

(2002) 11 GAU CK 0006
In the Gauhati High Court
Case No : M.A. (F) No. 149 of 1998

Union of India (UOI)

APPELLANT

Vs

Lila Maya Sannasi and Another

RESPONDENT

Date of Decision : 11-11-2002

Acts Referred:

Railways Accidents and Untoward Incident (Compensation) Amendment Rules, 1997 — Rule 3(2)
Railways Act, 1989 — Section 123, 124, 124A, 125, 129

Citation : (2003) 1 GLT 493

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : U.K. Nair, for the Appellant; H.N. Sarma and J. Mollah, for the Respondent

Judgement

N.S. Singh, J.—Heard Mr. U.K. Nair, learned Counsel for the Appellant and Mr. J. Mollah, learned Counsel for the Respondents.

2. The order dated 20th May, 1998 passed by the Railway Claims Tribunal, Guwahati Bench in Application No. 961/ 97 is the subject matter under challenge in this appeal.

3. The facts of the Case in a short compass are as follows-

The Respondent No. 1 Smti. Lila Maya Sannasi filed an application for compensation under the relevant provision of the Railways Act, 1989 (for short Act of 1989) by contending, inter-alia, that her son Shri Ganesh (Sannasi) now, deceased, and his sister while they were travelling on 30.7.97 by 5646 Dn. Guwahati Dadar Express, her son fell down from the train and was run over by the same train at Kamakhya. The claim application was resisted by the Railway-Appellant herein, by filing written statement, thus denying the incident as described in the claim application. The Appellant also urged that the alleged incident is not an untoward incident as defined under the provision of Section 123(c) of the Act 1989. The learned Tribunal upon hearing the parties awarded

compensation to the tune of Rs. 2,00,000/- to be paid by the Railway authority to the Respondent No. 1 and 2 who are mother and sister of the deceased in equal share within two months from the date of the order dated 20.5.98. Being dissatisfied with the impugned order passed by the learned Railway Claims Tribunal, the Appellant preferred this appeal. While this appeal is pending before this Court the Respondents filed an application for enhancing the compensation to the tune of Rs. 4,00,000/- and make payment of it keeping in view of the decision of the Apex Court rendered in Rathi Menon Vs. Union of India, and also the decision of this Court rendered in Saraswati Das and Another Vs. Union of India (UOI) and Others, and the said application was registered as Misc. Case No. 135/2002.

4. Mr. Nair, learned Standing Counsel, supporting the case of the Appellant argued that there is no evidence on record for establishing the factum of the death of the Late Ganesh Giri because of the train accident inasmuch as medical report shows that the said Ganesh Girt died because of chronic pulmonary Tuberculosis deceases. According to the learned Counsel, no compensation shall be payable u/s 124(a) of the Act of 1989 for the death caused by natural or disease or medical or surgical treatment and the said alleged incident is not untoward incident in terms of the Section 124(a)(e). However, the learned Tribunal passed the impugned order on surmise and conjecture and such finding of the learned Tribunal is based on no basis. Rebutting the argument so far advanced by the learned Counsel Mr. Mullah, learned Counsel submitted that there is sufficient material on record to establish the factum of the Railway accident and that it is the untoward incident as the deceased fell down from the running train and he was run over by the train and the Railway Appellant could not controvert it except the mere denial made in their written statement. Mr. Mullah, learned Counsel for the Respondents, has drawn my attention to the written objection filed by the Railway before the Tribunal and submitted that the plea so far taken by the Appellant that the deceased died because of chronic pulmonary Tuberculosis disease was not taken by the Railways-Appellant before the learned Tribunal and if it is a new pleading and, no related issue was framed before the Tribunal and as such the submission has no force. It is also argued by Mr. J. Mullah, learned Counsel that the Respondents are entitled to compensation to the tune of Rs. 4,00,000/- in view of the provision of the Railway Accidents and Untoward Incident (Compensation) Amendment Rule 1997 (for short Rule 1997) which has come into force on the 1st day of November, 1997 and he has drawn my further attention to Part-I of Schedule wherein the amount of compensation to the tune of Rs. 4,00,000/ has been fixed for death in Railway Accident and Untoward Incidents.

5. Now, this Court is to see and to examine as to whether the impugned order is tenable in the eye of law or not and whether the Respondents are entitled to compensation to the tune of Rs. 4,00,000/ in terms of the amended rule of 1997 or not?

6. While deciding the case, the learned Tribunal examined the three related issues, which are quoted below:

1. Whether late Ganesh Giri was a bonafide passenger of train No. 5646 Dn Guwahati Dadar Express on 30-7-97 and fell down from the running train accidentally?

2. Whether the applicant and other Respondents of deceased late Ganesh Giri are entitled to get compensation u/s 124-A from the Respondent?

3. What relief?

The Tribunal was of the view that Late Ganesh Giri travelled along with his sister, Smti. Tara Devi, which could not be disputed as the applicant Respondents produced a related train ticket and proved it and the said train ticket, was exhibited as Ext-1 and apart from that, the ASM of Kamakhya Railway Station also reported the matter immediately to all the concerned regarding the death of Late Ganesh Giri whose body was found lying down near line No. 2. There is also evidence on record that the doctor held the post mortem examination and one witness, Shri Ramesh Talukdar, ASI of Pandu GRP O.C. Kamakhya was also examined by the Tribunal and on the basis of the evidence available on record the Tribunal held that the deceased fell down from the running train, Guwahati Dadar Express, at about mid day time on 30.7.97 and there is also evidence on record that Ganesh Giri was a bonafide passenger who fell down from the running train accidentally and this evidence could not be controverted by the Appellant- Railways. In my considered view the learned Tribunal had dealt with the matter exhaustively and have given a reasoned finding and, as such, no interference of it is called for. However, the issue pertaining to the enhancement of the quantum of compensation from Rs. 2,00,000/- to Rs. 4,00,000/- is left at this stage.

