

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1089/2013 & CM No.2073/2013**

Pronounced on: 19.11.2015

SETU NIKET

..... Petitioner

Through: Ms. Esha Mazumdar, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjay Jain, ASG with
Mr.Arun Bhardwaj, CGSC, Mr.Sarfaraz
Ahmed, Ms. Aastha Jain, Ms.Neha Garg,
Mr.Apurva Varma, Ms.Honey Kumari and Mr.
Akash Nagar, Advs. for UOI

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

G. ROHINI, CHIEF JUSTICE:

1. This petition by way of Public Interest Litigation is filed with the following prayers:-

“(a) to quash Section 129 of the Railways Act, 1989 as *ultra vires* Article 14 and 21 of the Constitution;

(b) to quash the Railway Accidents and Untoward Incident (Compensation) Rules, 1999 providing for Rs.4,00,000/- as the maximum amount of compensation in case of death or permanent disability;

(c) to direct the Respondents to appoint a committee of experts including members of Respondent No.2 and other independent experts to formulate proper policy or standard to determine compensation till the same is formulated by the Parliament.”

2. We have heard the learned counsel for both the parties.

3. The Railways Act, 1989 (hereinafter referred to as ‘the Act’) has been enacted repealing the Indian Railways Act, 1890. Chapter XIII of

the Act, comprising Sections 123 to 129, deals with the liability of Railway Administration for death and injury to passengers due to accidents. Section 125 provides for making an application for compensation to the Claims Tribunal established under Section 3 of the Railway Claims Tribunal Act, 1987 (for short 'the RCT Act') for compensation under Section 124A of the Act. Section 124 provides for the liability of Railway Administration for payment of compensation for the loss occasioned by the death of a passenger or personal injury or damage to the goods as a result of an accident to a train, whereas Section 124 or Section 124A provides for the liability of Railway Administration for payment of compensation for the loss occasioned on account of an untoward incident. Both Section 124 and Section 124A of the Act make it clear that the liability of the Railway Administration shall be to such extent as may be prescribed by the Rules made under the Act.

4. In exercise of the powers conferred under Section 129 of the Act, the Central Government made Rules to carry out the purposes of Chapter XIII of the Act. The said rules, called the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (for short 'the Compensation Rules') *inter alia* provide that the maximum compensation that can be claimed is Rs.4 Lacs for death and permanent disability.

5. The *vires* of Section 129 and the provisions of the Compensation Rules are sought to be questioned by the petitioner on the following grounds:

- (i) Conferring of power upon the Central Government under Section 129 of the Act to determine the upper limit of compensation by

way of Rules amounts to delegation of essential legislative function of the Parliament.

- (ii) In the absence of any provision in the Act laying down the standards for fixation of the limit upto which the compensation can be granted, the impugned Rules are liable to be declared null and void on the ground of excessive delegation.
- (iii) The very object of RCT Act, 1987 is defeated by limiting the compensation that can be granted by the Tribunal to Rs.4 Lacs.
- (iv) The upper limit of Rs.4 Lacs as compensation in case of a rail accident is not in parity with the compensation provided in case of accidental deaths or permanent disability by other means.

6. For proper appreciation of the above contentions, it is necessary to notice the relevant statutory provisions of the Railways Act, 1989:

“Section 124. Extent of liability

When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.--For the purposes of this section "passenger" includes a railway servant on duty.”

....

Section 124A. Compensation on account of untoward incident

When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation. For the purposes of this section, "passenger" includes-

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

Section 128. Saving as to certain rights.— (1) The right of any person to claim compensation under section 124 29 [or section 124A] shall not affect the right of any such person to recover compensation payable under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force; but no person shall be entitled to claim compensation more than once in respect of the same accident.

(2) Nothing in sub-section (1) shall affect the right of any person to claim compensation payable under any contract or scheme providing for payment of compensation for death or personal injury or for damage to property or any sum payable under any policy of insurance.

Section 129 - Power to make rules in respect of matters in this Chapter. (1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

- (a) the compensation payable for death;
- (b) the nature of the injuries for which compensation shall be paid and the amount of such compensation.'

7. It is also relevant to refer to Rules 3 and 4 of the Compensation Rules which read as under:

“Rule 3. **Amount of compensation.** (1) The amount of compensation payable in respect of death or injures, shall be as specified in the Schedule.

