

(2009) 05 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 5563 of 2003

Union of India and Others

APPELLANT

Vs

Ved Parkash Sharma

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 100, 80, 9
Railway Claims Tribunal Act, 1987 — Section 13, 13(1), 13(1A), 15, 2(31)
Railways Act, 1989 — Section 124, 124A, 82A

Citation : (2010) 2 ILR (P&H) 393

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is defendants' second appeal challenging the judgment and decrees of the Courts below decreeing the suit of

the plaintiff-- respondent for recovery of Rs. 8,24,000 alongwith simple interest at the rate of 7.5% per annum as damages/compensation on

account of multiple injuries received by him because of gross negligence of the employees of the appellants. The cross-objections have been filed

by the plaintiff-respondent for enhancement of compensation.

2. Briefly stated, the plaintiff-respondent filed a suit for recovery of damages/compensation on account of multiple injuries received by him on 28th

January, 1991, with the averments that the Hissar Railway Station divides the main city into two parts and there is no over-bridge linking two parts

of the city. However, the Railways was allowing frequent pedestrian traffic to pass over through both the sides of the city through the two gates.

The outlets provided on the two gates are not manned at any time. On 28th

January, 1991 at about 7 p.m. the plaintiff was coming from Camp side and was going to his home which fell on the other side of the city. There was shunting of goods train and the engine was towards western side of the railway station whereas rear bogies were there and were shunting in the reverse direction without any light, unmanned and without any indication. There was no shunting man along with the train, regarding the shunting which was mandatory. The shunting was on the broad-gauge line. Neither the engine gave any whistle nor there was any warning from any quarters. There was no light at that time. The bogies hit the plaintiff, who fell on the railway line and sustained serious multiple injuries which were grievous in nature thereby resulting into amputation of his limbs besides other multiple fractures on his body. The accident was reported to the Railway Police immediately. He was medically examined in Govt. Hospital, Hissar, and was advised to be shifted to PGI, Chandigarh where he remained for more than two years and was still under the treatment of various doctors and specialists. Thus, the plaintiff who had suffered multiple injuries sought to recover a sum of Rs. 16,04,896 by way of damages as detailed in the suit on account of the aforesaid accident by filing the present suit. Before filing the suit, the plaintiff also gave a statutory notice u/s 80 CPC to the defendants who did not respond to the same. Since the suit by the plaintiff was filed as an indigent person, the trial Court,--vide its order dated 24th April, 1998 allowed the plaintiff-respondent to file the suit as an indigent person.

3. Upon notice, the defendants appeared and filed written statement raising various legal objections with regard to locus standi, cause of action, mis-joinder of parties, non-joinder of necessary parties limitation and jurisdiction of Civil Court etc. On merits, it was alleged that the injuries were suffered by the plaintiff due to his own negligence and there was no negligence on the part of the defendant-appellants. It was further stated that the defendants were not liable to pay any amount to the plaintiff and the suit was liable to be dismissed.

4. Replication on behalf of the plaintiff was also filed in which the plaintiff denied the averments of the written statement and reiterated his stand taken in plaint.

5. From the pleadings of the parties, the following issues, were framed by the

trial Court:-

1. Whether the plaintiff suffered multiple injuries in an accident at Railway Station Hisar on account of gross negligence of the defendants on the grounds mentioned in the plaint ? OPP.

2. If issue No. 1 is proved in affirmative whether the plaintiff entitled for decree of recovery as damages in the sum of Rs. 16,04,896 as detailed in para 7 of the plaint ? OPP.

3. Whether the plaintiff has no locus stadi and cause of action to file the present suit ? OPD

4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD

5. Whether the suit is time barred ? OPD

6. Whether the Civil Court has no jurisdiction to try and entertain the present suit ? OPD

7. Relief.

6. While deciding issues No. 1, 2 and 6 in favour of the plaintiff, the trial Court held that the Civil Court had got the jurisdiction to try the suit and

the accident was caused due to the negligence of the defendants and further held that the plaintiff was entitled to a compensation of Rs. 9,10,000

alongwith interest at the rate of 6% per annum from the date of institution of the suit till the time of actual payment. Issues No. 3 to 5 were not

pressed by the defendants before the trial Court. In view of the aforesaid findings, the suit of the plaintiff was decreed partly with proportionate

costs.

