

(1977) 08 AP CK 0001

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 355 of 1976

Union of India (UOI)

APPELLANT

Vs

Mohan Singh

RESPONDENT

Date of Decision : 04-08-1977

Acts Referred:

Constitution of India, 1950 — Article 227
General Clauses Act, 1897 — Section 6
Railways Accidents (Compensation) Rules, 1950 — Rule 6
Railways Act, 1989 — Section 58, 82A, 82B, 82J

Citation : (1977) 08 AP CK 0001

Hon'ble Judges : Ramachandra Raju, J;Jeevan Reddy, J

Bench : Division Bench

Advocate : P. Venkatarama Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

Ramachandra Raju, J.—The civil revision petition is filed under Article 227 of the Constitution of India against the order of the Ex-officio Claims Commissioner appointed u/s 82-B of the Indian Railways Act. When the civil revision petition came up for hearing in the first instance before our learned brother, Madhava Rao, J., he referred the case to a Division Bench on the ground that Article 227 of the Constitution was subsequently amended by the Constitution (Forty-second Amendment) Act, 1976, and it is necessary to decide whether the old Article or the new Article 227 would apply to the pending matters, and it being an important question of law it is desirable that it should be decided by a Division Bench.

2. According to the amended Article 227 of the Constitution a High Court has power of superintendence only over Court which are subject to its appellate jurisdiction whereas according to the old Article 227 it has power of superintendence over all the courts and also over all the tribunals throughout the territories in relation to which it exercises jurisdiction. The Claims Commissioner

appointed u/s 82-B of the Indian Railways Act is only a Tribunal and not a Court. Therefore, if new Article 227 of the Constitution applies this Court cannot have jurisdiction of superintendence over it. It is only if the old Article 227 is to be applied, then only this Court will have jurisdiction to deal with this civil revision petition. The civil revision petition was filed on 13th February, 1976. Thereafter the amended Article 227 came into force on 1st February, 1977. Then the question arises whether the amended Article 227 which does not give the right of superintendence to the High Court over the Tribunals, applies to the pending matters in which case this Court cannot deal with civil revision petition.

3. It is provided under Article 367 of the Constitution that unless the context otherwise requires, the General Clauses Act, 1897, shall apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. According to Section 6 (e) of the General Clauses Act where there is an amendment or repeal of a provision unless a different intention appears, it shall not affect any pending legal proceeding and it may be continued as if the repeal or amendment has not come into force. There is no provision in the Constitution (Forty-second Amendment) Act, 1976, making the new Article 227 applicable retrospectively affecting the pending matters. Wherever the Parliament intended any provision to have retrospective operation, it was so provided for in the Constitution (Forty-second Amendment) Act. For instance u/s 58 provision is made as to pending petitions under Article 226 to be dealt with under the amended Article 226. No such provision is made for pending matters under Article 227. Therefore, the old Article 227 of the Constitution only applies to the present case. In *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, , the Supreme Court said that in construing the Articles of the Constitution, Courts must bear in mind the cardinal rule of construction that statutes should be interpreted, if possible, so as to respect vested rights. The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. The Supreme Court said that the same principle applies to the amendment of the constitutional provisions also.

4. Therefore, it is clear that this Court has jurisdiction to deal with this civil revision petition as the old Article 227 only applies.

5. Now coming to the merits, the facts of the case may be stated; the Respondent was employed as a helper in some provisions stores. While he was travelling by a train on the night of 5th February, 1973 the train met with, an accident on account of removal of fish plates. The Respondent sustained injury in his left leg in the accident as his left leg was caught between two wooden planks inside the compartment. The Respondent was taken to the Government Hospital at Vellore and given treatment. It appears that the Respondent sustained fracture of the upper end of left tibia and femur. The Respondent has studied upto 8th class.

6. According to the findings of the Commissioner, the Respondent was earning Rs. 3 per day on the date of the accident. It was also found that the Respondent is not now able to walk freely and he limps and his services were terminated by his erstwhile employer. The Commissioner found that the Respondent's earning capacity has not been totally and fully affected and it is reasonable to expect that in view of the Respondent's present state of his physical condition after the accident, he may not be able to earn more than Rs. 2 per day. It is provided therein that when in the course of working, a railway accident occurs, whether or not there has been any wrongful act neglect or default on the part of the railway administration as such 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. Under Sub-section (2) of Section 82A the liability of railway administration under that provision is limited to a sum of Rs. 20,000. Provision is made u/s 82J empowering the Central Government to make rules in particular, rules to provide the nature of the injury for which and the rates at which compensation shall be payable. Under that provision the Railways Accidents (Compensation) Rules, 1950 were framed. Under Rule 6 of those Rules provision is made for computation of the amount of compensation payable in respect of death or injuries. In Part I of Schedule to those Rules the amounts of compensation payable for total disablement or for partial disablement having regard to the income of the victim at the time of the accident were mentioned. In Part II of the Schedule amounts payable for partial disablement of the nature of a loss of some limb are mentioned. It is provided under Sub-rule (2) of Rule 6 of the Rules that 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.

7. The Commissioner without mentioning or following these Rules gave compensation on the basis of the life expectancy of the Respondent and the loss he suffered in his earning capacity on account of the injury and fixed the compensation amount at Rs. 6,000. It may be noted that the liability of the Railway to pay compensation as provided u/s 82-A as already noticed above is irrespective of whether or not there has been any wrongful act, neglect or default on the part of the railway administration which enables the person injured or suffered loss to maintain an action and recover damages in respect thereof. The amount of compensation payable u/s 82-A by the railway administration is only a limited one the limits being those mentioned in the section itself and also the Rules. According to the Rules as discussed above the Respondent is entitled to some percentage of the amount of compensation payable for total disablement as provided under Part I of the Schedule appended to the Rules. The monthly earning of the Respondent was determined at Rs. 90 as on the date of the accident. If the earning was between Rs. 80 and Rs. 100 per month as per the Schedule for total disablement the amount of compensation payable is Rs. 8,000.

There is no total disablement as the Respondent was not totally incapacitated from earning. Therefore he is entitled to a portion of the amount of Rs. 8,000 which will be proportionate to loss of earning capacity caused by the injury. The Commissioner estimated the loss of earning capacity at 1/3rd on the ground that he would be able to earn hereafter at the rate of Rs. 2 per day instead of Rs. 3 per day which he was earning at the time of accident. We do not think the estimate made by the Commissioner with regard to the loss of earning capacity of the Respondent on account of the injury is reasonable. It is found that the Respondent cannot now walk freely and he limps. If that is so, we think his loss of earning capacity would be half in which case he is entitled to half of the amount of compensation which would be payable for total disablement. In that view of the matter the Respondent would be entitled to a compensation of Rs. 4,000.

8. Accordingly we hold that the Railway is liable to pay the Respondent a sum of Rs. 4,000 towards compensation instead of Rs. 6,000 as found by the Commissioner. Except for the modification made in the quantum of compensation as mentioned above there are no other merits in the Civil Revision Petition. Accordingly it is dismissed but for the modification made in the quantum of compensation. No costs.