

(2008) 10 BOM CK 0021
In the Bombay High Court
Case No : F.A. No. 184 of 1998

T. Natarajan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-10-2008

Acts Referred:

Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3, 3(3)

Citation : (2009) ACJ 1470

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : C.M. Jha, for the Appellant;

Judgement

D.G. Karnik, J.—This appeal is directed against the judgment and order dated 17.8.1995 passed by the Railway Claims Tribunal (for short "the Tribunal").

2. The applicant was travelling in a second class compartment of the Borivli-Churchgate local train No. 408-Up on 29.10.1993 on ticket No. 99498. When the train was at Matunga Road Station, there was a bomb blast in the train and several persons received injuries. Appellant also received some injuries on his legs. It is the case of appellant that some foreign body entered in his both knees and his right leg lost sensation. He was admitted to Sion Hospital on 29.10.1993 as an indoor patient and was discharged on 3.11.1993. Thereafter he took treatment as an outdoor patient in that hospital till 22.11.1993. According to the appellant, thereafter he took treatment in a private hospital from 7.12.1993 till 16.12.1993 as an indoor patient and for four weeks thereafter as an outdoor patient. He filed a claim for compensation before the Tribunal for the injuries suffered by him. The Tribunal held that the appellant was a bona fide passenger at the time of bomb blast, suffered injuries in the bomb blast and was entitled to compensation.

3. After considering the evidence of the appellant regarding the injuries suffered, the Railway Tribunal assessed the claim of the appellant at Rs. 7,000 and

accordingly passed an award in the sum of Rs. 7,000. Being aggrieved by the amount of claim awarded by the Tribunal, the appellant has filed this appeal.

4. The learned Counsel for the appellant submitted that under the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (for short "the Compensation Rules, 1990"), the appellant was entitled to a minimum compensation of Rs. 40,000. He submitted that the Tribunal erred in fixing the compensation at Rs. 7,000.

5. Rule 3 of the Compensation Rules, 1990 provides that the amount of compensation payable in respect of death or for injury shall be as specified in the Schedule. Schedule to the rules specifies that the compensation amount on account of death would be Rs. 2,00,000. Part II of the Schedule specifies the amount of compensation for injuries specified therein. Injury suffered by the appellant is not one of the injuries specified in the Schedule. Sub-rule (3) of Rule 3 provides that amount of compensation payable in respect of any injury other than the injury specified in the Schedule shall be such as the Tribunal, after taking into consideration the medical evidence and other circumstances of the case, determine to be reasonable. Second proviso to the Sub-rule (3) of Rule 3 of the Compensation Rules, 1990 provides that total amount of compensation for all the injuries not specified in the Schedule shall not exceed Rs. 40,000. Perusal of Rule 3 and in particular Sub-rule (3) thereof shows that in respect of all injuries put together which are not specified in the Schedule, maximum compensation of Rs. 40,000 can be awarded. Rs. 40,000 is not the minimum but the upper limit of compensation to be awarded in respect of injuries which are not specified in the Schedule. The actual amount of compensation is required to be determined by the Tribunal on the basis of the medical evidence and other circumstances of the case as the Tribunal deems reasonable.

6. In the present case, the applicant was not required to spend any money for the treatment at Sion Hospital. The entire expenses of the treatment at Sion Hospital were borne by the Railways. The appellant has not produced any evidence of the alleged treatment taken by him as an indoor patient in the private hospital, except a certificate issued by Dr. Jejurikar and a bill-cum-receipt issued by him. The bill of Dr. Jejurikar shows total amount spent by the appellant towards medical treatment as Rs. 13,517. Dr. Jejurikar has stated that there was a presence of a small foreign body in the left calf muscle. This is contrary to the record as the X-rays taken in Sion Hospital do not show presence of any foreign body. As such the certificate about the presence of the foreign body in the left calf muscle cannot be accepted. Even if it is accepted, they had been removed and the expenses for treatment by Dr. Jejurikar came to Rs. 13,517.

7. In my view, apart from the claim of Rs. 7,000 for pain and suffering, allowed by the Tribunal the appellant would be entitled to Rs. 13,517 being the amount spent by him for the medical expenditure in the private hospital of Dr. Jejurikar. For these reasons, the appeal is partly allowed. The respondents are directed to pay to the appellant a total sum of Rs. 20,517 computed as Rs. 13,517 for

reimbursement of medical expenses and Rs. 7,000 for pain and suffering as awarded by the Tribunal.

8. The appellant shall be entitled to the costs of the appeal which are quantified at Rs. 2,000.