

A.F.R.

ORISSA HIGH COURT: CUTTACK

M.A. No.185 of 1998

From an Order dated 28.08.1997 passed by Shri S.P.Singh Chowdhari, Member (Judicial) RCT, Ghaziabad Bench, Ghaziabad at Bhubaneswar in T.A. No.46/96 (Arising out of O.A.No.9600021/RCT (Bombay)).

Pramath Kumar Jena,
Son of Late Amulya Kumar Jena,
Resident of Rangani, PO: Iswarpur,
PS: Rajngar, Dist: Kendrapara ... Appellant.

-Versus-

Union of India represented through
General Manager, Central Railways,
Mumbai ... Respondent.

For Appellant : M/s Mahadev Mishra, S.Barik &
Miss. M.Mishra

For Respondent : Mr. Anindya Kumar Mishra

P R E S E N T :

THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA

Date of Judgment : 20.05.2011

B.N.Mahapatra, J. This Appeal has been directed against the Order dated 28.08.1997 passed by the Member (Judicial), R.C.T., Ghaziabad Bench at Bhubaneswar in T.A. No.46/96 arising out of O.A. No.9600021/RCT(Bombay) wherein there was difference of opinion on certain points between Member (J) and Member (T). In this Appeal, the prayer of the appellant-claimant is to enhance the amount of compensation from Rs.2,00,000/- to Rs.5,00,000/- and also to give appointment to the sister of the deceased, who is a Matriculate.

2. Bereft of unnecessary details, the facts and circumstances giving rise to the present Appeal are that the appellant is the father of the deceased-Swarup Kumar Jena, who passed High School Certificate Examination in the year 1993 in First Division and thereafter completed I.T.I. Course in Diesel Mechanic Trade in 1994. According to the claimant/appellant, the deceased could not prosecute his study because of distressed financial condition of the family. He was assisting the family till 1996 by imparting tuition. He was the only breadwinner of the family. Further case of the claimant is that late Swarup Kumar Jena was selected for the post of Assistant Operator by Gujarat Prakash Industries Ltd. in the interview held at Balasore and was directed to report at Surat on 10.06.1996. Pursuant to the said order/direction, the deceased along with his two friends, namely, Manoj Kumar Das and Badal Chandra Das was traveling towards Surat from Balasore Railway Station on 08.06.1996. All the three persons purchased their tickets up to Surat from Balasore railway station and all of them boarded Bhadrak-Kharagpur local train at 5.45 P.M. on 08.06.1996 and reached Kharagpur at 10.45 P.M. Then they boarded the Howarah-Ahmadabad Express in general compartment. While travelling in the train due to sudden brake of the train with a sound and some jerk in the train the deceased fell down from the train losing his balance; other passengers shouted that a passenger fell down and on verification Badal and Manoj found that Swarup had fallen, they could not pull-chain as there was no light and there was heavy rush. After the train arrived at Akola, the next stoppage, both Badal and Manoj reported the train-guard about falling of Swarup from the train. Again the matter was reported in the Surat railway

station so also the Government Railway Police of Surat, who assured to make an enquiry. Soon after receiving information from Manoj, father of the deceased went to the place of accident and contacted the G.R.P. of Akola to get dead-body of his son. But before his arrival, the G.R.P. disposed of the dead-body. Being advised by the G.R.P., Akola, father of the deceased contacted Bargaon Mangu Police Station to identify the photograph of the deceased. The Circle Inspector of Police gave him the photograph and also Xerox copy of the post mortem report. The appellant found other articles seized by Police including ticket but could not find the luggage mentioned in the application. The appellant also got the Xerox copy of the Police report in G.R. No.29/96. According to the appellant, on the date of accident, his son, the deceased was going to join his service in Surat; his salary would have been Rs.3,500/- per month. He was the only breadwinner of the parents as well as the sister; thus all of them were dependants on the deceased. With these averments the appellant filed claim application for compensation of Rs.5,00,000/-.

3. Learned Tribunal awarded compensation of Rs.2,00,000/- against the claim of Rs.5,00,000/-. The Tribunal was comprised of two members, i.e., one technical member and the other judicial member.

The observations of Member, Technical are as follows:-

- (i) The deceased was a passenger;
- (ii) The Railway is liable to pay compensation;
- (iii) Compensation of two lakhs rupees granted is to be shared equally by the parents;
- (iv) In case of delay the Railway is to pay interest @12% per annum and cost of Rs.5,000/-;

The observations of the Member, judicial are as follows:-

- (i) The deceased was a bona fide passenger;
- (ii) There was untoward incident as defined under Section 123(C) (2) and 124-A of Railway Act 1989 in between Badnera and Akola;
- (iii) Compensation of Rs.2,00,000/- was allowed. Further observation was made that Railway may give appointment to the sister of the deceased;
- (iv) Compensation of Rs.2,00,000/- to be paid to the appellant and his daughter equally;
- (v) If payment not made within 30 days it will carry interest @12%;
- (vi) Cost of Rs.5,000/- granted;

4. Since there was difference of opinion between the two members of the Claims Tribunal, the matter was referred to the 3rd member. The following points were referred to 3rd member for adjudication.

