

(1987) 07 CAL CK 0033
In the Calcutta High Court
Case No : A.F.O.O. No. 766 of 1978

Sailendra Nath Banerjee

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-07-1987

Acts Referred:

Railways Accidents (Compensation) Rules, 1990 — Rule 6(3), 6(4)

Citation : AIR 1988 Cal 333

Hon'ble Judges : Sukumar Chakravarty, J; Gobinda Chandra Chatterjee, J

Bench : Division Bench

Advocate : Gobinda Chandra Pal, for the Appellant; Prasanta Kumar Ghosh, for the Respondent

Final Decision : Partly Allowed

Judgement

Sukumarchakravarty, J.—This appeal has arisen out of the judgment and order passed by Sri S. R. Roy, learned Claims Commissioner, Burdwan, in Misc. Case No. 137 of 1976. Sri Sailendra Banerjee filed a petition for compensation u/s 82 of the Railways Act. The said application was registered as the aforesaid Misc. Case.

2. The case of the petitioner, in brief, was as follows :

On 4-11-75 the petitioner, Sailendranath Banerjee, was travelling by a local train from Burdwan Railway Station to Baruipara. The Train left the station at 8-10 A.M. and shortly after it left Saktigarh Railway Station it had a head-on collision with a train coming from the opposite direction. As a result of this accident, the petitioner sustained injuries and became unconscious. He was admitted to the Burdwan B. C. Hospital on the same date. He sustained the fractural injury in his right leg and some bleeding injuries on his forehead and back. The petitioner, Sailendranath Banerjee, was discharged from the Hospital on 18-11-75 with Advice to take rest for two months with plaster in his leg. As a result of the accident the petitioner Sailendranath Banerjee lost his brief case containing

therein a woolen sweater, bunch of keys and a cash of Rs. 430/-. The petitioner was the government employee and was drawing an amount of Rs. 460/- and odd as his salaries and allowances per month at the time of the accident. The petitioner incurred expenses also for his medical treatment. Accordingly, the petitioner claimed compensation of Rs. 30,000/-.

3. The opposite party, Eastern Railway, opposed the said application by filing "the written objection. The opposite party admitted that as a result of the accident of the ill-fated train, the petitioner Sailendranath Banerjee received injuries on the scalp and fractural injury on the right leg. It was also contended that the petitioner did not lose the earning capacity because of the injuries sustained by him and did not incur the medical expenditure as alleged by the petitioner. The opposite party denied also the loss of the alleged brief case of the petitioner containing the articles and money, as alleged by the petitioner. According to the opposite party, the amount of Rs. 200/- might be given to the petitioner on compassionate ground.

4. The learned Claims Commissioner on consideration of the evidence and the materials on the record allowed the compensation of Rs. 2,000/- only on account of the pain and suffering because of the injuries sustained by the petitioner and did not believe that the petitioner lost the brief case containing the articles and cash amount and incurred the medical expenditure in the absence of reliable evidence supporting the same.

5. The petitioner, Sailendranath Banerjee, being dissatisfied with the judgment and order of the learned Claims Commissioner has preferred this appeal.

6 Mr. Pal, appearing for the appellant- petitioner, has submitted that the compensation as awarded by the Claims Commissioner has been arbitrary and without taking into consideration of each injury and the loss of income and the loss of goods as sustained by the petitioner. Mr. Pal has further submitted that for the purpose of determining the compensation for the injuries sustained by the claimant, each and every injury sustained by the claimant ought to have been considered and for each of the injuries compensation ought to have been awarded " in consideration of all the circumstances. According to Mr Pal, the learned Claims Commissioner has committed mistake in no following the said principle. Mr. Palin suppoit of his such submission has relied on the decision reported in (1977) 1 Cal LJ 45ft corresponding to Union of India (UOI) Vs. Ad-hoc Claims Commissioner and Others, . Mr. Pal has further submitted that the loss of income and the loss of goods as sustained by the petitioner have not been taken into consideration by the learned Claims Commissioner while assessing the compensation.

7. Mr. Ghosh, appearing for the respondent, while supporting the impugned judgment and order has submitted that the learned Claims Commissioner has committed no mistake in not taking into consideration the medical expenditure, as alleged to have been incurred by the petitioner in the absence of any

materials in support of the same. Mr. Ghosh has submitted that this appellate court, if it so considers as reasonable, can add some amount to the compensation already awarded for the loss of the brief case containing the articles and cash as has been stated by the petitioner in his evidence. Mr. Ghosh in his usual fairness has also submitted that the appellate court can also add some amount to the awarded compensation for the loss of the income for about 42/45 days as the evidence has disclosed that the petitioner was without pay for the aforesaid period. Mr. Ghosh has, however, submitted that Rs. 2,000/- as awarded by the learned Claims Commissioner for the pain and suffering of the injury sustained by the petitioner was reasonable and the learned Claims Commissioner has not committed any mistake in that respect.

