
(2009) 09 KL CK 0017
In the High Court Of Kerala
Case No : M.F.A. (Railway) No. 48 of 2009

Sunderlal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Citation : (2009) 09 KL CK 0017

Hon'ble Judges : P.R. Raman, J;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : Sunil V. Mohammed, for the Appellant; Sunil Nath, S.C. for Railways, for the Respondent

Final Decision : Allowed

Judgement

P.R. Raman, J.—Appellant was the applicant before the Railway Claims Tribunal, who sustained severe injuries, as a result of an accident occurred while travelling as a passenger in a train. While he was travelling from Trichur to Ernakulam on 1-7-1999 by Jammu Tawi-Kanyakumari Express, and when the train was negotiating through Edappally and when he was about to go to bath room, as a result of a jerk, he was thrown out from the train and sustained injuries to his head and chest. He claimed compensation of an amount of Rs. 4 lakhs with interest. The Railways, on the other hand, contended that he was not a bona fide passenger in the train. It was further contended that the records pertaining to the incident was not available at Edappally railway station. It was alleged that the accident, if any happened, was due to his careless and negligent act, and hence, the railway is absolved from liability to pay compensation, as provided u/s 124A(b) of the Railways Act.

2. The Tribunal framed necessary issues. The evidence consists of oral testimony of P.Ws. 1 to 3 and Exts. A-1 to A-24 marked on the side of the Appellant. There was no evidence on the side of the Railways.

3. The Tribunal found that the applicant was a bona fide passenger and that he

sustained injuries due to an untoward incident. At the same time, it also found in paragraph 9 that the fall of the applicant from the moving train was on account of hit of an electric pole which was hanging and hitting the boggy.

4. Strictly speaking, the accident as found to have occurred does not fall u/s 124A of the Railways Act, for short "the Act", as an untoward incident as defined u/s 123 of the Act. Therefore, the accident could only come u/s 124 of the Act.

5. Be that it may, coming to the compensation awardable, it depends upon the nature of the injuries sustained by the applicant. Ext. A-7 discharge certificate issued from the Lisie Hospital, Ernakulam, clearly reveal that the applicant suffered severe head injuries, fracture on right ribs 4th and 7th and (L) 4th and odontoid. It was also proved in evidence that he was admitted in the Lisie Hospital as an in-patient from 1-7-1999 to 15-9-1999 and he underwent treatment at various hospitals thereafter, as evident from Exts. A-8 to A-22. Ext. A-8 is a medical certificate issued by the Lisie Hospital, which shows that applicant was intubated and ventilated for five days, Tracheotomy was done on 6-7-1999 and he has also inter costals drainage for right pneumothorax. ENT consultation was done for regurgitation of fluids.

6. Odontoid process, as per the dictionary meaning, is projecting part of a vertebra shaped like a tooth. There was a fracture of odontoid, as revealed from the documentary evidence produced and as found by the Tribunal.

7. If so, the next question could arise as to whether such an injury will fall as a scheduled injury or is it a non-scheduled injury. The Tribunal found that though the injuries sustained were of serious in nature, they do not fall under the scheduled injuries. It is contended that the finding of the Tribunal in this regard is wrong. According to the Appellant's counsel, the applicant has suffered more than one injury and the compensation for each of which are separately prescribed under the schedule and that he is entitled for compensation so prescribed for each of such injuries. So however, the maximum compensation for all the injuries put together cannot exceed Rs. 4 lakhs. It is his further case that the injuries sustained by him will fall under Item No. 5 of Part II of Schedule, i.e., "Severefacial disfigurement", as also Item No. 26 of Part III, i.e., "Fracture of Spine without paraplegia".

8. Though it is contended that there was severe facial disfigurement, except to prove that he has undergone some surgery, where there was actually any disfigurement is not seen proved in evidence. The Doctor is not examined in the case. Whether or not there was facial disfigurement is a question of fact and that has to be gathered either by seeing a person or by the evidence or materials produced in the case. Therefore, based on the available materials, we are not in a position to say whether there was any severe disfigurement entitling him for compensation, as prescribed under Item No. 5 of Part II of the Schedule.

9. However, as noticed above, "Fracture of Spine without paraplegia" is specifically included as Item No. 26, Part III of the Schedule. From the medical

certificate produced and from the oral testimony of P.W. 1, it is proved that the injuries sustained by him will fall under Item No. 26 of Part III of the schedule, for which compensation payable, as prescribed by the amended schedule with effect from 1-11-1997, is Rs. 1,20,000. The accident in this case occurred on 1-7-1999. Therefore, the applicant is entitled to be paid compensation at the prescribed rate of Rs. 1,20,000 with interest thereon. However, since he had already been awarded compensation of an amount of Rs. 80,000 with interest, he will be entitled only for the balance compensation, less what has been awarded earlier.

10. We find that the Tribunal has awarded interest at the rate of 9% which is reasonable, but the interest was awarded only from the date on which the application was registered, obviously for the reason that there was delay in filing the application. There is no good reason as to why he was denied interest from the date on which the application was filed. The delay, if any, in considering the petition for condonation of delay (allowed later and having directed to register the case) cannot be attributed on the applicant. Further, the delay has been condoned in this case. Once the delay is condoned, every thing should restore back to the position, as on the date on which the application is filed. No prejudice is caused to the other side, if interest is awarded from the date of the application, because the very application itself is belated and when interest is awarded only from the date of the application, virtually no interest is awarded for the delayed period. Therefore, we direct that the Appellant is entitled for interest from the date of filing the application at the rate as awarded by the Tribunal.

In the result, the appeal is allowed, awarding a further amount of Rs. 1,20,000 by way of compensation for the injury sustained by him, together with interest at the rate of 9% from the date of filing the application, viz., 16-3-2005, till the date of payment. Since the award amount with interest has already been paid to the Appellant, he will be entitled only for the balance amount less what has been paid.