“1) According to Member (Judicial), a compensation of Rs.1 lakh is to be paid to the applicant Sri Pramath Kumar Jena and Rs.1 lakh is to be paid to Shreemarani Jena, daughter of the applicant. But according to Member (Technical) Rs.1 lakh compensation is to be paid to the applicant (father of the deceased) and Rs.1 lakh is to be paid to the mother of the deceased (wife of the applicant).

2) According to Member (Judicial), in case of default in payment, the interest @12% per annum was to be paid with effect from the date of the order till realization. But according to Member (Technical), in the event of default in payment interest @12% per annum was to be paid till the date of payment. His order is silent as to from which date the interest is to be paid in case of default.”

5. Learned 3rd member after considering the evidence on record and circumstances of the case held that the appellant Pramath Kumar Jena, who is father of the deceased and his wife who is mother of the deceased are entitled to get compensation of Rs.1 lakh each. This finding of the 3rd

member is in conformity with learned Member (Technical). He further held in agreeing with the learned Member (Judicial) that in case of default in payment the respondent-Railway would pay interest @12% per annum from the date of order. The further finding of the 3rd member is that appellant's claim for compensation of Rs.5.0 lakhs is not acceptable as there is no difference between two members and also under law in case of death compensation cannot be given more than Rs.2.0 lakhs. With these findings/ observations, the 3rd member directed to place the file before both the members for further proceeding in accordance with law.

6. Being dissatisfied with the above order, the appellant filed the present appeal.

7. Mr. M. Mishra, learned counsel appearing for the claimant-appellant submitted that the learned Tribunal should have allowed the compensation of Rs.5.0 lakhs in view of the Notification dated 25.10.1997 and considering the fact that the deceased was a brilliant student, who passed matriculation in 1st division in 1993 and completed I.T.I. course in Diesel mechanic and was selected for the post of Assistant Operator by Gujarat Prakash Industries Limited, Gujarat with initial salary of Rs.3,500/. He had a very bright future. Notification dated 25.10.1997 provides for compensation of Rs.4.00 lakhs in all ordinary cases. In support of his contention, he relied upon the following decisions of the apex Court.

- (1) Union of India, represented by the General Manager, South Eastern Railway, Calcutta V. Smt. Ahalya Prusti & Anr., 2008(II) CLR 824;
- (2) Union of India V. Aggala Dilleswara Rao, AIR 2005 A.P. 444

- (3) Union of India V. Gayatri Srivastava, 2002 ALL. L.J. 1710
- (4) Saman Ismail V. Rafiq Ahmad & Anr., 2002 ALL. L.J. 1713
- (5) N.Parameswaran Pillai V. Union of India & Anr.,
AIR 2002 SC 1834
- (6) Prasant Kumar Choudhury V. Union of India,
2006 (Suppl.-II) OLR 713
- (7) Rathi Menon V. Union of India, AIR 2001 SC 1333

The further claim of the learned counsel Mr.Mishra for the appellant is that the sister of the deceased should have been given compassionate appointment by the respondent-Railway Department as observed by the Tribunal in its order dated 15.05.1997.

8. Mr.A.Mishra, learned counsel appearing for the Railways submitted that the appellant having accepted the amount of compensation pursuant to the order of the Tribunal, he has no right to claim any further compensation. Supporting the order of the Railway Tribunal he submitted that there is no illegality or infirmity in the order of the Tribunal. According to Mr.Mishra notification dated 25.10.1997 enhancing the amount of compensation from Rs.2.00 lakhs to 4.00 lakhs with effect from 01.11.1997 has no application to the case of the applicant, as the accident in question took place on 09.06.1996 and at the relevant time, the amount of compensation for any death in a railway accident was Rs.2.00 lakhs. It was further submitted that the Railway Tribunal has no jurisdiction to pass any order directing compassionate appointment to the sister of the deceased. It's power is limited to award compensation. Therefore, the Tribunal has not committed any error in not directing compassionate appointment to the sister of the deceased.

9. On the rival contentions of the parties, the questions that fall for consideration by this Court are as follows:-

- (i) Whether on the facts and in the circumstances of the case the appellant is entitled to compensation for more than Rs.2.00 lakhs?
- (ii) Whether the compensation provided under Notification No.G.S.R. 620(E) dated 25.10.1997 is applicable to the case of the present appellant when the accident occurred on 09.06.1996?
- (iii) Whether the Tribunal has committed any error in not directing the opp. party railways authorities to give appointment to the sister of the deceased?

