

'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 20TH DAY OF JULY 2023 / 29TH ASHADHA, 1945

WP(C) NO. 26110 OF 2012

PETITIONER/S:

MANAF.M.
AGED 46 YEARS
S/O.A.M.MUSTHAFA, AGED 46 YEARS, T.C.14/550(5),
N.R.A.77, NANDAVANAM, PALAYAM, THIRUVANANTHAPURAM-
33.
BY ADVS.
SRI.A.ABDUL KHARIM
SRI.M.SREEKUMAR

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, RAILWAY
DEPARTMENT, MINISTRY OF RAILWAY, RAIL BHAVAN, NEW
DELHI-110001.
- 2 SOUTHERN RAILWAY
REPRESENTED BY ITS GENERAL MANAGER, HEADQUARTERS
OFFICE, PARK TOWN, CHENNAI-600003.
- 3 DIVISIONAL MANAGER
THIRUVANANTHAPURAM DIVISION, SOUTHERN RAILWAY,
THAMAPANOOR, THIRUVANANTHAPURAM-695001.
- 4 V.ESSAKIAPPAN
CONSTABLE, R.P.F., THAMPANOOR, THIRUVANANTHAPURAM-
695001.
BY ADVS.
SRI.C.DINESH - R4
SRI.T.C.GOVINDA SWAMY
SRI.G.SHYAM RAJ

OTHER PRESENT:

SRI. S.MANU, DSGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11.07.2023, THE COURT ON 20.07.2023 DELIVERED THE FOLLOWING:

'CR'

P.V.KUNHIKRISHNAN, J

W.P.(C) No. 26110 of 2012

Dated this the 20th day of July, 2023

JUDGMENT

The above writ petition is filed with the following prayers :

"(i) to issue a writ of mandamus or any other appropriate writ order or direction commanding the respondents 1 & 2 to pay compensation to the tune of Rs.20 lakhs to the petitioner for the personal injury, trauma and mental agony suffered by him from the 4th respondent in the interest of justice;

and

(ii) such other reliefs that this Hon'ble Court may deem fit;"
[SIC]

2. The petitioner sustained a bullet injury from a misfired gun by a Railway policeman on 06.07.2012. This writ petition is filed to pay compensation to the petitioner by respondent Nos.1 and 2 for the personal injury, trauma and mental agony he suffered because of the negligence of the 4th

respondent-Constable of the Railway Protection Force. The incident stated by the petitioner is admitted by the Railway. The Railway also admitted that the 4th respondent accidentally pulled the trigger of his service pistol, and the bullet, unfortunately, hit the petitioner, who was on his way to the reservation counter of Thampanoor Railway Station, Thiruvananthapuram. But the respondent railway is contesting this matter by filing a detailed counter. I am of the considered opinion that in a situation like this, the Railway ought to have risen to the occasion and redress the grievance of the petitioner without asking the victim, like the petitioner, to lead a legal battle. All legal battles are worth fighting, but some are not worth winning.

3. The brief facts are like this: The petitioner's wife delivered a premature baby girl, the child was on a ventilator continuously for 30 days, and consequently, the child had some illness in her eyes. Hence the petitioner and his wife used to take their child to Aravind Eye Hospital, Madurai, Tamil Nadu, for treatment once a month in the year 2012. On 06.07.2012

at 7.30 pm, the petitioner and his wife went to the booking office in the Central Railway Station, Thampanoor, Thiruvananthapuram and moved through the Railway premises. When the petitioner reached in front of the Railway Protection Force (RPF) guard room, he was suddenly hit with a gunshot in his lower abdomen and fell down. The gunshot came from the pistol of the 4th respondent, who was on duty then. Admittedly, the gunshot was fired from the service gun of the 4th respondent mistakenly. The petitioner was taken to the hospital. The petitioner immediately underwent major surgery, and it is stated in the writ petition that 25 centimetres of small intestine were removed, and pieces of bone were also removed through the surgery. Ext.P1 is the medical report of KIMS Hospital containing the details of the injuries. It will be better to extract the surgical details found by the hospital authority in Ext.P1 medical report.