(2) The amount of compensation payable for an injury not specified in Part II or Part III of the Schedule but which, in the opinion of the Claims Tribunal is such as to deprive a person of all capacity to do any work, shall be [rupees four lakhs].

(3) The amount of compensation payable in respect of any injury (other than an injury specified in the Schedule or referred to in sub-rule (2) resulting in pain and suffering, shall be such as the Claims Tribunal may after taking into consideration medical evidence, besides other circumstances of the case, determine to be reasonable:

Provided that if more than one injury is caused by the same accident, compensation shall be payable in respect of each such injury:

Provided further that the total compensation in respect of all such injuries shall not exceed [rupees eighty thousand].

(4) Where compensation has been paid for any injury which is less than the amount which would have been payable as compensation if the injured person had died and the person

subsequently dies as a result of the injury, a further compensation equal to the difference between the amount payable for death and the already paid shall become payable.

(5) Compensation for loss, destruction or deterioration of goods or animals shall be paid to such extent as the Claims Tribunal may, in all the circumstances of the case, determine to be reasonable.”

Rule 4. Limit of compensation. —

Notwithstanding anything contained in Rule 3, the total compensation payable under that rule shall in no case exceed [rupees four lakhs] in respect of any one person.”

8. A plain reading of Section 124 and Section 124A of the Act shows that when in the course of working a railway an accident or an untoward incident occurs then whether or not there has been any wrongful act, neglect or default on the part of the Railway Administration, a passenger who was injured or killed is entitled for compensation. In other words, there is no obligation on the part of the claimants of the deceased/injured to prove whether there was a wrongful act, neglect or default on the part of the Railway Administration. However, the total compensation payable under Section 124 and Section 124-A of the Act shall not exceed Rupees Four Lacs prescribed under Rule 4 of the Compensation Rules.

9. The contention of the petitioner is that Rule 4 of the Rules under which the Central Government has prescribed the upper limit of compensation payable under Section 124 and Section 124-A of the Act is beyond the scope of legislative power, particularly in view of the fact that no guidance has been given under the Act as to how the power conferred under Rule 4 is to be exercised. Hence, according to the petitioner Rule 4 of the Compensation Rules as well as Section 129 of

the Act which conferred unguided power on the delegate are liable to be declared illegal and are liable to be quashed.

10. We may at the outset point out that Section 128 of the Act provides that the right of the claimant under Section 124 or Section 124A shall not affect the right of any such person to recover compensation payable under the Workmen's Compensation Act, 1923 or any other law for the time being in force. Section 128 further provides that no person shall be entitled to claim compensation more than once in respect of the same accident. On a reading of Section 124/124A together with Section 128 of the Act, it is evident that the right of any person to claim compensation before the Claims Tribunal as indicated in Section 124/124A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. While interpreting the purport of Section 128 read with Section 124/124A of the Act, the Supreme Court in ***Rathi Menon vs. Union of India*, (2001) 3 SCC 714** held:

“25. This means that the party has two alternatives, one is to avail himself of his civil remedy to claim compensation based on common law or any other statutory provisions, and the other is to apply before the Claims Tribunal under Section 124 or 124-A of the Act. As he cannot avail himself of both the remedies he has to choose one between two. The provisions in Chapter XIII of the Act are intended to provide a speedier remedy to the victims of accidents and untoward incidents. If he were to choose the latter that does not mean that he should be prepared to get a lesser amount. He is given the assurance by the legislature that the Central Government is saddled with the task of prescribing fair and just compensation in the Rules from time to time. 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 as 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.”

11. As could be seen from the settled legal position, the upper limit of compensation payable under Section 124 and Section 124-A of the Act prescribed by the Central Government under the Compensation Rules in no way deprives the claimant to claim higher compensation by availing the other remedies as provided under Section 128 of the Act. It is also relevant to note that the Railway Claims Tribunal has been established under Section 3 of the RCT Act, 1987 to exercise the jurisdiction, powers and authority conferred on it by or under the said Act. RCT Act, 1987 is a special legislation enacted by the Parliament for creating a speedy remedy of adjudicating claims arising against Railway administration. Section 13 of the RCT Act, 1987 which provides for the jurisdiction, powers and authority of Claims Tribunal may be extracted hereunder for ready reference:-

“Section 13. Jurisdiction, powers and authority of Claims Tribunal.—(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act,—

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for—

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable under section 82A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

[(1A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under section 124A of the said Act or the rules made thereunder.]

