

(2017) 11 DEL CK 0287

In the Delhi High Court

Case No : First Appeal From Order No. 254 Of 2014

Kore Raju

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 21-11-2017

Acts Referred:

Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3(1), 3(2)
Railways Act, 1989 — Section 124, 124A, 129

Citation : (2017) 11 DEL CK 0287

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : S.N. Parashar, Pankaj Kumari, Kirtiman Singh, Prerna Mehta, Joydeep Mazumdar, Debojyoti Bhattacharya, Rohit Dutta, Momota Bhattacharya

Final Decision : Allowed

Judgement

J.R. Midha, J

1. The appellant has challenged the order dated 03rd April, 2014, whereby his claim petition has been dismissed.

2. The appellant filed an application for compensation before the Railway Claims Tribunal on the ground that he was working as a constable with

Sashastra Seema Bal and posted at Rangia, Assam; he took leave from 29th June, 2009 and went to his village in Warangal District; he was returning

after leave from Warangal to Vijaywada from where he had to board a train to Guwahati; he purchased a general ticket from Warangal and boarded

the train; he was standing near the gate of the compartment along with his luggage at about 03:30 A.M. on 29th July, 2009 when there was a jerk in

the train and due to heavy rush, he fell down from the moving train; he was removed to Government Hospital, Khammam, where he was referred to

Gandhi Hospital, Secunderabad, where he remained from 29th July, 2009 to 06th August, 2009; both his legs were amputated; he lost his ticket during the transit and incurred Rs.2 lakh on the medical expenses.

3. The Claims Tribunal rejected the claim on the ground that the appellant did not disclose the details of the journey from Warangal to Vijaywada and the name of the train in which he was travelling. The Claims Tribunal further observed that the incident did not come to the notice of Railway

Authorities at Chinthakani Railway Station; it is not known who alerted the ambulance and shifted the applicant to the government hospital at

Khammam. The Claims Tribunal observed that no report is given to the railway station authorities by anyone or even by the GRP and no entry was

made in the station records. The Claim Tribunal further observed that the appellant has not filed any final report of investigation by the Police or his

hospital records. The Claims Tribunal further observed that the discharge card, Ex.AW-1/6 does not disclose that the accident was an accidental fall

from any train. The Claims Tribunal concluded that the appellant failed to establish that he was a bona fide passenger of any train and that he met

with an untoward accident on 29th July, 2009.

4. The record of the Claims Tribunal has been perused. The appellant has stated in his evidence that he was travelling by train named, Machilipatnam

Express. The appellant has clearly deposed in the witness box that he fell down from the aforesaid train on 29th July, 2009.

5. In order to verify the veracity of the appellant's claim, this Court, vide order dated 18th September, 2017, directed Sashastra Seema Bal, New

Delhi to produce the service record of the appellant including the record of the accident dated 29th July, 2009.

6. Mr. Waize Ali Noor, Advocate for Sashastra Seema Bal, produced the service record of the appellant. The photocopy of the same has been taken

on record. As per the said record, the appellant as working with Sashastra Seema Bal as a constable and he took 45 days' earned leave w.e.f.

29th June, 2009 to 12th August, 2009. The appellant reported the accident to his office that he met with an accident while travelling by train at

Khammam, Andhra Pradesh and sought an extension of leave, which was granted. The appellant joined the department on 16th February, 2010 when

he was medically examined and was found that both his legs had been

amputated on 31st July, 2009 due to the accidental fall from the train at Chinthakani Gandhi railway station at Khammam, Andhra Pradesh. On 10th August, 2010, the appellant was issued a rail concession certificate for 80% handicap due to the amputation of left leg above knee and right leg below knee. Vide certificate dated 10th June, 2011, the appellant's disability was assessed as 86% permanent disability in relation to both his lower limbs by Safdarjung Hospital, New Delhi.

7. This Court is satisfied that the appellant was a bona fide passenger of Machilipatnam Express and he fell down from the aforesaid train at Chinthakani Railway Station, Khammam on 29th July, 2009 and suffered an untoward accident resulting in amputation of his both legs (amputation of left leg above knee and right leg below knee).

8. The next question arises for consideration is whether the appellant is entitled to compensation as per the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 or as per Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016.

9. The Railway Accident (Compensation) Rules, 1990 has been amended by Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016 w.e.f. 01st January, 2017. By the said amendment, the compensation under each category has been enhanced.