7. Feeling aggrieved against the judgment and decree of the trial Court, Civil Appeal No. 102 of 31st August, 2001 titled as Ved Parkash Sharma

v. Union of India and others was filed by the plaintiff-respondent in which he claimed enhancement of the compensation, whereas Civil Appeal No.

119 of 18th October, 2001 titled as Union of India and others v. Ved Parkash Sharma was filed by the defendants challenging the judgment and

decree of the trial Court granting compensation of Rs. 9,10,000 in favour of the plaintiff-respondent. The Lower Appellate Court after appreciating

the evidence and hearing the learned counsel for the parties, affirmed the findings of the trial Court except that instead of Rs. 9,10,000 as granted

by the trial Court, the compensation was reduced to Rs. 8,24,000 and instead of rate of interest of 6% as granted by the trial Court, it was

enhanced to 7.5% per annum. Hence, both the appeals were partly accepted to the extent as mentioned above, rejecting the remaining claim of the parties.

8. Still not satisfied, the defendants had filed the present appeal challenging the judgment and decrees of the Lower Appellate Court dated 24th

May, 2003 passed in Civil Appeal No. 102 of 31st August, 2001 titled as Ved Parkash Sharma v. Union of India and others and had not filed any

appeal challenging the decree in Civil Appeal No. 119 of 18th October, 2001 titled as Union of India and others v. Ved Parkash Sharma. It is also

relevant to mention that the plaintiff-respondent has preferred Cross-objections No. 19-C of 2007 claiming higher compensation.

9. Learned counsel appearing on behalf of the appellants has vehemently argued before this Court that the Courts below have erred at law while

holding that the Civil Court had the jurisdiction to try the present suit. According to the learned counsel for the appellants, in view of the provisions

of Section 13 and 15 of the Railway Claims Tribunal Act, 1987, (for brevity the "Act") the jurisdiction of the civil court is barred and thus, the

judgment and decrees of the Courts below are liable to be set aside. Learned counsel has further argued that the respondent was not entitled to

any amount of compensation in view of the fact that he suffered injuries due to his own negligence and the findings of the Courts below to the

contrary are perverse and are liable to be set aside. Learned counsel has argued that the following substantial questions of law arise in this appeal:-

1. Whether the jurisdiction of the civil court was barred u/s 13 and 15 of the Railway Claims Tribunal Act 1987 ?

2. Whether the compensation can be granted under the general law when the remedy under the provisions of Indian Fatal Accident, is available to the plaintiff-respondent ?

3. Whether the respondent is entitled to any amount of compensation in view of the fact that he suffered injuries due to his own gross-negligence ?

4. Whether the claim of the respondent is barred by limitation?

10. On the other hand, learned counsel appearing on behalf of the plaintiff-respondent has supported the impugned judgment and decrees insofar

as the findings in favour of the plaintiff. It was further argued that the appellants have failed to challenge the decree in CA No. 119 of 18th

October, 2001 which has become final between the parties and therefore, the appeal filed by the appellants even if allowed, will lead to passing of

contradictory decrees in the same case. However, the learned counsel for the respondent has further argued that the plaintiff-respondent is entitled

to get much higher compensation as proved from the record of the case and the impugned judgment and decrees are liable to be modified

accordingly.

11. I have heard learned counsel for the parties and perused the record.

12. At the outset, it may be noticed that,--vide impugned judgment dated 24th May, 2003, the Lower Appellate Court decided two civil appeals

i.e. Civil Appeal No. 102 of 31st August, 2001 titled as Ved Parkash Sharma v. Union of India and others filed on behalf of the plaintiff for

enhancement of compensation and Civil Appeal No. 119 of 18th October, 2001 titled as Union of India and others v. Ved Parkash Sharma filed

by the defendants for setting aside the judgement and decree of the trial Court. Both these appeals were partly accepted by one composite

judgement dated 24th May, 2003 passed by the Lower Appellate Court whereby the judgment and decree of the trial Court was modified

reducing the compensation from Rs. 9,10,000 to Rs. 8,24,000 but rate of interest was increased from 6% to 7.5% per annum and two separate

decrees were prepared in both the aforesaid appeals.

13. The present appeal has been filed by the Union of India challenging the judgment and decree passed in Civil Appeal No. 102 of 31st August,

2001 titled as Ved Parkash Sharma v. Union of India and others (which was filed by the plaintiff for enhancement of compensation) whereas

Union of India has failed to challenge the decree passed in Civil Appeal No. 119 of 18th October, 2001 titled as Union of India and others v. Ved

Parkash Sharma passed by the Lower Appellate Court (which was filed by the defendants) whereby the prayer of the defendant-appellants for

setting aside the judgment and decree of the trial Court granting compensation to the tune of Rs. 9,10,000 was partly accepted and compensation

was reduced from Rs. 9,10,000 to Rs. 8,24,000 but rate of interest was increased from 6% to 7.5% per annum.

