

(1997) 03 KAR CK 0065

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 178 of 1992

C. Linge Gowda

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Railways Act, 1989 — Section 124, 124 (A), 129, 2 (30)

Citation : (1998) 2 ACC 469 : (1998) ACJ 701 : (1998) 6 KarLJ 552

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri T.N. Viswanath for Sri Sanjegowda, for the Appellant; Sri N.S. Srinivasan, Add, for the Respondent

Judgement

1. This is an appeal from the order of the Railway Accidents Claims Tribunal, Bangalore Bench, in T.A. No. 389 of 1990, whereby, the Tribunal has disposed of the appellant's application for claim under Railway Accidents Claims Tribunal Act.

The claim was originally filed before the Lucknow Bench of the Railway Claims Tribunal and thereafter, was transferred to the Bangalore Bench.

2. The claimant in this claim petition has alleged that he was a bona fide passenger in Karnataka Express which was involved in accident at Lalithpur on 18-4-1989, and that he had sustained injuries as a result of the accident. He made a claim to the tune of Rs. 90,000/- for injuries and Rs. 500/- for loss of articles.

The claim petition has been contested on the ground that the quantum of compensation claimed was excessive.

3. The Tribunal after considering the material on record opined that ends of justice will be met by awarding the claimant compensation to the tune of Rs. 10,000/-. It further held that loss of articles has not been established, so claim for loss of articles was rejected and claim for compensation for injuries was awarded to the tune of Rs. 10,000/-, with a direction to the Railways to pay that

amount within three months.

Feeling dissatisfied with the quantum of compensation awarded, the claimant-petitioner has come up in appeal.

4. I have heard Sri T.N. Viswanath, learned Counsel for the appellant and Sri Sanjgowda, Counsel for the Railways. Learned Counsel for the appellant contended that in this accident, the claimant had suffered fracture of mandible and right temporo-mandibular joint dislocation. He further submitted that the claimant had to remain in Hospital from 27-4-1989 and was discharged on 15-5-1989. Learned Counsel contended that awarding Rs. 10,000/- was insufficient, as the claimant had to incur expenditure to the tune of Rs. 25,000/- in medical treatment and further his mouth does not fully open and that in munching, he gets pain in temple and that is permanent feature. He submitted that the claimant was sportsman, but on account of the injuries, he has lost the proficiency and could not participate in games like Kabaddi. He submitted that when the Tribunal has been satisfied about all these factors, it should have awarded compensation for injury, pain and suffering and the medical expenditure to which the appellant was entitled. It should have been more than Rs. 10,000/-, and he suggested, that at least Rs. 30,000/- should have been awarded as compensation. The learned Counsel for the respondent-Railways, Sri Sanjgowda, holding brief for the learned Counsel for the Railways, contended that the amount of Rs. 10,000/-, that has been awarded as compensation is sufficient, there is no permanent disability caused to the claimant. The compensation that has been awarded by the Tribunal is in consonance with the material on record and it does not require to be enhanced.

5. I have applied my mind to the contentions of the learned Counsels for both the parties. Dr. C.M. Koshi, has been examined as P.W. 1 in this case. He has deposed that he was Assistant Professor in Plastic Surgery and was attached to St. John's Medical College Hospital. He examined the appellant on 27-4-1989 and admitted him for treatment of injuries which the injured was alleged to have sustained in the train accident. Dr. Koshi states: "I found (1) fracture of mandible (left body) and (2) right temporo-mandibular joint dislocation. Open reduction of temporo-mandibular joint and open reduction of fracture mandible and upper and lower arch bar fixation with subsequent inter-dental wiring. He was discharged on 15-5-1989. The doctor stated that Ex. P-1 is the summary of the case, x-rays have been taken and Ex. P-2 the series do confirm the clinical evaluation. The doctor has further stated that "he does not now suffer from any permanent disability, even though there are grievous injuries".

6. Doctor's statement reveal that after joint, there was no permanent disability. P.W. 2, has stated that for medical treatment, he spent about Rs. 25,000/-. He could not open his mouth for 3 months and even after treatment, mouth cannot be opened fully and according to the statement of P.W. 1, while munching the claimant/injured gets pain in temple. He had also got stitches for injuries on the face. That the injured i.e., P.W. 2 has deposed on oath he was earlier to incident

a good Kabaddi player and had proficiency in it and he had represented State team, but on account of injuries caused in accident, he was unable to take part in Kabaddi etc. and he has lost future prospects due to injuries.

