(1994) 08 MP CK 0018

In the Madhya Pradesh High Court

Case No : M.P. No. 276 of 1987

Union of India (UOI) APPELLANT

Vs

Smt. Laxmipati and Another RESPONDENT

Date of Decision : 26-08-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Railway Claims Tribunal (Procedure) Rules, 1989 — Rule 1
Railways Accidents (Compensation) Rules, 1990 — Rule 1
Railways Act, 1989 — Section 13

Citation : (1995) ACJ 644 : AIR 1995 MP 90 : (1995) 40 MPLJ 28 : (1995) MPLJ 28

Hon'ble Judges : U.L. Bhatt, C.J;M.V. Tamasker, J

Bench : Division Bench

Advocate : S.K. Mukerjee, for the Appellant; Abhay Sapre, for Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.

First respondent''s husband, late of S. C. Pati, was travelling in Train No. 143 U. P. Kalinga Express on 15-9-1984. Between Zalwara and Katni Railway Stations, the train met with an accident as a result of which S. C. Pati sustained injuries and died. First respondent, for herself and on behalf of her two minor children, filed an application u/s 82(A) of the Indian Railways Act, 1890, before the Claims Commissioner appointed u/s 82(B) of the Act (District Judge of the District). The Claims Commissioner, by Annexure P-2 order upheld the claim and awarded Rs. 1 lac as compensation and directed the railways to pay the amount with interest at the rate of 6% from the date of application till payment. The direction for payment of interest is challenged by the Union of India in this petition.

The first respondent is absent. We have heard the learned Additional Central Government Standing Counsel. We have also heard Shri Abhay Sapre, Advocate who has been requested to assist the Court and place on record our appreciation of the assistance so rendered.

Indian Railways Act, 1890 did not originally contain any provision for payment of compensation or adjudication of claims by Claims Commissioner. Sections 82(A) to 82(J) were incorporated in the Act by Amendment Act No. III of 1943. These sections provided a scheme for assessment and payment of compensation to victims of railway accidents or their legal representatives. The maximum limit of compensation which could be awarded was fixed at Rs. 50,000/-. Section 82(B) empowered the Central Government to appoint Claims Commissioners. Section 82(C) dealt with application for compensation. Section 82(D) prescribed the procedure and powers of Claim Commissioners. The Claims Commissioner is required to follow such Summary Procedure as he thinks fit. He shall have all the powers of a Civil Court for the purpose of taking evidence on oath, enforcing attendance of witnesses and compelling discovery and production of documents. The Claims Commissioner shall be deemed to be a Civil Court for all the purposes of Section 194 and Chapter XXXV, C.P.C. Section 82(E) enabled the Claims Commissioner to pass interim orders. Section 82(F) enabled the Claims Commissioner to decide any question as to the liability of the railway administration to pay compensation or as to the quantum thereof or as to the person entitled to compensation. There was also a provision for appeal to the High Court. The Central Government framed Railway Accident (Compensation) Rules 1950 US 82(J) of the Act. Rule provide for applications, examination of applicant, summary dismissal of application, notice to opposite party, appearance and examination of opposite- party, framing of issues, determination of issues, method of recording evidence, local inspection, summary examination, maintenance of diary, etc. Rule 27 stated that if any matter is not covered by Rules or covered insufficiently by the rules, the Commissioner shall follow the procedure laid down in the Code of Civil Procedure. Section 82(A) of the Act of 1890 was amended by Amendment Act No. 44 of 1983 enhancing the limit of compensation to Rs. 1 lac.

The 1890 Act was replaced by Indian Railways Act, 1989. The Act does not contain any provisions regarding compensation. The Act does not incorporate the provisions noticed above since in 1987 the Railway Claims Tribunal Act was enacted. The said Act was enacted to provide for establishment of Claims Tribunals for enquiring into and determining claims against railway administration for compensation for death or injury no passengers occurring as a result of railway accidents, for loss, destruction, damage, etc. of animals or goods entrusted with it and for, other reasons. Section 13 of the Act deals with jurisdiction, powers and authority of Claims Tribunal. The Tribunal is to exercise jurisdiction, powers and authority which before the appointed date were exercisable by Civil Court. Section 16 deals with applications to Claims Tribunal. Section 18 deals with procedure and powers of the Tribunal. The Tribunal though not bound by the procedure laid down by the C.P.C., shall be guided by the principles of natural justice and subject to other provisions of the Act or Rules shall have power to devise its own procedure. Under Sub-section (3), several provisions of the C.P.C. are made applicable. The Railway Claims Tribunal (Procedure) Rules, 1989 have been framed to regulate the procedure of the Tribunal. Railway Accidents (Compensation) Rules, 1989 have also been framed.

The accident in the instant case took place on 15-9-1984. The case is, therefore, governed by the provisions of the Indian Railways Act, 1890 and not by the provisions of Railways Claims Tribunal Act, 1987. However, we have adverted to the provisions of the Acts to highlight that the Act of 1890 did not and the 1987 Act does not contain express provision enabling the Claims Commissioner or Tribunal to award interest.

