



2023: DHC: 8694



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

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Date of decision: 4th December, 2023+ **FAO 37/2021****KULDEEP SINGH**

..... Appellant

Through: Mr. Rajan Sood, Ms. Ashima
Sood and Ms. Megha Sood,
Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Mohit Sharma, Sr. Panel
Counsel**CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)****CM APPL. 3085/2021 (Delay of 400 days in filing)**

1. This application is moved on behalf of the appellant seeking condonation of delay of 400 days in filing of the present appeal.
2. For the reasons stated in the application and considering that the appellant is an illiterate person, hailing from an impoverished background whose legal rights have been infringed and also for the fact that the appellant suffered serious fractures on his face, the delay is condoned.
3. The application stands disposed of.

FAO 37/2021

4. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987¹ seeking setting aside/ quashing of the impugned

¹ RCT Act



2023: DINC: 8694



order dated 25.04.2019 passed by the Railway Claims Tribunal².

5. In a nutshell, the appellant was injured while travelling from train as a *bonafide* passenger on 27.11.2017 from Delhi Azadpur to Sandal Kalan, holding a valid Monthly Season Ticket³ no. 07829463. He fell out of the moving train at Narela Railway Station and suffered grievous injuries all over his body in addition to injuries sustained on his head and face.

6. The learned RCT vide impugned order/judgment dated 25.04.2019 while considering the issue of amount of compensation payable and relief, made the following observations: -

“3. As per DD No.14B dated 29.01.2018 (*Ex.A-2*), it has been brought out that the injured (applicant) was firstly taken to Raja Harish Chander Memorial Hospital, Narela; thereafter was taken to ESI Hospital, Sector 16, Rohini, Delhi; thereafter was taken to Safdarjung Hospital, New Delhi; and lastly was taken to FIMS Hospital, Sonipat. The discharge summary of FIMS Hospital (*Ex.A-5*) shows that the injured (applicant) was brought there on 28.11.2017 at 12.31 p.m. and was discharged on 02.12.2017 at 09.35 a.m.; with diagnosis of "*fracture ZMC right side, fracture palate and fracture coronoid, process of right side of mandible and multiple tooth fracture*". The nature and extent of injuries brought out in the aforesaid discharge summary are all non-scheduled injuries, localized in the jaw, palate and face. The quantum of compensation is, therefore, to be decided by the Tribunal taking into account the principles stated in Rule 3(3) of the Railway Accidents and Untoward Incidents (Compensation) Rules.

4. The injured appeared as AW-1 before this Tribunal on 14.03.2019 and was cross-examined. In his cross-examination, he deposed that he sustained injuries only on his face and there was no other injury on any other part of his body. He also deposed that two months later to the incident, he was in a position to join back his duty and that there has been no problem faced by him in performing his duty. It can, therefore, be inferred that the nature and extent of injuries sustained by him have not resulted in any

² RCT

³ MST



2023: DHC: 8694



permanent impairment/ disability and were of temporary nature, which have been healed with proper treatment. Nonetheless considering the fact that the applicant was hospitalized in different hospitals for about five days, he must have suffered pain in moving his jaws and palate in the initial phases of his suffering and would have also incurred expenditure in different hospitals, a quantum of Rs.50,000/- for the aforesaid non-scheduled injuries is reckoned to be a reasonable, fair and adequate compensation. Thus, the applicant is entitled to receive Rs.50,000/- as compensation for the aforesaid non-scheduled injuries. Issue Nos.3 & 4 are answered accordingly.

Conclusion:-

ORDER

5. There shall be an award of Rs.50,000/- (Rupees Fifty Thousand only) alongwith interest @ 9% (Nine per cent) per annum from the date of accident till the date of payment. Having regard to the social and economic status and level of literacy of the applicant, I believe that the applicant has the means of managing his own finances. I make no direction for retention of any portion of the amount of compensation. As such, the entire amount of compensation shall be deposited in his Saving Bank A/c at or near the place of his residence within a period of four weeks from the date of receipt of copy of this order.”

7. Learned counsel for the appellant has urged that the impugned order is contrary in law and the compensation of Rs.50,000/- is on a lower side. Learned counsel for the appellant alluded to Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 which provides as under: -

“3. Amount of compensation.-(1) The amount of compensation payable in respect of death or injuries, 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 Eight 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



2023: DHC: 8694



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 One Lakh Sixty 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, compensation equal to the difference between the amount payable for death and a further 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.”

8. It was urged by learned counsel for the appellant that although appellant sustained injuries which are classified as ‘unscheduled injuries’, there is no denying the fact that he was treated for as many as four different kind of injuries on the face/head viz., fracture ZMC right side, fracture palate, fracture coronoid, process of right side mandible and multiple tooth fractures. It was, therefore, urged that in terms of conjoint reading of proviso (1) & (2) of Rule 3 (3) of the aforesaid rules, each distinct injury was required to be assessed independently and the total amount of statutory compensation of Rs.1,60,000/- should have been awarded.

9. *Per contra*, learned counsel for the respondent Railways urged that the appellant was working as a sweeper and he had only suffered facial injuries which were not in the nature of severe facial disfigurement as enlisted in clause 5 of the Schedule to Rule 3. It was argued that the learned RCT committed no error in taking a broad



2023: DHC: 8694



view of the matter and awarded just and reasonable compensation.

10. Having heard the learned counsel for the parties, at the outset, the impugned order dated 25.04.2019 cannot be sustained in law. The nature of injuries suffered by the appellant tells its own tale. Proviso 1 to Rule 3 (3) is specific that each injury has to be assessed separately for compensation. Although the 04 injuries were suffered on the head / face but each injury was of a different nature and required different kind of medical treatment. Furthermore, each injury took its own time in the healing process.

11. Incidentally, there is no challenge to the deposition of AW-1/ appellant in the cross examination that he could not join his duties for two months.

12. In view of the aforesaid discussion, the impugned order dated 25.04.2019 cannot be sustained in law, the same is set aside to the extent that the appellant shall be entitled to a total statutory compensation of Rs.1,60,000/- with interest @ 9% per annum from the date of incident till its realization. However, the amount of compensation of Rs.50,000/- with interest at such rate already paid to him shall be adjusted. The compensation be paid to the appellant with interest as aforesaid within a period of two months, failing which, the respondent Railway shall be liable to pay the same @ 15 % per annum from the date of this order till its realization to the appellant.

DHARMESH SHARMA, J.

DECEMBER 04, 2023/ss