
(2011) 08 BOM CK 0128
In the Bombay High Court
Case No : F.A. No. 781 of 1998

Satyawan J. Mahale

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Railways Accidents (Compensation) Rules, 1990 — Rule 3(1), 3(2), 3(3)

Citation : (2011) 7 ALLMR 404 : (2012) 4 BomCR 279 : (2011) 6 MhLj 645

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : G.J. Mohan Rao, for the Appellant; A.N. Samant, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—The challenge by the appellant is to the Judgment and order dated 12th September, 1995 passed by the learned Member of the Railway Claims Tribunal, Bombay.

2. The appellant was travelling by a suburban train of the western railway on 29th October, 1993 from Kandivali to Churchgate. There was a bomb blast at Matunga Railway Station. As a result, the appellant sustained severe injuries. He was admitted to a hospital and was discharged on 8th November, 1993. He received only a sum of Rs. 2,000/- by way of ex-gratia payment from the respondent Railway. He filed a claim in the sum of Rs. 1,95,000/-. It is not in dispute that the entitlement of compensation is governed by the Railway Accident (Compensation) Rules, 1990 (hereinafter referred to as "the said Rules"). The Tribunal held that in view of second proviso to sub-rule (3) of Rule 3 of the said Rules, the compensation cannot exceed a sum of Rs. 40,000/-. Accordingly the Tribunal granted compensation of Rs. 40,000/-.

3. The submission of the learned counsel appearing for the appellant is that the appellant suffered several non schedule injuries. He submitted that the appellant suffered the injuries which are of very serious and grave nature and the proviso

to sub-rule (3) of Rule 3 relied upon by the Tribunal will apply only in the case of small injuries. He submitted that in view of sub-rule (2) of Rule 3, a person who has suffered non schedule injuries and who is deprived of capacity to do any work is entitled to compensation of Rs. 2,00,000/-. But, in the present case, the appellant who has suffered 50% disability is held entitled to only to a sum of Rs. 40,000/-. He, therefore, submitted that the relevant Rules have not been read and applied properly by the Tribunal. He placed a reliance of the decision of the Calcutta High Court in the case of Sailendra Nath Banerjee Vs. Union of India (UOI), .

4. I have carefully considered the submissions. It is not in dispute that the entitlement of the appellant to compensation will be governed by the said Rules of 1990. Rule 3 of the said Rules of 1990 reads thus :

3. 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 is 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 two lakhs.

(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 Claim 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.

(4) Where compensation has been paid for any 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.

5. Sub-rule (1) of Rule 3 provides that if a claimant suffer injuries which are specified in the schedule, he will be entitled to compensation as specified in the schedule. Sub-rule (2) of Rule 3 applies in a case where a claimant suffers injuries which are not specified in the schedule to the Rules but are of such a nature that in the opinion of the Claims Tribunal are sufficient to deprive a person of all capacity to do any work. In such a case, compensation shall be of a sum of Rs. 2,00,000/-. Thus, in case of a claimant who sufferers a non schedule injuries but the injuries are of such a nature which in the opinion of the Tribunal have resulted in 100% loss of earning capacity, the compensation shall be Rs. 2,00,000/-. Sub-rule (3) is applicable when a claimant suffers an injury other

than the injury specified either in the schedule or in the sub-rule (2) of Rule 3 resulting in pain and suffering. In such case, the Claims Tribunal has to determine compensation which is reasonable on the basis of evidence on record. The first proviso of sub-rule (3) provides that if a claimant suffers more than one of such injuries specified in sub-rule (3), compensation shall be payable in respect of each of such injuries. The second proviso, however, restricts the total compensation in respect of all such injuries to a sum of Rs. 40,000/-.

6. In the present case, admittedly, the applicant suffered the injuries which are not covered by sub-rules (1) and (2) of Rule 3. The injuries are admittedly non-schedule injuries. Therefore, the case will be governed by sub-rule (3) of Rule 3 and the upper ceiling of Rs. 40,000/- provided by the second proviso will be applicable.

7. Reliance placed on the decision of Calcutta High Court in the case of Sailendra Nath Banerjee (*supra*) will not help the appellant as the Calcutta High Court considered the provisions of Railway Accidents (Compensation) Rules, 1947 as amended in the year 1974. The said Rules of 1990 were not in force when the decision of the Calcutta High Court was rendered.

8. The appellant will be entitled to compensation only in accordance with the said Rules of 1990. Hence, no fault can be found with the view taken by the Tribunal. Appeal is accordingly dismissed with no order as to costs.