10. Since question Nos.1 and 2 are interrelated, the same are dealt with together. The undisputed facts are that while the deceased was travelling by Howrah-Ahemadabad Express on the strength of railway ticket No.03598, he fell down from the train between Bargaon and Akola Station and succumbed to the injuries which he sustained on the spot. The deceased had passed matriculation in First Division in the year 1993 and thereafter completed I.T.I. Course in Diesel Mechanic Trade in 1994. The Tribunal held that the deceased was a bona fide passenger in the train on 09.06.1996 and died due to an untoward accident as defined under Section 123(3) and Section 124-A of Railways Act, 1989 and determined the amount of compensation at Rs.2.00 lakhs. Now the question arises as to whether this amount of compensation can be enhanced in view of the subsequent Notification of the Railway Department dated 25.10.1997 which provides the amount of compensation of Rs.4.00 lakhs.

11. At this juncture, it would be profitable to refer to the decision of the Apex Court in ***Rathi Menon V. Union of India***, AIR 2001 SC 1333

, wherein the Apex Court held as under:

“25. The asinine consequence of accepting the interpretation placed by the Division Bench of the High Court can be demonstrated through an illustration. If a person sustained injury as described in Rule 3(2) of the Rules, in an accident in a train on 31-10-1997, and another person sustains the same kind of injury in another accident in a train the next day i.e., 1-11-1997, when both persons made separate applications before the same Claims Tribunal for the compensation, the Tribunal can award Rs. 2 lakhs only in the first case and Rs. 4, lakhs in the second case. What a woeful discrimination, if not a glaringly unfair differentiation. See the interval between the two accidents of identical features. It was only a few hours, but the difference in the compensation amount is enormously high. Any court should avert an interpretation which would lead to such a manifestly absurd fall out, unless the Court is compelled otherwise by any mandatory provision.

26. Why the Central Government decided to make such a vast variation in the amount of compensation while exercising the powers conferred by Section 129 of the Act. It cannot be conceived that the Government wanted to make a discrimination between those victims who suffered the accident prior to 1-11-1997 and those who suffered the identical injury in a similar accident on or after that date. The *raison d'etre* for making such variation is easily discernible. The Central Government wanted to update the compensation amount. Rupee value is not an unchanging unit in the monetary system. Students of economic history know that currency value remained static before the Second World War. But the post World War II witnessed the new phenomenon of vast fluctuations in money value of currency notes in circulation in each nation. When the U.S. Dollar has registered a steep upward rise, currencies in many other countries made downward slip. What was the value of one Hundred rupees twenty years ago is vastly different from what it is today. This substantial change has caused its impact on the cost of living also.

27. The Central Government while changing the figure in the compensation amount after an interval of a decade was only influenced by the desire to update the money value of the compensation. In other words, what you were

to pay ten years ago to one person cannot be the same if it is paid today in the same figure of currency notes. It is for the purpose of meeting the reality that Central Government changed the figures.

28. The unjust consequence resulting from the interpretation which the Division Bench placed can be demonstrated in another plane also. If a person who sustained injury in a railway accident or in an untoward incident was disabled from making an application immediately and he makes the application a few years hence, is he to get the compensation in terms of the money value which prevailed on the date of the accident? Suppose a Tribunal wrongly dismissed a claim after a few years of filing the application and the claimant approaches the High Court in appeals. As it happens quite often now, some High Courts could take up such an appeal only after the lapse of many years and if the appeal is decided in favour of the claimant after so many years, what a pity if the amount awarded is only in terms of the figure indicated on the date of the accident.

29. From all these, we are of the definite opinion that the Claims Tribunal must consider what the rules prescribed at the time of making the order for payment of the compensation.”

12. In the note of submission, the appellant in paragraph 4 stated that during pendency of the appeal which is a continuation of the claim, the Notification dated 25.10.1997 was issued, which reads as follows:-

“Ministry of Railways, Railway Board, New Delhi, the 25th October, 1997.

NOTIFICATION

G.S.R.620(E)- In exercise of the power conferred by Sec. 129 of Railways Act, 1989 (24 of 1989) the Central Government hereby makes the following Rules further to amend the Railway Accidents and untoward incidents (Compensation) Rules, 1990, namely :

1. These rules may be called the Railway accidents and untoward incidents (Compensation) Amendment Rules, 1997.

2. They shall come into force on the 1st day of November, 1997.

3. In Rule 3 of the Railway Accidents and untoward incidents (compensation) Rules 1990 (hereinafter referred to as the said Rules).

(i) In sub rule 2 for the words “rupees two lakhs” the word “rupees four lakhs” shall be substituted.

