

(1972) 01 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1645-D of 1970 and Writ Petition No. 1194 of 1970

Union of India (UOI)

APPELLANT

Vs

B.K. Ojha and Another

RESPONDENT

Date of Decision : 25-01-1972

Acts Referred:

Railways Accidents (Compensation) Rules, 1990 — Rule 6(3)
Railways Act, 1890 — Section 82A, 82J

Citation : AIR 1972 All 266 : (1972) 42 AWR 168

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : Lal Ji Sinha, for the Appellant; U.K. Misra and S.C. Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—This and the connected writ petition have been filed by the Union of India against the order of the Claims Commissioner in compensation proceedings under the Indian Railways Act.

2. In writ petition No. 1645 of 1970 the facts are these. On the night between June 20 and 21. 1969 the 6 Down Allahabad-Gorakhpur Express met with an accident resulting in the death of some persons and injuries to others. A Claims Commissioner was appointed by the Central Government u/s 82-B of the Indian Railways Act. The first respondent, B. K. Ojha, made an application for compensation u/s 82-C of the Act claiming that he was one of the injured persons and alleging that in consequence of the accident he had received bodily injuries and that he had to be) treated in the hospital for a number of days. The application was opposed by the petitioner. On February 23, 1970 the Claims Commissioner made an order holding that the claimant had proved that he had suffered serious injury and great pain and suffering, including mental suffering, on which account he was entitled to Rs. 3,000/- as compensation, that he had

also suffered a loss of goods and cash for which he was entitled to compensation in the sum of Rs. 1,000/- and he had been on medical leave from June 21. 1969 to August 18. 1969 which resulted in loss of salary for which the compensation should be Rs. 765/-. Accordingly, he awarded Rs. 4, 765/- as compensation.

3. In writ petition No. 1194 of 1970, which arises out of proceedings in respect of the same railway accident, the first respondent Mool Chand. filed an application for compensation alleging that he was one of the injured persons and that besides bodily injuries he had suffered loss of cash and goods. This claim was also opposed by the petitioner. The Claims Commissioner made an order dated January 5. 1970 awarding Rs. 3,000/- on account of pain and suffering brought about by the claimant's injury and loss of earnings, a sum of Rs. 5,000/- as compensation for loss of cash and a sum of Rs. 180/- on account of loss of goods.

4. Learned counsel for the petitioners has raised two contentions. One contention is that there was no jurisdiction in the Claims Commissioner to award compensation for pain and suffering and loss of salary or earnings, and the other is that the loss of cash and goods cannot be immediately or directly attributed to the railway accident.

5. Section 82-A of the Act provides for compensation payable by the railway administration in the event of a railway accident :--

"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".

Section 82-J empowers the Central Government to make rules, and Sub-section (2) contemplates that the rules may provide for "the nature of the injury for which end the rates at which compensation shall be payable". The Railway Accident Compensation Rules have been framed u/s 82-J. and Rule 6 thereof 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 or 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 died as a result of the injuries, a further compensation equal to the difference between the amount payable and that already paid shall become payable".

Rule 7 provides :--

"Compensation for loss of goods and animals :-- Compensation for loss, destruction or deterioration of goods or animals shall be paid to such extent as the Commissioner in the circumstances deems reasonable, provided that such compensation together with any compensation payable for personal injury shall not. in respect of any one person exceed the limit specified in Sub-section (2) of Section 82-A".

6. The first question is whether the Claims Commissioner had power to grant compensation for pain and suffering. Rule 6 provides for the compensation payable in respect of death, injuries causing total disablement or partial disablement, and injuries resulting in pain and suffering without causing any disablement. It is clear that if the claimant suffers injuries which result in pain and suffering he is entitled to compensation. That is covered by Rule 6(3). It is also covered by Section 82-A which speaks of compensation for personal injury. When the Claims Commissioner found that the claimants in the present cases had suffered pain and suffering because of the injuries received on account of railway accident and awarded compensation therefor, he did no more than exercise the powers conferred upon him by the statute and the rules. The contention of the petitioner to the contrary is rejected.

7. The next contention is that the claimants were not entitled to compensation on account of the cash lost by them. It is said that the loss of cash cannot be attributed to the railway accident. I have been referred to Secy, of State v. Gokul Chand. AIR 1925 Lah 636. The learned Judges held in that case that loss of currency notes could not be regarded as a pecuniary loss to the estate of the deceased u/s 2 of the Indian Fatal Accidents Act. 1855 because the loss was only remotely connected with the wrongful act and the injury caused by it. It seems to me that the decision has no application. That Act was enacted in order to provide compensation to families for loss occasioned by the death of a person caused by an actionable wrong The actionable wrong contemplated by that Act is not necessarily identifiable with the subject-matter of Section 82-A of the Indian Railways Act. Section 82-A speaks of railway accident by collision between trains

in all cases, whether or not there has been any wrongful Act, neglect or default on the part of the railway administration. The wrongful Act, neglect or default on the part of the railway administration is not the "raisonD"etre" for the payment of the compensation. It is the railway accident which produces the death or injury for which compensation becomes payable. The railway accident may be due to any reason whatsoever. It may be due to a wrongful act, neglect or default on the part of the railway administration. It may be due to entirely fortuitous circumstances. It is the railway accident which is the immediate cause of the injury, and if it can be established, as it has been found in the present case, that the loss of currency notes was due to the railway accident, clearly compensation is payable. The second contention of the petitioner also fails.

8. No other point has been pressed before me.

9. The writ petitions fail and are dismissed with costs.