"Surgical Details of Mr. Manaf:

Midline laparotomy

19. Penetrating circular wound of 1X1 cm in the anterior

abdominal wall with burns and contusion of edges in the left lumbar region infero lateral to the umbilicus. The wound is full-thickness deep with an infero lateral trajectory up to the peritoneum.

20. Gross hemoperitoneum with 2 litres of blood and clots and bowel contents

21. Multiple perforation (4 in number) in a segment of mid jejunum with faecal contamination. Active bleeding from the lacerated mesentery of the involved jejunum

22. Contused greater omentum near the infero-lateral aspect and few areas of mesenteric contusion.

23. Laceration of the medial aspect of distal mesosigmoid near the colonic wall. The colon appeared intact and vascular. There was bleeding from sigmoid mesocolic vessels and a large retro sigmoid hematoma.

24. The trajectory was found to pass inferolaterally through the sigmoid mesocolon. penetrating the psoas fascia and muscle iliacus muscle, causing a circular defect in the iliac bone just lateral to the left sacroiliac joint. There were a few impacted bone fragments and bleeding from the bone edge

25. This defect continued through to the gluteal muscles posteriorly to an external lacerated skin wound of about 3X1cm with irregular contused edges.

26. Left ureter, gonadal vessels and iliac vessels were found close to the path of injury but appeared intact Rest of the viscera was examined thoroughly and grossly appeared intact.

27. No foreign body fragments found."

4. Ext.P3 FIR was registered in connection with the above incident. The petitioner was an employer of the University of Kerala at the relevant time. It is stated in the writ petition that the State Government was kind enough to meet his treatment bill in the KIMS Hospital. Ext.P4 is the discharge summary.

5. It is the case of the petitioner that he is still not relieved from the trauma of the incident. It is also stated that the petitioner suffered a permanent disability, and he is not able to resume his life as before and suffered impairments of his amenities and abilities. The petitioner stated in the writ petition that he could not move or bow freely or even take and pamper his ailing child. The petitioner was advised not to take any physical strain. It is also stated that the petitioner suffered extreme shock and pain because of the incident. According to the petitioner, the incident and its consequential impact crippled the life of the petitioner and his family physically, mentally and financially.

6. It is stated by the petitioner that the incident in

which the petitioner sustained a gunshot injury occurred due to the gross negligence and carelessness of the 4th respondent. It is also submitted that the 4th respondent was well aware that he was standing near the Railway Station's Railway reservation counter and cash office, where many people usually pass regularly. It is the case of the petitioner that the 4th respondent ejected the pistol magazine without noting that it was a public place. It is the case of the petitioner that the 4th respondent pulled the trigger of his gun recklessly, which hit on the petitioner and the attitude and inaction of the Railway officials even after the incident was callous. It is stated that the fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India has been violated by the negligence and careless attitude of the 4th respondent. Therefore, it is submitted that the petitioner is entitled to adequate compensation from the respondents. Hence, this writ petition is filed.

7. A counter affidavit was filed by respondent Nos. 1 to 3 taking a preliminary objection that the writ petition is not

maintainable in law because of the statutory provision under Sec. 125 of the Railways Act, 1989 (For short, the Act, 1989), which stipulates that an application for compensation has to be made to the Railway Claims Tribunal as defined under the Railway Claims Tribunal Act, 1987. Thereafter, the averments in the writ petition are denied by the Railway and submitted that the writ petition is not maintainable.

8. Heard the learned counsel for the petitioner and the learned counsel appearing for respondent Nos. 1 to 3. I also heard the learned counsel appearing for the 4th respondent.

9. The counsel for the Railway took a preliminary objection regarding the maintainability of the writ petition. This Court considered this point in detail in the order dated 18.05.2022. That order became final.

10. The main contention of respondent Nos. 1 to 3 is that the writ petition is not maintainable in law because of the specific statutory provision under Sec.125 of the Act, 1989, which stipulates that an application for compensation has to be made to the Railway Claims Tribunal as defined under the

Railway Claims Tribunal Act, 1987. It is the case of the Railway that the incident occurred on 06.07.2012 squarely covers Sec. 123 of the Act, 1989. According to respondent Nos. 1 to 3, the incident is an "untoward incident", explained in Sec.123 (c) of the Act 1989. It will be better to extract Sec.123 of the Act, 1989.