7. The evidence discloses the nature and result of the above injuries that the injury has been grievous and the record indicates that he feels pain in munching and he is unable to open his mouth to its full. The expenditure in the medical treatment, it may be said that the witness is exaggerated by saying that the amount spent is to a sum of Rs. 25,000/-. But it is clear beyond doubt that he had to spend something more when the treatment of plastic surgery was also got done. Looking to all these aspects of the matter, I am of the opinion that the total compensation that has been awarded to the tune of Rs. 10,000/- is insufficient. The proper compensation to be awarded in such a case should have been Rs. 25,000/- in all, i.e., Rs. 15,000/- for pain and injury etc. and Rs. 10,000/- for medical treatment for the plastic surgery etc. should have been awarded.

8. The learned Counsel for the respondents contended that Rules of 1989, had governed the case, where the limit of compensation with respect to non-schedule injuries is fixed to the maximum of Rs. 20,000/-. He invited my attention to the proviso to Rule 3 of 1989 Rules. The claim petition in this case had been filed on July 8th, 1989. It remained pending on the date when new rules, that is, Rules of 1990, were enforced. The claim petition had been filed before the Railway Claims Tribunal in July 1989, as mentioned above. Rule 1, sub-rule (2) of Railway Accidents Claims Rules, 1990, which were notified in June 1990, provided that these Rules of 1990, shall come into force from the date of commencement of the Act. It means that the rules had come into operation from the date of commencement of Railways Act, 1989, namely from the 1st July, 1990. These rules have been framed u/s 129 of the Indian Railways Act. Section 129 of the Indian Railways Act reads:

"Section 129.--(1) The Central Government may by notification make rules to carry out the purpose of this Chapter:-

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the compensation payable for death;

(b) the nature of injuries for which compensation shall be paid and the amount of such compensation".

Earlier to Rules of 1990 and 1989, there were Railway Accidents Compensation Rules, 1950, which had been framed under Indian Railways Act, 1890.

9. Sections 124 and 124(a) of the Indian Railways Act (for short "Railways Act"), make provision as to the extent of liability of Railway Administration for death or injuries caused to the passengers due to accidents and provide that the Railway shall be liable to pay the compensation to such extent as may be prescribed.

Prescribed means, prescribed under the rules. Section 2(30) of the Railways Act, 1989 defines, expression "prescribed" meaning as prescribed by rules under the Act. The right to get compensation is conferred by Section 124 or 124(a) of the Railways Act, as the case may be, it only provides that it may not be unlimited, but it may be to the extent as the relevant rules at the relevant time be provide. The rules being primarily the rules of procedure, in my opinion have retrospective effect in the sense that the re-amended or amended or the latest rules will apply as on the date of decision of a claim petition. In this view of the matter, in my opinion Rules of 1990 will apply to the present case, as the claim had been decided on 30th of March, 1991, when Rules of 1990, had already come into operation. Rules of 1990 had been published in the Gazette dated 7th June, 1990 and were made operative from the date of commencement of the Act of 1989. Section 6 of the General Clauses Act, provides with reference to the effect of repeal. It provided that a repeal of an Act or regulation unless a different intention is exhibited by the repealing Act, shall not effect any investigation, legal proceedings or remedy and such legal proceedings or remedy instituted may be continued.

Clause (b) of Section 200 of the Railways Act also provides that all pending proceedings from the date of commencement of the new Act, pending before the Railway Accidents Claims Tribunal or before the Claims Commissioner of Railways, shall be heard and decided by the Tribunal, as if appointed under the new Act and in accordance with the procedure prescribed under the new Act. In this view of the matter, the proceedings initiated for claims before the Railway Accidents Claims Tribunal, had to be continued no doubt in accordance with the provisions of the Railways Act and Rules as on the date the proceedings were going on. When Rules of 1990 provide that they shall come into force from the retrospective date, that is, the date of coming into force of the Railway Act, in my opinion, the proviso to Rule 3 of Railway Accidents Compensation Rules, 1990 whereby the limit of the compensation to be awarded has been enhanced to Rs. 40,000/- will be applicable in the matters of proceedings pending before the Tribunal on 7th June, 1990.

10. In my opinion, where there is a case of non-schedule injuries, looking to the circumstances of the case, the Railway Claims Tribunal could grant total compensation for injuries (other than specified in Schedule) upto the extent of and not exceeding the limit of Rs. 40,000/- instead of Rs. 20,000/- as earlier means that it may grant the compensation to the tune of Rs. 40,000/-, the maximum keeping this in view and the compensation which has been awarded to the tune of Rs. 10,000/- being insufficient. In my opinion, in the circumstances of this case, the proper compensation to be awarded would be of Rs. 25,000/- and I hereby hold appellant to be entitled to the sum of Rs. 25,000/- as compensation in total.

11. Hence this appeal is allowed, awarding the compensation to the tune of Rs. 25,000/-. If amount of award is not paid within four months from today, it will

carry interest at the rate of 9%, because when the award amount becomes due and it is not paid, then it becomes a debt and carried interest, but if amount is paid within four months, it shall not carry interest. The cost is made easy. Thus this appeal is allowed.