

(2000) 02 KAR CK 0034

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 456 of 1999

D.B. Avalakki and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34, 34 (1)
Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1990 — Rule 3
Railway Claims Tribunal Act, 1987 — Section 13, 18 (3) (i)
Railways Act, 1890 — Section 124

Citation : (2000) 2 ACC 764 : (2001) ACJ 1258 : AIR 2000 Kar 269 : (2000) ILR (Kar) 1613 : (2000) 4 KarLJ 237 : (2000) 3 KCCR 1613

Hon'ble Judges : Mohamed Anwar, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sri R.C. Ijari, for the Appellant; Sri Sanjaya Gowda, for the Respondent

Judgement

1. This appeal is directed against the judgment and order dated 13-10-1998 passed in T.A. No. 4 of 1997 on the file of Railways Claims Tribunal, Bangalore Bench, awarding compensation of Rs. 1,00,000/- in favour of the parents of one Prafulla, who had died in a Railway Accident which took place on 16-11-1988. The appellants have approached this Court for enhancement of compensation.

2. The Tribunal, on the basis of the material placed before it, has found that the deceased, who was travelling from Belgaum to Mysore by Kittur Express, had died because of derailment of the said train on 16-11-1988. Accordingly, the Tribunal has awarded Rs. 1,00,000/- as compensation but without ordering for payment of any interest. The amount has been quantified as per the provisions contained in Section 82-A of the Indian Railways Act, 1890 (in short the "Old Act") and the rules framed thereunder.

3. According to the appellants, the Tribunal has erred in awarding only Rs. 1,00,000/- as compensation since during the pendency of the proceedings before

it, the amount of compensation to be awarded in case of death has been raised to Rs. 4,00,000/- in view of the amendment to the rules and therefore this Court should modify the impugned order to the said extent. The appellants also pray for granting of interest from the date of filing of claim petition till realisation of the amount so awarded.

4. Keeping in view the contentions raised on behalf of the appellants, the following two questions of law arise for our consideration, viz.,

(i) Whether the amount of compensation payable u/s 82-A of the Old Act (corresponding Section is 124 of the Indian Railways Act, 1989) is to be determined on the basis of the statutory rules as those stood on the date of accident or the same needs to be determined in accordance with the amendments made to the said rules during the pendency of the claim proceedings.

(ii) Whether the Tribunal has erred in not ordering interest on the amount of compensation awarded by it to which the appellants are entitled in law.

Reg. Issue No. 1

5. Before trying to resolve the aforesaid controversies, it is essential to have conspectus of the relevant provisions contained in the Act and rules.

6. For the first time, by Amendment Act No. III of 1943, Sections 82-A to 82-J were incorporated in the Old Act for adjudication of claims and payment of compensation to victims of train accidents or their heirs.

7. Section 82-A read as under:-

"Section 82-A. Liability of Railway Administration in respect of accidents to trains carrying passengers.--(1) When in the course of working a railway an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then, whether or not there has been any wrongful act, neglect or default on the part of the Railway Administration such as would entitle a person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods owned by the passenger and accompanying the passenger in his compartment or on the train, sustained as a result of such accident.

(2) The liability of a Railway Administration under this section, shall in no case exceed Rs. One lakh in respect of any one person".

8. Section 82-J of the Old Act empowered the Central Government to make rules for carrying out the objectives of Sections 82-A to 82-H inclusive. Clause (ii) of

Section 82-J(2) of the Old Act has specifically provided for making of such rules for compensation payable in respect of death. Pursuant to the said powers, the Central Government had framed Railway Accident (Compensation) Rules, 1950. The Schedule to the rules had set out the amount of compensation payable for deaths and injuries. This Schedule was last substituted by Railway Accident (Compensation) (Amendment) Rules, 1984, w.e.f. 4-3-1983. As per the substituted Schedule, Rs. 1,00,000/- was payable as compensation for individual death caused due to any train accident.

9. The Old Act was repealed by the Railways Act, 1989, (in short the "Present Act") which came into force w.e.f. 1-7-1990. Section 200, which is a repeal and saving clause, inter alia provided that:-

"200(2).--Notwithstanding the repeal of the Indian Railways Act, 1890 (9 of 1890) (hereinafter referred to as the Repealed Act)-

(a) anything done or any action taken or purported to have been done or taken (including any rule, notification inspection, order or notice made or issued, or any appointment or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given or any proceedings taken or any penalty or fine imposed) under the Repealed Act shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(b) xxx xxx xxx xxx".

10. The statutory provisions, corresponding to Section 82-A of the Old Act, are contained in Section 124 of the Present Act, which reads as under:-

"124. Extent of liability.--When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the Railway Administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passengers and accompanying him in his compartment or on the tram, sustained as a result of such accident".