10. In *Rathi Menon v. Union of India*, (2001) 3 SCC 714, Rathi Menon, a Commerce graduate of 22 years, secured a job in Bangalore and was called for an interview at Trichur. On her way back to Bangalore on 3rd September, 1999, she boarded the Island Express (bound for Bangalore) at 8.00

P.M. from Palakkad Railway Station. After the train started moving and when it collected momentum, her ill-luck prompted her to have a face wash

for which she moved to the wash basin situated next to the door of the train. While washing her face the train jerked violently at a turning and in that

impact she was thrown off the running train during the night. Her spinal cord was ruptured and she turned a paraplegic and remained immovable

forever. After she fell down, the wheels of the train ran over her right arm severing it from the shoulder point forever. The train, not knowing what it

did to one of its lawful and innocent passengers, continued its running leaving the paraplegic on the track itself on that dreadful night. It was

physiologically impossible for the young lady to move her leg from the position

where she fell. Her right leg happened to remain on the rail-track, and unless a Good Samaritan had passed by that track during the night she had to remain there unmoved. As none like that came the poor female human being remained on the track bleeding and unattended by anyone. Alas, within half an hour another train came along the same track which, without knowing that a badly mauled human being was lying ahead, ran over her right leg causing a sudden amputation of that leg also. Thus, within the span of less than an hour, she became a one-handed and one-legged paraplegic. All those disasters happened during the night of 3rd September, 1996.

While she remained on the track unattended by any one she happened to be spotted by an engine driver who was shunting a railway engine. He got her removed from that scene to the district hospital, and then to a Medical College Hospital where she had to undergo a long period of hospitalization and remained immovable forever.

11. The Railway Claim Tribunal awarded Rs.6 lakh along with interest @ 15% per annum which was challenged before the Kerala High Court on the ground that the Claims Tribunal awarded compensation beyond the amount prescribed in the Railway Accident and Untoward incidents (Compensation) Rules 1990. The Division Bench of the High Court allowed the appeal and reduced the compensation amount. The Supreme Court reversed the judgment of the Division Bench of the High Court and restored the order of the Claims Tribunal. The Supreme Court held that the compensation amount has to be determined according to the Rules prescribed at the time of making the order for payment of the compensation.

Relevant portion of the said judgment is reproduced hereunder:

12. As the above facts are not disputed by the Railway Administration the appellant was relieved of the burden to prove those facts averred in her claim petition. Thus, the only question which remained for the Claims Tribunal to decide was regarding the amount of compensation payable to her. Now the only question remaining is whether the High Court was so helpless that learned Judges could not confirm the amount awarded to her by the Claims Tribunal.

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16. The liability of the Railway Administration in such a case would be to pay compensation, but the extent of such compensation is as may

be prescribed which means prescribed by the rules made under the Act. Section 129 of the Act empowered the Central Government to make such rules.

17. The Railway Accident Compensation Rules 1990 (for short the Rules) were made by the Central Government in exercise of the powers conferred on it by Section 129 of the Act. Rule 3(1) says that the amount of compensation payable in respect of death or injuries shall be as specified in the Schedule. The Rules as well as the Schedule were amended with effect from 1.11.1997. After the amendment Rule 3(2) reads thus:

“(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 work, shall be Rupees four lakhs.”

18. Item No.2 of Part III of the Schedule relates to amputation below shoulder with stump less than 8 from tip of acromion for which an amount of Rs.3.20 lakhs is shown as the compensation.

19. Item 20 in Part III of the Schedule relates to amputation below knee with stump exceeding three and a half inch but not exceeding five inches, for which an amount of Rupees two lakhs is shown as compensation.

20. Before the said amendment of the Rules and the Schedule which came into effect on 1.11.1997 the above amounts were respectively two lakhs (instead of rupees four lakhs) and 1.40 lakhs (instead of 3.20 lakhs) and one lakh (instead of two lakhs). Such amounts were revised by the Central Government in 1990. The revision of the rates was made after 8 years and thus the new rates were incorporated by amending the Schedule.

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23. The collocation of the words “as may be prescribed” in Section 124-A of the Act is to be understood as to mean “as may be prescribed from time to time”. The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined

by the Central Government from time to time by means of rules. This delegation to the Central Government indicates that it was difficult for

Parliament to fix the amount because compensation amount is a varying phenomenon and the Government would be in a far advantageous

position to ascertain what would be the just and reasonable compensation in respect of a myriad different kinds of injuries by taking into

account very many factors. What the legislature wanted was that the victim of the accident must be paid compensation and the amount must

represent a reality which means the amount should be a fair and reasonable compensation. The Government has the better wherewithals to

ascertain and fix such amount. It is for the said reason that Parliament left it to the Government to discharge that function. Sections 124 and

124-A of the Act speak the same language that "the Railway Administration shall be liable to pay compensation". As pointed above, it is

the liability of the Railway Administration to "pay compensation to such extent as may be prescribed". Hence the time of ordering

payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the

claimant.