(ii) In the proviso to sub Rule 3 for the words rupees “forty thousand” the word rupees “eighty thousand” shall be substituted.

4. In the rule 4 of the said Rules for the words, “Rupees Two Lakhs” the words “rupees four lakhs” shall be substituted.”

13. Thus, by the above Notification dated 25.10.1997 for the words “rupees two lakhs” appearing in sub-Rule (2), Rule 4 of earlier Railway Accident and Untoward Incidents (Compensation) Rules, 1990 (for short ‘Rules, 1990’), the words “rupees four lakhs” shall be substituted. Since in the Notification dated 25.10.1997 for the words “rupees two lakhs” the words “rupees four lakhs” have been substituted, the said rupees four lakhs go back to the earlier Notification. This view of mine is fortified by the decision of the Apex Court in ***Shamrao V. Parulekar and others V. District Magistrate, Thana, Bombay and others***, AIR 1952 SC 324, wherein the Apex Court held as follows:

“7. The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper cannons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all.”

14. This issue also can be looked at from a different angle. In the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, Compensation of Rs.2.00 lakhs was provided for untoward incidents, which was enhanced to Rs.4.00 lakhs vide notification dated 25.10.1997. The Central Government has enhanced the figure in compensation amount for

the reason to update the money value of the compensation. Therefore, the Apex Court in *Rathi Menon (supra)*, held that what 'you have to pay 10 years ago to one person cannot be the same, if it is paid today in the same figure of currency note'.

The Apex Court in ***Laxmi Devi and others Vs. Mohamed Tabbu and another***, 2008 (2) TAC 394 (SC) upheld the notional income of the deceased determined by the High Court at Rs.36,000/- per annum against notional income of Rs.15,000/- prescribed in the second schedule under Section 163A of M.V. Act on the ground that the notional income prescribed in the second schedule of the MV Act was in the year 1994 whereas the accident took place in the year 2004.

In the instant case, compensation of Rs.2.00 lakhs was prescribed in the Rules, 1990 whereas the accident took place in the year 1996.

15. Moreover, if the deceased would have died in vehicular accident, the amount of compensation would have come to Rs.4,50,000/- considering his age and income.

16. In view of the above, this Court is of the considered opinion that the appellant is entitled to get compensation amount of Rs.4.00 lakhs as provided in Notification dated 25.10.1997 which according to this Court is just and proper compensation.

17. The third issue relates to giving appointment to the sister of the deceased on compassionate ground. It is not in dispute that the appellant filed his claim petition seeking various reliefs including a direction to Railways to give appointment to the sister of the deceased on compassionate

ground. Learned Member (Judicial) in paragraph 9 of his order observed that causing death of a boy who had to join a post, with a salary of Rs.3,500/- per month, granting any amount of compensation is inadequate. If his sister is given appointment by the Railways it would be an adequate compensation. It is further held that fixing of compensation amount of Rs.2.00 lakhs for death of the deceased is against natural justice and it is curving the power of the Tribunal in dispensing justice for the person claiming more compensation. Although such an observation was made by the Member (Judicial), he has not given any direction to the respondent-Railways to give appointment to the sister of the deceased on compassionate ground and has rightly done so as grant of such relief is not within the jurisdiction of the Railway Tribunal. Such a relief also cannot be granted to the parents in the present appeal.

18. However, it is open for the appellant to make a representation to the appropriate authority of the opposite party-Railway for giving appointment to the sister of the deceased, who was a minor being 16 years at the time of accident and a dependant on the deceased, as there was no other earning member in the family. This Court is quite hopeful that if such a representation is made, the Railway authorities shall consider the same sympathetically. However, this Court makes it clear that this shall not be treated as a direction to the Railway authorities.

19. The submission of Mr.A.Mishra is that once compensation amount is awarded for the death of a valid passenger in the railway journey, compassionate appointment to any member of his family should not be claimed as the same would amount to granting double benefit. This Court is

unable to accept such contention. There are several enactments and statutes where in addition to payment of compensation, compassionate appointments are being given to the members of distressed family. To illustrate, many Government and semi-Government organizations are giving compassionate appointment along with the compensation in case of death of an employee in harness. In land acquisition matters in addition to the payment of compensation, appointment is also provided to the family members of land oustees.

20. In the fact situation, the railway authorities are liable to pay compensation amount of Rs.4.00 lakhs inclusive of the amount of compensation, if any already paid to the appellant. The net amount of compensation payable to the parents of the deceased shall carry 12% interest per annum from to-day till the date of payment.

21. In view of the above, this Court directs Railway authorities to pay the net amount of compensation to the parents of the deceased along with 12% interest per annum from today till the date of payment within a period of eight weeks from today.

22. In the result, the appeal is allowed with the above direction.

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B.N.Mahapatra, J