
(1952) 04 PAT CK 0005

In the Patna High Court

Case No : A.F.O.O. No's. 329 and 330 of 1951

Shreenath Singh and Another

APPELLANT

Vs

The East Indian Rly. Administration

RESPONDENT

Date of Decision : 02-04-1952

Acts Referred:

Railways Accidents (Compensation) Rules, 1990 — Rule 6(2)
Railways Act, 1890 — Section 82A, 82J

Citation : AIR 1952 Patna 466

Hon'ble Judges : Ramaswami, J; Das, J

Bench : Division Bench

Advocate : Nandlal Untwalia and Kamleshwar Pd. Sinha, for the Appellant; Govt. Advocate, P.K. Bose and Nandlal Ray, for the Respondent

Judgement

Das, J.—These are two appeals u/s 82F(2) of the Indian Railways Act from an order of the Claims Commissioner dated the 18th of August 1951, and the principal point for consideration is the amount of compensation to which the appellants are entitled by reason of the provisions of Section 82A and the rules made u/s 32J of the Indian Railways Act. In Miscellaneous Appeal No. 329 of 1950, the appellant, who was the claimant before the Claims Commissioner, is Sri Sreenath Singh, an advocate of this Court. The appellant in Miscellaneous Appeal No. 330 of 1951, who was the claimant before the learned. Claims Commissioner, is Sri T.R. Bhatia. Both these gentlemen were travelling by the 7 Up Toofan Express on the 13th of August 1950, This train met with an accident near Karamnasa, and as a result of the accident, the appellants sustained severe personal injuries and lost their personal effects. Both of them were first removed to Mogalsarai by a relief train, then to the hospital at Benares & ultimately to the Patna General Hospital. At the Patna General Hospital, they were indoor patients for some months; and their case before the Claims Commissioner was that they were still suffering from the effects of the personal injuries sustained by them in the accident.

2. The questions raised in the two appeals are principally questions of law bearing on the amount of compensation payable to the appellants. Therefore, it is unnecessary to give details of the injuries sustained by the appellants. It is, however, necessary to indicate how the Claims Commissioner proceeded to consider and decide the claims preferred by the two appellants. Section 82A (I am reading only the relevant portion) lays down that, when in the course of working a railway an accident occurs, whether or not there has been any wrongful act, neglect or default on the part of the Railway Administration such as would entitle a person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the Railway Administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in Sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of goods owned by the passenger and accompanying the passenger in his compartment or on the train, sustained as a result of such accident. Sub-section (2) states that the liability of a railway administration shall in no case exceed ten thousand rupees in respect of any one person.

Section 82A was inserted by Section 2 of the Indian Railways (Amendment) Act, III of 1942. In 1949, further amendments were made by the Indian Railways (Amendment) Act, LVI of 1949. Sections 82B to 82J were added. These sections related to the appointment of Claims Commissioners, application for compensation, procedure and powers of Claims Commissioners, interim orders for compensation, liability to pay compensation etc. to be decided by the Claims Commissioners, and appeals from their orders etc. Section 82H saved the right of any person to recover compensation payable under the Workmen's Compensation Act, 1923 or any other law for the time being in force or under any contract or scheme providing for payment of compensation etc. Section 82J is important, and I propose to read it in full:

"(1) The Central Government may, by notification in the official Gazette, make rules to carry out the objects of Sections 82A to 82H inclusive.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

(i) the qualifications and conditions of service of Claims Commissioners:

(ii) the nature of the injury for which and the rates at which compensation shall be payable;

(iii) the rates at which compensation shall be payable for death or total disablement;

(iv) the manner in which claims for compensation may be inquired into and determined by the Claims Commissioner;

(v) the matters in respect of which any person may be chosen to assist the

Claims Commissioner u/s 82D, and the functions exercisable by such person;

(vi) generally for the effective exercise of any powers conferred on the Claims Commissioner.

(3) All rules made under this section shall be laid before the Dominion Legislature as soon as may be after they are made."

The Rules made in exercise of the powers conferred by Section 82J are known as the Railway Accidents (Compensation) Rules, 1950. These were published in the Gazette of India, Part II-Section 3, dated the 1st July, 1950. It is necessary to read Rule 6 of the said Rules and I am reading it so far as it is relevant for our purpose:

"(1) The amount of compensation payable in respect of death or for injuries causing partial disablement or total disablement shall be at the rates set out in the schedule.

(2) In case of a partial disablement arising out of an injury not specified in Part II of the Schedule, such percentage of the compensation payable in the case of a total disablement as is proportionate to the loss of earning capacity permanently caused by the injury, shall be payable:

Provided that where more than one injury is caused by the same accident, compensation shall be payable in respect of each injury but so that the aggregate amount of compensation does not exceed the amount which would have been payable if a total disablement had resulted from such injuries."