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25. "The provisions are not intended to give a gain to the Railway Administration but they are meant to afford just and reasonable

compensation to the victims as a speedier measure. If a person files a suit the amount of compensation will depend upon what the court

considers just and reasonable on the date of determination. Hence when he goes before the Claims Tribunal claiming compensation the

determination of the amount should be as on the date of such determination."

12. The Supreme Court further held that where the appeals are pending before the High Court, the scale of compensation shall depend on the date on

which the High Court delivers the judgment. Relevant portion of the judgment is reproduced hereunder:

"29. The unjust consequence resulting from the interpretation which the Division Bench placed can be demonstrated in another plane

also. If a person who sustained injury in a railway accident or in an untoward incident was disabled from making an application

immediately and he makes the application a few years hence, is he to get the compensation in terms of the money value which prevailed on

the date of the accident? Suppose a Tribunal wrongly dismissed a claim after a few years of filing the application and the claimant

approaches the High Court in appeal. As it happens quite often now, some High Courts could take up such an appeal only after the lapse of

many years and if the appeal is decided in favour of the claimant after so many years, what a pity if the amount awarded is only in terms of

the figure indicated on the date of the accident.

30. From all these, we are of the definite opinion that the Claims Tribunal must consider what the Rules prescribed at the time of making the

order for payment of the compensation.â??

(Emphasis Supplied)

13. The Supreme Court explained the rationale for granting compensation as per prescribed Rules at the time of making order as under:

â??24.â?|â?|.. when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent

value.

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27â?|â?|â?|Rupee value is not an unchanging unit in the monetary system.

Students of economic history know that currency value remained static before the Second World War. But the post World War II witnessed

the new phenomenon of vast fluctuations in money value of currency notes in circulation in each nation. When the U.S. Dollar has

registered a steep upward rise, currencies in many other countries made downward slip. What was the value of one Hundred rupees twenty

years ago is vastly different from what it is today. This substantial change has caused its impact on the cost of living also.

28â?|â?|â?| what you were to pay ten years ago to one person cannot be the same if it is paid today in the same figure of currency notes. It is

for the purpose of meeting the reality that Central Government changed the figures.â??

(Emphasis Supplied)

14. Following *Rathi Menon* (supra), Andhra Pradesh High Court and Division

Bench of Calcutta High Court have applied the amended schedule as on the date of adjudication in Union of India v. Aggala Dilleswara Rao, 2006 ACJ 1470; Pramath Kumar Jena v. Union of India, AIR 2012 Ori 32 and Radha Yadav v. Union of India, 2017 SCC OnLine Cal 420 respectively.

15. It is well settled that the appeal is the continuation of the claim petition and the power of the Appellate Court is co-extensive with that of the

Claims Tribunal. Reference may be made to Sardar Tajender Singh Gambhir v. Sardar Gurpreet Singh, 2014 (10) SCC 702.

16. Vide order dated 17th October, 2017, the appellant was referred to the Central Hospital, Northern Railway to examine the appellant and confirm

the categories in which the petitioner's case will be covered. In pursuance to the above order the appellant was examined by the Additional Chief

Health Director, Northern Railway, Central Hospital, New Delhi on 30th October, 2017 and a certificate dated 30th October, 2017 has been produced

before this Court today according to which the appellant's amputation below knee of right lower limb falls in category 22 whereas the

appellant's amputation below middle thigh of left lower limb falls in Category 19 of the Schedule of Railway Accidents and Untoward Incidents

(Compensation) Rules, 2016. The report of Northern Railway, Central Hospital, New Delhi is taken on record.

17. Learned counsel for the appellant submits that the appellant's case falls in Category 3 of the Schedule of Railway Accidents and Untoward

Incidents (Compensation) Amendment Rules, 2016 which is reproduced hereunder:-

â??(3) For double amputation through leg or thigh or amputation leg or thigh on one side and loss of other foot. - Rs.8,00,000/-â??

18. This Court is of the view that the appellant's case falls in category 3 of the Schedule of Railway Accidents and Untoward Incidents

(Compensation) Amendment Rules, 2016 and he is entitled to compensation of Rs.8,00,000/-.

19. The appeal is allowed and the award of Rs.8,00,000/- along with interest @ 9% per annum w.e.f. 29th July, 2010 is passed in favour of the appellant.

20. The respondent is directed to deposit the decretal amount after deducting the permissible TDS with UCO Bank, Delhi High Court Branch by

means of a cheque drawn in the name of A/c Kore Raju within four weeks. The respondent shall also deliver the TDS certificate to the appellant on the next date of hearing.

21. List for disbursement of the compensation amount on 10th January, 2018.

22. The appellant shall remain present in Court on the next date of hearing along with passbook of his savings bank account near the place of his residence with PAN card as well as Aadhaar card.

23. Copy of this judgement be given dasti to counsels for the parties under signature of Court Master.