

(1954) 04 PAT CK 0021
In the Patna High Court
Case No : A.F.O.O. No. 217 of 1951

Suresh Chandra Ray

APPELLANT

Vs

East Indian Railway

RESPONDENT

Date of Decision : 20-04-1954

Acts Referred:

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

Citation : AIR 1954 Patna 507

Hon'ble Judges : Sahai, J;Ahmad, J

Bench : Division Bench

Advocate : Amarnath Banerji, for the Appellant; Govt. Advocate and P.K. Bose, for the Respondent

Final Decision : Partly Allowed

Judgement

Sahai, J.—This is an appeal u/s 82P (2), Railways Act.

2. Shortly stated, the facts of the case are that the claimant, Shri Suresh Chandra Ray, was employed as Librarian. Zoological Survey of India. On the night of the 12th and 13th August 1950, he was travelling by 7 Up Toofan Express from Howrah. At about midnight on the 13th August, the train met with an accident near Karmanasa river in Shahabad district. Mr. Ray received some Injuries and he also lost all the goods which he had with him. First aid was given to him at the site of the accident and also at Mogalsarai. He then proceeded to Armapur Estate where his son-in-law was residing. His son came to him there on 15-8-1950 and took him to Calcutta. From Calcutta, he went to his house at Baranagar where he was placed under the treatment of Dr. Kanailal Pal on 16-8-1950, He was given penicillin and other injections but there was a swelling on his right leg which turned into a septic abscess and was operated upon by Dr. Pal on 1-9-1950. Mr. Ray filed a petition on 26-10-1950, claiming compensation. He claimed Rs. 1,484 on account of the value of goods and cash lost by him; Rs. 1,100 on account of medical expenses up to date; Rs. 300 on account of

approximate expenses on special diet and Rs. 25,000 on account of compensation for mental shock and worries and for permanent mental and physical deficiency.

3. By his order dated 14-3-1951, the Claims Commissioner ordered that an aggregate sum of Rs. 1,355 should be paid to Mr. Ray as compensation for the loss of goods and cash. He held that Mr. Ray was not entitled to any compensation for temporary partial disablement which had been caused to him by reason of the injuries which he received. As, however, the railway administration offered to pay Mr. Ray a sum of Rs. 403 for loss of income, medical expenses and nervous shock, the Claims Commissioner ordered that he should get this amount also. Thus, he allowed a total compensation of Rs. 1,758 besides costs. This appeal by the claimant (Mr. Ray) is directed against that order. So far as the compensation for loss of goods and cash is concerned, the only point which Mr. Banerji has argued on behalf, of the appellant is that the Claims Commissioner has made a mistake of Rs. 2/- in adding up the amounts which he has allowed. This appears to be correct. The learned Claims Commissioner has directed that the appellant should get the full value of his pocket watch, gold chain and some other articles as well as the entire amount of Rs. 480 in cash which he claims to have lost. The total of these amounts comes to Rs. 1,230 but, by mistake, the Claims Commissioner has computed it to be Rs. 1,228.

The learned Government Advocate, who has appeared on behalf of the railway administration, has not disputed this point. The appellant, Mr. Ray, will therefore get Rs. 1,357 instead of Rs. 1,355 on this count.

4. In connection with the compensation for the injuries received by the appellant, Mr. Banerji has argued that the Claims Commissioner has erred in holding that the appellant is not entitled to receive any compensation. His first contention is that the appellant is entitled to receive compensation under the Railway Accidents (Compensation) Rules, 1950. His second contention is that, if it is held that those rules have not made any provision for compensation on account of injuries of the kind that the appellant received, he should get compensation computed on the principles laid down in the common law for assessing damages in torts. I propose to consider these contentions in the order in which I have mentioned them.

