
(2001) 12 KL CK 0043
In the High Court Of Kerala
Case No : M.F.A. No. 986 of 1997

Joji C. John

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Railways Act, 1989 — Section 123, 124A

Citation : (2003) ACJ 52 : (2002) 3 RCR(Civil) 488

Hon'ble Judges : K. Padmanabhan Nair, J; J.B. Koshy, J

Bench : Division Bench

Advocate : S. Muhammed Haneeff, for the Appellant; M.C. Cherian, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Claimant before the Railway Claims in O.A. No. 191 of 1996 is the appellant herein. On 13.11.1995 at about 7 A.M. while she was boarding the train Vanchinadu Express (Ernakulam Trivandrum) from Kottayam Railway Station, there was a sudden jolt, and the appellant lost her hold and slipped and fell on the rail through the gap between the platform and the train, thereby the train ran over to the foot of the appellant cutting the same and she sustained injuries on both side of the eyes. The appellant's left leg was amputated and now she is using crutches and wheel chair. She claimed an amount of Rs. 4 lakhs as compensation. Respondent Railway pleaded that the applicant fell down due to her own negligence and applicant has to give proof that she was a bonafide passenger. In paragraph 5 of the reply statement it was also stated that liability of the respondent is subject to Railways Act, 1989 and Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. In effect it is admitted that appellant fell down from the train, but according to the Railway, she was not a bona fide passenger and if she is a bonafide passenger, she will get compensation only as per the Rules and not Rs. 4 lakhs as claimed by her.

2. Appellant's claim for compensation was dismissed by a Member (Technical)

(Single Bench without judicial member) on the following reasons:

"(a) There is no evidence that she was a bona fide passenger;

(b) There are no eye witnesses to the accident;

(c) Even the FIR was recorded by Head Constable K. 3495 after getting information from Gandhi Nagar Police Station and proceeding to the Medical College Hospital to record the statement of the applicant on 14.11.1995 i.e. the day after the accident;

(d) Despite the averment of Pw. 3 that he had accompanied the applicant to the hospital and that the Police recorded the statement, no such statement has been produced to support his deposition; and

(e) The alleged handing over of the bag belonging to the applicant by the Station Master to Pw. 3 and Pw. 3 not checking its contents leads to the conclusion that no such bag was handed over to Pw. 3"

3. According to us the only contention worth consideration was whether she was a bonafide passenger as mentioned in reason (a) as in the reply statement itself it is accepted that she fell down from the train and she got injuries as a result of falling down from train. Therefore, registering of FIR by the Railway Police after getting information from Gandhi Nagar Police Station where Medical College Hospital is situated and where the appellant was treated after accident is of no consequence. Ext. P1 FIR itself shows that she was taken to the Medical College Hospital from the spot by the Railway Police. Apart from PW.1, PW.3 also spoke about the accident and there is no case for the Railway even in the pleadings that no accident occurred. The averment that appellant fell down from the train as alleged is admitted, but according to the Railway, that was caused due to negligence of the appellant. She fell down accidentally. When there is "untoward incident" even when no negligence is proved on the part of Railway Officers, Railway is liable to pay compensation as prescribed in the schedule. See Section 124A and 123(c) of the Railways Act, 1989 as amended by Railways (Amendment) Act, 28 of 1994. We also refer to the findings of a Division Bench of this Court in *Vijaysankar v. Union of India* 1995 (2) KLT 408.

4. Here Railway has no case that appellant attempted to commit suicide and she fell down from the train in a state of intoxication or insanity. There is no evidence to show that there is self inflicted injuries. Railway also did not prove negligence on the part of the appellant. Even if there is no negligence on the part of the Railway employees, it cannot be presumed that injuries caused to the victim of the accident are self inflicted injuries so as to deny compensation as provided under Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

5. The next contention is whether appellant was a bonafide passenger. It is true that appellant failed to produce ticket before the Claims Tribunal. It has come out in evidence of PW1 and PW3 that when appellant fell down she lost consciousness and she regained it only on next day at Medical College Hospital.

Her handbag was lost. She deposed as follows:

"I am the applicant in this case. On 13.11.1995 at about 6.30 A.M. I reached Kottayam Railway Station to go to Trivandrum by Vanchinad Express. After purchasing ticket, I came to Platform No. 1 to board the train. I went inside the train. I could not enter into the train because of the heavy rush. Because of a sudden jerk, I fell down in between the Platform and the train. Then I lost my consciousness.

On the next day I regained my consciousness in the Medical College Hospital, Kottayam, I came to know that my left leg below the knee was amputated in the hospital. I had received injuries on the sides of my eyes and the right forearm. I was under the treatment of Dr. Thomichan M.C. I took treatment as inpatient from 13.11.1995 to 7.12.1995. Afterwards, I continued my treatment as outdoor patient. I came to know that one Dr. K.C. Gopalakrishnan Nair had conducted operation on my leg. The Police came to me on the next day of the accident and recorded my statement. I have produced the certified copy of First Information Report as per Ext. P1. (Marked subject to proof). I have produced the medical certificate dated 30.3.1996 as per Ext. P2. (subject to proof). I am taking treatment for the injuries received in the accident. I was working as a Teacher prior to the accident. I did not attend to the work for six months after the accident. Now I am working as Assistant in Athirampuzha St. Alocious High School. I was getting a salary of Rs. 3200/- P.M. Now I cannot do my work as usual. Every time I have to take a Rickshaw to reach the school and for coming back to my residence. I have to spend Rs. 50/- per day for transportation. Now I have been using an artificial limb and also using crutches. I had spent Rs. 10,000/- for the artificial limb and crutches. The artificial limb can be used for a period of two years only. I am married and I have got one child. I was aged about 30 years when the accident took place. After the accident, I cannot do my duty as mother and as a wife. I have spent Rs. 10,000/- by way of medical treatment in the hospital."

