CASE NO.:
Appeal (civil) 1778-79 of 2001

PETITIONER:
RATHI MENON

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT: 13/03/2001

BENCH:
K.T. Thomas & R.P. Sethi.

JUDGMENT:

THOMAS, J.

Leave granted.
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Misfortunes do not come single is an old adage but even the author of that adage would not have imagined that multiplicity of misfortunes would visit the same person in a series on the same night, that too within the same hour. One may ask aghast, can the destiny be so cruel to a damsel.

Rathi Menon, a Commerce graduate of 22 years, was thrown off from a running train during the night of a jinxed train journey as the consequence of a sudden jerk of the train. In the impact her spinal cord was ruptured and in a trice she turned a paraplegic. After she fell down, the wheels of the train ran over her right arm severing it from the shoulder point forever. The train, not knowing what it did to one of its lawful and innocent passengers, continued its running leaving the paraplegic on the track itself on that dreadful night.

It was physiologically impossible for the young lady to move her leg from the position where she fell. Her right leg happened to remain on the rail-track, and unless a Good Samaritan had passed by that track during the night she had to remain there unmoved. As none like that came the poor female human being remained on the track bleeding and unattended by anyone.

Alas, within half an hour another train came along the same track which, without knowing that a badly mauled human being was lying ahead, ran over her right leg causing a sudden amputation of that leg also. Thus, within the span of less than an hour, she became a one-handed and one-legged paraplegic. All those disasters happened during the night of 3.9.1996. While she remained on the track unattended by any one she happened to be spotted by an engine driver who was shunting a railway engine. He got her removed from that scene to the district hospital, and then to a Medical College Hospital where she had to undergo a long period of

hospitalisation. However, she remained immovable forever.

Though she was unable to move by herself she was able to make two petitions before the Railway Claims Tribunal on 27.6.1997, in respect of the aforesaid two accidents. The Claims Tribunal awarded a total amount of six lakhs of rupees with the regret that it could not award more due to the ceiling imposed by the statutory rules. However the Claims Tribunal directed interest to accrue on the amount at the rate of 15% per annum from the date of default.

The Railways Department, mindless as it was, dragged the helpless lady to the High Court of Kerala before which the Administration filed an appeal challenging the award passed by the Claims Tribunal only on the ground that the amount awarded was excessive according to law of the Administrations interpretation.

The misfortune spree which was haunting the unfortunate lady bubbled up once again when a Division Bench of the High Court had chosen to slash down substantially the compensation amount awarded to her, on the premise that the amount granted by the Claims Tribunal could not have been awarded as the disaster had not visited her after 1.11.1997. The Division Bench expressed the helplessness of law in helping the hapless female in her misery of the superlative dimension.

Though her body was disabled due to the paraplegia afflicted consequent to the rupture of the spinal cord, and though she became limbless in a major measure, she collected morale to approach the apex Court to ask whether the limbs of law could be so stretched as to give the limbless girl solace at least in the form of pecuniary compensation. We, therefore, heard Mr. K. Sukumaran, learned senior counsel for the appellant and Mrs. Rekha Pandey, learned counsel for the Railway Administration.

There is no dispute on the factual position of which the following are some more details. Rathi menon lost her father earlier, and her mother became a widow. She passed her degree in commerce and secured a job in Bangalore. In her early twenties she was in search of better career prospects and it earned some response. She was called for an interview at Trichur. It was that trip which turned out the most cursed one in her life. On her way back to Bangalore on 3.9.1996 she boarded the Island Express (bound for Bangalore) at 8.00 p.m. from Palakkad Railway Station. After the train started moving and when it collected momentum her ill-luck prompted her to have a face wash for which she moved to the wash basin situated next to the door of the train. While washing her face the train jerked violently at a turning and in that impact she was thrown out of the train. What happened thereafter has been summarized earlier and cannot be repeated over again.

As the above facts are not disputed by the Railway Administration appellant was relieved of the burden to prove those facts averred in her claim petition. Thus, the only question which remained for the Claims Tribunal to decide was regarding the amount of compensation payable to her. Now the only question remaining is whether the High Court was so helpless that learned Judges could not confirm the amount awarded to her by the Claims Tribunal.

Appellants claim for the compensation was based on Section 124A of the Railways Act 1989 (for short the Act). The said Section itself was introduced as per Railway (Amendment) Act 28 of 1994. The Section provided for awarding compensation to victims of any untoward incident which occurs in the course of working of a railway. The expression untoward incident was alien to Railways Act before Parliament inserted such an expression in the statute as per the Amendment Act 28 of 1994. Prior to it the Railways could have granted compensation only to the victims of accident. As the definition of accident in the Act did not embrace instances of other types of disasters which frequently happened during train journeys, the Parliament in its wisdom, decided to insert a new category of disasters, both man- made and otherwise, to be the causes of action for claiming compensation.

