

(1999) 08 KL CK 0010

In the High Court Of Kerala

Case No : M.F.A. No's. 816, 839, 915, 1249, 1265, 1282, 1284, 1293 and 1320 of 1998

Union of India (UOI)

APPELLANT

Vs

M. Thankaraj

RESPONDENT

Date of Decision : 12-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
General Clauses Act, 1897 — Section 22, 5
Motor Vehicles Act, 1988 — Section 140, 140(1)
Railway Claims Tribunal Act, 1987 — Section 13(1A), 24
Railways (Amendment) Act, 1994 — Section 123, 124, 124A, 126(2)
Railways Accidents and Untoward Incident (Compensation) Amendment Rules, 1997 — Rule 2(1)
Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3, 3(2), 3(4), 4
Railways Act, 1890 — Section 82A
Railways Act, 1980 — Section 82A
Railways Act, 1989 — Section 120, 124, 125, 126, 129
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3(1)
Workmens Compensation (Amendment) Act, 1995 — Section 1(2), 4, 4A
Workmens Compensation Act, 1923 — Section 4, 4A

Citation : (2000) 1 RCR(Civil) 632

Hon'ble Judges : K.K. Uska, J;G. Sivarajan, J

Bench : Division Bench

Advocate : M.C. Cherian, for the Appellant; P. Parameswaran Nair, V. Giri, M.R. Rajendran Nair, T.C. Govindaswamy, V.N. Ramesan Nambisan, P. Santhalingam, N. Sukumaran and A.K. Madhavan Unni, for the Respondent

Judgement

K.K. Usha, J.—These appeals are directed against judgments of the Railway Claims Tribunal, Ernakulam Bench granting compensation for death or personal injuries of passengers under the provisions of the Railways Act, 1989 read with Rules issued thereunder. Except M.F.A. No. 915/98 all the other appeals are at the instance of the Railway administration. The common question of law that arises in all these appeals is whether in respect of death happened or injury

sustained before the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997 came into force the enhanced rate of compensation under the Amended Rules can be made applicable. The Railway Claims Tribunal, Ernakulam Bench granted compensation in O.A. No. 137/97, O.A. No. 24/96, O.A. No. 142/97, O.A. No. 136/97, O.A. No. 124 of 1997, T.A. No. 56/97, O.A. No. 93/97, O.A. No. 94/97 and O.A. No. 3/98 by applying the Amended Rules. These judgments are challenged by the Railway administration in M.F.A. Nos. 816, 839, 1249, 1265, 1282, 1284, 1292, 1293, and 1320 of 1998. In T.A. No. 259/96 the Tribunal applied unamended provisions and therefore the judgment is challenged at the instance of the applicants. The contentions are raised in the appeals by the Railway administration on the merits of the claim also. We will first consider the common question of law and thereafter deal with the factual contentions raised in each case separately.

2. Section 124 of the Railways Act, 1989 provides for liability of Railway administration for loss occasioned by the death of a passenger, dying as a result of the railway accident, and for personal injury and loss, of property whether or not there has been any wrongful act, neglect or default on the part of the Railway administration. Section 82A of the Indian Railways Act, 1980 is the forerunner of this provision. The compensation payable by the Railway administration u/s 124 is "to such extent as may be prescribed" and to that extent only. The amount of compensation thus payable is specified in Schedule II of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The Railways (Amendment) Act, 1994 which came into force with effect from 1st August 1994 brought in amendment to Section 123 by, introducing a new concept of "untoward incident". As a consequence a new section as Section 124A was also introduced after Section 124 of the Act. The term "accident" is defined u/s 123 as an accident of the nature described in Section 124, An accident described in Section 124 is one which occurs in the course of working a railway either by 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. By the 1994 amendment Clause (c) was added to Section 123 which reads as follows:

(c) "untoward incident" means-

(1) (i) the commission of a terrorist act within the meaning of Sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987; or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.