The learned Claims Commissioner applied Sub-Rule 2 of Rule 6 to the claims of these two appellants, inasmuch as the injuries which the appellants sustained were not injuries specified in Part II of the Schedule appended to the Rules. On the basis of medical certificates submitted by the Surgeon, Dr. V. N. Singh, F.R.C.S. of the Patna General Hospital who treated the two appellants, the learned Claims Commissioner found that both the appellants had suffered partial disablement as a result of the injuries sustained and such disablement had caused a permanent loss of earning capacity fifty per cent in the case of Sri Sreenath Singh and thirty per cent in the case of Sri T. R. Bhatia.

On the basis of their monthly income at the time of the accident as per Part I of the Schedule, he allowed compensation of Rs. 4,250/- to Sri Sreenath Singh on account of personal injury, and Rs. 3,000/- to Sri T. R. Bhatia. With regard to the loss of personal effects, he allowed further sums to both the appellants, the details whereof are unnecessary for our purposes except in the case of Sri Sreenath Singh where, it has been contended, there has been an error of calculation to the extent of Rs. 72 only. To that aspect of the case I shall return later.

3. The contention of learned Counsel for the appellants is that his clients are entitled to the maximum compensation laid down in Sub-section (2) of Section

82A of the Indian Railways Act. In support of this contention, he has urged the following points. Firstly, he has argued that the rules made u/s 82J (particularly Rule 6), so far as they are inconsistent with the meaning, and go beyond the scope, of Section 82A, must give way to the provisions of that section. Secondly, he has contended that the rules are incomplete and do not cover the cases of the, two appellants; therefore, the general rules relating to damages in an action in tort should be applied, subject to the maximum fixed by Sub-section (2) of Section 82A.

These have been the two principal arguments of learned Counsel for the appellants. He has also submitted that the certificate of Dr. V.N. Singh, on which the learned Claims Commissioner relied, should not have been preferred to another certificate which the same Surgeon had given in respect of the injuries of Sri Srinath Singh in support of the claim of the appellant. I propose now to consider the arguments in the order in which I have stated them.

4. Speaking for myself, I have found it rather difficult to appreciate the argument of learned Counsel for the appellants that the Railway Accidents (Compensation) Rules, 1950 are in any way inconsistent with the meaning or go beyond the scope of the provisions in Section 82A of the Indian Railways Act. Those Rules were made in exercise of the powers conferred by Section 82J of the Indian Railways Act. Learned Counsel for the appellants stated before us that he did not contend that any of the Sections 82A to 82J were ultra vires the Legislature which passed them. He agreed that Section 82J was good and valid. He referred to Subsection (1) of Section 82J which gave the Central Government a general power to make rules to carry out the objects of Sections 82A to 82H (inclusive).

Without prejudice to the generality of the power given by Sub-section (1), Sub-section (2) stated that the rules might, in particular, provide for among other things, the nature of the injury for which and the rates at which compensation shall be payable. Rule 6 is obviously a rule made under that power. It is difficult to see how Rule 6 can be said to be inconsistent with or to go beyond the scope or object of Section 82A. Learned Counsel, however, argued that Section 82A had a particular meaning, and if his contention as to meaning of Section 82A were accepted, then Rule 6, Sub-rule (2), would be inconsistent with that meaning.

The meaning which learned Counsel for the appellants sought to give to Section 82A was this; Section 82A according to him, imposed a statutory liability on the Railway Administration to pay compensation for, (a) death, (b) personal injury, and (c) loss, destruction or deterioration of animals and goods etc. The liability was limited to a maximum of Rs. 10,000. But, within the maximum limit no principles were laid down as to how the amount of compensation would be determined; therefore, the contention of learned Counsel was that the principles which governed the determination of damages in an action in tort should be applied, and the measure of damages must represent, (a), solatium or satisfaction for the pain, infirmity etc. as also (b) compensation for medical expenses, loss of business, earning capacity etc.

Put briefly, the argument of learned Counsel for the appellants is that we must first read into Section 82A the principles governing damages in an action in tort & then hold that the rules made u/s 82J, so far as they are inconsistent with the said principles, are invalid and inoperative. Put this way, the fallacy of the argument becomes at once apparent. There is nothing in Section 82A which requires us to read or engraft into that section the principles relating to damages in an action in tort. On the contrary, there are words in the section which give different indication. The section clearly indicates that the liability imposed by it is independent of any wrongful act, neglect or default on the part of the Railway Administration such as would entitle a person, who has been injured or has suffered loss, to maintain an action and recover damages in respect thereof.

The word damages is used in connection with a wrongful act, neglect or default, but the liability under the section is compensation (as distinct from damages). Section 82H saves the right of any injured person to claim compensation under any other law for the time being in force. It is obvious, therefore, that the liability to pay compensation u/s 82A has no necessary relation to the liability to pay damages in an action in tort and there are no reasons why the principles relating to damages in an action in tort should be imported into Section 82A. The rules made u/s 82J clearly work out the object of Section 82A and are in no way inconsistent with the meaning of Section 82A, nor do they go beyond the object of that section.