It was in compliance of the aforesaid intention of the Parliament that the category untoward incident was included by defining its contours in section 123 of the Act. The Sections consists of two segments. In the first segment acts such as terrorists acts, riotous attacks, robbery and decoity which visit the passengers in the train as well as those who wait within the precincts of Railway Station are included. In the second segment, which is the relevant part for the purpose of this case, is included the accidental falling of any passenger from a train carrying passengers.

Now we have to see Section 124A which is the provision imposing liability on the Railway Administration to pay compensation to the victims of untoward incidents. Its proviso excludes from its purview persons who committed or attempted to commit suicide, persons who inflicted injury by self, and those who committed criminal acts or acts done in a state of intoxication or insanity and also the cases affected by any natural cause of disease etc. After excluding such persons and cases, Section 124A can be read thus:

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.

The liability of the Railway Administration in such a case would be to pay compensation, but the extent of such compensation is as may be prescribed which means prescribed by the rules made under the Act. Section 129 of the Act empowered the Central Government to make such rules.

The Railway Accident Compensation Rules 1990 (for short the Rules) were made by the Central Government in exercise of the powers conferred on it by Section 129 of the Act. Rule 3(1) says that the amount of compensation payable in respect of death or injuries shall be as specified in the Schedule. The Rules as well as the Schedule were amended with effect from 1.11.1997. After the amendment Rule 3(2) reads thus:

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 work, shall be Rupees four lakhs.

Item No.2 of Part III of the Schedule relates to amputation below shoulder with stump less than 8 from tip of acromion for which an amount of Rs.3.20 lakhs is shown as the compensation.

Item 20 in Part III of the Schedule relates to amputation below knee with stump exceeding three and a half inch but not exceeding five inches, for which an amount of Rupees two lakhs is shown as compensation.

Before the said amendment of the Rules and the Schedule which came into effect on 1.11.1997 the above amounts were respectively two lakhs (instead of rupees four lakhs) and 1.40 lakhs (instead of 3.20 lakhs) and one lakh (instead of two lakhs). Such amounts were revised by the Central Government in 1990. The revision of the rates was made after 8 years and thus the new rates were incorporated by amending the Schedule.

Learned judges of the Division Bench of the High Court of Kerala, for reaching the conclusion that appellant is not entitled to the amount indicated in the Rules as they stand now on account of the fact that the accident happened prior to 1.11.1997, considered among other things the effect of Section 126 of the Act. That Section enables an applicant to claim interim relief. Sub-section (2) of that section empowers the Claims Tribunal to pay to the applicant who has sustained the injury such sum as it considers reasonable for affording such relief, so however, that the sum paid shall not exceed the amount of compensation payable at such rates as may be prescribed." The Division Bench thereafter concluded thus:

The wording of sub-section (2) of Section 126 would show that the liability is saddled as soon as the accident happens, not when the quantum is determined. The wording of section 124 and 124A also would clearly show that the liability of the Railway Administration to pay compensation arises as soon as the accident or untoward incident, as the case may be, happens. But the quantum of compensation is to be as prescribed. Prescription is under the Rules. Therefore, it is clear that the liability to pay compensation is to the extent prescribed under the Rules in force at the time of the accident or the untoward incident, as the case may be.

It was on the above premise that the Division Bench of the High Court slashed down the compensation amount considerably from what the Claims Tribunal awarded. In our perception the provision for payment of interim relief indicated in Section 126 of the Act has no utility for deciding as to what should be the total amount of compensation payable to the injured or other claimant. The

right of the injured to claim compensation as well as the liability of the Railway Administration are both reposed in Section 124A of the Act. The right is to maintain an action and recover the damages. The liability is to pay compensation to such extent as may be prescribed.

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.

In this context a reference to Section 129 of the Act appears useful. The Central Government is empowered by the said provision to make rules by notification to carry out the purposes of this chapter. It is evident that one of the purposes of this chapter is that the injured victims in railway accidents and untoward incidents must get compensation. Though the word compensation is not defined in the Act or in the Rules it is the giving of an equivalent or substitute of equivalent value. In Blacks Law Dictionary, compensation is shown as equivalent in money for a loss sustained; or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; or recompense in value for some loss, injury or service especially when it is given by statute. It means when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value.

In this context we may look at Section 128(1) also. It says that the right of any person to claim compensation before the Claims Tribunal as indicated in Section 124 or 124A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. But there is an interdict that no person shall be entitled to claim compensation for more than once in respect of the same accident. 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 provision, and the other is to apply before the Claims Tribunal under Section 124 or 124A of the Act. As he cannot avail himself of both the remedies he has to choose one between the two. The provisions in Chapter XIII of the Act are intended to provide a speedier remedy to the victims of accident 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 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 in 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.