7. It is not disputed that in terms of the amended provision of Rules of 1997, the amount of compensation to the tune of Rs. 4,00,000/- has been fixed for "death". Now a question arose whether this rule shall be applicable in the instant case or not. This issue has already been settled by the Apex Court and this Court too, in Rathi Menon (supra), the Apex Court highlighted the related principles of law and interpreted it. The relevant observations of the Apex Court finds its place, which is relevant and accordingly, it is quoted below:

The asinine consequence of accepting the interpretation placed by the Division Bench of the High Court can be demonstrated through an illustration. If a person sustained injury as described in Rule 3(2) of the Rules, in an accident in a train on 31.10.1997, and Anr. person sustains the same kind of injury in Anr. accident in a train the next day i.e. 1.11.1997, when both persons made separate applications before the same Claims Tribunal for compensation, the Tribunal can award Rs. 2 lakhs only in the first case and Rs. 4 lakhs in the second case. What a woeful discrimination," if not a glaringly unfair differentiation. See the interval between the two accidents of identical features. It was only a few hours, but the

difference in the compensation amount is enormously high. Any court should avert an interpretation which would lead to such a manifestly absurd fallout, unless the Court is compelled otherwise by any mandatory provision.

Why the Central Government decided to make such a vast variation in the amount of compensation while exercising the powers conferred by Section 129 of the Act? It cannot be conceived that the Government wanted to make a discrimination between those victims who suffered an injury in an accident prior to 1.11.1997 and those who suffered an identical injury in a similar accident on or after that date. The *raison detre* for making such variation is easily discernible. The Central Government wanted to update the compensation amount. Rupee value is not an unchanging unit in the monetary system. Students of economic history know that currency value remained static before the Second World War. But the post-World War II witnesses the new phenomenon of vast fluctuations in money value of currency notes in circulation in each nation. When the US Dollar registered a steep upward rise, currencies in many other countries made downward slip. What was the value of one hundred rupees twenty years ago is vastly different from what it is today. This substantial change has caused its impact on the cost of living also.

The Central Government while changing the figures in the compensation amount after an interval of a decade was only influenced by the desire to update the money value of the compensation. In other words, what you were to pay ten years ago to one person cannot be the same if it is paid today in the same figure of currency notes. It is for the purpose of meeting the reality that the Central Government changed the figures.

The unjust consequence resulting from the interpretation which the Division Bench placed can be demonstrated in Anr. plane also. If a person who sustained injury in a railway accident or in an untoward incident was disabled from making an application immediately and he makes the application a few years hence, is he to get the compensation in terms of the money value which prevailed on the date of the accident? Suppose a Tribunal wrongly dismissed a claim after a few years of filing the application and the claimant approaches the High Court in appeal. As it happens quite often now, some High Courts could take up such an appeal only after the lapse of many years and if the appeal is decided in favour of the claimant after so many years, what a pity if the amount awarded is only in terms of the figure indicated on the date of the accident.

From all these, we are of the definite opinion that the Claims Tribunal must consider what the Rules prescribed at the time of making the order for payment of the compensation.

8. This legal aspect was further examined by the Apex Court in a case between N. Parameswaran Pillai and Another Vs. Union of India (UOI) and Another, and apart from that, this Court by a Division Bench of this Court also dealt with the matter, rather interpreted the provision of Section 125 of the Act 1989. Though

the occurrence/incident took place on 30.7.97, prior to the amendment of the Railway Accidents and Unfortunate Deaths Compensation Rule 1997 (for short Rule 1997), the benefit of the provision of Rule of 1997 should be afforded to the Respondents, I made this observation keeping in view the above settled law of the Apex Court rendered in N.P. Pillai (supra). In other words, the present case is covered up by the said rules of 1997. In my considered view, the learned Tribunal had failed to consider the said rules of 1997 at the time of making of the order of payment of compensation and, rather, the learned Tribunal lost the sight of the settled law of the land as discussed above while passing the impugned order.

9. For the reasons, observations and discussions made above, I am of the view that the Appellant could not make out a case to justify interference with the impugned order passed by the learned Tribunal. However, considering the existing facts and circumstances of the case it is ordered that the Respondents are entitled for compensation to the tune of Rs. 4,00,000/- in terms of the said Rule of 1997, and the same shall be paid by the Railway Authority within a period of four months from today after proper adjustment with any earlier payment of compensation in terms of the order passed by the learned Tribunal, without interest, except the interest so far awarded by the learned Tribunal on the earlier compensation money of Rs. 2,00,000/-. It is also made clear that if the Railway/Appellant fails to make payment of compensation in full within the stipulated period mentioned above, the Respondents shall be entitled interest at the rate of 10% for the awarded compensation money from the date of filing of the claim application.

The appeal is accordingly disposed of. No cost.