(2) The provisions of the 6 [Railways Act, 1989 (24 of 1989)] and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.”

12. It may be added that the RCT Act, 1987 precedes the Railways Act, 1989. Thus, the reference to Chapter VII of the Railways Act under Section 13(1)(a) of the RCT Act, 1987 was to the repealed Indian Railways Act, 1890. It may also be pointed out that Chapter VII of the repealed Railways Act, 1890 deals with the responsibility of the Railway Administration as carriers and Section 82-A specifically provides for the liability of the Railway Administration in respect of payment of compensation for loss occasioned by the death of a passenger dying as a result of accidents to train carrying passengers and for personal injury. Section 82A(2) limits the liability of the Railway Administration to ten thousand Taka. It is evident that Section 82-A of the repealed Act corresponds to Section 124-A of the Railways Act, 1989. Section 124A was inserted to the Railways Act, 1989 by way of amendment w.e.f. 01.08.1994 and simultaneously there was an amendment to Section 13 of the RCT Act, 1987 inserting sub-Section (1A) thereby conferring jurisdiction on the Railway Claims Tribunal in

respect of claims for compensation under Section 124A of the Railways Act also.

13. Thus, it is clear that the Railway Claims Tribunal has been constituted only for the purpose of the determination of the compensation under Section 124 and Section 124A of the Railways Act. The intention of constitution of the Railway Claims Tribunal is to provide a expeditious and efficacious remedy to the victims of accidents and untoward incidents. If the claimant chooses to claim higher compensation based on common law or any other statutory provisions as provided under Section 128 of the Act, he may do so by initiating proceedings before the appropriate forum. Therefore, there is no merit in the contention of the petitioner that the very object of establishing the Railway Claims Tribunal is defeated.

14. The contention that the power conferred on the Central Government to fix the upper limit of the compensation under Section 124 and Section 124A of the Act by making the Rules in exercise of the power conferred under Section 129 of the Act would amount to excessive delegation was also considered by the Supreme Court in **Rathi Menon** (*supra*) and it was held:

“23. The collocation of the words “as may be prescribed” in Section 124A of the Act is to be understood as to mean “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. This delegation to the Central Government indicates that it was difficult for the Parliament to fix the amount because compensation amount is a varying phenomenon and the Government would be in a far advantageous position to ascertain what would be the just and reasonable compensation in respect of a myriad different kinds of

injuries by taking into account very many factors. What the legislature wanted was that the victim of the accident must be paid compensation and the amount must represent a reality which means the amount should be fair and reasonable compensation. Government have the better wherewithals to ascertain and fix such amount. It is for the said reason that the Parliament left it to the Government to discharge that function. Sections 124 and 124A of the Act speak the same language that “the Railway Administration shall be liable to pay compensation.” As pointed above, it is the liability of the Railway Administration to “pay compensation to such extent as may be prescribed”. 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.”

15. In the light of the ratio laid down by the Supreme Court, the challenge to Section 129 of the Act on the ground that the same has conferred on the Central Government excessive and unguided power is also liable to be rejected.

16. The further submission of the petitioner is that the upper limit of compensation of Rs. 4 lacs was fixed by the Central Government under the Compensation Rules long back in the year 1997 and thereafter the Central Government failed to revise the same by amending the Rules suitably.

17. Under Section 129 of the Act, the Central Government is empowered to make Rules by notification “to carry out the purposes of this Chapter”. One of the purposes of the said Chapter i.e. Chapter XIII is that the victims of Railway accidents and untoward incidents must get compensation. Though the word “compensation” is not defined in the Act or in the Rules, it would mean giving back an equivalent in money for loss sustained. Thus, the compensation must represent equivalent or substitute of equivalent value for the loss or injury. In the case of ***Rathi Menon (supra)***, it was laid down by the Supreme Court that the Claims

Tribunal must consider what the Rules have prescribed at the time of making the order for payment of compensation. Therefore, it is obligatory on the part of the Central Government to update the amount of compensation taking into consideration the substantial change in the money value and the impact it has caused in the cost of living. We, therefore, deem it appropriate to direct the respondent Nos. 1 and 2 to consider the issue of updating the upper limit of compensation prescribed under Rules 3 & 4 of Compensation Rules and take the appropriate steps in accordance with law.

18. The writ petition is accordingly disposed of.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

NOVEMBER 19, 2015

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