- "a) xxx xxx
- b) xxx xxx
- c) *untoward incident" means-*
 - (1) *(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or*
 - (ii) *the making of a violent attack or the commission of robbery or dacoity; or*
 - (iii) *the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloakroom or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or*
 - (2) *the accidental falling of any passenger from a train carrying passengers."*

11. If there is an "untoward incident" happened, the compensation is to be paid as per Sec.124A of the Act, 1989

and it is to be decided by the Claims Tribunal as per Sec.125 of the Act, 1989. Therefore, the question to be decided is whether the incident that happened in this case is an "untoward incident" as defined in Sec. 124(c) of the Act, 1989. According to the Railway, the incident in this case will come within the meaning of 'Shoot out' mentioned in Sec.124(c) (1)(iii). What is the meaning of Shoot out? Shoot-out is not defined in the Act 1989.

12. In such a situation, this Court has to follow the normal dictionary meaning of 'shoot out'. The dictionary meaning of 'shoot out' is a fight in which two people or two groups of people shoot at each other with guns. It is a decisive gun battle. The Chambers 20th Century Dictionary says that 'shoot out' is a gunfight, especially to death or other decisive conclusion'. Admittedly, in this case, there is no fight in which two people or two groups of people shoot at each other with guns. Moreover, there is no gunfight also in this case. The admitted case of the petitioner and respondents is that, on 06.07.2012 at 7.30p.m while the 4th respondent, who was on

guard duty at Trivandrum Central Railway Station, accidentally pulled the trigger of his service pistol, and the bullet, unfortunately, hit the petitioner, who was on his way to the reservation counter within the precincts of the railway station. In such circumstances, I am not in a position to accept the contention that the incident, in this case, is an untoward incident, as explained in Section 123(c) of the Act 1989. If that is the case, it is not a case in which an application for compensation is to be considered by the Claims Tribunal as per Section 125 of the Act 1989. That contention of the respondent was rejected by this Court as per the order dated 18.05.2022, and this Court issued the following directions:

"6. Since the accident is admitted and the injury sustained to the petitioner is also admitted, respondent Nos. 1 to 3 should come forward with an amount of compensation, which they are prepared to give to the petitioner.

7. Therefore, there will be a direction to respondents Nos. 1 to 3 to file an affidavit about the amount of compensation that can be paid to the petitioner in the light of the injury sustained to the petitioner as evident in Exts.P1 and P4. The above affidavit should be filed within

two months.

Post on 18.7.2022 in the daily hearing list.”

13. Based on the above direction, an affidavit is filed by the respondents 1 to 3. The order dated 18.05.2022 was not challenged by the respondents, and that became final. Therefore, the respondents also conceded that the Railway Claims Tribunal has no jurisdiction to entertain the claim for compensation. Therefore there is no serious dispute for passing an order of compensation by this court invoking the powers under section Article 226 of the constitution of India. As per the affidavit dated 29.09.2022, respondents 1 to 3 stated that the petitioner is entitled to a total compensation of Rs.1,20,000/-. It will be better to extract the relevant portion of the affidavit dated 29.09.2022.

“7. It is humbly submitted that the nature of the injury was also considered by the board, and the board arrived at a conclusion that even though the claimant had undergone a major surgery, it never resulted in a permanent disability. But, the member medical informed the board that such a surgery could result in the weakening of stomach muscles, and this can be the reason for

developing a swelling close to the abdominal scar of the petitioner, where the previous surgery was performed, and this can be rectified through surgery only. As per the estimate submitted by Sri Manaf from his doctor at KIMS hospital, the cost for the surgery will come to Rs.1,10,000/- (One Lakh Ten Thousand Only). But, the member medical suggested that the surgery can be done in the Railway Hospital or referral hospital at Trivandrum. In this regard, the board arrived at a conclusion that an option can be placed before Sri. Manaf, either to have the surgery done in the Railway Hospital or Referral Hospital at Trivandrum. All the board members agreed that if he prefers to do the surgery at an outside hospital, the expenses can be met by Railways. But, it was agreed by all members that this amount may be disbursed after the expenditure is incurred for the surgery. In addition to this, the board member observed that outpatient expenses would have to be incurred, which was assessed by the board to be around Rs. 10 000/-(Ten Thousand Only). Hence, all members agreed that this Ten Thousand rupees will also have to be paid to Sri. Manaf. Thus, the board arrive at a conclusion that a total sum of Rs.1,20,000/-(One Lakh Twenty Thousand Only) is be given to the petitioner, Sri. Manaf.”