5. Section 82A was inserted in the Indian Railways Act by Section 2 of Act 3 of 1943 and Sections 82B to 82J were inserted in that Act by Section 13 of Act 56 of 1949. Section 82A provides that the railway administration shall be liable to pay compensation for loss occasioned by death of or personal injury to a passenger and also for loss, destruction or deterioration of animals or goods of the passenger caused due to an accident in the course of working a railway. The maximum compensation payable by the railway administration in respect of any one passenger has been fixed at Rs. 10,000. It has been specifically provided that the railway administration's liability to pay compensation will be irrespective

of any wrongful act, neglect or default on their part of the kind which might entitle a passenger who has been injured or who has suffered loss to maintain an action and recover damages. No provision was made in this Section in 1943 about the forum where the claim for compensation would be decided, nor was any provision made for the nature of the injury for which and the rates at which compensation would be payable. It was only in 1949 that provision for appointment of a Claims Commissioner for deciding claims for compensation was made u/s 82B.

Power was also given under Sub-section (1) of Section 82J to the Central Government to make rules to carry out the objects of Sections 82A to 82H inclusive. Under Sub-section (2) of Section 82J, provision was made as follows (I am quoting only the relevant part) :

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

(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;"

6. It is by virtue of the power given u/s 82J that the Central Government have made the rules known as the Railway Accidents (Compensation) Rules, 1950. These rules were published in the Gazette of India on 1-7-1950, i. e., before the date of the accident in question.

7. Under Rule 2 (e) of the aforesaid rules, the expressions "partial disablement" and "total disablement" have the same meanings as they have in the Workmen's Compensation Act, 1923 (Act 8 of 1923). The expression "partial disablement" has been defined in Clause (g) of Sub-section (1) of Section 2, Workmen's Compensation Act as follows :

" "Partial disablement" means where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time : provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement;"

"Total disablement" has been defined in Clause (I) of Sub-section (1) of the same section as follows:

" "Total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: provided that permanent total disablement shall be deemed to result from the permanent

total loss of the sight of both eyes or from any combination of injuries specified in Schedule I, where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent;"

It will thus be seen that the definitions of the expressions "partial disablement" and "total disablement" contemplate both temporary and permanent disablement which may be either total or partial.

8. Rule 6 of the Railway Accidents (Compensation) Rules, 1950, is important and, omitting the provisos, it runs as follows:

"(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:"

9. The Schedule referred to in Rule 6 is divided into two parts. Part I provides the rates of compensation payable in case of death and total disablement. The rates vary on the basis of difference in salary or income of the person killed or injured. Part II provides for compensation in respect of partial disablement. It lays down the percentage at which the loss of a particular limb will be computed in terms of the amounts payable under Part I for total disablement. There is no provision in either part or in any of the rules to show that persons who suffer temporary partial disablement or temporary total disablement will or will not receive any compensation.

10. The case of -- Shreenath Singh and Another Vs. The East Indian Rly. Administration, was a case which arose out of injuries caused to two persons at the same railway accident, that is, the accident to 7 Up Toofan Express on 13-8-1950 near the Karmanasa. It was argued in that case that the Railway Accidents (Compensation) Rules, 1950, were inconsistent with the meaning of Section 82A but a Division Bench of this Court negated this argument. It was further argued in that case that there was a lacuna in the rules as no provision was made therein for compensation payable in respect of temporary total or temporary partial disablement. This point was, however, left undecided because it was found that the injured persons concerned in that case had suffered permanent partial disablement.

11. It is necessary at this stage to ascertain whether the appellant before us suffered temporary or permanent disablement.

12. Dr. P.K. Chatterji (O. P. W. 1) is the doctor who examined him at Mogalsarai. He has described the injuries which he found as follows:

"(1) Abrasion 1" x 1/6" on the medial border of the right leg.

(2) Small abrasion 1" x 1/6", about 2" below injury No. 1".

According to this doctor, both the injuries were simple. Dr. Kanai Lal Pal, who examined the appellant at Baranagar on 16-8-1950, is the claimant's witness No. 2. He has described the injuries on the appellant's person as follows:

"1. inflammation of the right calf muscle. The part was highly tender with lacerated wound, muscle-deep, and the palpation of the part was painful and difficult. The left ankle was highly swelled and tender. There were some injuries (lacerated) on the left temporal region also; some bruises on the waist and the lumbar region and several contusions, abrasions here and there which were minor."

