

1581

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 4952 of 2004
Date of Decision: 07.02.2017

S.K.S. BEDI

... Appellant

VS.

UNION OF INDIA

...Respondent

CORAM: **HON'BLE MR. JUSTICE KULDIP SINGH.**

Present: Appellant in person.

Mr. Karminster Singh, Advocate,
for the respondent-Union of India.

KULDIP SINGH, J (ORAL)

This is the first appeal filed against the judgment dated 02.04.2004 passed by the learned Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short “the Tribunal”) vide which on account of injuries sustained by the appellant, a compensation ₹50,000/- was allowed alongwith interest @ 6% per annum from the date of the said order, after the expiry of 60 days.

The admitted facts of the present case is that the appellant, who happens to be an Advocate by profession, was travelling in a train which met with an accident on 09.09.2002 near Rafiganj Railway Station. As a result of the accident, the appellant was trapped in the bogie and stated to have remained trapped there for nearly 12 hours. As per the medical report, the appellant has suffered two fractures on the right foot alongwith dislocation. In this way, three injuries were sustained on the right foot of the appellant. The right ankle was found swollen and its movement was painful. The said injury is non-scheduled injury. Therefore, considering the proviso of Sub-Rule 3 of Rule 3 of the Railway Accidents and Untoward Incidents

FAO No. 4952 of 2004

(Compensation) Rules, 1990 (for short “the Rules, 1990”), a compensation of Rs. 50,000/- was allowed alongwith interest @ 6% per annum from date of passing of the order.

I have heard the appellant in person and learned counsel for the respondent and have carefully gone through the case file.

The appellant-in-person has argued that under Rule 4 of the Rules, 1990, the compensation cannot exceed to Rs. 4,00,000/-. According to him, this is an exception to Rule 3 of the Rules of 1990. The said Rules 3 and 4 of the said Rules, 1990, is reproduced 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.*

FAO No. 4952 of 2004

- (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.”

The perusal of the Rules 3 and 4 shows that in case one become disabled, the maximum compensation is fixed at ₹4,00,000/-. Under Sub-Rule 3 of Rule 3, if more than one injuries are received, the compensation is payable in respect of each of the injuries. Further proviso provides that the total compensation in respect of such injuries shall not exceed to ₹80,000/-.

The appellant has relied upon the Calcutta High Court’s judgment titled as Union of India Vs. Adhoc Claims Commissioner and others; AIR 1977 Calcutta 393, to press that the Rule 4 of the Rules 1990 is also an exception to Rule 3 (3) and compensation limited to ₹4,00,000/-. Therefore, the prayer of the appellant is for enhancing the compensation to that extent.

I am of the view that the harmonious reading of both the Rules shows that there is a Rule of strict liability for the Railways, even though the Railways may not be liable for the accident. In case of death and injuries, separate compensation is provided. In death case, maximum compensation of ₹4,00,000/- and for any injury, except which causes 100% disability, the compensation cannot exceed to ₹4,00,000/-. Consequently, I am of the view that in case of non-scheduled injuries, the maximum cap ₹80,000/-, as given under Rule 3 (3) proviso will apply and consequently, the maximum

FAO No. 4952 of 2004

compensation payable to the appellant in respect of three injuries on the right foot is subject to the cap of ₹80,000/-.

Considering the same, now this Court is to see whether the compensation @ ₹50,000/- alongwith interest @ 6% per annum from the date of order is justified or not?

Considering the facts of the accident which took place on 09.09.2002 and the compensation awarded by the Tribunal on 02.04.2004, I am of the view that the right foot is weight bearing organ of the body and in case of three injuries, certain amount of disability is there for whole of the life. One is also deprived of the proper enjoyment of life due to pain caused by the fracture and subsequent partial incapacity.

In the circumstances, I am of the view that the appellant is entitled to the maximum compensation as provided under the said Rules i.e. ₹80,000/-. I am also of the view that the Tribunal has erred in granting the interest @ 6% per annum that too from the date of passing of the order.

Now the question would arise as to what would be the amount of compensation, in view of the facts that vide notification dated 22.12.2016 an amendment was carried out in the Railway Accidents or Untoward Incident (Compensation) Rules 1990, wherein, for ₹80,000/- , ₹1,60,000/- have been mentioned. In this case, the occurrence/incident took place and the appellant filed the claim application before the Tribunal on 01.07.2003 and the Tribunal decided the said claim application on 02.04.2004, and the appeal is being decided today in February, 2017.

Learned counsel for the appellant has relied upon the judgment of Supreme Court in Appeal **(Civil) No. 1778-79 of 2001, Rathi Menon Vs.**

Union of India, decided on 13.03.2001 to claim that the compensation as

FAO No. 4952 of 2004

applicable on the date of final adjudication is to be paid. It was held in the said judgment that the time of ordering the payment is more important to determine as to what extent of compensation, which is prescribed by the rules, is to be disbursed to the claimant. It was concluded that the Apex Court is of the definite opinion that the Tribunal must consider what the rules were prescribed at the time of making the order for payment of compensation. Therefore, the said judgment indicates that the Rules as applicable at the time of the adjudication by the Tribunal are to be applied. In the present case, the Tribunal adjudicated the matter on 02.04.2004, therefore, the Rules as applicable on the said date are to be applied. The amendment effective from 01.01.2017 was made on 22.12.2016, i.e. during the pendency of the appeal, It being so, I am of the view that the compensation as applicable at the time of adjudication by the Tribunal is to be disbursed @ ₹80,000/-.

In view of foregoing discussion, the present appeal is partly allowed. The respondent is directed to pay the compensation to the tune of ₹80,000/- as compensation to the appellant alongwith interest 9% per annum, payable from the date of filing of the claim application before the Tribunal i.e. 01.7.2003 till the date of actual payment after adjusting the amount earlier granted to the appellant.

February 7, 2017

Suresh Kumar

**(KULDIP SINGH)
JUDGE**

Whether speaking / reasoned :

✓
Yes / No

Whether Reportable :

✓
Yes / No