It is unnecessary to consider in this case how the amount of compensation would have been determined, if there were no rules. It is pointed out that the Railway Accidents (Compensation) Rules, 1950, came into existence some seven years after the enactment of Section 82A. The question before us is whether the said Rules are in any way inconsistent with Section 82A, and I do not propose to answer the hypothetical question as to how the compensation would be determined in the absence of any rules. The argument of learned Counsel that the rules are inconsistent with the meaning of Section 82A must, in my opinion, be overruled.

5. The next argument is that the rules are incomplete and do not cover the case of the two appellants. Here again, I think that the argument is unsound. The learned Claims Commissioner, on a comparison of the provisions of the Railway Accidents (Compensation) Rules, 1950 and the Workmen's Compensation Act, 1923 came to the conclusion that Rule 6, Sub-rules (1) and (2), together with the Schedule attached to the Rules, provided for compensation for permanent total disablement and permanent partial disablement only; in other words, the Rules did not provide for temporary total disablement or temporary partial disablement. Learned Counsel for the appellants pointed out that the rules made u/s 82J did not have any provision corresponding to Section 4, Clause D of the Workmen's Compensation Act.

I do not think that it is necessary in these two appeals to determine (1) whether the view of the Claims Commissioner that Rule 6 provides for compensation for

permanent total disablement and permanent partial disablement only is correct and (2) whether the rules have a lacuna of the kind suggested by learned Counsel for the appellants. With regard to both the appellants, the Surgeon, who treated their injuries, said that there was permanent partial disablement which affected their earning capacity. Rule 6(2) clearly applies to such a case, because the injuries which the appellants sustained were not injuries specified in Part II of the Schedule. In the case of Sri Sreenath Singh, the partial disability caused a loss of earning capacity permanently to the extent of fifty per cent. In the case of Sri T. R. Bhatia, there were two medical reports, one by Dr. V. N. Singh and the other by a Medical Board consisting of the Divisional Medical Officer, East Indian Railway and Dr. Imam, Civil Surgeon of Patna.

Dr. Singh's report was that the disability affected the earning capacity of Mr. Bhatia to the extent of fifty per cent; the Medical Board gave its estimate as fifteen per cent. The learned Claims Commissioner examined both estimates with reference to the nature of the injuries sustained and held that the correct proportion would be thirty per cent. I do not think that the learned Claims Commissioner was wrong in his estimate on the materials before him. In my opinion, the learned Claims Commissioner rightly applied Sub-rule (2) of Rule 6 in the cases of the two appellants, and it is not necessary in this case to consider whether his view as to the general effect of Rule 6 is correct or not, or whether the Rules have a lacuna of the kind suggested by learned Counsel for the appellants.

6. Learned Counsel drew our attention to another certificate of Dr. V.N. Singh dated the 30th October 1950, in which he noted, amongst other things, that Sri Sreenath Singh was completely disabled at that time and would take about three years to recover. It is contended that there was, in the case of Sri Sreenath Singh, total disablement for a temporary period, and if the Rules do not provide for payment of compensation for temporary total disablement, the general principles of determining damages for bodily harm in an action in tort should be followed. I am unable to accept this argument. The two certificates of Dr. V.N. Singh should be considered together, and the latter certificate gave a correct estimate of the effect of the injuries on Sri Sreenath Singh: that effect was partial disablement causing a loss of earning capacity permanently. Sri Sreenath Singh was entitled to compensation on that basis, and the Claims Commissioner rightly allowed such compensation to him.

7. Sri T.R. Bhatia was also entitled to compensation on the same basis. As to the method of calculation, learned Counsel has conceded that there has been no error, the calculation being made on the basis of monthly income as laid down in Part I of the Schedule.

8. As to the loss of personal effects, there has been a mistake of calculation with regard to Rs. 72 only in the case of Sri Sreenath Singh. It appears that the learned Claims Commissioner allowed full value of certain articles which, together with the cash money lost by Sri Sreenath Singh, came to Rs. 1,050.

Regarding other articles, the learned Claims Commissioner allowed one-third of the amount claimed as compensation. Sri Sreenath Singh claimed Rs. 1500 as compensation for the loss of personal effects. Deducting Rs. 1,050 from that amount, the balance was Rs. 450 only. One-third of Rs. 450 is Rs. 150. Therefore, Sri Sreenath Singh was entitled to Rs. 1050/- plus 150: Rs. 1200, on the findings of the learned Claims Commissioner. He appears to have been given Rs. 1,128 only for personal effects besides Rs. 4,250/- for personal injury, the total sum allowed to him being Rs. 5,378. Sri Sreenath Singh should get Rs. 5,450 instead of Rs. 5,378. Learned Counsel for the respondent has agreed that there was a mistake of calculation to the extent of Rs. 72 only and that should now be corrected.

9. It is conceded that there was no mistake of calculation so far as Sri T. R. Bhatia was concerned.

10. The result, therefore, is that the appeal of Sri Sreenath Singh (Miscellaneous Appeal No. 329 of 1951) is allowed to the limited extent indicated above. The appeal of Sri T. R. Bhatia (Miscellaneous Appeal No. 330 of 1951) is dismissed. In the circumstances of these cases we direct that the parties should bear their own costs of the hearing in this Court.

Ramaswami, J.

11. I agree.