

(2024) 11 KL CK 0124
In the High Court Of Kerala
Case No : MFA (RCT) No.66 Of 2017

Prasad.A.V

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 28-11-2024

Acts Referred:

Railways Act, 1989 — Section 124

Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3(2)

Citation : (2024) 11 KL CK 0124

Hon'ble Judges : G.Girish, J

Bench : Single Bench

Advocate : K.P.Sudheer, Arun Mathew Vadakkan, S.Chandrasenan, S. Biju

Final Decision : Allowed

Judgement

G.Girish, J

1. This appeal is preferred against the judgment dated 10.01.2017 of the Railway Claims Tribunal, Ernakulam Bench in O.A.(II-U) 50/2002 disallowing the prayer of the appellant for enhancement of compensation which was earlier awarded by the Tribunal on 12.04.2005.

2. The appellant, an Upper Primary School Teacher, is one amongst the survived passengers in the Kadalundi Train Accident happened on 22.06.2001. He suffered grievous injuries requiring prolonged treatment. He had approached the Railway Claims Tribunal by filing the required application on 15.12.2001 claiming compensation for Rs.4 lakhs stating the reason that the accident caused injuries resulting in permanent disability. Before the Tribunal he gave evidence as PW1. It is stated that, though 27 documents were produced by the appellant to substantiate his claim, the Tribunal marked only 11 documents. As per the earlier judgment dated 12.04.2005, the Tribunal awarded a sum of Rs.1,60,000/- as compensation. The appellant challenged the above judgment before this Court by filing MFA No.132 of 2005 contending that the compensation awarded by the

Tribunal was grossly inadequate. It is stated that, during the pendency of the above MFA before this Court the appellant had undergone four surgeries in connection with the injuries suffered in the aforesaid train accident. The medical bills and other documents pertaining to the above surgeries and treatment undergone by the appellant were produced before this Court in MFA No.132 of 2005. As per the judgment dated 10.02.2010, a Division Bench of this Court remanded the case to the Railway Claims Tribunal for fresh consideration in accordance with law after affording sufficient opportunity to the appellant to adduce further evidence. Thereafter the Tribunal passed the judgment dated 01.10.2010 declining to grant any enhancement of the amount of Rs.1,60,000/- which was earlier awarded as compensation to the appellant. In the aforesaid judgment, the Tribunal made sarcastic comments about the observations of the Division Bench of this Court in the judgment dated 10.02.2010. The appellant challenged the above judgment of the Railway Claims Tribunal by filing MFA No.204 of 2010 before this Court. Thereafter a Division Bench of this Court, in MFA No.204 of 2010, set aside the aforesaid judgment of the Railway Claims Tribunal as per the judgment dated 20.01.2016, strongly deprecating the course adopted by the Tribunal. The case was accordingly remanded back to the Tribunal for fresh disposal after considering all the relevant records produced by the appellant in support of his claims. It was further directed that the appellant has to be permitted to bring all documents legally on record. However, the Railway Claims Tribunal, by the impugned judgment dated 10.01.2017, affirmed its original order dated 12.04.2005, and held that the appellant is not entitled to get any further amount. Though there was specific direction of the Division Bench of this Court in the remand judgment to consider the various medical bills and other records relied on by the appellant and to re-evaluate his entitlement to be considered as a person deprived of all capacity to do any work as envisaged under Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the Tribunal paid no heed to the above direction, and rendered the judgment by harping upon technicalities. Aggrieved by the aforesaid judgment of the Railway Claims Tribunal, the appellant is here before this Court.

3. Heard the learned counsel for the appellant and the learned Senior Central Government Counsel representing the respondent.