14. Thereafter, the matter was again heard in detail. The counsel for the petitioner contended that the compensation offered by respondents 1 to 3 is unacceptable to him, and it is

meagre considering the trauma and suffering faced by the petitioner. The counsel for the respondents submitted that the Railway Administration considered the matter in detail and constituted a Board which consists of a Senior Divisional Personnel Officer, Senior Divisional Security Commissioner, Divisional Financial Manager and Additional Chief Medical Superintendent to arrive at a conclusion to what extent the compensation is to be paid. It is also stated that the petitioner was also heard, and thereafter, the compensation amount of Rs.1,20,000/- is fixed. Therefore, it is submitted that the amount of Rs.1,20,000/- is just and reasonable compensation that can be paid by the Railway.

15. I am not in a position to accept the above quantification by the Railway. Admittedly, there is no forum to decide the compensation that can be paid to the petitioner. It is also conceded in the counter filed by the Railway that no such incident happened in the history of the Railway, and hence, a special Board was constituted and thereafter, they fixed the compensation.

16. It is stated in paragraph 5 of the affidavit dated 29.09.2022 of respondents 1 to 3 that a Medical Member of the board constituted for this purpose, after examining the petitioner, confirming the presence of an incisional hernia close to the umbilicus and appraised the Board that he requires another surgical procedure for its correction. From the discharge summary, it is clear that the petitioner was admitted to KIMS hospital on 06.07.2012 with Penetratory Abdominal Trauma from the gunshot injury. He had undergone one major surgery to repair his damaged small intestine, which had multiple perforations, due to the gun injury, and a segment of it about 25 cm was resected and also for the repair of injuries to other parts. The petitioner submitted an estimate from his doctor at KIMS hospital for the second surgery as Rs.1,10,000/-. The Railway is ready to pay that amount. In addition to this, the Board members observed that outpatient expenses would have to be incurred, which was assessed by the Board as Rs.10,000/-. Accordingly, an amount of Rs.1,20,000/- was offered by the Railway. But that is only an

amount for the surgery. What about the trauma and pain suffered by the petitioner?

17. The petitioner had suffered a gunshot injury in the lower abdomen, and he underwent a major surgery lasting about 3 hours in which his small intestine up to a length of 25 cm was removed, and pieces of bones were also removed. The petitioner was discharged after about 12 days of hospitalization. It is the specific case of the petitioner that even after the discharge from the hospital, the petitioner had to continue the treatment due to the gastric problems developed because of the removal of the intestine to an extent of 25 cm and swelling close to the abdominal scars of the petitioner. In paragraph 7 of the affidavit dated 29.09.2022, respondents 1 to 3 stated that a 'surgery' can be resulted in the weakening of stomach muscles, and this can be the reason for developing a swelling close to the abdominal scar of the petitioner surgery, where the previous surgery was performed, and this can be rectified through a yet another surgery only.

18. It is the case of the petitioner that, even after the

performance of one more surgery, the problems cannot be permanently resolved, and the petitioner may require further surgeries in future. Hence, the petitioner claimed an amount of Rs.3 lakhs under the head "pain and suffering". I think that there is some force in the argument of the petitioner. Admittedly, the petitioner underwent the first surgery in the year 2012. The medical expert of the Board constituted by the Railway stated that the petitioner requires one more surgery, which means the petitioner has been suffering for the last 13 years. Even though the amount claimed by the petitioner is huge, I think the petitioner is entitled to an amount of Rs.2,0,000/- towards pain and suffering also.

19. As far as the surgery is concerned, the petitioner submitted an estimated cost for the same as Rs.1,10,000/-, and the Railway is ready to pay that amount with an additional amount of Rs.10,000/-. The petitioner stated in the writ petition that the State Government was kind enough to meet his treatment bill in the KIMS Hospital when he was originally admitted. Therefore, for future treatment, an amount of

Rs.1,20,000/- is enough, especially because the petitioner himself submitted that the estimate for the cost of surgery is Rs.1,10,000/-.

