

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

MFA.No. 116 of 2009 ()

ORDER IN OA 10/2005 OF RAILWAY CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/RESPONDENT:

UNION OF INDIA, REPRESENTED BY
GENERAL MANAGER, SOUTHERN RAILWAY, CHENNAI.

BY ADV. SRI.N.B.SUNIL NATH,SC, RAILWAYS

RESPONDENT/APPLICANT:

A.A. LUKOOSE, ALAKULATHIL,
AYARKUNNAM P.O., KOTTAYAM.

BY ADV. SRI.S.SUNIL NARAYANAN

BY ADV. SRI.K.P.JUSTINE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

scl

T.R. RAMACHANDRAN NAIR

&

P.V. ASHA, JJ.

M.F.A. No. 116 of 2009

Dated this the 20th day of February, 2015.

JUDGMENT

T.R.Ramachandran Nair,J.

This appeal is filed challenging the order in O.A.No.10 of 2005 of the Railway Claims Tribunal, Ernakulam Bench. By the said order, the appellant is directed to pay a sum of Rs.1,44,000/- along with interest at the rate of 9% p.a. from the date of filing of the case before the Tribunal till payment.

2. We heard the learned counsel on both sides.

3. The learned standing counsel appearing for the appellant submitted that actually there was no evidence of the accident. Further, it is submitted that for non-scheduled injuries, the maximum amount of Rs.80,000/- was granted. It is submitted that he had sustained two fractures for which Rs.64,000/- has been granted relying on the schedule. Other

injuries are incised wound (Rt.) foot medially by 3 Cms. and lacerated wound (Rt.) heel. It is also submitted that the medical bills are to the tune of Rs.4,000/- and above and even if other incidental expenses are calculated, the amount granted for non-scheduled injuries at Rs.80,000/- is on a higher side.

4. The learned counsel for the respondent submitted that the compensation granted is perfectly justified in the light of the injuries sustained, and other aspects like pain and sufferings and other incidental expenses.

5. We find from the discussion and the evidence available that the Tribunal accepted the case of the applicant that he was a bonafide passenger and he fell down, after the door hit him, due to sudden jerk of the train. Along with him, his wife PW2 was also there. According to her, he had taken tickets for their journey, which he had kept in his pocket. They were travelling in the Shornur-Trivandrum Venad Express from Trichur to Kottayam. Apart from his wife, another independent witness was also examined as PW3. He supported the case by stating that the applicant fell down from the train, after he was

hit by the door of the compartment. Since the evidence was there to prove the accident, we find no reason to vary the finding entered by the Tribunal. Apart from the same, the police records were also there, viz. Exts. A8 and A9, FIR and Final Report which were prepared by the Railway Police Station, Kottayam.

6. As regards the compensation, for the fracture medial malleolus (right) and fracture fibula (right), Rs.64,000/- has been granted (Rs.32,000/- each), which do not require any interference, since the same is as per the schedule.

7. As regards the grant of Rs.80,000/- under the Rules, it is the maximum that can be awarded. As rightly pointed out by the learned counsel for the appellant, the injuries were minor in nature. Even if, the medical expenses and other incidental expenses are considered, then also, it is on the higher side. The Tribunal has not elaborated the reasons for awarding Rs.80,000/- for non-scheduled injuries. The learned counsel for the respondent submitted that the period of treatment is from the date of accident, viz.,

24.1.2004 to 31.1.2004 in the Matha Hospital, Thellakom and from 31.1.2004 to 12.2.2004 in Kottayam Medical College Hospital. It is submitted that he would have experienced much pain and sufferings during this period.

8. After considering the various factors, we are also of the view that the compensation granted for non-scheduled injuries at Rs.80,000/- is excessive. We re-fix the same to Rs.50,000/- and therefore, the total compensation will be Rs.1,14,000/-.

The appeal is allowed partly. The appellant will deposit the amount before the Tribunal or pay to the respondent the amount awarded as above directly within a period of two months along with interest. The parties will suffer the costs of the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE
Sd/-
P.V. ASHA
JUDGE

Scl.

True Copy
PA to Judge