6. PW.3, a fellow passenger who was along with her at the time of accident deposed supporting her case. According to him, the Station Master returned the handbag of the appellant after two days and he did not check up the bag. Appellant filed an affidavit stating that when bag was returned, cash (Rs. 500/-) and ticket were missing. When appellant was examined by Court following answers were given by the appellant:

"Court questions:

1. Ques. When you boarded the train, what was your destination? Ans. My destination was Trivandrum.
2. Ques. When did you buy the ticket? Ans. I brought the ticket at about 6.45 A.M. on 13.11.1995.
3. Ques. How much did you pay for the ticket? Ans. I paid Rs. 43/-.

7. Appellant was a teacher employed in Trivandrum and residing in Kottayam. There is nothing to disbelieve her story. It is not disputed by the Railway that when she entered into the train, she fell down and sustained injuries. In the above circumstances, the burden is on the Railway to prove that claimant is not a bonafide passenger. Claimant was a teacher. She sustained injuries due to fall from the train accidentally and finding of the Tribunal otherwise is perverse and set aside. Merely because she lost the ticket during the accident by which she became unconscious, she cannot be labelled as "not a bonafide passenger". Railway failed to prove that she was not a bonafide passenger when other incidents like her accident are not disputed.

8. The only question to be considered is what is the amount of compensation payable to her. It is not disputed that she fell down from the train accidentally and sustained serious injuries. At the spot itself she lost lower portion of the left foot. She became unconscious. Somebody pulled the chain. PW.3 and others went to the spot. With the help of Railway Police she was lifted and Railway Police arranged a vehicle. Report of the Railway Police shows that apart from the injuries on the leg she sustained injuries on the knee of both hands and both eyes. Ext. P1 FIR registered at Railway Police gives all these details. The Consultant Orthopaedic Surgeon, Spinal Disorders and Professor of Orthopaedics, Medical College Hospital, Thiruvananthapuram, Dr. K.C. Gopalakrishnan M.B.B.S., D. Orth, M.S. (Orth), Mch (Orth) issued Ext. P2 Medical Certificate which is as follows:

"This is to certify that Mrs. Joji C. John, 30 years, was admitted in Kottayam Medical College Hospital on 13.11.1995 with traumatic amputation of left foot and degloving injury of left ankle, following a railway accident on that day. She underwent below knee amputation for the injury, she suffered in the accident. After the treatment she was discharged home 7.12.1995.

I have reexamined her today and found that the left below knee amputation stump is well healed. Her permanent disability from the injuries she sustained resulting below knee amputation is assessed as 35% (Thirty Five Percentage)."

There is also evidence to show that she has to wear artificial limb after amputation of left foot below knee and she had to use crutches. Ext. P3 shows that she purchased an artificial limb for Rs. 10,000/-. Every two years she has to change it. It was also alleged by her that she spent Rs. 10,000/- in the hospital for treatment.

9. Compensation payable for injuries are specified in Part II of the Schedule of the Railway Accident and Untoward Incidents (Compensation) Rules, 1990. Items 20 and 22 are read as follows:

Amount of Compensation (in rupees)

.....

(20) For amputation below knee with stump exceeding 3 - 12" but not exceeding

5" 2,00,000

.....

(22) For amputation below knee with stump exceeding 5" 1,60,000

10. According to the appellant, she is entitled to compensation as provided under item 20 of Part III of the Schedule as doctor certified that her left leg below knee was amputated. But what is the extent of stump existing is not proved. During accident her foot was crushed and part of it was lost. Considering the injuries as stated in Ext. P1 and P2, we are of the opinion that her injuries will come only under item 22. At the time of accident, compensation payable for such injuries as specified under item 22 was only Rs. 80,000/-. The above Schedule was amended by Notification G.S.R. 620(E) dated 25.10.1997 and after amendment compensation payable for injuries scheduled under item 22 is Rs. 1,60,000/- and under item 20 is Rs. 2,00,000/-.

11. The Supreme Court in *Rathi Menon v. Union of India* 2001 (2) KLT 12: AIR 2001 SCW 1074) held that when injuries occurred due to accidental falling of a person, considering the value of money etc., compensation shall be payable on the basis of rules prevailing at the time of making the final order for payment of compensation and not on the money value which prevailed on the date of accident. In that case the Apex Court awarded 12% interest. Considering the entire evidence and facts of this case, Apex Court judgment referred above, present rate of interest etc. we are of the opinion that the appellant is entitled to compensation of Rs. 1,60,000/- with 9% interest from the date of filing of the application before the Claims Tribunal till the date of payment.

12. The amount awarded shall be paid within three months from today.