It further appears from the evidence of Dr. Pal that the swelling on the leg turned into a septic abscess which he had to operate upon. Mr. Ray has said that the operation was made on 1-9-1950. I do not see any good reason to disbelieve the evidence of Dr. Pal. It is likely that Dr. Chatterji who had to examine a large number of persons having various injuries due to the railway accident had no sufficient time to conduct, an elaborate examination of each victim minutely. I, therefore, hold that the appellant received the injuries which Dr. Pal has described.

13. While giving evidence, appellant Mr. Ray has stated that at the advice of Dr. Pal he went to Puri for a change on 18-10-1950 and stayed there until the end of February 1951. His evidence further is that as an after-effect of the operation performed upon his right leg he gets a swelling in that leg if he keeps it down for a couple of hours or so and that he feels pain if he walks a distance of about 100 yards at a stretch. Dr. Pal has, however, deposed that he is not in a position to state whether the operation upon the leg has resulted in any disablement and that, so far as he remembers, the other physical injuries on the appellant's person had healed up when he left for Puri. In this state of the evidence, it seems to me that the learned Claims Commissioner has rightly held that the injuries did not cause permanent total or permanent partial disablement, as contemplated by the Railway Accidents (Compensation) Rules, 1950, to the appellant. That being so, the injuries which the appellant received can only be held to have caused him temporary partial disablement, as contemplated by those rules.

14. As the appellant has suffered temporary partial disablement, it has become necessary to consider the question whether there is any lacuna in the rules. I have already pointed out that there is no provision in them to the effect that no compensation will be payable in respect of temporary disablements. In view of the fact, however, that the definitions of "total disablement" and "partial disablement" include such disablements of a temporary nature, Mr. Banerji has argued that the rates specified in Part I of the Schedule for total disablement are meant both for temporary total disablement as well as permanent total

disablement. But it seems obvious that this argument is unsound. The rates of compensation payable for total disablement are higher in almost all cases than the rates of compensation payable for death. It will be absolutely unreasonable if a person who suffers only a temporary total disablement is allowed a higher compensation than the heirs of a person who has died as a result of the injuries which he received. So far as the Workmen's Compensation Act is concerned, the provision for compensation in respect of death and different kinds of injuries has been made in Section 4.

Paragraphs A, B and C of that section provide respectively for compensation payable in respect of death, permanent total disablement and permanent partial disablement. Paragraph D of that section provides for compensation payable in respect of temporary disablement, either total or partial. The amount that is payable for an injury of this class is half-monthly payment of a rather small amount during the continuance of the disablement. It is, therefore, impossible to accept that the framers of the Railway Accidents (Compensation) Rules have provided for payment to persons who have suffered only temporary total disablements at the same rates at which payment has to be made to those who have suffered permanent total disablements.

15. So far as partial disablements of the kinds enumerated in Part II of the Schedule are concerned, the compensation has, as I have already mentioned, been fixed at varying percentages of total disablements. Compensation computed at these percentages cannot be held to be payable for temporary partial disablements of those kinds because the descriptions in Part II themselves indicate that those disablements must be permanent; For instance, "loss of right arm above or at the elbow" has been set down as equivalent to 70 per cent, of total disablement. Loss of right arm cannot be temporary. A man can only be said to have suffered loss of that limb if he has lost it permanently. Hence it is clear that there is no provision in Part II for the rate of compensation payable in the case of temporary partial disablement.

16. The learned Claims Commissioner has expressed the opinion that the

"absence of definite rules regarding temporary disablement leads to the inevitable conclusion that the intention of the framers of these statutory rules is that no compensation should be paid for temporary disablement whether total or partial as that does not lead to permanent reduction or loss of earning capacity."

The ground given by him for coming to this conclusion is that, whereas there is a clear provision in paragraph D of Section 4, Workmen's Compensation Act, for compensation payable in respect of temporary total disablement or temporary partial disablement, there is no such specific provision for temporary disablements in Rule 6 of the Railway Accidents (Compensation) Rules. Even though the framers of the Railway Accidents (Compensation) Rules have adopted the definitions of partial disablement and total disablement as given in the Workmen's Compensation Act, and even though some of the provisions of the

aforesaid rules are similar to those of the Act, I do not think that the mere omission in the rules to provide for the rates of compensation payable in respect of temporary disablements can lead to an "inevitable conclusion" that it was intended that no compensation will be payable for such disablements. The rules have been framed in pursuance of the power given u/s 82J, Railways Act. Under Clause (ii) of Sub-section (2) of Section 82J, the rules were to provide for the nature of the injury for which compensation will be payable and the rates at which compensation will be payable.

