

GAHC010233362013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/11/2013

UNION OF INDIA,
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI-11, ASSAM.

VERSUS

LITHUNGBEMO LOTHIA
S/O LT. SHANCHUMO LOTHIA, VILL. YANLUM, P.O. YANOHA, DIST. WOKHA
NAGALAND

Advocate for the Petitioner : MSB DEVI

Advocate for the Respondent : MR.K P MAHESWARI

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

18-06-2024

The present appeal has been preferred under Section 23 of the Railway Claims Tribunal Act, 1987 against a judgment and award dated 27.08.2012 passed by the Railway Claims Tribunal, Guwahati in OA No.IIu389/2005, New No. M.16/2010. By the aforesaid judgment, the learned Tribunal has awarded an amount of Rs.2,00,000/- (Rupees Two Lakhs) only to the claimant/applicant

with interest @ 6% per annum and further interest in case of delay. The appeal is preferred by the Railways.

2. The facts of the case which emerge from the materials on record revolves around a claim connected with a bomb blast at the Dimapur Railway Station on 02.10.2004. The respondent had instituted a claim before the Railway Claims Tribunal, Guwahati for injuries sustained by him in the said bomb blast. The learned Tribunal, vide the judgment dated 12.01.2007 had awarded an amount of Rs.2,00,000/- (Rupees Two Lakhs) only. It was clarified that out of the said amount, Rs.1.2 Lakhs was under Sl. No. 27 of Part III of the Schedule of the ***Railway Accidents and Untoward Incidents (Compensation) Rules, 1990*** and the balance amount of Rs.80,000/- (Rupees Eighty Thousand) only was against ten numbers of non-scheduled injuries. The amount granted was paid which is not in dispute. The respondent thereafter filed an application for enhancement of the amount contending that he had sustained permanent disability regarding hearing of both the ears. The basis of the aforesaid claim was a certificate dated 08.09.2008 issued by the Doctor of the Dimapur Civil Hospital. The learned Tribunal vide the impugned judgment dated 27.08.2012 had come to a conclusion that the respondent/claimant was entitled to further compensation of Rs.2,00,000/- (Rupees Two Lakhs) only. The said compensation was paid under Rule 3 (4) of the aforesaid Rules of 1990. It is this judgment, which is the subject matter of challenge in this appeal, which has been mentioned above.

3. I have heard Shri B. Sharma, learned Standing Counsel, Railways for the appellant. I have also heard Ms. M. Sharma, learned counsel for the respondent/claimant.

4. Shri B. Sharma, the learned counsel for the appellant has structured his appeal on two principal grounds. Firstly, he contends that the recourse to Rule 3 (4) of the Rules of 1990 is an erroneous approach. Secondly, he submits that without prejudice to his first ground of challenge, even the claim was not duly proved in accordance with law.

5. Elaborating his submissions, the learned counsel for the appellant, by referring to Rule 3 (4) of the Rules of 1990 has submitted that the application of the aforesaid provision would only arise when the injured person subsequently dies as a result of the injuries sustained. It is submitted that in the instant case, the enhanced claim is only on a contention that due to the incident, the claimant had sustained permanent disability on the hearing capacity of both the ears. Secondly, it is submitted that the basis of the enhanced claim for which the application was filed on 14.07.2009 was a certificate dated 08.09.2008 issued by the doctor of the Dimapur Civil Hospital. It is submitted that the said certificate was not proved in accordance with law inasmuch as the doctor, who has issued the certificate or any other authorized person of the hospital, who would be competent to vouch for which, was produced as a witness. It is submitted that when the basis of the enhanced claim was not proved in accordance with law, the claim is not sustainable.

6. *Per contra*, Ms. M. Sharma, learned counsel for the respondent/claimant has submitted that even if there is no strict application of Rule 3 (4) of the Rules of 1990, the spirit would be very much applicable inasmuch as an injured who subsequently suffers from further complications because of the injuries cannot be left high and dry. It is submitted that the approach of the learned Tribunal cannot be faulted with. As regards the certificate dated 08.09.2008, the learned

counsel submits that though the doctor issuing the certificate was not examined, the contents of the same are genuine and it was issued by following the due process of law.

7. The rival submissions have been duly considered and the materials placed before this Court, including the records of the Tribunal have been carefully examined.

8. At this stage, the learned counsel has also drawn the attention of this Court to the order dated 20.07.2023 whereby the learned counsel for the respondent/claimant was directed to obtain instructions.

9. Ms. Sharma, the learned counsel has accordingly submitted that instructions have been obtained and the concerned doctor is still there. The aforesaid instructions were directed to be obtained on the aspect as to whether an effective purpose would be served if the matter is remanded back in the interest of justice.

10. After considering the rival submissions and the facts and circumstances, this Court is of the opinion that even without going into the technical aspect of deciding as to whether the provision of Rule 3 (4) of the Rules of 1990 would be applicable in this case, this Court is of the opinion that the reliance on the certificate without the same being proved in accordance with law could not have been made the basis for the impugned judgment. However, this Court is of the view that interest of justice would be served if the matter is remanded back giving the respondent/claimant an opportunity to prove the certificate in accordance with law.

11. Accordingly, while the impugned judgment dated 27.08.2012 is set aside, the matter stands remanded back to the learned Railway Claims Tribunal, Guwahati wherein the respondent/claimant is to be given an opportunity to prove the certificate dated 08.09.2008 in accordance with law. The records of the Tribunal be transmitted back immediately and the parties are directed to appear on 17.07.2024 before the learned Tribunal from which date, the Tribunal would take charge of the proceedings and complete the exercise as directed above in an expeditious manner. The claimant is also given liberty to produce the concerned witness without praying for issuance for summons.

JUDGE

Comparing Assistant