

(2016) 05 P&H CK 0313
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 2298 of 2002

Deo Mani Srivastava

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-05-2016

Acts Referred:

Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3

Citation : (2016) 05 P&H CK 0313

Hon'ble Judges : Sneh Prashar, J.

Bench : Single Bench

Advocate : Vipul Sharma for Paul S. Saini, Advocates, for the Appellant;
Karminder Singh, Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Sneh Prashar, J.—Assailing the judgment dated 10.12.2001 of the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, "the Tribunal") in Case No.OA-II/51/2001, vide which the appellant was held entitled to a sum of Rs. 30,000/- as compensation from the respondent-Railway, the appellant preferred the instant appeal.

2. The facts, as garnered from the record, are that on 01.12.2000 the appellant purchased train ticket for travelling from Patna to Ludhiana and boarded Howrah-Amritsar 3005-Up mail train from Patna railway station. On 02.12.2000 at about 5:45 a.m., the said train met with an accident when it crashed into the bogies of a derailed goods train near village Jeonpura between Sadhugarh and Sarai Banjara railway stations on Ambala-Ludhiana line near Sirhind. Several passengers including the appellant suffered multiple serious injuries. The appellant, who had become unconscious, was rushed to Civil Hospital Fatehgarh Sahib and then to General Hospital, Chandigarh where he was admitted on the date of accident itself i.e. 02.12.2000. Being not satisfied with the treatment being given, he got himself discharged from General Hospital, Chandigarh and went to Delhi where he was admitted in Dr. Manohar Lohiya Hospital.

3. It was submitted by the appellant that he was carrying luggage and Rs. 4000/- cash. The entire luggage including the train ticket were lost or destroyed in the train mishap. He admitted that Rs. 1 lac as ex-gratia payment was given to him by the respondent-railway on account of injuries suffered by him. He further claimed Rs. 4 lacs as compensation by way of the claim petition filed by him.

4. The claim petition was contested by the respondent-railway. Though it was denied that the appellant was a bonafide passenger on the ill fated train, but at the same time it was admitted that the name of the appellant appeared in the list of injured persons prepared by the respondent railway after the train accident.

5. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal allowed the claim petition and awarded Rs. 30,000/- as compensation to the appellant to be paid by the respondent-railway with interest at the rate of 9% per annum from the date of filing the claim petition till payment is made.

6. Feeling dissatisfied, the appellant-applicant preferred the instant appeal.

7. The submissions made by Mr. Vipul Sharma, learned counsel for appellant and Mr. Karinder Singh, learned standing counsel for respondent-Union of India have been heard and record perused.

8. There is no denial of the fact that Howrah-Amritsar 3005-Up mail train which had started from Patna railway station on 01.12.2000 had met with an accident on 02.12.2000 at about 5:45 a.m. when it crashed into the bogies of a derailed goods train on Ambala-Ludhiana line near Sirhind. As indicated by the facts, it is also not a matter in issue that the name of the appellant appeared in the list of injured in the train accident. Learned Tribunal rightly held that once it was admitted by the respondent-railway that the appellant was injured in the said train accident, the burden was upon the respondent to prove that the appellant was not holding a valid ticket. No evidence was led by the respondent in that regard.

9. Otherwise also, according to the version of the appellant, he had boarded the train from Patna railway station. It is not the case of the respondent-railway that the tickets of the passengers had not been checked by the staff of the railway after the train had started from Patna. In his affidavit, the appellant specifically stated that he had been paid a sum of Rs. 1 lac as ex- gratia relief by the railway authorities on account of injuries suffered by him in the train accident. All the said facts combined prove beyond doubt that the appellant was travelling as a bonafide passenger in the train when the untoward incident took place.

10. Learned counsel for the appellant argued that as many as ten injuries were suffered by the appellant which were all serious in nature. The injuries were

mentioned as under:-

- "A. Dislocation of left shoulder
- B. Fracture of 5th Rib Right side
- C. Fracture of L.I. Vertebra
- D. Back Bone hit by iron rod
- E. Deep cut on the forehead
- F. Deep cuts on both hands
- G. Injury on the Nose
- H. Lower portion both legs injured by iron rods
- I. Severe blunt injuries all over the body
- J. Abrasions on several parts of the body".

11. Learned counsel for the appellant submitted that from the site of accident the appellant was first taken to Civil Hospital, Fatehgarh Sahib from where he was referred to General Hospital, Chandigarh but his condition being serious, he was taken to Ram Manohar Lohiya Hospital, New Delhi for treatment by his family members. He remained under treatment for more than four months and spent approximately Rs. 50,000/- on treatment, medicine, special diet, transportation and X-rays etc. He has still not fully cured and is on medication. He was coming to Ludhiana for appearing in a written examination on 03.12.2000 conducted by Banking Service Recruitment Board, Chandigarh for appointment of Clerks in the Bank. Because of the accident, he missed the exam which adversely affected his career. Learned counsel also contended that considering the nature of injuries sustained by the appellant and the pecuniary loss suffered by him on various counts, the amount of Rs. 30,000/- awarded by learned Tribunal is very meager.

12. On the other hand, learned counsel for the respondent-railway argued that none of the injury suffered by the appellant fell in the category of Schedule-II or Schedule-III of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (for short, "Rules" 1990"). He has already been adequately compensated by payment of ex-gratia relief by the railways and the amount awarded by learned Tribunal is also appropriate.

13. Rule 3(3) of the Rules" 1990 is reproduced hereunder:-

"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]."

14. The appellant suffered the aforementioned ten injuries in a railway accident. None of the injury suffered by the appellant-claimant fall in Part-II or Part-III of the Schedule. However, in the light of Rule-3 of Rules" 1990, the amount of Rs. 30,000/- awarded by learned Tribunal is enhanced to Rs. 80,000/-.

15. Accordingly, the instant appeal filed by the appellant is allowed. The enhanced compensation of Rs. 50,000/- be paid to the appellant-claimant alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till realization.