8. We have given due consideration to the submissions us made by the learned Advocates on both sides with reference to the impugned judgment and order and the materials on the record. We accept the submissions of Mr. Pal to the effect that in terms of Sub-rule (3) read with Sub-rule (4) of Rule 6 of the Railways Accident (Compensation) Rules, 1950 as amended by the Railway Accident Compensation (Amendment) Rules, 1974, the amount of compensation shall be payable in respect of each injury sustained by the victim claimant which the Claims Commissioner may in all the circumstances of the case determine to be reasonable. We find support to such submission of Mr. Pal from the decision reported in Union of India (UOI) Vs. Ad-hoc Claims Commissioner and Others, . The relevant portion from the aforesaid decision is quoted hereunder :

"for all these reasons we are unable to accept the contentions made on behalf of the Union of India limiting compensation under Sub-rule (3) of Rule 6 10 all injuries together as may be suffered by the victims of the accident. We hold on an interpretation of the" compensation rules that the compensation not exceeding Rs. 10,000/- under Sub-rule (3) of Rule 6 relates to each injury resulting in pain and Suffering which a victim of the accident sustained on account thereof, subject to the maximum overall statutory limit of Rs. 50,000/- for all injuries so suffered. Further in determining the compensation, the Claims Commissioner will take into account all circumstances including the loss of income or earning capacity of the victim as also the pain and suffering endured by him on account thereof as may be deemed reasonable."

9. In view of what has been stated above, we are, therefore, of the view that for each and every injury sustained by the victim-claimant, the amount of compensation shall have to be payable and the amount of compensation shall have to be determined for each such injury after taking into consideration all the circumstances of the case by the Claims Commissioner for determination of the reasonable amount of compensation. In the instant case, it appears that the learned Claims Commissioner has not determined the amount of compensation for each of the injuries sustained by the victim claimant. The learned Claims Commissioner has awarded the compensation of Rs. 2,000/-only on account of the victim's pain and suffering.

10. It has already been stated that the opposite-party-respondent admitted the fact that the victim-claimant sustained one fracture injury in the right leg and other injuries on the forehead and back. It is true that the evidence does not disclose that because of the fracture injury or other simple injuries on the forehead and back, the claimant-petitioner did suffer the loss of earning capacity although he suffered the loss of income for a particular period. The pain and suffering sustained by the victim-claimant because of the fracture in the right leg were no doubt greater than the pain and suffering sustained by the petitioner for the injuries sustained on his forehead and back. The amount of Rs. 2,000/- for the fracture injury resulting in the pain and suffering by way of compensation does not appear to be unreasonable". The amount of Rs. 1,000/- as compensation for the bleeding injury on the forehead and the back resulting in the victim's pain and suffering for the same appears to be reasonable regard being had to the circumstances of the case. So for pain and suffering for both the injuries, the total amount" of compensation at Rs. 3,000/- would be reasonable in consideration of all the circumstances of the case.

11. As regards medical expenditure, the claimant-petitioner only produced some prescription like Exhibit 2 but did not produce any voucher or receipt showing the expenditure incurred by the victim for medical expenditure. Having considered the facts and circumstances of the case we do not disbelieve that the victim-petitioner incurred some expenditure for medical treatment but it is a matter of surprise why the claimant-petitioner did not produce the relevant vouchers and the cash memos showing the medical expenditure. Be that as it may, Mr. Ghoshin his usual fairness has not disputed that in the facts and circumstances, the claimant-petitioner no doubt incurred some medical expenditure and he has been considerate enough to suggest that a sum of Rs. 500/- may be added to the compensation of Rs. 3,000/- on account of medical expenditure. We find sufficient force in such suggestions and submissions as made by Mr. Ghosh in his usual fairness. Mr. Pal also in his usual fairness has completely relied upon the decision of the appellate court in this respect as his client could not produce the materials in support of the medical expenditure. We, therefore, are of the view that the amount of Rs. 500/- may be added to the compensation of Rs. 3,000/- by way of medical expenditure.

12. The evidence and the materials in the record show that monthly income of the victim-petitioner was about Rs. 495/- when he could not attend the office for about 42745 days and when he was without pay for the said period. The amount of Rs. 750/- on account of the loss of income for the aforesaid period may be added to the compensation as the said amount appears to be reasonable for the loss of income in consideration of all the circumstances. The evidence has disclosed that the claimant-victim lost the brief case containing woolen sweater, the bunch of keys and the cash of Rs. 430/- and as such the amount of another Rs. 750/- for the loss of the brief case, woolen sweater and the cash of Rs. 430/- may be added . to the compensation and in consideration of the facts and circumstances we are of the view that the said amount of Rs. 750/- would be

reasonable in consideration of the facts and circumstances of the case, as according to the evidence of the claimant-victim the woolen sweater cost Rs. 75/-. While assessing the amount of Rs. 750/- for the loss of the aforesaid goods, we have taken into consideration also the value of the brief case the bunch of keys and the cash amount of Rs. 430/-.

13. In view of what has been stated and discussed a above, we are of the view that the . total compensation of Rs. 5,000/-, namely, Rs. 3,000/- for the pain and suffering of both the injuries sustained by the victim-claimant, Rs. 5007- for medical expenditure, Rs. 7507-for loss of income and Rs. 750/ for the loss of the goods should be paid to the claimant-victim in consideration of all the facts and circumstances of the case.

14. In the result, the appeal is allowed in part and the total compensation is increased to Rs. 5,000/- from Rs. 2,000/-as awarded by the learned Claims Commissioner. We make no order as to costs.

Gobinda Chandra Chatterjee, J.

15. I agree.