
(2000) 01 KL CK 0024
In the High Court Of Kerala
Case No : M.F.A. No. 1138 of 1996

K.P. Shanmughan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-01-2000

Acts Referred:

Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3(3)
Railways Act, 1989 — Section 129

Citation : (2000) ACJ 1252 : AIR 2000 Ker 237 : (2000) 2 ILR (Ker) 238 :
(2000) KLJ 266 : (2000) 3 RCR(Civil) 129

Hon'ble Judges : S. Sankarasubban, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : P.V. Surendranath, for the Appellant; M.C. Cherian, for the Respondent

Final Decision : Allowed

Judgement

Ar. Lakshmanan, J.—Heard Mr. P. V. Surendra Nalh for the appellant and Mr. M. C. Cherian for the respondent.

2. This appeal by the claimant is directed against the judgment dated 25-4-1996 in O.A. No. 1/1994 on the file of the Railway Claims Tribunal. Ernakulam Bench. The appellant filed the above O.A. claiming compensation of Rs. 60,000/- from the respondent for the injuries sustained by him out of the accident occurred by him on 22-12-1992. On that day he was travelling by the Trivandrum -- Mangalapuram Parasuram Express. He was in the nearest compartment to the Engine and due to the impact and force of the collision, he was forcibly thrown away from the seat and got jam packed under another seat and sustained injuries on his body, especially on his head and legs. The main injury was on the right side of the head just above the ear. From the accident spot, he was taken to the Kayamkulam hospital in a taxi and from there to the Government Hospital, Mavelikkara, where he was treated as an inpatient for 11 days. From there, he was referred to the Trivandrum Medical College. The Neurosurgeon attached to

the Medical College Hospital, Trivandrum examined and treated him at the request of the Medical Officer of Government Hospital. Alappuzha. It is the case of the appellant that due to the accident the hearing capacity of the right ear has been affected and there is discharge from the right ear. The internal injury of the ear did not heal. The sight of the right eye has also been affected. He continued treatment in the Medical College Hospital, Alappuzha after the discharge from the Medical College Hospital. Trivandrum. There is perforation of the tympanic membrane of the right ear. The Associate Professor. Medical College Hospital, Alappuzha has noted that there is a small anterior central perforation of the right tympanic membrane with mucopurulent discharge. According to the appellant, he had undergone treatment at several hospitals, viz., Government Hospital, Mavelikkara, E.S.I. Hospital. Mavellkkara, Medical College Hospital, Trivandrum and Medical College Hospital, Alappuzha. Even now there is occasional discharge from the right ear and. therefore, he is not able to attend his duty and lead a normal life, as he could before the accident. He has suffered excruciating pain and the pain and suffering undergone by him are inexplicable.

3. The Railway Administration contested the matter by filing a reply statement. According to them, the appellant is not entitled to any amount by way of compensation and that the amount claimed is highly excessive, exaggerated and disproportionate to the alleged injuries. It also denies that the applicant was a bona fide passenger.

4. The Tribunal framed the necessary issues and held that the application filed by the appellant claiming compensation is maintainable and that the appellant has proved that he was a bona fide passenger travelling In the Parasuram Express on the date of the accident and that he has sustained injuries as mentioned in paragraph 8 of the petition due to the train accident. Insofar as issue No. 4, i.e. his entitlement by way of compensation, the Tribunal was of the opinion that compensation has to be awarded under Rule 3(3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. It was not a scheduled Injury and, therefore, by invoking Rule 3(3) of the Rules, the Tribunal has awarded a sum of Rs. 10,000/- which, according to them, is sufficient to meet the ends of justice In the circumstances of the case. Aggrieved by the above judgment, the claimant has preferred the above appeal.

5. Rule 3(3) of the Railway Accidents and Untoward Incidents (Compensation) Rules reads thus :--

"(3) 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 forty thousand."

It is seen from the judgment that an argument was advanced by the counsel for the Railways that the appellant is not entitled for any compensation for the injury sustained by him since the injury sustained by him does not come under the Scheduled injuries. Accepting the said contention and without further discussion, the Tribunal awarded a sum of Rs. 10,000/- as compensation. In our opinion, the compensation awarded is not a just compensation that could be awarded to a person who has sustained serious injuries and whose hearing capacity was impaired. It is seen from the judgment that he was admitted in various hospitals for treatment and he has produced medical certificates in support of his contention. Exhibit P-20 was issued by Dr. P. Prathapan Nair, who gave evidence as PW 2. He has sworn to the fact that the injured was suffering from partial deafness and there was a perforation of the tympanic membrane, which makes it clear that there is an injury on the right ear of the claimant. Because of the injury, the hearing power of his right ear was affected. The above rule though speaks about Scheduled injury and the award of compensation payable for the same, it gives discretion to the Tribunal to determine reasonable compensation after taking into consideration medical evidence, besides other circumstances of the case. The first proviso to Clause (3) of Rule 3 states that if more than one injury is caused by the same accident, compensation shall be payable in respect of each such injury and the second proviso to Clause (3) of Rule 3 states that the total compensation in respect of all such injuries shall not exceed rupees forty thousand. A close scrutiny of the above Rule would lead us to come to the conclusion that the discretion vested in the Tribunal to determine and award a Just and reasonable compensation is not taken away by the above Rule. The Tribunal is entitled to determine the reasonable compensation after taking into consideration the medical evidence, besides other circumstances of the case. The evidence let in in this case and in particular the medical evidence of PW 2, the doctor, and the certificate issued by him and the other circumstances of the case would only ask us to award a compensation of Rs. 25,000/- (Rupees twentyfive thousand only) as a Just and reasonable compensation in the facts and circumstances of the case. We, therefore, modify the award of the Tribunal and fix the compensation at Rs. 25,000/-.

6. It is stated by the counsel appearing on either side that Rs. 10,000/- with interest has already been paid and received by the appellant-claimant. We, therefore, direct the respondent to pay the balance amount of Rs. 15,000/- within one month from the date of receipt of a copy of this Judgment, failing which interest at 12% is payable from this date till payment.

The appeal is allowed. No costs.