By adopting the definitions of partial and total, disablements as given in the Workmen's Compensation Act, the framers of these rules have indicated that the injuries for which compensation will be payable will be total or partial disablement of either permanent or temporary nature. All that they have omitted to do is to provide for the rates at which compensation will be payable in respect of temporary disablements. The learned Government Advocate has also not been able to urge that the framers of these rules must be held to have intended that no compensation will be payable in respect of temporary disablements. He has agreed that the rules should have contained the rates payable for temporary disablements or a clear provision that no compensation will be payable in respect of such disablements. In these circumstances, there is no escape from the conclusion that there is a lacuna in the rules in so far as they have not provided for rates of compensation payable in respect of temporary disablements.

17. The partial disablement caused to the appellant has not arisen out of an injury of the kind specified in Part II of the Schedule. Sub-rule (1) of Rule 6 has, therefore, no application so far as his case is concerned. Sub-rule (2) of that rule provides for an injury which causes partial disablement but is not one specified in Part II of the Schedule. That Sub-rule lays down that the compensation payable for a partial disablement will be such percentage of the compensation payable in the case of a total disablement as is proportionate to the loss of earning capacity "permanently" caused. As the appellant has suffered only a temporary partial disablement, he cannot be held to have suffered loss of earning capacity "permanently". Hence, Sub-rule (2) also cannot be held to govern this case. The position, therefore, is that, although the appellant has suffered an injury of the nature for which, according to the Railway Accidents (Compensation) Rules, compensation is payable, the rate at which compensation is payable to him has not been fixed in those rules. There is, therefore, a lacuna in the rules in connection with an injury of the kind which has been caused to the appellant.

Even though the rate of compensation is not provided i"or in the rules, I am of opinion that the appellant is entitled to some compensation under the provisions of Section 82A, Railways Act.

18. The next question is as to what amount the appellant should be given as compensation. Mr. Banerji has argued that the compensation must be fixed on the same basis on which damages are allowed under the common law for torts. I am unable to agree with* this argument. The learned Claims Commissioner

appears to have been erroneously under the impression that after the insertion of Section 82A and before the Railway Accidents (Compensation) Rules were framed, the Courts had to adopt the common law principles for ascertaining the amount of compensation. Neither the Government Advocate nor Mr. Banerji has been able to point out to me a single case in which compensation was awarded u/s 82A on the basis of principles on which damages are ascertained in actions in tort. As I have already said, the compensation payable u/s 82A is irrespective of any wrongful act, neglect or default on the part of the railway administration. If the appellant had instituted an action for damages in tort, he could not succeed without proof of the fact that the Railway Administration was guilty of wrongful act, neglect or default. That being so, the principles on the basis of which damages are fixed in an action in tort can be no criterion for fixing the compensation in this case. Besides, no limit has been laid down as the maximum amount which can be allowed as damages in an action in tort. In a case for compensation u/s 82A, however, the maximum amount that can be allowed is Rs. 10,000. In these circumstances, Mr. Banerji's argument fails.

19. The learned Government Advocate has argued that, in spite of the provisions of Section 32A, this Court cannot fix any rate of compensation payable for temporary partial disablement in the absence of any provision in the rules laying down such rates. It is true that this Court cannot fix any rate of compensation which will be generally payable for such disablements but I do not think that this Court can refuse to give relief to the appellant when he has quite clearly a right u/s 82A read with the Railway Accidents (Compensation) Rules to receive compensation. In inserting Section 82A in the Railways Act in 1943, the Legislature must have contemplated that the ordinary Courts would award compensation on some sound basis subject to the maximum of Rs. 10,000. They could not have had any idea at that time that Sections 82B to 82J would be inserted in the Act in 1949 and rules would be framed u/s 82J. Hence it is clear that, in the absence of rules laying down the rate of compensation payable in a case like that of the appellant, the Court has to fix the compensation on some reasonable basis. No doubt is left on this point when it is seen that the injuries suffered by the appellant are of a kind contemplated by the rules subsequently framed and not excluded by them expressly or by necessary implication.

