

(1972) 11 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1654 of 1970

Union of India (UOI)

APPELLANT

Vs

Ad-Hoc Claims Commissioner and Another

RESPONDENT

Date of Decision : 17-11-1972

Acts Referred:

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

Citation : AIR 1973 All 342 : (1973) 43 AWR 62

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : Lalji Sinha, for the Appellant; R.N. Upadhya, for the Respondent

Final Decision : Partly Allowed

Judgement

Satish Chandra, J.—This writ petition has come before this Bench on a reference by Hon. Kirty, J. The learned Judge felt that the view taken in three single Judge decisions cited before him on the question of law raised in this writ petition required reconsideration.

2. On the night between the 20th and 21st June, 1969, 6-Down Allahabad-Gorakhpur Express train met with an accident between Jakhania and Dulahpur railway stations. Several persons died and many others received injuries at the accident. Nand Lal, respondent No. 2 was one of the injured persons. On 11th September, 1969, Nand Lal respondent filed an application before the Claims Commissioner, Varanasi, respondent No. 1, for payment of compensation. The Claims Commissioner on 18th February, 1970, allowed the claim in part. He awarded Rs. 7,353/- in all. Of this amount, Rs. 2,100/- was compensation for 15 per cent, partial permanent disability; Rs. 1,387/- for the loss of earnings for 3 months and 21 days during which the claimant was lying in hospital and Rs. 3,866/- was for the loss of goods and cash. The Union of India felt aggrieved and instituted the present writ petition in this Court for quashing the award.

3. At the hearing of the writ petition before the learned Single Judge only one point appears to have been pressed on behalf of the petitioner. It related to the award of Rs. 1,387/- as compensation for the loss of earnings for 3 months and 21 days. It was urged in support of the writ petition that the Claims Commissioner had no jurisdiction to travel outside the provisions of the Act and the rules laying down the categories under which alone compensation could be granted. There was no provision for grant of compensation on account of loss of income because the injured person was undergoing medical aid in a hospital. In support reliance was placed upon the decisions of Lokur, J. in *Union of India v. Murli Dhar Pathak* (Writ No. 1910 of 1970 decided on 20-1-1972) (All), Hari Swarup, J. in *Union of India v. Claims Commr.* (Writ No. 1839 of 1970 decided on 21-2-1972) (All) and Broome, J. in *Union of India v. Vijai Prasad* (Writ No. 2116 of 1970 decided on 18-3-1972).

4. Section 82-A of the Railways Act provides for liability of Railway Administration in respect of accidents to trains carrying passengers. It provides:--

"82-A. (1) 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 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 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 animals or goods owned by the passengers and accompanying the passenger in his compartment or on the train, sustained as a result of such accident. (2) The liability of a railway administration under this section shall in no case exceed twenty thousand rupees in respect of any one person."

Section 82-B authorises the Central Government to appoint a Claims Commissioner for specified local areas. Section 82-C provides for the person who can make an application for compensation before the Claims Commissioner. Section 82-D lays down the procedure and powers of the Commissioner.

5. Sub-section (1) of Section 82-F provides that the Claims Commissioner shall decide any question as to the liability of the railway administration "to pay compensation u/s 82-A", or as to the amount thereof, or as to the person to whom such compensation is payable. By Sub-section (2) the decision of the Claims Commissioner is appealable to the High Court. Sub-section (5) makes the decision of the Claims Commissioner final and not liable to be questioned in any court, subject to the decision of the High Court in an appeal.

6. Section 82-H provides that the right of any person to claim compensation u/s

82-A shall not affect his right to claim compensation under the Workmen's Compensation Act, 1923, or any other law for the time being in force, but no person shall be entitled to claim compensation more than once in respect of the same accident. Section 82-J authorises the Central Government to frame rules to carry out the objects of Sections 82-A to 82-H. Sub-section (2) says that the rules may, inter alia, provide for the nature of the injury for which and the rates at which compensation shall be payable.

7. In exercise of the power conferred by Section 82-J, the Central Government framed the Railway Accident Compensation Rules. Part III of the Rules is headed as "Rates of Compensation". It consists of Rules 6 and 7. Rule 6 provides for the amount of compensation to the injured person while Rule 7 makes provision for compensation for loss of goods and animals and provides that the compensation payable under both the heads shall not, in respect of any one person, exceed the limit specified in Sub-section (2) of Section 82-A, namely Rs. 20,000/-.

Rule 6 provides:--

"6. Amount of compensation,--

(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.

(3) The amount of compensation payable in respect of injuries causing temporary disablement, total or partial, or of injuries resulting in pain and suffering without causing any disablement, shall be such as the Claims Commissioner may, in all the circumstances of the case, determine to be reasonable:

Provided that such compensation shall in no case exceed 3/5th of the amount prescribed for total disablement in Part I of the Schedule.