The same was the position in regard to Motor Accident Claims Tribunals before the enactment of the Motor Vehicles Act, 1988. The Motor Vehicles Act, 1939 as it was originally enacted did not contain any provision relating to compensation or Claims Tribunal. The group of sections relating to compensation and claims were incorporated by Act No. 100 of 1956. These provisions did not contain an express provision relating to interest. Such a provision was incorporated by way of.Section 110-CC by Act No. 55 of 1969 which came into effect on 2-3-1970. In other words, till 2-3-1970, there was no express provision relating to interest in the Motor Vehicles Act. Nevertheless, the Courts, as a matter of course, were awarding interest on the compensation amount determined from the date of application till payment.

In Vinod Kumar Shrivastava v. Ved Mitra Vohra, AIR 1970 Madh Pra 172, a Division Bench of this Court noticed the absence of an express statutory provision under the Motor Vehicles Act, 1939 empowering the Tribunal to award interest, but held that the Tribunal was empowered to award interest in appropriate cases on the principles of Section 34, C.P.C. since the provision applied in regard to claims for unliquidated damages also. The Court noticed the language used in Section 110 of the Motor Vehicles Act, 1939 requiring that the compensation should appear to be "just", and observed (at pp. 178 and 179 of AIR) :

"The amount of compensation will normally be determined with reference to the date of the application but it must appear to the Tribunal to be just on the date of making of the Award. If the circumstances of the case are such that some interest should be allowed from the date of application up to the date of the Award or Payment, to make the Award ''just'', the Tribunal must impliedly have that power otherwise it will not be able to make a just Award. Thus, the power to allow interest though not expressly conferred flows from Section 110-B itself from the power to award the amount of compensation which is just..... The Tribunals are constituted to decide claims for compensation which prior to their constitution were decided by Civil Court. The sections pertaining to the Claims Tribunal in the Motor Vehicles Act apart from dealing with its constitution, power to make an Award, and other procedural matters, do not lay down the law according to which the Tribunal is to adjudicate the claim for compensation. The

Tribunal must, therefore, decide claims for compensation according to the existing law as the Courts would have done if the claims were laid in a suit. The object of Sections 110 to 110-F of the Motor Vehicles Act is the substitution of Tribunals in place of Courts; the object is not to deprive the claimant of a substantive relief which he would have obtained had the matter been litigated in Courts. If in the circumstances of a case a Court would have allowed interest to a claimant from the date of suit or from the date of decree, the Tribunal must necessarily possess that power otherwise the claimant would be deprived of a relief which he would have obtained before the constitution of the Tribunal."

Reference was made in the above decision to the provisions of the Interest Act, 1839 containing only one section empowering the Court to allow interest "upon all debts or sums certain payable at a certain time or otherwise" from the time when such debts or sums certain were payable. The provision relates to interest prior to the date of the suit. The provisions in the Interest Act, 1978 are very comprehensive. u/s 2(a), ''Court'' includes a Tribunal and an arbitrator. Section 3 of the Act deals with the pre-litigation interest in respect of debt or damages. In proceedings which do not relate to debt, interest may be awarded from the date mentioned in this regard in written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed. According to Section 3 of the interest Act, 1978, interest can be awarded for the period prior to the proceedings if a written notice had been given to the person liable to pay the damages indicating that interest will be claimed. If that be so, there is no reason to hold, in principle, that interest is not awardable in regard to damages from the date of proceedings. That is because the proceedings or the application itself must be deemed to be an intimation that interest will be claimed.

Section 34, C.P.C. deals with interest for the post-litigation period. Where decree is for payment of money, the Court may order interest at a reasonable rate on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged for any period prior to the institution of the suit. It is unnecessary to refer to the other details of the provision. It is true that the Indian Railways Act, 1890 or the Rules framed thereunder do not contain an express provision making Section 34, C.P.C. applicable to proceedings before the Claims Commissioner. But for the provisions in the Indian Railways Act, 1890, the claimant would have resorted to a suit for damages in a Civil Court. Had such a suit been filed, the Civil Court in a position to award post-litigation interest. The provisions under the Indian Railways Act, 1890 had the object of changing the forum from Civil Court to the Claims Commissioner with a view to provide cheaper and more expeditious remedy for the claimants. It could not be that the legislature intended that a benefit which the claimant would have derived at the hands of the Civil Court should be taken away by the mere changed of forum. Under the 1950 Rules, a person shall not be qualified for appointment as Claims Commissioner unless he has been or is qualified for appointment as a Judge of the High Court, or is/has been exercising powers of a District Judge, or is or has been exercising the powers of a District Magistrate. The Act provided a right of appeal to the High Court by the claimant but not by the Government or the railways. To deny post-litigation interest would amount to depriving the claimant of compensation for delay in obtaining relief for no fault of his. We hold that even though Section 34, C.P.C. has not been expressly made applicable to the proceedings before the Claims Commissioner, there is no reason to hold that the principles of Section 34, C.P.C. would be inapplicable.

For the reasons indicated above, we hold that the Claims Commissioner had power to award interest on the basis of principles of Section 34, C.P.C. The incident took place on 15-9-1984. The application was filed in 1985. The decision was given on 24-7-1986. There is no reason why the claimant should be deprived of the benefit of interest during the pendency of proceedings, merely because the proceedings lingered on for more than a year. We, therefore, decline to interfere and accordingly dismiss the petition, but in the circumstances without costs. Refund security, if any deposited.