A provision similar to Section 124 is provided u/s 124A making the railway administration liable for loss occasioned by the death of a passenger as a result of an "untoward incident" occurring in the course of working a railway and for personal injury of the passenger whether or not there has been any wrongful act, neglect or default on the part of the railway administration. For the purposes of this section "passenger" includes, a railway servant on duty as in the case of Section 124. But this section would take in also a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident. The quantum of compensation is prescribed by the same rules viz., Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

3. Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 provides that the amount of compensation payable in respect of death or injuries shall be as specified in the Schedule. These Rules are issued u/s 129 of the Railways Act, 1989 read with Section 22 of the General Clauses Act (10 of 1897) and in supersession of the Railway Accident (Compensation) Rules, 1989. The Rules came into force with effect from 1st August 1994. The Railway Accident (Compensation) Rules, 1989 which were issued in exercise of the powers conferred by Section 82A of the Indian Railways Act, 1890 contained more or less similar provisions as in the 1990 Rules which came into force on 1st August 1994. But the quantum of compensation prescribed under the Schedule was different. For example: Under Part I to the Schedule for death the amount of compensation prescribed under the 1989 Rules was only Rs. 1,00,000 which was enhanced to Rs. 2,00,000 in the 1990 Rules. Similar enhancement can be noticed against other items in Part II also. Subsequently, the Railway Accidents (Compensation) Rules, 1990 was further amended by Railway Accidents (Compensation) Amendment Rules, 1994 mainly for the purpose of taking in the compensation in respect untoward incidents also. But we find that there was no enhancement of the quantum of compensation from what was provide in the schedule under 1990 Rules. Three years later the Rules underwent a further amendment by Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997. By this amendment only change brought in was enhancement of the quantum of compensation. The amount was doubled against each item given under Part I and II. The amount of Rs. 2,00,000 provided under Sub-rule (2) of Rule 3 as die amount of compensation payable for injury not specified in Part II or III of the Schedule, but which in the opinion of the Claims Tribunal is such as to deprive a person of all capacity to do any work was enhanced to Rs. 4,00,000. By an amendment to the second proviso to Sub-rule (3) of Rule 3 where a limitation for total compensation in respect of injuries not specified in the Schedule or referred in Sub-rule (2) was enhanced from Rs. 40,000 to Rs. 80,000. Rule 4 provides for a limit of compensation in respect of any one person. This limit was amended and enhanced from Rs. 2,00,000 to Rs. 4,00,000.

4. Sub-rule (2) of Rule 1 of the Railway Accidents and Untoward Incidents

(Compensation) Amendment Rules, 1997 provides that those Rules shall come into force on the 1st day of November, 1997. The common question to be considered in these appeals is whether while fixing the liability of the Railway administration in respect of an accident or untoward incident occurred before 1st November 1997 enhanced compensation provided by the amendment can be made applicable, only for the reason that the adjudication by the Tribunal was after the 1997 amendment came into force.

5. The learned standing counsel for the Railway administration contended that the quantum of compensation has to be assessed on the basis of the Rule that was available at the time when the accident or untoward incident, as the case may be, happened. Rule 1(2) of the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997 provides that those Rules shall come into force on the 1st day of November, 1997. Therefore, according to the Railway administration, the enhanced amount of compensation can be granted only in respect of an accident or untoward incident happened on or after 1st November 1997. In support of the above contention the learned standing counsel relied on two Full Bench decisions of this Court in *Oriental Insurance Co. Ltd. v. Sheela Ratnam* 1996 (2) KLT 695 and *United India Insurance Co. Ltd. v. Alavi* 1998 (1) KLT 951. The learned standing counsel further contended that the issue involved in the present cases has not been considered by this Court in *Vijayasankar v. Union of India* 1995 (2) KLT 408, or in *Anandan v. Railway Claims Tribunal* 1997 (2) KLT 1, the two decisions on which reliance was placed by the learned Counsel appearing on behalf of the claimants. Apart from the above, it is pointed out that the question of law decided in 1995 (2) KLT 408 was left open by the Supreme Court in its Order in SLP No. 1411/96.