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:

Provided further that where compensation has been paid for any injury which is less than the amount which would have been payable as compensation if the injured person had died and that person subsequently dies as a result of the injury, a further compensation equal to the difference between the amount payable and that already paid shall become payable."

8. Section 82-D authorises the Claims Commissioner to enquire into and determine any claim for compensation payable u/s 82-A. The Claims

Commissioner thus has been constituted as a special tribunal to determine the compensation payable u/s 82-A alone. He has not been expressly given any power to travel outside that section. u/s 82-A compensation is payable irrespective of any wrongful act, neglect or default on the part of the railway administration. Under it the railway administration is liable to pay compensation (a) for loss occasioned by the death of a passenger dying as a result of the accident, (b) for personal injury and (c) for loss, destruction or deterioration of animals or goods owned by the passenger and accompanying the passenger in the compartment or on train, sustained as a result of such accident. The Claims Commissioner thus has jurisdiction to grant compensation in respect of the three categories of losses mentioned above. The detailed specification of the character of the loss suffered because of the personal injury and the rate of compensation payable therefore has been provided in Rule 6 read with the schedule.

9. For the respondents it was urged that no provision of the Railways Act or of the Rules specifically prohibits the Claims Commissioner to award compensation in aspect of a category of loss which may not have been mentioned. In Rule 6, for instance, loss of business or income occasioned by the accident.

10. It is true that there is no such express bar. At the same time it is evident that the Claims Commissioner is a special tribunal constituted for the limited purpose of determining compensation payable u/s 82-A. It is a tribunal of limited jurisdiction constituted for a special purpose.

11. In the law of ultra vires in British India by S. R. Das (Tagore Law Lectures, 1903, page 12) it has been stated:--

"The phrase ultra vires is applicable only to acts done in excess of the legal powers of the doer, as distinguished from want of jurisdiction and illegality. This may be called the essence of the doctrine of ultra vires. It is action in excess of the powers possessed by a person (which includes a body corporate) within the above limitations. This presupposes that the powers are in their nature limited. What is the nature of that limitation? In speaking of an ordinary citizen we do not speak of any action being ultra vires. To an ordinary citizen whatever is not expressly forbidden by the law is permitted by the law. It is only when the law has called into existence a person for a particular purpose or has recognised its existence--such as the holder of an office, a body corporate &c. -- that the power is limited to the authority delegated expressly or by implication and to the object for which it was created. In the case of such a creation the ordinary law applicable to an individual is somewhat reversed. Whatever is not permitted, expressly or by implication, by the constituting instrument, is prohibited, not by any express prohibition of the legislature, but by the doctrine of ultra vires." (See Attorney-General v. Great Eastern Rly. Co., L. R. 5 App Cas 473).

12. In the context of this principle it is clear that the Claims Commissioner is a tribunal created with the object of determining compensation payable u/s 82-A. The powers possessed by the Commissioner are limited to the authority

delegated to him by Section 82-A and the rules, especially Rule 6. He has no power to travel outside them. He has no power to grant compensation under any head which is not provided in Rule 6.

13. The respondent suffered a fracture of the elbow bone of his left hand. This resulted in 15 per cent permanent partial disability for which he was awarded compensation of Rs. 2,100/- under Rule 6 (2). If an injury has caused permanent partial disablement covered by Sub-rule (2), the same injury will not fall under Sub-rule (3) because the same injury cannot at the same time cause partial permanent disablement as well as temporary disablement, total or partial. The second clause of Sub-rule (3) dealing with injuries resulting in pain and suffering without causing disablement obviously cannot include injuries which have caused disablement mentioned in Sub-rule (2) or in the first clause of Sub-rule (3). The injured person is no doubt entitled to compensation for each injury. This is specifically mentioned in the first proviso to Rule 6. But the various clauses of Rule 6 make it clear that one injury cannot fall under more than one of the three sub-rules. In this respect the various sub-rules of Rule 6 are mutually exclusive.

14. The Schedule to the rules which gives the amounts of compensation shows that the compensation is computed by capitalising the monthly salary or income of the injured person. The compensation for partial disablement is the prescribed percentage of the amount payable under part I for total disablement. The compensation payable under the rules is, therefore, linked and is based on a consideration that the injured person has suffered loss of income as a result of the injuries. The compensation is liable to be determined at a flat rate mentioned in the Schedule. The loss of income by reason of enforced absence from the injured person's place of business is an element which seems to have been taken into consideration while determining the actual amount of compensation payable to him. This also supports the view that for the same injury the claimant is not entitled to compensation independently under the head of loss of income for the period the injured person was being treated in a hospital and was thus absent from his place of business.

15. In our opinion the Claims Commissioner had no power to grant compensation under the head of loss of income for the period the injured person was lying in the hospital. The award in so far as it granted Rs. 1,387/- under this head was ultra vires.

16. In the result the writ petition succeeds and is allowed in part. The order of the Claims Commissioner is modified. His award is reduced by a sum of Rupees 1,387/-. In view of the divided success, the parties will bear their own costs.