3(3) of the Rules of 1990 where the maximum amount payable was Rs. 40,000/-. The Tribunal awarded the said purported maximum amount of Rs. 40,000/- to the applicant looking to the seriousness of the injuries in addition to Rs. 32,000/- earlier allowed in respect of scheduled injury. The Tribunal rejected the claims on other heads. Consequently, it was held that the applicant was entitled to Rs. 72,000/- as compensation in the aggregate for the injuries suffered by him in the train accident of 26.11.1998. The compensation was directed to be paid within 90 days of the order, failing which the applicant was to be entitled to claim interest @ 9% p.a. from the date of order till the realization of the award amount.

6. Mr. Deepak Goyal, appearing for the applicant, has submitted that the learned Tribunal misread the provisions of Sub-rule (3) of Rule 3 of the Rules of 1990 in

holding that the maximum compensation for non-scheduled injuries was Rs. 40,000/-. Attention of this Court has been drawn to second proviso to Sub-rule (3) of Rule 3 of the Rules of 1990 which effective the amendment 01.11.1997 fixes the maximum compensation in respect of non-scheduled injuries at Rs. 80,000/-. The accident in issue occurred on 26.11.1998. The learned Tribunal instead recorded that the maximum compensation payable for non-scheduled injuries was Rs. 40,000/-. This is an apparent misreading by the learned Tribunal, submitted counsel, apparently for the reason that the amendment of 1997 does not appear to have been brought to the notice of the Tribunal either by the claimant or by the respondent-Railway. He further submits that the learned Tribunal has not granted any interest for the compensation found payable to the applicant, in the event the said compensation determined by the Tribunal were to be paid within 90 days. He further submitted that interest @ 9% p.a. was conditional on non-payment within 90 days and was limited to the period commencing the date of the award i.e. 14.03.2002 till the date of payment. It was submitted that the Hon"ble Supreme Court in the case of Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, has held that where a money award is made, the principles of Section 34 CPC and Section 3 of the Interest Act are to be invoked. Reference has been made to para 23 of the aforesaid judgment wherein it has been held that "in our view, both the Claims 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."

7. Heard. Considered.

8. In view of second proviso to Sub-rule (3) of Rule 3 of the Rules of 1990 as amended effective 01.11.1997 providing for maximum compensation of Rs. 80,000/- for non-scheduled injury, I am of the considered view that in respect of non-scheduled injuries to the head and neck of the applicant in the accident of 26.11.1998 leading to neurological problems as has been found by the learned Tribunal, the compensation on that count should be enhanced from Rs. 40,000/- to Rs. 60,000/-. Resultantly, the amount of compensation determined by the Tribunal from Rs. 72,000/- stands enhanced to Rs. 92,000/-.

9. The principle with regard to payment of interest on money claims has been well delineated by the Hon"ble Supreme court in the case of Thazhatte Purayil Sarabi (Supra). The obtaining legal position in terms of Article 141 of the Constitution of India thus mandates payment of interest on money claims even in the absence of a provision in the statute under which money is claimed. In view of the judgment of the Hon"ble Supreme Court, I am of the considered opinion that on the compensation amount of Rs. 92,000/- the applicant would be entitled to interest @ 9% p.a. from the date of filing of the claim petition till the payment of the amount determined, no doubt adjusting for any amount already paid to the applicant. Accounting principles as applicable to the Railways shall be

applicable for making adjustment of amount already paid and the remainder compensation payable to the applicant under this order.

10. The civil misc. appeal is accordingly disposed of.