

(2016) 05 KL CK 0025

In the High Court Of Kerala

Case No : MFA. No. 43 of 2016. (Against The Order/judgment In O.A 65/2014 Of Railway Claims Tribunal, Ernakulam Dated 10.9.2015)

Beena

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-05-2016

Acts Referred:

Citation : (2017) 1 Civil LJ 247 : (2016) 2 ILR Kerala 1036 : (2016) 3 KHC 255 : (2016) 3 KLT 32 : (2016) 4 TAC 91

Hon'ble Judges : P.N. Ravindran and K. Ramakrishnan, JJ.

Bench : Division Bench

Advocate : Sri. R.T. Pradeep and Smt. M. Bindudas, Advocates, for the Appellant; Sri. C.S. Dias, SC, Railways, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Ravindran, J.—The appellant is the claimant in O.A.No. (IlU)/ERS/2014/0065 on the file of the Railway Claims Tribunal, Ernakulam Bench, an application filed by her under section 16 of the Railway Claims Tribunal Act, 1987, claiming payment of the sum of Rs.7,00,000/- as compensation for the injuries sustained by her in an untoward incident.

After entering a finding that the claimant was a bona fide passenger, the Railway Claims Tribunal awarded her the sum of Rs.4,00,000/- as compensation and directed the respondent to pay the said amount together with interest at 9% per annum from the date of registration of the claim petition till payment, within 60 days from the date of the order, failing which it was held that the claimant will be entitled to interest at 10% per annum from the date of default. The claimant has, dissatisfied with the quantum of compensation awarded by the Railway Claims Tribunal, filed this appeal.

2. Shri R.T. Pradeep, learned counsel appearing for the appellant raised only one contention. He contended that though compensation has been paid as per rule 3

of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, hereinafter referred to as "the Rules" for short, in respect of the scheduled injuries, viz. below knee amputation and amputation of the fingers of the right hand except the thumb, no compensation has been awarded for the non scheduled injuries, viz. traumatic spondylolisthesis with radiculopathy. Learned counsel submitted that as there was partial dislocation of L4 and L5 vertebrae as a result of the very same untoward incident and it is a non scheduled injury, the tribunal ought to have awarded compensation for the said injury under sub-rule (3) of rule 3 of the rules. Learned counsel contended that as a result of the said non scheduled injury, the claimant has pain in the lower back with sensory blunting over both the buttocks.

3. It is not in dispute that in terms of the stipulations contained in rule 3(2) of the rules, the appellant/claimant has been awarded the maximum permissible compensation of Rs.2,00,000/- each for loss of four fingers of one hand (falling under item 7 in Part III of the Schedule to the rules) and for amputation below knee of the right leg (falling under item 20 in Part III of the Schedule). The appellant has thus been awarded a total compensation of Rs.4,00,000/-. Though at first blush, it may appear that the appellant is entitled to be compensated for the non scheduled injury referred to above and sub rule (3) of rule 3 of the rules indicates that compensation is payable in respect of non scheduled injuries and the maximum compensation payable for all such injuries is also stipulated (Rs.80,000/-), in view of the fact that the claimant was awarded a total compensation of Rs.4,00,000/-, though in respect of two scheduled injuries, having regard to the stipulations contained in rule 4, we are of the opinion that no further compensation can be awarded to her. Rules 3 and 4 of the rules are extracted below:

"3. Amount of compensation-(1) The amount of compensation payable in respect of death or injuries, 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.

4. Limit of compensation.-- Notwithstanding anything contained in rule 3, the total compensation payable under that rule shall in no case exceed rupees four lakhs in respect of any one person."

4. Rule 4 stipulates that "notwithstanding anything contained in rule 3, the total compensation payable under that rule shall in no case exceed rupees four lakhs in respect of any one person."

5. In the instant case the claimant was awarded the sum of Rs.4,00,000/- as compensation, though in respect of two scheduled injuries. In such circumstances, we are of the opinion that the tribunal could not have awarded her anything in excess of the said amount though she had suffered a non scheduled injury as well. The claim for enhanced compensation is in our opinion not tenable, having regard to the stipulation in rule 4 of the rules.

6. For the reasons stated above, we hold that there is no merit in the instant appeal. It fails and is accordingly dismissed.