It seems to me that the most reasonable method for fixing the compensation payable to the appellant will be to consider the facts of this case with reference to the criterion adopted by the framers of the rules for laying down the rates of compensation for other kinds of injuries.

20. I find that stress has been laid in the Railway Accidents (Compensation) Rules upon the loss of earning capacity of a person who receives injuries. As I have said in an earlier part of this judgment, the rate of compensation fixed in the schedule attached to the rules varies on the difference of the salary or income of the person injured. In Rule 6 (2) also, the loss of earning capacity has been mentioned as the criterion for awarding compensation. Neither Section 82A

nor any of the rules framed u/s 82J gives any indication that medical expenses reasonably incurred by the injured person have to be taken into consideration for fixing the rate of compensation. Hence, I am of opinion that the only safe criterion for fixing the amount of compensation payable to the appellant will be on the basis of loss of earning capacity. He has said in his evidence that an employee in his department retires at the age of 55 but he is generally granted extension of service, his efficiency being tested every year, until he attains the age of 60 years. It is, therefore, possible that he may have been granted extension of service beyond the age of 55 years but he could not claim as of right to continue in service until he attained the age of 60 years. That being so, he can only be held to have suffered loss of earning capacity up to the date on which he completed the age of 55 years. He has himself said in his evidence that he attained the age of 55 years on 1-3-1951. In the statement which he filed before the Claims Commissioner,, he has shown that up to the end of February 1951 he suffered a loss of salary to the extent of Rs. 1,003-11-0. It seems to me that this amount must be fixed as the actual amount of loss in his earning capacity. The Claims Commissioner has already allowed Rs. 403, as that was the amount offered by the railway administration. After deducting that amount, the appellant is, in my opinion, entitled to receive a further sum of Rs. 600-11-0 as compensation for his temporary partial disablement.

21. For the reasons given above, the appeal is allowed in part. Over and above the amount allowed to the appellant by the Claims Commissioner as compensation, he will get Rs. 600-11-0 on account of his temporary partial disablement and Rs. 2/- on account of the loss of goods. To this extent, the learned Claims Commissioner's order is modified. There will be no order for costs in this Court.

Ahmad, J.

22. In my opinion there is no escape from the conclusion arrived at by my learned colleague and I entirely agree with it. It is very unfortunate that though the definitions of partial disablement and total disablement adopted in the Railway Accidents (Compensation) Rules, 1950, for awarding damages under the Railways Act are the same as those given in the Workmen's Compensation Act, 1923, yet the schedule provided in the Railway Accident (Compensation) Rules, 1950, does not lay down any rate of compensation for temporary disablement, either of total or partial character, as done in the case of Workmen's Compensation Act. The result is that there is a lacuna left in rules and that, in my opinion, as also pointed out by the Claims Commissioner, requires immediate attention of the authorities concerned, otherwise that will be a regular source of confusion in the matter of awarding damages in cases covered by Section 82A, Railways Act. In Part I of the schedule provided at the end of the Rules the heading given in Clause Co) is to read "Amount of compensation for total disablement" and under Clause (e) of Section 2 of the Rules it is said " "partial disablement" and "total disablement" have the meanings respectively assigned

to them in the Workmen's Compensation Act, 1923 (8 of 1923). The definition of total disablement given in the Workmen's Compensation Act, 1923 (8 of 1923) is as follows:

" "Total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates, a workman for all work which he was capable of performing at the time of the accident resulting in such disablement provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I, where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent;"

This definition includes disablement both of a temporary and permanent character. If, therefore, this definition is applied word to word to the table given in Part I of the Schedule to award compensation for total disablement, the damages to be awarded both for temporary total disablement and permanent total disablement will have to be the same, which, in my opinion, could not be the intention of the framers of the rules. It is, therefore, obvious that what has happened is that the definitions of partial disablement and total disablement as given in the Workmen's Compensation Act have been adopted in toto but the scheme of the different tables given in the Workmen's Compensation Act for partial disablement and total disablement has been adopted in part only giving rise to a lacuna therein.