5(a). According to the Railway administration, except in the cases which are under challenge in these appeals at the instance of the Railway administration in all other cases Railway Claims Tribunal has taken the view that the Rule as on the date of the accident should be applied for fixing the quantum of compensation. On the other hand, the learned Counsel for the claimants would contend that since the provision for compensation made under the Rules is part of a beneficial legislation, it has to be given a liberal interpretation and, therefore the Rule that was available at the time of assessment of the quantum of compensation by the Tribunal should be made applicable. According to the learned Counsel, the principle laid down by the Supreme Court in *Maghar Singh Vs. Jashwant Singh*, , should be applied in the present case.

6. In 1996 (2) KLT 695 a Full Bench of this Court considered the question whether amendment to Section 140 of the Motor Vehicles Act, 1988 by the Motor Vehicles (Amendment) Act, 1994 enhancing the quantum of compensation is applicable to claims for compensation in respect of death or permanent disablement resulting from such accident occurred prior to 14th November 1994, the date on which the Amending Act came into force. Full Bench took the view that the liability is incurred u/s 140(1) of the Motor Vehicles Act, 1988 and the

right accrues under the above provision on the date of the accident and not on the date of consideration of the claim. Large number of decisions of the Supreme Court as well as two earlier Full Bench decisions of this Court viz., *Neeli v. Padmanabha Pillai* 1992 (2) KLT 807 and *National Insurance Co. v. Roy George* 1993 (1) KLT 308, were relied on by the Bench in coming to the above conclusion. In 1998 (1) KLT 951 a Full Bench of this Court considered the question whether Section 4 and 4A of the Workmen's Compensation Act, 1923 as amended by Act 30 of 1995 enhancing the amount of compensation and rate of interest would be applicable to claims in respect of death or permanent disablement resulting from accident which occurred prior to 15th September 1995, the date on which amended provisions came into force. The Workmen's Compensation (Amendment) Act, 1995 (Act 30 of 1995) received the assent of the President on 17th August 1995. Section 1(2) of the Amendment Act provided that the Act shall come into force on such dates as the Central Government may by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of that Act. Sections 4 and 4A as amended by the Amendment Act came into force with effect from 15th September 1995 vide Central Government Notification dated 12th September 1995. Full Bench took the view that in the case of accidents happened prior to 15th September 1995 the amended provisions have no application even though reliance was placed on behalf of the claimants on the decision of the Supreme Court in Civil Appeal Nos. 16904 to 16909/96. Full Bench distinguished the above decision and followed two earlier decisions of the Supreme Court in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, rendered by 5 Judges Bench, and *Maghar Singh Vs. Jashwant Singh*, rendered by 3 Judges Bench of the Supreme Court. It was held that no retrospective effect can be given to the amended provisions and that the amended provisions could not be applied in respect of accident or death or permanent disablement resulting from accident occurred prior to 15th September 1995.

7. Now we will refer to the two decisions relied on by the learned Counsel for the claimants and examine whether those decisions are authorities for the proposition raised in these appeals. In 1995 (2) KLT 408 a claim which is not covered by Section 124 but could be covered by Section 124A was dismissed by the Railway Claims Tribunal on 11th October 1991 much before Section 124A was introduced in the statute by Act 28 of 1994. Division Bench upheld the above order of the Tribunal. Then it proceeded to examine the scope of Sub-section (1A) added to Section 13 of the Claims Tribunal Act, 1987 read with Section 24. It was then observed that "Parliament has transplanted the civil Court jurisdiction regarding all claims for compensation (relating to trains) with Claims Tribunals from 1st August 1994 onwards. Even cases which could be held in civil Courts before that date could be entertained only by the Claims Tribunal. Similarly those cases which were in fact filed before civil Courts prior to that date could only be dealt with by the Claims Tribunal after that date". It was then held that since the appeal was pending before this Court, and since appeal is a

continuation of the original proceeding, it should be taken that when the amendment came the proceeding was pending before the Tribunal and the Tribunal will get jurisdiction by virtue of the amendment. In view of the peculiar facts of the case this Court proceeded¹ to decide upon the quantum of compensation without remitting the matter to the Tribunal. While fixing the quantum, the provisions of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 were applied. The question whether in the case of an accident happened in 1988, the provision of 1990 Rules could be applied or not was not raised at all. Therefore, this decision is not an authority for the proposition that the date of accident is not relevant and that the rate of compensation shall be the one as per rules in force at the time of consideration, of the claim. As mentioned earlier, this decision was taken in appeal before the Supreme Court in SLP No. 1411 of 1996 and even though the SLP was dismissed the question of law was left open.