4. As already stated above, a Division Bench of this Court by disposing of the earlier appeal filed by the appellant as MFA No.204 of 2010, had issued the direction in the judgment dated 20.01.2016 that the Tribunal has to take into account all the medical records, especially those which relate to the prolonged treatment of the appellant, for deciding the question whether he had been deprived of all capacity to do work, warranting the invocation of Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The relevant paragraphs of the aforesaid judgment is extracted hereunder for the sake of convenience and easy reference:

"11.We will appreciate the challenge against the impugned judgment in another angle as well. A bare perusal of the impugned judgment would reveal that after granting an amount of Rs.32,000/- for the 'scheduled injuries' under item No.34 of Part II, the Tribunal considered the question of compensation payable for the 'non-scheduled injuries'. In that context, it is to be noted that besides fracture of radius and ulna of one limb, the appellant had also sustained fracture to clavicle and ulnar nerve palsy. The medical records already produced and the bills revealing continuation of treatment for the injuries sustained years after the accident, were not at all considered by the Tribunal despite the direction of this Court. The appellant had evidently taken up the contention that he had prolonged treatment and even in this appeal it is specifically stated that he had to undergo four surgeries in connection with the injuries sustained in the accident. The medical records including the medical bills pertaining to such prolonged treatment were produced even going by the impugned judgment. As noticed hereinbefore, the tribunal declined to consider them holding the view that there is no provision for taking into account such medical bills and the prolonged treatment as also the loss of earning capacity. With respect to the observation of the Tribunal that there is no provision for taking into account the loss of earning capacity one can only say that it is only an observation without taking into account the provisions under Rule 3(2) of the Rules which reads thus:-

"3. Amount of Compensation.-

(1) xx xx xx

(2) The amount of compensation payable for 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 any work, shall be rupees four lakhs."

12. It is evident from Rule 3(2) of the Rules that the maximum amount of Rs.4,00,000/- can be granted in a case where the Tribunal arrives at an opinion that owing to the non-scheduled injuries a person was deprived of all capacity to do any work. Therefore, it is incorrect to say that there is no provision for taking into account loss of earning capacity. In this context, it is to be noted that besides sustaining a fracture on the clavicle the appellant had ulnar nerve palsy as well. If the appellant had to undergo four surgeries and still could not recover from the impact of the injuries, it is a matter befitting a consideration for deciding whether or not the injuries sustained would deprive him of all capacity to do any work and if so, whether he is entitled to enhanced compensation. However, these aspects were not at all considered by the Tribunal. The impugned judgment also would reveal that the appellant had produced medical bills before the Tribunal in addition to the documents produced before the passing of the earlier judgment dated 12.4.2005, by the Tribunal. However, in the appendix what is stated is that the appellant/applicant had not produced any oral or documentary evidence. In the context of tortious liability of the railway administration it is relevant to refer to Section 124 of the Railways Act, 1989

which reads thus:-

"Extent of liability.- When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and the personal injury and loss, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident."

(underline supplied)

5. In spite of the aforesaid direction, the Railway Claims Tribunal brushed aside the claim of the appellant about the deprivation of all capacity to do work by a casual remark in paragraph 12 of the impugned judgment that there was admission on the part of the counsel for the appellant that he continued to function as a teacher on the date of hearing of that Original Application and hence Rule 3(2) is not attracted. Throwing to the winds all the directions of the Division Bench of this Court in MFA No.204 of 2010 to consider the medical condition of the appellant after evaluating the treatment records produced by him, and to decide whether the compensation which could be granted under Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 could be extended to the appellant, the Tribunal took a pedantic approach to the directions of this Court, and found lame excuses for denying succour and relief to the appellant who had been suffering the traumatic consequences of the train accident befall upon him about a quarter of century ago.

6. On a perusal of the Trial Court records, it is seen that the appellant had produced Exts. A5 to A14 which included treatment certificates, medical certificates, reference card, disability certificate and about 85 medical bills pertaining to a treatment being undergone by him for getting relief from the consequences of the injuries suffered by him in the train accident which took place on 22.06.2001. Even in the impugned order it has been observed by the Tribunal that the appellant was admitted in the Medical College Hospital, Calicut, on 22.06.2001 and was discharged on 11.07.2001, and again admitted in Kozhikode District Co-operative Hospital, on 19.10.2001 and thereafter, discharged on 22.10.2001. It is also stated that the appellant had undergone a surgery on the left arm after accident on 28.06.2001, and an implant removal surgery was performed upon him on 17.10.2001. It is further stated that the steel rod implanted in the left hand of the appellant was rejected by the body and the left forearm became septic requiring one more surgical operation. It

could also be seen from the records that even during the pendency of the appeals before this Court the appellant had to undergo four surgeries as part of the treatment for curing the ailments suffered due to the injuries suffered in the train accident. The disability certificate dated 10.07.2002 which the appellant produced as Ext A11 before the Trial Court would go to show that the appellant suffered 30% permanent disability due to the fracture of right clavicle, fracture of both bones of left forearm and left ulnar nerve palsy. The Tribunal did not find it necessary to look into any of the above medical records, despite specific direction from the Division Bench of this Court in M.F.A.No.204/2010, to decide whether the injuries suffered by the appellant could have caused loss of all capacity to do any work.

