
(2008) 02 KL CK 0010
In the High Court Of Kerala
Case No : M.F.A. No. 1174 of 2002

Murukan V.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Railways Act, 1989 — Section 123, 124A

Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3(1)

Citation : (2009) ACJ 2018

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

Bench : Division Bench

Advocate : V. Chitambaresh and T.C. Suresh Menon, for the Appellant; Jamesh Kurian, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Appellant-claimant was injured in an accident due to a fall between the moving train and the platform and injured seriously. As a result of the accident, he sustained crush injury to the leg and 4th and 5th toes were amputated. The District Medical Officer certified that he had 40 per cent disability. The medical certificate further shows that debridement amputation of 4th and 5th toes was done on 3.6.1999 and a skin grafting and fascio cutaneous flap was done to cover the raw area on 1.7.1999. Thereafter, on 9.2.2000, another certificate was issued stating that 2nd, 3rd and 4th toes had undergone traumatic amputation and stumps only were seen on admission in the hospital.

2. He filed an application for compensation u/s 124-A of the Railways Act, 1989 read with the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997 for Rs. 2,00,000. It is not disputed that he was a season ticket holder. Exh. P1 is the monthly season ticket and Exh. P2 is the identity card. It is his case that the train moved while he was entering into the train and he fell down and the accident occurred. According to claimant, steps gave away and that is why he fell down. For claiming compensation in untoward

incidents as provided u/s 124-A, even if the appellant is negligent, compensation cannot be denied provided the injury was not caused as a self-inflicted injury. There is no contention that appellant sustained injury in an attempt to commit suicide. It is not a self-inflicted injury or the result of his own criminal act or any act committed by him in a state of intoxication or insanity.

3. Tribunal rejected the application because he was not travelling in the train as a passenger. But Section 123(c) specifically defines "untoward incident" as follows:

123 (c) "untoward incident" means- (1) (i) the commission of a terrorist act within the meaning of Sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987; or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.

Therefore, denial of the claim because the appellant did not start travelling as a passenger cannot be accepted and appellant is entitled to compensation. He was a season ticket holder. He fell down accidentally while trying to enter into the train.

4. Then, the question arises: what is the amount of compensation payable for loss of three toes. The compensation payable for loss of all toes of one foot through the metatarsophalangeal joint, as per the Schedule, is Rs. 80,000. Here, only three toes were lost out of which only two toes were completely lost and other is only partially lost. Therefore, as per the Schedule to the Rules, the amount of compensation that is payable is Rs. 40,000 only instead of Rs. 2,00,000 claimed by the appellant. The above Rs. 40,000 should be paid to the claimant with 7 per cent interest from the date of application till its payment. Appeal is allowed to the above extent.