11. Section 129 of the Present Act empowers the Central Government to make rules in respect of Chapter XIII wherein provisions have been made for liability of Railway Administration for death and injury to passengers due to accidents. This section reads as under:-

"129. Power to make rules in respect of matters in this Chapter.--(1) The Central Government may, by notification, make rules to carry out the purposes 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 the injuries for which compensation shall be paid and the amount of such compensation".

12. Pursuant to the above powers, the Central Government framed the Railway Accidents (Compensation) Rules, 1989 which came into force on 8-11-1989. Rule 3 of these rules provided for the amount of compensation payable in respect of death or injuries as specified in the Schedule. Under the Schedule to these rules, in case of death. Rs. 1,00,000/- only was payable as compensation. The above Rules of 1989 were superseded by the Railway Accidents (Compensation) Rules, 1990 (in short the "1990 Rules") which came into force w.e.f. 1-7-1990. By these rules, the amount of compensation payable in respect of death was raised to Rs. 2,00,000/-. Subsequently, the Central Government amended the 1990 Rules under Notification No. GSR 620(E), dated 25-10-1997, which came into force on 1-11-1997, by raising the amount of compensation in case of death from Rs. 2 lakhs to 4 lakhs.

13. Keeping in view these legislative developments, learned Counsel for the appellants has submitted that no doubt as per the statutory provisions, as those stood on the date of accident, i.e., 16-11-1988, the amount of compensation prescribed for death cases was only Rs. 1 lakh but since during the pendency of the claim proceedings before the Tribunal, the rules were amended and it was raised to Rs. 4 lakhs, therefore, the appellants are entitled to compensation as per the amendments. According to him, the provisions made in the Railways Act, for giving compensation to victims or their heirs, being beneficial in nature, it should be construed so as to give maximum benefit to the sufferers. According to him, since the amount was quantified only in the rules which are part of the procedural law, those should be deemed to have retrospective operation, meaning thereby those have to be applied irrespective of the date of accident/death giving rise to such proceedings. In support of his submissions, he has relied on two judgments of this Court in the cases of C. Linge Gowda Vs. Union of India, and United India Insurance Company Limited, Bangalore Vs. Venkataraju and Another, . The appellants have also relied on the judgment of the Supreme Court in the case of Shashikalabai (Smt) Vs. State of Maharashtra and Another, .

14. So far as judgment of the Supreme Court in Shashikalabai's case, supra, is concerned, it is based on interpretation of Circular dated 28-1-1993 which was issued by the Maharashtra Electricity Board regarding grant of compensation for deaths caused due to electrical accidents relatable to Board's fault. This case has not delved into the proposition of law with which we have been confronted in the

present case.

15. It is well-settled that a decision is an authority for what it actually decides and not for what can be logically deduced from it -- *Quinn v Leathem*.

16. In the case of *Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. and Another*, , it has been held that "a judgment should be understood in the light of the facts of that case and no more should be read into it than what it actually says".

17. Anyhow, in our considered opinion, the question posed before us has now been squarely answered by the three Judges Bench of the Supreme Court in a very recent judgment in the case of *Kerala State Electricity Board and Another Vs. Valsala K and Another*, . In this case, the question involved was as to whether the amendment to Sections 4 and 4-A of the Workmen's Compensation Act, 1923 made by Act 30 of 1995, w.e.f. 15-9-1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995.

18. The two Judges Bench of the Supreme Court in the case of *New India Assurance Company Limited v V.K. Neelakandan and Others*, had taken the view that the Workmen's Compensation Act being a special legislation for the benefit of workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of accident. In view of the categorical law laid down by the larger Bench in the case of *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, , in the case of *Kerala State Electricity Board, supra*, it has been held that the view taken in *V.K. Neelakandan's case, supra*, was not correct. Now, in *Kerala State Electricity Board's case, supra*, the Supreme Court has specifically approved the view taken by the Kerala High Court in the case of *United India Insurance Company Limited v Alavi*, wherein the Full Bench had held that the injured workman becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated under the provisions of the Workmen's Compensation Act and it is the amount of compensation payable on the date of accident and not amount of compensation payable on account of amendment made in 1995.

19. There cannot be two opinions that the law laid down by the Supreme Court in *Kerala State Electricity Board's case, supra*, in relation to the compensation payable under the Workmen's Compensation Act will apply on all fours on the issue raised in the present case as well.

20. Therefore, in our considered opinion, the contrary view taken by the learned Single Judge of this Court in the above referred two cases, (see para 13) one under the Workmen's Compensation Act and another under the Railways Act cannot be accepted and therefore are overruled. Even otherwise, the view taken by the learned Single Judge that quantification of the amount of compensation is

a matter of procedure, clearly appears to be fallacious because prescription of amount of compensation is directly related to substantive right and cannot be held to be a part of any procedural law. As a matter of fact, Section 82-A of the Old Act or Section 124 of the Present Act, do not speak of any procedure at all. These merely confers a right on the victims to get compensation.