7. It is also pertinent to note that the appellant, in his proof affidavit filed before the Tribunal, had sworn that he was not able to walk more than 100 metres at a stretch, and unable to hold even 1 Kg of weight. It is further stated by the appellant in the proof affidavit that he was not able to do the works done by him before the accident, and that he sustained permanent disability as a result of the said accident. Apart from three or four formal questions put to him during cross-examination, there is absolutely no challenge against the various statements sworn by the appellant in his proof affidavit about the permanent disability suffered by him which had deprived his capacity to do work. The Tribunal which lost sight of the above aspects pertaining to the evidence adduced by the appellant about the nature of the disability suffered by him, had observed in the impugned judgment that the appellant cannot be said to have suffered the injury coming under Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, since he is still continuing his employment as a Teacher. It is pertinent to note that the above finding of the Tribunal is not based on any evidence, but by solely relying on an admission said to have been made by the counsel for the appellant about the employment of the appellant. It seems that the Tribunal was of the opinion that the appellant ought to have been terminated from service if he wanted to claim the compensation under Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, for a person who was deprived of all capacity to do any work. It is too hard to accept the above hypothesis of the Tribunal. The physical condition of a person as one deprived of all capacity to do any work as stated in Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, does not mean that the said person should be in a vegetative state. Nor could it be said that a Primary School Teacher who continues to be in service even after suffering grievous injuries cannot be considered as a person deprived of all capacity to do any work, due to the sole reason that he has not been terminated from service. As far as the present case is concerned, the evidence tendered by the appellant would go to show that the physical disabilities suffered by him as a result of the train accident has derailed his life and incapacitated him from leading a normal life like the one which he had been following prior to the accident. As the Tribunal had scant regard to the repeated directions from this Court to evaluate the

medical evidence brought on record, and to ascertain whether the appellant could be considered for the compensation envisaged under Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990; and the evidence adduced by the appellant about his permanent disability remains uncontroverted by effective cross-examination, I am of the view that this is a fit case where the benefit of Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, could be extended to the appellant.

8. After the amendment made to Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, vide GSR 1165(E) dated 22.12.2016 with effect from 01.01.2017, the amount payable as compensation under Rule 3(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, is Rs.8,00,000/-.

9. As regards the question whether the applicant could claim the prevailing rate of compensation for the incident which occurred in the year 2001, the answer could be found from the decision of the Apex Court in Union of India v. Rina Devi [2018 (2) KLT 1060], wherein it has been held that the compensation amount has to be calculated by applying a reasonable interest upon the compensation amount prevailing at the date of accident, and that if the amount so calculated is less than the amount prescribed as on the date of the award, the claimant will be entitled to the higher of the two amounts. Going by the aforesaid dictum of the Apex Court, the appellant herein is entitled to a compensation of Rs.9,62,000/- since the total amount calculated by applying interest at the rate of 6% per annum upon the amount of Rs.4,00,000/- from 22.06.2001 till this date, would come to Rs.9,62,000/-.

10. As a conclusion to the aforesaid discussions, I find that the impugned judgment of the Railway Claims Tribunal, Ernakulam, is liable to be set aside, and the appellant herein is entitled for compensation at the rate mentioned above.

In the result, the appeal stands allowed as follows:

(i) The judgment dated 10.01.2017 of the Railway Claims Tribunal, Ernakulam Bench in O.A (IIu) No.50/2002, is hereby set aside.

(ii) The respondent is directed to pay compensation Rs.9,62,000/- (Rupees Nine Lakh Sixty Two Thousand only) to the appellant herein (applicant in O.A(IIu) No.50/2002) within a period of 30 days from today.

(iii) In the event of failure of the respondent to make payment, as directed above, the appellant would be entitled to realise the above amount with interest at the rate of 9% per annum from 28.12.2024 till the date of actual payment.