14. This Court,--vide order dated 23rd January, 2009 after noticing this situation had adjourned the matter to enable counsel for the appellants to

address further arguments. Learned counsel for the appellants has relied upon a judgment of this Court in Umrao Singh Vs. Mst. Munni and

Others, and Narhari and Others Vs. Shankar and Others, to contend that in a single judgment wherein two decrees are prepared and an appeal is

preferred against one decree only, the fact that there is an unappealed decree, does not create an estoppel against the hearing of the appeal and

therefore, there was nothing wrong as far as the decision of the present appeal is concerned. Elaborating further his argument, learned counsel has

argued that it was not necessary to file separate appeals in this case as there was one suit and both the judgment and decrees were in the same

case and based on the same judgment and the matter decided concerned the entire suit.

15. On the other hand, learned counsel for the respondent has argued that in the present situation even if one decree is set aside, the other decree

would remain intact which will lead to the passing of the two contradictory decrees in one suit and therefore, the present appeal is liable to be

dismissed on this ground alone.

16. In the judgment of this Court in Umrao Singh's case (supra) and Narhari's case (supra), it was held that an unappealed decree does not create

in estoppel against the hearing of the other appeal. There is no dispute as far as the aforesaid ratio of law is concerned and there is no impediment

in the hearing of present appeal in which the decree appealed against is Civil Appeal No. 102 of 31st August, 2001 titled as Ved Parkash Sharma

v. Union of India and others which was filed by the plaintiff-respondent for enhancement of compensation and this appeal has been allowed only to

the extent of increasing the rate of interest from 6% to 7.5%. Thus, in the present appeal which has been filed against Civil Appeal No. 102 of 31st

August, 2001 by the defendants, the only issue which may arise can be with regard to granting of higher rate of interest to the plaintiff on the

amount of compensation. However, the appellants have failed to raise any grouse against the grant of rate of interest at the rate of 7.5% per annum

on the amount of compensation and therefore, no substantial question of law in favour of the appellants arises at all from the decree appealed from.

On the other hand, it is also relevant to mention that the learned counsel for the plaintiff-respondent was unable to substantiate his claim for higher compensation as claimed by him in Cross-objections. Learned counsel for the plaintiff-respondent was unable to point out any material evidence which was not taken into consideration while determining the compensation. Thus, I find no merit even in the cross-objections filed by the plaintiff-respondent and the same are also dismissed.

17. Civil Appeal No. 119 of 18th October, 2001 titled as Union of India and others v. Ved Parkash Sharma filed by the defendants for setting

aside the judgment and decree of the trial Court was partly accepted only to the extent of reducing the compensation from Rs. 9,10,000 to Rs.

8,24,000; However, the aforesaid decree has not been appealed by the defendants. May be the judgment is one but u/s 100 CPC, the appeal is

permissible against the decree and therefore, decree passed in Civil Appeal No. 119 of 18th October, 2001 has remained unchallenged and

definitely even if the present appeal (which has been filed challenging CA No. 102 of 31st August, 2001) is allowed, it will amount to passing of

contradictory decrees in the same suit.

18. Although the questions as raised by the appellants do not arise in the impugned decree and the same would have arisen in appeal No. 119 of

18th October, 2001 but under Order 41 Rule 33 CPC, the Lower Appellate Court has the power to pass or make such further order or decree

which ought to have been passed in favour of a party although such party may have not filed any appeal where two or more decrees are passed in

one suit in respect of any of the decree. In view of the aforesaid provisions of Order 41 Rule 33 CPC and the fact that one composite judgment

was passed in both the appeals (i.e. CA No. 102 of 31st August, 2001 and 119 of 18th October, 2001 before the Lower Appellate Court) this

Court now proceeds to examine the arguments raised by the defendant-appellants in support of their case.