8. In 1997 (2) K.I.T. 1 a learned Single Judge has considered the effect of dismissal of an application filed before Section 124A came into force for lack of jurisdiction to the Tribunal, on a fresh application after Section 124A was introduced. It was held that the second application was not hit by principles of res judicata as the first application was not dismissed on merits. It is relevant to note that in the above two decisions there is no finding that even a claim which would be barred before a civil Court could be filed in the Tribunal after Section 124A was introduced.

9. In P.A. Narayanan Vs. Union of India (UOI) and Others, even though a contention was raised that the provisions of Section 120(c) of the Railways Act, 1989 cannot have any application to an accident happened on 3rd January 1981, as the above provision has not been given retrospective effect, the Apex Court did not go into that question and left the issue open. Compensation was granted to the claimant on the breach of common law duty of reasonable care which lies upon all carriers including the Railways. Therefore, this decision is of no help to us in deciding the issue raised in these cases.

10. We do not find any merit in the contention raised by the learned Counsel for the Respondent in M.F.A. 1320/98 relying on Sub-rule (4) of Rule 3 of the 1990 Rules. The above sub-rule reads as follows:

(4) 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 the person subsequently dies as a result of the injury, a further compensation equal to the difference between the amount payable for death and the already paid shall become payable.

The contention is that since payment of compensation is contemplated when death occurs subsequent to the accident, it has to be taken that the Rule that is relevant is the Rule available at the time of consideration of the claim and not at the time of the accident or untoward incident, as the case may be. It is clear

from the wording of the sub-rule itself that the additional compensation is claimable on the happening of a subsequent event namely, the death of the person who was injured in the accident. It is in the nature of a second cause of action. The Rule that will be applied for finding out the quantum of compensation for death would be the Rule that was available at the time of the death. It does not mean that Rule on the date of consideration of the claim on the basis of death has to be applied for assessing the quantum. Quantum has to be assessed on the basis of the Rule which was in force at the time of the death.

11. A reference to the provision of Section 126 of the Railways Act, 1989 which provides for interim relief by the Railway administration would also make it clear that the liability of the Railway to pay compensation and the right of the claimant to receive compensation accrue on the date of the accident and not at a subsequent date. Section 126 reads as follows:

126. Interim relief by railway administration-

(1) Where a person who has made an application for compensation u/s 125 desires to be paid interim relief he may apply to the railway administration for payment of interim relief along with a copy of the application made under that section.

(2) Where, on the receipt of an application made under Sub-section (1) and after making such inquiry as it may deem fit, the railway administration is satisfied that circumstances exist which require relief to be afforded to the applicant immediately, it may, pending determination by the Claims Tribunal of the actual amount of compensation payable u/s 124 (or Section 124-A) pay to any person who has sustained the injury or suffered any loss, or where death has resulted from the accident, to any dependant of the deceased, such sum as it considers reasonable for affording such relief, so however, that the sum paid shall not exceed the amount of compensation payable at such rates as may be prescribed.

(3) The railway administration shall, as soon as may be, after making an order regarding payment of interim relief under Sub-section (2), send a copy thereof to the Claims Tribunal.

(4) Any sum paid by the railway administration under Sub-section (2) shall be taken into account by the Claims Tribunal while determining the amount of compensation payable.

12. The above provision enables the Railway administration to grant interim relief of a sum as it considers reasonable, but that sum shall not exceed the amount of compensation payable at such rates as may be prescribed. This would show that the liability to pay compensation accrues on the date of the accident at the prescribed rate on that date. The interim relief that can be granted has to be assessed on such rate and the amount cannot be more than what the claimant would ultimately get as compensation. This provision would clearly show that the basis for assessment of the quantum of compensation should be the basis that

was available at the time of accident or untoward incident, as the case may be, and not at the time of assessment by the Tribunal.

