
(2007) 06 MP CK 0020
In the Madhya Pradesh High Court

Union of India (UOI)	Vs	APPELLANT
Ram Bachan Singh and Another		RESPONDENT

Date of Decision : 19-06-2007

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2009) ACJ 122 : AIR 2007 MP 232

Hon'ble Judges : S.R. Waghmare, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dipak Misra, J.—This is an application for review/modification of the order dated 8-8-2005 passed in MA No. 226/1995. Suffice it to say, the said appeal was preferred u/s 23 of the Railway Claims Tribunal Act, 1987 (for brevity "the Act") whereby the Union of India had called in question the pregnability of the judgment dated 30-10-1998 passed by the Railway Claims Tribunal, Bhopal Bench, Bhopal (in short "the tribunal") in OA No. 5/98-A.

2. This Court after referring to the definition contained u/s 123 (c) "untoward incident" and the decision rendered in the case of P.A. Narayanan Vs. Union of India (UOI) and Others, expressed the opinion as under:

10. In this context, we may fruitfully refer to the observations of the Apex Court made in the case of P.A. Narayanan Vs. Union of India (UOI) and Others, :

There is common law duty of taking reasonable care which must be attached to all carriers including railways....

Though the said observation was made on a different context but emphasis is on the taking reasonable care. When tickets are issued and passengers are not allowed to have sitting place it is duty of the Railways to make adequate provision for coaches. We have no hesitation in mind that an accidental falling of any passenger from train carrying passengers would come within the ambit and

sweep of "untoward incident". Thus, we do not find any error or fallacy in the said conclusion of the Tribunal.

11. The next spectrum relates to grant of interest. Submission of Mr. Sinha, is that the interest is excessive. Keeping in view the facts and circumstances of the case, the reduction of the interest rate in presenti, is proper and we are disposed to reduce the interest to 6% per annum.

12. In view of the aforesaid premises reasons, the award passed by the tribunal is confirmed with only a modification that the awarded sum shall carry interest at the rate of 6% per annum. In the peculiar facts and circumstances of the case there shall be no order as to costs.

3. It is noteworthy to mention here that the tribunal had passed the award on 30-10-1998 and granted compensation of Rs. Two lakhs with a stipulation that it shall carry interest at the rate of 12% from 6-1-1998 till the date of payment. This Court Only reduced the interest to 6% per annum.

4. Mr. Dinesh Koushal, learned Counsel appearing for the claimant respondent submitted that this Court should have enhanced the compensation to Rs. Four Lakhs. To bolster his submission he has placed reliance on the decision rendered in the case of Rathi Menon Vs. Union of India, .

5. Mr. S.P. Sinha, learned Counsel appearing for the Railways has submitted that the claimant had not preferred an appeal nor any cross-objection and hence, no relief should be granted.

6. At this juncture, we must note with profit that the grant of compensation of an untoward incident is basically a facet of beneficial legislation. The concept of technicality in entirety cannot be incorporated to a litigation of the present nature. To give an example, if an application for grant of compensation is barred by limitation and statute prohibits the condonation of delay, the matter would be quite different. But the present case does not fresco a scenario.

7. It is well-settled in law that the appellate Court indubitably can pass an appropriate order to do justice. Grant of just compensation as allowable under any statute is the mandate of law and Rule of Law must prevail, for sacrosanctity in the matter of grant of compensation can never be marginalized.

8. In the case of Rathi Menon (supra) their Lordships were dealing with an accident which occurred on 3-9-1996. The Railway Claims Tribunal had passed the judgment on 27-6-1997. The Apex Court referred to the definition of "untoward incident" which was included by defining its contour in Section 123 of the Act. Their Lordships also referred to Section 124A of the Act which provides for awarding compensation to victims of any untoward incident. The Apex Court observed that the liability of the Railway Administration is to pay compensation to the extent as provided under the rules framed u/s 129 of the Act by the Central Government. The Railway Accident Compensation Rules 1990 were framed by the Central Government in exercise of powers conferred on it by

Section 129 of the Act. The Rules as well as the Schedule was amended with effect from 1-11-1997. After the amendment, Schedule prescribes Rs. Four Lakhs in case of death. The Apex Court while dealing with such Rule expressed the view as under:

The right of the injured to claim compensation as well as the liability of the Railway Administration are both reposed in Section 124-A of the Act. The right is to maintain an action and recover the damages. The liability is to "pay compensation to such extent as may be prescribed". The collocation of the words "as may be prescribed from time to time." The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of rules. Hence the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the claimant. Though the word "compensation" is not defined in the Act or in the Rules it is the giving of an equivalent or substitute of equivalent value. It means when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value. The provisions are not intended to give a gain to the Railway Administration but they are meant to afford just and reasonable compensation to the victims in a speedier measure. If a person files a suit the amount of compensation will depend upon what the Court considers just and reasonable on the date of determination. Hence, when he goes before the Claims Tribunal claiming compensation the determination of the amount should be as on the date of such determination.

9. Thereafter their Lordships proceeded to state as follows:

29. 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.

10. In view of the aforesaid, there can be no scintilla of doubt that the Rules that is in force on the date of passing of the order would apply.

11. In the present case the award, as has been indicated, has been passed on 30-10-1998. The amendment came into force on 1-11-1997. Thus, the tribunal should have kept the same in view and passed the order. It is the mandate of law as has been interpreted by the Apex Court.

12. Submission of Mr. Sinha is that no cross-objection had been preferred. In this context, we may refer with profit to the Order 41 Rule 33 of the Code of Civil Procedure. The same reads as under:

Order 41, Rule 33. Power of Court of Appeal.- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case

may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

Provided that the Appellate Court shall not make any order u/s 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

13. In Pannalal Vs. State Bombay and Others, their Lordships have expressed the opinion as under:

We are not, at present advised, prepared to agree that if a party who could have filed a cross-objection under Order 41, Rule 22 of the Civil P.C. Has not done so, the Appeal Court can under no circumstance given him relief under the provisions of Order 41, Rule 33 of the Code.

14. In State of U.P. and Ors. v. Raj Narain Singh and Anr. AIR 1986 AP 321 a Division Bench has opined that relief under Order 41, Rule 33 CPC, can be granted even in those cases where a cross-objection could have been filed, but was not filed if the circumstances justify granting relief under the said provision.

15. In Laxmi and Co. Vs. Dr. Anant R. Deshpande and Another, their Lordships have ruled thus:

27. It is true that the Court can take notice of subsequent events. These cases are where the Court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes. If the Court finds that the judgment of the Court cannot be carried into effect because of change of circumstances of the Court takes notice of the same. If the Court finds that the matter is no longer in controversy the Court also takes notice of such event....

16. In view of the aforesaid we allow the application and direct that the respondent who were the claimants would be entitled to get Rs. 4,00,000/- (Rupees Four Lakhs) only. However, to strike a balance we would clarify the interest on the enhanced sum of Rs. 2,00,000/- (Rupees Two Lakhs) only shall accrue from today.

17. The M.C.C. is allowed on the above terms.