19. The first argument of the learned counsel for the appellants that the jurisdiction of the civil court is barred under Sections 13 and 15 of the Act

is erroneous. Learned counsel for the Union of India laid emphasis on the contention that only the Railway Claims Tribunal has the jurisdiction to

award compensation in respect of railway accidents u/s 13 of the Act the

jurisdiction of the civil court is absolutely barred under the provisions of

Section 15 of the Act. The learned counsel for the appellants further argued that as per the claim of the plaintiff, he sustained injuries in railway

accident, and therefore, he could approach the Railway Claims Tribunal for claiming damages/compensation and his suit for damages/

compensation in civil court, is not maintainable as the jurisdiction of the civil court is barred.

20. Relevant provisions of Section 15 of the Railway Claims Tribunal Act, 1987 (hereinafter called the "Act") are as under:

Bar of jurisdiction.--On and from the appointed day, no court or other authority shall have, or be entitled to, exercise any jurisdiction, powers or

authority in relation to the matters referred to in [sub-sections (1) and (1A)] of section 13.

21. Thus, according to Section 15 of the Act, on and from the appointed day, no court or other authority shall have jurisdiction, in relation to the

matters referred to in [sub-sections (1) and (1 A)] of section 13 of the Act. Therefore, the questions arises whether the claim of the plaintiff for

damages in respect of the injuries sustained by him due to the negligence of Railway employees" falls within the ambit of Section 13 of the Act or

not.

22. For proper appreciation of the matter Section 13 of the Act are reproduced as under:-

13. Jurisdiction, powers and authority of Claims Tribunal.--

(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately

before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act.--

(a) relating to the responsibility of the Railway Administrations as carriers under Chapter VII of the Railways Act in respect of claim for--

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a Railway Administration for

carriage by railway;

(ii) compensation payable u/s 82A of the Railway Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any

freight paid in respect of animals or goods entrusted to a Railway

Administration to be carried by railway.

[(1A)] The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act,

1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of

claims for compensation now payable by the Railway Administration u/s 124A of the said Act or the rules made thereunder.]

(2) The provisions of the [Railways Act, 1989 (24 of 1989)] and the rules made thereunder shall, so far as may be, be applicable to the inquiring

into or determining, any claims by the Claims Tribunal under this Act.

23. A plain reading of the aforesaid provisions of Section 13 of the Act shows that the Railway Claims Tribunal shall exercise jurisdiction relating

to the responsibility of Railway Administration as carriers in respect of claim of compensation for loss, destruction, damage, deterioration or non-

delivery of animals or goods entrusted to Railway Administration for carriage of railway; compensation u/s 82-A of the Railway Act or the rules

made thereunder and in respect of the Claims for refund of fares. Thus, it is clear that u/s 13 of the Act, the Railway Claims Tribunal has

jurisdiction only for matters when the responsibility of the Railways Administration as carriers is involved.

24. It is also relevant to state that Section 82-A of the Railway Act only deals with liability of Railway Administration in respect of accident to

trains carrying passengers which reads as under :--

Section 82-A of the Railways Act:-

Liability of railway administration in respect of accidents to trains carrying passengers.--(1) When in the course of working an accident occurs,

being either a collision between trains of which one is a train carrying passengers, or the derailment of other accidents to a train or any part of a

train, carrying passengers, then, 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 damage 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 animals or goods owned by the passenger and accompanying the passenger in his compartment or on the train

sustained as a result of such accident.

25. It may be relevant to state here that the above referred provisions of the Railways Act have been substituted by Section 124 of the aforesaid

Act which is as under:-

Extent of Liability.--When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train

carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been

any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered

a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any

other law, be liable to pay compensation to such extent as may be prescribed 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, damage or deterioration of goods owned by the

passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

26. It is crystal clear from the language of old and new provisions the Railway Act that it relates to liability of Railway Administrations when in the

course of working the railway accident occurs being either a collision between trains of which one is a train carrying passengers or the derailment of

or other accidents to a train or any part of a train carrying passengers, to pay compensation for loss caused by death of passenger dying as a result

of accident and for personal injury and loss, destruction or deterioration of animals or goods, owned by passengers and accompanying the

passengers in his compartment. In *Ratnakar Tanbaji Itankar Vs. Union of India*, , it was held by the Hon"ble Bombay High Court that the Railway

Claims Tribunal is a Tribunal of limited and specified jurisdiction and it can exercise jurisdiction and power as conferred upon it under the said Act

only Section 13 (1) of the Act provides for jurisdiction power and authority of the

claims Tribunal and by virtue of the express provisions contained in Section 15 thereof the jurisdiction of the Civil Court or any other authority is barred only in regard to the matters specified in Section 13(1). Therefore, in regard to the matters other than matters covered by Section 13(1) of the Act, the Civil Court has jurisdiction to entertain the Civil Suit. It was further held that the accident in which passenger fell out of the bogie of the train and dies on being caught, between the platform and the running train, is not cognizable by the Claims Tribunal as the accident in question is not an accident to the train within the meaning of Section 82-A of the Railway Act and does not fall in sub clause (ii) of Section 13(1) of the Act.