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 Rules 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 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.

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 detre 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 monitory 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.

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.

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 appeal. 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.

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.

Learned Judges of the Division Bench in the High Court referred to the decisions of this Court in Pratap Narain Singh Deo vs. Srinivas Sabata and anr. {1976 (1) SCC 289}, P.A. Narayanan vs. Union of India and ors. {1998 (3) SCC 67} and Maghar Singh vs. Jashwant Singh {1998 (9) SCC 134}, in order to gain support for the conclusion arrived at in the impugned judgment. Among them P.A. Narayanan vs. Union of India arose from a writ petition filed for compensation in respect of the death of claimants wife in a railway accident which happened on 3.1.1981. The High Court dismissed the writ petition against the claimant and approached this Court by special leave. A plea was made that compensation could be granted in accordance with the rates prescribed by the rules under Railways Act, 1989. The counsel for the Railway Administration disputed the said contention on the ground that the said Act cannot have any retrospective operation. A two-Judge Bench of this Court (Dr. A.S. Anand, as His Lordship then was, and S. Rajendra Babu, J) acceded to the said plea and granted a sum of Rs.2 lakhs as compensation, which is the sum prescribed in the Rules then in force, despite the fact that the Act itself came into force only in 1990. The said decision, instead of supporting the view taken by the Division Bench of the High Court, is more in support of the approach we have made above.

In the other two decisions referred to by the Division Bench the claims made under the Workmens Compensation Act, 1923 (W.C. Act, for short) were the subject matter. In Pratap Narain Singh Deo (supra) the claimant workman sustained injuries and one of his arms was amputated in the course of his employment on 6.7.1968, the Commissioner under the Act passed an order on 6.5.1969 directing the employer to pay compensation together with penalty and interest for delayed payment. The employer challenged the said order before the High Court contending that penalty and interest could not be awarded as his liability to pay had arisen only when the Commissioner passed the order and not earlier. The High Court repelled such a contention. Against this the

employer approached this Court by special leave. A four-Judge Bench of this Court held thus: The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioners order dated May 6, 1969 under Section 19. On the aforesaid order this Court further held that the Commissioner under the Act was fully justified in making the order for payment of interest and penalty. In Maghar Singh vs. Jashwant Singh (supra) the claim made under the W.C. Act was dealt with and the findings or the observations therein have no bearing on the question involved in this appeal.

The scheme of the provision under the W.C. Act is materially different from the scheme indicated in Chapter XIII of the Railways Act. In the former, compensation payable is fixed in the Act itself through the schedule incorporated thereto. Section 4 of the W.C. Act shows that such compensation is to be linked with the monthly wages of the workman concerned. It also provides that the liability to pay compensation on the employer would arise not when the Commissioner passes the order but on the date of sustaining the injury itself. A provision is made in Section 4A of W.C. Act that where any employer is in default of paying the compensation due within one month the Commissioner shall direct the employer to pay not only interest but in appropriate cases a penalty ranging up to 50% of the amount payable. The said scheme cannot be equated with the scheme in Chapter XIII of the Railways Act, as the principles involved have differences.

Shri K. Sukumaran, learned senior counsel relied on the decision of another Division Bench of the Kerala High Court in Oriental Insurance Company Ltd. vs. Asokan {1997 (1) Kerala Law Times 608} in which a decision of this Court is quoted. That decision of this Court is dated 6.11.1996, rendered by a two-Judge Bench (Kuldip Singh and Saghir Ahmad, JJ) of this Court (C.A. Nos.16904-09 of 1996). Later we came across that the said decision is reported in New India Assurance Co. Ltd. vs. V.K. Neelakandan and ors. {1999 (8) SCC 256). The said decision was also under the W.C. Act. This is what the two-Judge Bench said:

> We are finally determining the rights of the workmen today. The Act is a special legislation for the benefit of the labour. Keeping in view the scheme of the Act we are of the view that the only interpretation which can be given to the amendment is that if any benefit is conferred on the workmen and the said benefit is available on the date when the case is finally adjudicated, the said benefit should be extended to the workmen.

A three-Judge Bench of this Court in Kerala State Elelctricity Board and anr. vs. Valsala K. and anr. {1999 (8) SCC 254} has referred to the aforesaid decision and held that it was wrongly decided in view of the four-Judge Bench decision of this Court in Pratap Narain Singh Deo (supra). Nonetheless, in appropriate cases the principle of taking advantage of the beneficial legislation,

subsequently enacted, is not dissented from by the larger Bench.

In the result, we allow these appeals and set aside the impugned judgment of the High Court. We direct the Railway Administration to pay the amount awarded by the Claims Tribunal to the appellant (if not already paid) within three months from today together with interest at the rate of 12% per annum from 27.6.1997 (the date of the order passed by the Claims Tribunal).