

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.372 of 2014

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 31.01.2014, passed in O.A.A.No.434 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad whereunder and whereby, the claim of the appellant/applicant under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railways Act, 1989 with regard to grant of compensation of Rs.2,00,000/- for the injuries suffered by him in a railway accident that took place on 20.01.2008 was partly allowed.

2. Heard the learned counsel for the appellant/applicant and the learned Standing Counsel for the respondent/Railways.

3. Learned counsel for the appellant/applicant would contend that the appellant had lost all his toes and the amputation suffered by him falls under Part III of the Schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 issued by the Ministry of Railways *vide* notification, dated 22.12.2016; that the appellant/applicant is entitled for compensation of Rs.1,60,000/-, but the Tribunal granted only Rs.10,000/-, which is erroneous; that the Tribunal misread Ex.A.4, original wound certificate and held that the appellant/applicant was examined by the Doctor at 10:50 hours on 20.01.2018, in fact, the appellant/applicant was examined by the Doctor at 10:50 PM on 20.01.2018; that the subject accident

occurred at 8:00 PM on that date and ultimately prayed to enhance the compensation.

4. On the other hand, learned Standing Counsel for the respondent/Railways had supported the impugned order and ultimately prayed to dismiss the appeal.

5. The point that arises for consideration in this appeal is as follows”

“Whether the appellant/applicant suffered amputation due to accidental fall, as shown in Part-III of the Schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 issued by the Ministry of Railways?

6. As per Part III of the said Schedule, the injury said to have been suffered by the appellant/applicant is “loss of all toes of one foot through the metatarso-phelangeal joint”.

7. As per Ex.A.4, original wound certificate, the appellant/applicant suffered loss of all toes of right foot. Injury noted on 20.04.2010 by the Tribunal shows “amputation of right foot leaving end bearing. So, this is equivalent to the injury mentioned at Para III of the Schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 issued by the Ministry of Railways. This Court has examined Ex.A.4, original wound certificate. The Doctor had not clearly written whether he examined the appellant/applicant at AM or PM. ‘M’ is already printed on Ex.A.4. The Doctor has put some mark before ‘M’. Neither it appears as ‘A’ nor ‘P’, but, the Doctor has recorded the crush injury and other injuries said to have suffered

by the appellant/applicant on 20.01.2008. It is not possible to any person to travel on the same day (20.01.2008) by train in the evening. The mark put on Ex.A.4 is required to be read as of 'P' i.e., PM. The Tribunal had failed to examine this aspect. Therefore, the substantial evidence on record establishes that the appellant/applicant had suffered amputation of right foot leaving end bearing. The injury mentioned at Part III of the Schedule to injuries made under the Rules. Therefore, the appellant/applicant is entitled for compensation of Rs.1,60,000/-.

8. In the result, the appeal is allowed granting compensation of Rs.1,60,000/- to the appellant / applicant. The respondent/Railways is directed to deposit the said amount within a period of three months from the date of receipt of a copy of this order, failing which the appellant/applicant is entitled for interest at the rate of 6% per annum from the date of this order till the date of realization. If the respondent/Railways deposited any amount, the same shall be adjusted.

Miscellaneous petitions pending, if any, in this appeal shall stand closed. There shall be no order as to costs.

DR.JUSTICE SHAMEEM AKTHER

NOVEMBER 06, 2018

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Date: 06.11.2018

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