

Union of India Vs. Mrs. Nanda

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Court : Karnataka

Decided On : Jan-29-1999

Reported in : I(1999)ACC406; 1999ACJ1259; [1999(82)FLR844];
ILR1999KAR1193; 1999(3)KarLJ256

Judge : V.P. Mohan Kumar, J.

Acts : Workmen's Compensation Act, 1923 - Sections 2

Appeal No. : Miscellaneous First Appeal No. 2552 of 1990

Appellant : Union of India

Respondent : Mrs. Nanda

Advocate for Def. : Sri B.R. Viswanath, ;Sri Dinesh and ;Sri S.M. Byadgi, Adv.

Advocate for Pet/Ap. : Sri Sanjay Gowda and ;Sri N.S. Srinivasan, Adv.

Judgement :

1. In an accident that took place on 18-4-1989 at 14-20 hours between Lalithpur and Dailwara Station the claimant's daughter aged about 7 years died and a claim petition was made before the Railway Claims Tribunal invoking Section 82-A of the Railway Act. After considering the respective contentions of the parties the Tribunal awarded Rs. 1,00,000/-to the claimant. Aggrieved by the said order the Union of India has filed this appeal.

2. The main contention of Mr. Sanjay Gowda, learned Counsel for the appellant is that the application before the Tribunal is not maintainable as the applicant is not a dependant of the deceased daughter. He invited my attention to Section 82-C of the Act which states inter alia that an application for compensation under Section 82-A arising out of an accident of the nature specified therein by the person who has sustained the injury or where death has resulted from the accident can be maintained before the Tribunal by any of the dependent of the deceased. The proviso to Section 82(c) declares that in the said section the word 'dependent' has the same meaning as assigned to it in clause (d) of Section 2 of the Workmen's Compensation Act, 1923 (Act 8 of 1923). Section 82-C of the Act is as follows:

'82-C. Application for Compensation.--(1) An application for compensation under Section 82-A arising out of any accident of the nature specified therein may be made to the Claims Compensation.-

(a) by the person who has sustained the injury or suffered any loss, or

(b) by any agent duly authorised by such person in this behalf, or

(c) where such person is a minor, by his guardian, and

(d) where death has resulted from the accident, by any dependent of the deceased:

(2) No application for compensation under this section shall be entertained unless it is made within three months of the occurrence of the accident, but the Claims Commissioner may on good cause shown allow any application to be made at any time within one year of such occurrence.

Explanation.--Where a Claims Commissioner is appointed under Section 82-B with respect to any particular accident or accidents, the references in this sub-section to the occurrence of the accident shall be construed as references to the date on which the Claims Commissioner so appointed assumes charge of his office.

(2-A) If an applicant desires to be paid interim relief under Section 82-HH, he may send to the railway administration a copy of the application made under sub-

section (1) with a request for payment of such interim relief.

(3) If in an application for compensation under this section, any person makes a statement which is false and which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation.--In this section and Section 82-HH, the word 'dependent' has the meaning assigned to it in clause (d) of Section 2 of the Workmen's Compensation Act, 1923 (8 of 1923)'.

3. According to the appellant since the mother cannot be classified as a dependent of the deceased minor the application for compensation before the Claims Tribunal at the instance of the mother is not maintainable. I am afraid that this contention cannot be accepted for the following reason. Section 82-A reads thus:

'82-A. Liability of railway administration in respect of accidents to trains carrying passengers.--(1) When in the course of working a railway an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding any other provisions of law to the contrary, be liable to pay compensation to the extent set out in sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods owned by the passenger and accompany the passenger in his compartment or on the train, sustained as a result of such accident'.

(emphasis supplied)

It is clear from Section 82-A that the person who has sustained the injury or suffered any loss to maintain an action and recover damages in respect thereof

can approach the Railway Claims Tribunal within the stipulated period and can claim compensation. In other words, Section 82-A, casts 'a no fault liability' on the Railway Administration and entitles a 'Person who has suffered loss to maintain an action' to claim compensation. This right is 'notwithstanding any other provisions of law'. When Section 82-A introduces a no fault liability that obligation then cannot be defeated by invoking the proviso to Section 82-C referred to by the appellants. Apparently, for the reason that Section 82-A confers the right on the person to claim compensation 'notwithstanding any other provision to the contrary' meaning thereby that notwithstanding the proviso to Section 82-C, the right accrues. Likewise under Section 13 of the Railway Claims Tribunal Act the Tribunal has jurisdiction to deal with all categories of compensation payable under Section 82-A of the Act. This makes the position abundantly clear that any claim that can be traced to Section 82-A can be made before the Tribunal. The learned Counsel for the appellant submitted that by virtue of the fact that the above specific clause states that the claim can be made only by the dependent, he submits that as the mother is not a dependent of the deceased herein the present claim is not maintainable. I think this contention has to be rejected as untenable and as it would frustrate the object behind the Section 82-A of the Act itself. When the non obstante clause in Section 82-A is applied to the claimant's case, automatically the operation of proviso to Section 82-C stands excluded and the contention of the appellant that as the mother is not a dependent the claim is not maintainable has to be rejected. Accordingly I do so, the appeal is dismissed. In the circumstance there will be no order as to costs.