13. The wording of Sub-section (2) of Section 126 would show that the liability is saddled as soon as the accident happens, not when the quantum is determined. The wording of Section 124 and 124A also would clearly show that the liability of the Railway administration to pay compensation arises as soon as the accident or untoward incident, as the case may be, happens. But the quantum of compensation is to be as prescribed. Prescription is under the Rules. Therefore, it is clear that the liability to pay compensation is to the extent prescribed under the Rules in force at the time of the accident or the untoward incident, as the case may be.

14. A contention was raised by the learned Counsel for the claimant in M.F.A. No. 839 of 1998 that the non-obstant clause in Section 124 and 124A namely, "notwithstanding anything contained in any other law" would exclude the provisions of Section 5 of the General Clauses Act also. Section 124 and 124A would clearly show that it is not the provisions of General Clauses Act that has been excluded, but reference is to the provisions of other statutes like Fatal Accidents Act, Workmen's Compensation Act, etc. Apart from the above, it can be seen that the Amendment Rules itself provided that they shall come into force on 1st day of November, 1997.

15. There is one more common question to be considered in this case that is regarding payment of interest. We are of the view that the claimants are entitled, to interest from the date of filing the petition before the Tribunal. In order to make the compensation just and fair it is only proper that interest is paid to the claimant from the date of filing the petition. A similar view was taken by a Division Bench of the Madhya Pradesh High Court in Union of India (UOI) Vs. Smt. Laxmipati and Another, . It was held that even if Section 34 of CPC has not been expressly made applicable to the proceedings before the Commissioner under the Indian Railways Act, 1890, there is no reason to hold that principles of Section 34 CPC would be inapplicable. Court, therefore, directed payment of interest from the date of tiling the petition before the Commissioner. The same view was taken by the Madras High Court in Union of India v. Janardhanan and Anr. AIR 1908 Mad 272. In A.A. Haji Muniuddian v. Indian Railways AIR 1996 S.C. 361 the Supreme Court had occasion to consider the question whether the provisions of the Order 33 of the CPC would be applicable to the proceedings before the Railway Tribunal. It was held that although the Railway Claims Tribunal Act and the Rules thereunder do not specifically provide for the application of Order 33 of the Code of Civil Procedure, there is nothing in the Act or the Rules which precludes the Tribunal from following that procedure if the ends of justice so require. Nowhere in the Act is there any provision which runs counter to or is inconsistent with the provisions of Order 33 of the Code of Civil Procedure. Same principle can be applied to hold that even through Section 34 of CPC as such is not applicable, the principles contained therein can be made

applicable to proceedings before the Railway Claims Tribunal.

16. In all the cases under consideration we find that the Tribunal has granted interest at the rate of 15 per cent from the date on which the Tribunal had directed the Railway administration to make the payment. The above direction is not under challenge in these appeals. We therefore hold that the claimants will be entitled to interest at the rate of 12 per cent per annum from the date of the application before the Tribunal upto the date on which the compensation amount was directed to be paid by the Tribunal in addition to the interest granted by the Tribunal.

17. In the light of the above discussion, we have no hesitation to hold that the enhanced rate of compensation as per the amendment which came into force on 1st November 1997 can be applied only in respect of claims arising from accidents or untoward incidents, as the case maybe, happened on or after 1st November 1997. Now we will consider the contentions raised in the individual case on the facts of each case.

(Their Lordships considered individual appeals and continued-Ed.)

18. In the light of the above, we allow M.F.A. Nos. 816, 839, 1249, 1265, 1282 and 1293 of 1998 subject to the direction to pay interest. M.F.A. No. 1292 of 1998 is partly allowed with direction to pay interest. M.F.A. No. 1320 of 1998 is allowed and cross appeal is partly allowed with direction to pay interest. M.F.A. No. 1284 of 1998 is allowed and the judgment of the Tribunal in T.A. No. 56/97 is set aside. M.F.A. No. 915 of 1998 is partly allowed.