20. Then, the petitioner claimed an amount of Rs.10 lakhs towards the loss of amenities in life. It is an admitted fact that an extent of 25 centimetres of the intestine of the petitioner was removed in the first surgery. It is also the case of the petitioner that he is suffering from gastric problems on a daily basis. It is conceded by the medical expert of the Board constituted by the Railway itself that the petitioner is even now suffering, and a second surgery is necessary. It is the case of the petitioner that there are a lot of food restrictions on the petitioner due to this problem, and the petitioner could not take spicy foods and many items of food which produce gas. It is also submitted that the petitioner cannot lift weight due to the gunshot injuries suffered by him. It is also the case of the petitioner that his baby girl was only 4 years at the time of the incident, and the petitioner was prevented from spending time with the child and playing with the child due to the health

hazards caused by the aforesaid accident. The petitioner was prevented from engaging in his sports and games as before after the incident is the submission. Hence, his good health and happiness in life were lost because of the incident. According to the petitioner, he is not able to lead a normal personal life after the incident. I think there is some force in this argument of the petitioner also, especially because the medical expert of the Board constituted by the Railway itself says that even now, the petitioner is suffering from health issues because of the gunshot injury, and he requires a second surgery. In such circumstances, I am of the considered opinion that taking it as a special case, the Railway should pay an amount of Rs.5,00,000/- towards loss of amenities in life.

21. The petitioner claimed interest for the compensation awarded. It is an admitted fact that the petitioner sustained a gunshot injury from the 4th respondent because of his negligence in using his weapon in an open space. The Railway filed a counter affidavit originally, stating that they are not ready to pay the compensation and the petitioner has to

approach the Railway Claims Tribunal. Not a single penny has been paid by the Railway till now, even though the incident has been admitted. It is an admitted fact that the petitioner suffered a gunshot injury because of the negligence on the part of the 4th respondent, who is an employee of the Railway protection force. The petitioner filed this writ petition in the year 2012. Even though the matter was referred for mediation, the same also failed. The Railway is introducing fast trains like "Vande Bharath", "Rajadhani", "Janshadabdhhi" etc. But Railway ought to have redressed these types of grievances of the citizens also in speed track to build confidence in the citizen without dragging citizens to litigation. The Railway unnecessarily drag the petitioner into this litigation. In such circumstances, I am of the opinion that the petitioner is entitled to interest for the amount of compensation awarded by this Court from the date of the incident. Hence the petitioner is entitled to an amount of Rs.2,00,000/- towards pain and suffering and Rs.1,20,000/- towards future treatment, and also an amount of Rs.5,00,000/- towards loss of amenities.

Therefore, the petitioner is entitled to a total amount of Rs.8,20,000/-. The petitioner is entitled to interest also for the said amount at the rate of 9% per annum from the date of the incident.

Therefore, this writ petition is allowed in part in the following manner.

I) The petitioner is entitled for a total amount of Rs.8,20,000/- as compensation from the respondent Nos. 1 to 3 towards pain and suffering, future treatment and loss of amenities.

II) The petitioner is also entitled for interest at the rate of 9% from 06.07.2012 (the date of the incident) for the compensation amount of Rs.8,20,000/-.

III) Respondent Nos. 1 to 3 shall pay the total amount of compensation of Rs.8,20,000/- with interest at the rate of 9% from 06.07.2012 for the said amount, as expeditiously as possible, at any rate, within four months from the date of receipt of a certified copy of this judgment.

Sd/-
P. V. KUNHIKRISHNAN
JUDGE

APPENDIX OF WP(C) 26110/2012

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE MEDICAL REPORT ISSUED FROM KIMS HOSPITAL CONTAINING DETAILS OF INJURIES AND TREATMENT OF PETITIONER 11 TO 13
Exhibit P2	TRUE COPY OF PAPER CUTTINGS OF MADHYAMAM DAILY DATED 7.7.2012
Exhibit P3	TRUE COPY OF THE FIR NO. 38/12 OF RAILWAY POLICE STATION, THIRUVANANTHAPURAM
Exhibit P4	TRUE COPY OF DISCHARGE SUMMARY OF PETITIONER ISSUED FROM KIMS HOSPITAL DATED 17.7.2012

RESPONDENT'S EXHIBITS

NIL