27. It is worth pointing out that no passenger train was involved in the accident. The Plaintiff was not travelling as a passenger in the train at the time of accident. The plaintiff has not claimed any damages or compensation arising out of the responsibility of Railway Administration as carriers.

The plaintiff claimed damages in respect of the injuries sustained by him on account of negligence of Railway employees as the bogies of the shunting goods train hit him. Therefore, the case of the plaintiff does not fall within the purview of Section 82-A and Section 124 of the Railways Act and other clauses of Section 13(1) of the Act

28. The judgment in Smt. Nridhaniya Devi Vs. Union of India (UOI), cited by the learned counsel for the appellants is not applicable to the facts and circumstances of the case. In this case, the bus in question was hired by the Railways for carrying the passengers which met with an accident with another vehicle. The question arose whether the bus would be deemed to be included in the vehicles of the Railways as defined u/s 2(31)(e)

of the Act for the purpose of grant of compensation under the provisions of Section 124 of the Railways Act and it was held that an accident which had taken place between the bus which is hired by the Railways with another bus, it would be called a railway accident and a person travelling in a bus hired by Railways when died as a result of such accident, his legal representative would be entitled to the grant of compensation as provided u/s 124 of the Act. Thus, the aforesaid judgment, in no way holds that jurisdiction of the Civil Court is barred in a case where a person has suffered multiple injuries because of the gross negligence of the employees of

the Railways. Similarly, the judgment of the Hon''ble Supreme Court of India in Sabitri Sahoo v. Union of India SLP(C) No. 22919 of 2002 is of no help to the appellants because the question for consideration before the Hon''ble Apex Court was whether the amount of compensation laid down in the Railway Accident (Compensation) Rules, 1990 is to be the compensation which must be granted or the Court has the discretion to grant lower compensation.

29. The jurisdiction of the Civil Courts is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. The mere fact that a special Statute provides for certain remedies, may not by itself necessarily exclude the jurisdiction of the Civil Courts to deal with a case brought before it in respect of some of the matters covered by the said Statute. Section 9 of the CPC provides that the Civil Court shall try all suits of civil nature subject to pecuniary jurisdiction, unless their cognizance is expressly or by necessary implications is barred. There is no express provision in the Railway Claims Tribunal Act, 1987 or the Railways Act, 1989 which bars the jurisdiction on the Civil Court, except the matters covered u/s 13 and 15 of the Railways Claims Tribunal Act, 1987. Thus, the first question of law as raised by the defendant-appellants is answered against them and it is held that the Civil Court has the jurisdiction to try the present case.

30. Question No. 2 was not raised by the appellants in their pleadings and therefore, the same cannot be allowed to be raised at this stage as held by the Hon''ble Apex Court in Bachhaj Nahar Vs. Nilima Mandal and Another, , Similarly, issue No. 5 with regard to the limitation was not pressed by the defendant-appellants before the trial Court which amounted to waiver, and therefore, the same cannot be allowed to be raised in the present appeal. Thus, questions No. 2 and 4 as raised by the appellants do not arise in this appeal.

31. The other argument of the appellants that the plaintiff-respondent was not entitled to any compensation as injuries were suffered by him due to his own negligence is also liable to be rejected. Both the Courts below on appreciation of evidence available on record have recorded a concurrent finding of fact that the plaintiff-respondent suffered multiple injuries due to gross-negligence of the employees of the railways. In the pleadings, the

defendant-appellants had taken a plea that at the time of accident level crossing gate was closed for road traffic and the plaintiff himself was

negligent. However, to prove this assertion, the defendant-appellants came with the version that the plaintiff was going on scooter which dashed

into the shunting train because of the negligence of the plaintiff-respondent himself. The aforesaid evidence of the appellants is beyond pleadings

and therefore, the same was rightly rejected by the Courts below. Even otherwise, the question whether the plaintiff-respondent suffered injuries

due to his won negligence or due to the negligence of the appellants is a question of fact and therefore, question No. 3 does not arise.

32. For the reasons recorded above, I find no merit in this appeal.

33. Dismissed.