
(1990) 02 AHC CK 0074
In the Allahabad High Court
Case No : F.A.F.O. No. 913 of 1987

Raja Pathak

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 02-02-1990

Acts Referred:

Railways Act, 1890 — Section 82F
Railways Act, 1890 — Section 82F
Railways Act, 1890 — Section 82F

Citation : (1991) ACJ 112

Hon'ble Judges : N.N. Mithal, J;A.P. Misra, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Lalji Sinha, for the Respondent

Final Decision : Partly Allowed

Judgement

N.N. Mithal, J.—The appellant in this appeal brought u/s 82-F of the Indian Railways Act, 1890, was an injured passenger. He has claimed enhancement of compensation to Rs. 3,20,829.80 in respect of the injuries sustained by him. The Claims Commissioner has awarded him only Rs. 8,000/- by way of compensation. Aggrieved by the award, the present appeal has been lodged.

2. There was an accident of 163 Up Sangam Express with 452 Down Goods Train on 30.10.1980 between Jhijnhak and Ambiapur stations of the Northern Railway. The appellant had boarded this train from Allahabad where he had come in connection with a court case. The fact that he was a bona fide passenger is not disputed. On account of the accident, the appellant suffered injuries which are admittedly two in number, i.e., fracture of patella and disfigurement of fragments in the right hand. It is alleged that he was admitted in the L.L.R.M. Hospital, Kanpur on 31.10.1980 but he was discharged the same day. The appellant denied this fact and according to him he was sent by bus to Etawah and there he was admitted to the District Hospital on 4.11.1980 and remained hospitalised until 6.4.1981. Dr. Rajendra Singh has proved the X-ray report which establishes

that there was a fracture in the patella and other injuries also. It has come in evidence that on 20.11.1980 the plaster was changed and it was removed only on 10.1.1981. According to the doctor the injury in the right leg on account of fracture of patella has resulted in partial disability and the appellant cannot undertake any strenuous job, i.e., field work or to do any heavy work. The Claims Commissioner has also mentioned that the appellant must have suffered greatly on account of injury caused to his leg and must have remained disabled at least for some time. For these injuries, the appellant has been awarded a sum of Rs. 8,000/- by way of compensation.

3. The appeal was argued in person by the appellant. Mr. Lalji Sinha has appeared for the respondent Railways. The record of the Claims Commissioner was sent for on several occasions but so far its whereabouts have not been located. This court is, therefore, under this handicap but Mr. Lalji Sinha appearing for the respondent submitted that the appeal can be disposed of even without the aid of the record. He has candidly but not seriously disputed the fact that the appellant was a bona fide passenger and that he had suffered certain injuries as indicated in the order. All that he has argued is that the injuries which have been caused are non-scheduled injuries and, therefore, the compensation awarded was just and proper.

4. Rules have been framed under the powers conferred on the Central Government u/s 82-J of the Indian Railways Act which govern the grant of compensation. Rule 3 in Chapter III of these Rules is as under:

Amount of compensation.-

(1) The amount of compensation payable in respect of death or injuries shall be as specified in the Schedule.

(2) The amount of compensation payable for an injury not specified in part II of the Schedule, but which, in the opinion of the Claims Commissioner, is such as to deprive a person of all capacity to do any work, shall be rupees fifty thousand.

(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 Commissioner may, after taking into consideration all the 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 injury;

Provided further that the total compensation in respect of all such injuries shall not exceed rupees ten thousand.

(4) Where compensation has been paid for injury which is less than the amount which would have been payable as compensation if the injured person had died and the person subsequently dies as a result of the injury, a further compensation equal to the difference between the amount payable for death and

that already paid shall become payable.

Compensation for loss, destruction or deterioration of goods or animals shall be paid to such extent as the Commissioner may, in all the circumstances of the case, determine to be reasonable.

5. It is undisputed that the injuries suffered by the appellant are not scheduled. A perusal of Sub-clause (2) of the above rule will also show that it puts an upper limit of Rs. 50,000/- in case of non-scheduled injuries in those cases where the injured has been incapacitated. Sub-clause (3), however, permits the grant of compensation for other injuries not covered by Sub-clause (2) which result in pain and suffering but an upper limit of Rs. 10,000/- is provided in respect thereof. A perusal of these provisions will, therefore, show that in respect of those injuries covered by Sub-clause (2) upto Rs. 50,000/- can be awarded and for those which are not covered by Sub-clause (2), a further sum of Rs. 10,000/- can be awarded to an injured. Considering the fact that the appellant had remained under treatment in the hospital for a very long period starting from 4.11.1980 to 6.4.1981, i.e., almost six months and finally resulting in a partial disability, the amount of Rs. 8,000/- awarded by the Claims Commissioner appears to be extremely on the low side. One cannot deny the fact that during hospitalisation for a long period, the appellant must have been deprived of his normal working and must be constantly under pain and suffering. The fracture of patella has also resulted in partial disability and for his remaining life he will have to live with this disability. These are circumstances which should have weighed with the Claims Commissioner. Besides this, the appellant must have also spent sufficient amount on his treatment and for medicines etc. Having given our careful consideration to the various facts and circumstances of the case as apparent from the order of the Claims Commissioner, we are of the opinion that a sum of Rs. 20,000/- ought to have been awarded to the appellant for the injuries caused to him. This is besides a sum of Rs. 3,000/- which has already been awarded to him as loss of articles etc. which were lost on account of the accident.

6. In view of the above, the appeal succeeds and is hereby allowed in part. The order of the Claims Commissioner is modified and instead of a sum of Rs. 11,000/-, the appellant will now be entitled to a sum of Rs. 23,000/- from the respondent. The enhanced amount shall be paid by the respondent to the appellant within a period of 6 weeks from today failing which the appellant will be entitled to execute this order in accordance with law.