21. Accordingly, we hold that the appellants are entitled to only Rs. 1 lakh as compensation for the death of late Prafulla according to the provisions contained u/s 82-A read with Rule 6 of 1950 Rules, as in force on the date of death and not on the basis of the amounts specified by subsequent amendments during the pendency of the claim proceedings before the Tribunal.

Reg. Issue No. 2

22. So far as this issue is concerned, admittedly in the impugned order, the Tribunal has not ordered any interest on the amount of compensation awarded by it. However, subsequent to passing of the impugned order, the Tribunal, on the miscellaneous application filed by the appellants on 7-12-1998 claiming interest on the amount of compensation, has ordered for interest by its order dated 16-2-1999 holding that the appellants will be entitled to 12% interest on the awarded amount from the date of filing of the said application.

23. The ordering of interest by the Tribunal has been questioned by the Union of India in the connected appeal in M.F.A. No. 2521 of 1999 on the ground that this order amounted to substantive review of the order impugned herein and therefore it is without jurisdiction.

24. We have accepted the above objection on being satisfied that in view of Sections 18(3)(i) and 30(2)(f) of the Tribunal Act and Rule 32 of the Railways Claims Tribunal Rules, 1989, the Tribunal has no power or substantive review of the order passed by it. Anyhow, since in the present appeal, apprehending the said consequence, the appellants have specifically raised a ground that the Tribunal has erred in not ordering interest on the amount of compensation awarded by it.

25. Learned Counsel for the Union of India has objected to this ground by raising the plea that the Tribunal Act or the rules framed thereunder do not specifically provide for grant of interest and therefore no such interest can be ordered even by this Court as an Appellate Authority. We find it difficult to uphold the said objection.

26. Section 13 of the Tribunal Act, which confers jurisdiction, powers, and authority on the Tribunal, reads as under:-

"13. Jurisdiction, powers and authority of Claims Tribunal.--(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any Civil Court or a Claims Commissioner appointed under the provisions of the Railways Act-

(a) relating to the responsibility of the Railway Administration as carriers under Chapter VII of the Railways Act in respect of claims for-

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable u/s 82-A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a Railway Administration to be carried by railway.

(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124-A of the Railways Act, 1989, all such jurisdiction, powers and authority as were exercisable immediately before that date by any Civil Court in respect of claims for compensation now payable by the Railway Administration u/s 124-A of the said Act or the rules made thereunder.

(2) The provisions of Railways Act, 1989 and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act".

27. It can be seen from the above provisions that in relation to the responsibility of the Railway Administration as carrier in respect of claims for compensation payable u/s 82-A of the Old Act or the rules framed thereunder, the Tribunal has to exercise the same jurisdiction, power and authority as were exercisable inter alia by the Civil Court till the constitution of the Tribunal. In view of this specific conferment of such jurisdiction, it can safely be held that the Tribunal has to exercise powers of Civil Court as enunciated u/s 34(1) of the Civil Procedure Code, which reads as under:-

"Section 34. Interest.--(1) Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit".

28. Therefore, though there is no specific provision either empowering or disentitling the Tribunal from ordering interest on the amount of compensation awarded by it but since it has been made incumbent on the Tribunal to exercise powers of a Civil Court in relation to grant of compensation and since it pertains to substantive right of the claimant, the Tribunal, in not passing appropriate orders ordering interest has erred in not exercising the said jurisdiction.

29. The view of ours is fully substantiated by the judgment of the Supreme Court in the case of A.A. Haja Muniuddian Vs. Indian Railways, .

30. In this case, the Supreme Court after examining the entire scheme of the Tribunal Act and the rules framed thereunder has held that-

"Though there is nothing in the Act and the rules, which specifically provides for application of Order XXXIII of the Code pertaining indigent person, there is nothing in the Act or rules which precluded the Tribunal from following the procedure if the ends of justice so require. The Tribunal in order to advance cause of justice ought to have followed the procedure laid down therein".

31. For the above reasons, we hold that the Tribunal while awarding compensation under the Act should have ordered for interest at the rate of 6% p.a. u/s 34 of the Civil Procedure Code. But so far as the period for which it is to be granted is concerned, the same has to be determined by the Tribunal. For determining the period for which interest should be ordered, the Tribunal has to address itself as to whether for whose fault the proceedings have been delayed. Since in the present case, though the impugned order has been passed after almost 10 years, from the date of accident but since there is no material before us to ascertain as to under what circumstances and for whose fault the proceedings were delayed. We are unable to locate the precise reasons for the same.

32. Anyhow, in our opinion, ends of justice will be met if interest at the rate of 6% for a period of 5 years amounting to Rs. 30,000/- is ordered. We direct accordingly. Let the amount be deposited by the Union of India within a month from this date. The amount will be deposited in a Nationalised Bank in long term deposit in terms of the judgment of the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . It is clarified that the appellants will be entitled to draw the periodical interest accruing thereon and the Tribunal can permit the appellants to withdraw the amount on the grounds set out in Susamma Thomas's case, supra.

33. The appeal is accordingly allowed in part. No costs.