

Smt. Sofia Begum and ors. Vs. General Manager, South Central Railway

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Court : Karnataka

Decided On : Jan-11-1995

Reported in : II(1995)ACC443; 1995ACJ433; 1995(3)KarLJ146;
(1995)IILLJ1158Kant

Judge : M.F. Saldanha, J.

Acts : [Railways Act, 1989](#) - Sections 82 and 128; Railways Claims Tribunal Act, 1987 - Sections 22A

Appeal No. : M.F.A. No. 1186/1993

Appellant : Smt. Sofia Begum and ors.

Respondent : General Manager, South Central Railway

Advocate for Def. : N.S. Srinivasan, Adv.

Advocate for Pet/Ap. : Jayakumar S. Patil and ;S.S. Chikkamath, Adv.

Disposition : Appeal allowed

Judgement :

M.F. Saldanha, J.

1. Heard learned counsel. The solitary ground on which the Claims Tribunal refused to consider the appellant's claim is that she has already received a sum of

Rs.55,652 from the Labour Officer-cum-Commissioner under the Workmen's Compensation Act, Hubli. Relying on the provisions of Section 128(1) of the Railways Act, the Tribunal held that it is not permissible for the claimant who has once received compensation to claim compensation from the Tribunal on a second occasion in respect of the same accident.

2. The appellant's learned advocate submitted that she had not preferred any claim before the Workmen's Compensation Authority and that the railway had on their own accord, deposited the amount whereupon the authority issued notice to the appellant, recorded her statement and disbursed the payment to her. His contention; is that she has not made any claim and is, therefore, not precluded from agitating the compensation claimed before the Railways Claims Tribunal. To this extent he, therefore, submits that the order is erroneous and that the Tribunal should be directed to consider the appellant's claim.

3. The order of the Tribunal is stoutly defended by the learned advocate who represents the railways authorities. In the first instance he relies on the provisions of Section 128(1) which clearly debars multiple applications in respect of claim arising out of the same accident. He submits, therefore, that once the amount has been received by the appellant, it cannot be argued that it does not constitute a 'claim'. While this order was being dictated, the respondents' learned advocate stated that there is a finding at page 5 of the judgment to the effect that the appellant has admitted having preferred a claim under the Workmen's Compensation Act in her application before the Railway Claims Tribunal and that, therefore, the Claims Tribunal was justified in rejecting her claim. The record of this case has been sent for and a perusal of the record indicates that the correct factual position is that the Railways, in keeping with their obligation, deposited the amount in question before the Workmen's Compensation Authority. At that point of time no claim had been preferred by the appellant. The authority issued notice to the appellant, recorded her statement and disbursed the amount to her. It is submitted that regardless of the manner in which the exercise took place, this in fact amounts to 'preferring a claim' and receiving compensation I do concede that it is dangerously close to that situation but that it is not synonymous with the exercise, of preferring a claim which essentially pre-supposes the element of a

'demand'

4. The respondent's learned advocate has relied on the Division Bench decision of this court in *Smt. Zaibunnisa v. Divisional Superintendent, Southern Railway*, AIR 1965 Mys 306, The Division Bench has very clearly held that it is not permissible to agitate a claim for compensation more than once in respect of the same accident while interpreting the provisions of Section 82 of the old Act which corresponds with Section 128 of the 1989 Railways Act. I do concede, that the legislative intent needs to be taken cognizance of and that more than one claim application would certainly be debarred. Had the present appellant filed a claim application before the other authority, there would have been no difficulty in upholding the present order. In the present instance, it is true that the appellant did receive the amount from that authority but this was in the absence of any claim having been preferred and, therefore, to my mind, she cannot be precluded from agitating her compensation claim before the Railways Tribunal, though in the event of this Tribunal coming to the conclusion that she is entitled to a higher amount, what she has earlier received will naturally have to be deducted.

5. The respondent's learned advocate submits that if this procedure were to be sanctioned it would come squarely within the very mischief which the Legislature has prohibited in so far as it would be tantamount to permitting a second amount of litigation in respect of the same claim, I have already had occasion to deal with the unusual facts of this case whereby I have held that what had happened before the authority cannot be construed to be a claim. In sum and substance, quite apart from the aspect of the multiplicity of proceedings, what the Legislature basically prohibits is the receipt of more than one set of compensation in respect of the same claim, That aspect of the matter will necessarily have to be respected and safeguarded and it is for this reason that I have indicated in this order that the compensation now claimed, if determined by the Tribunal to be higher than the amount already received, will take into account what has already been disbursed.

6. In view of the above position, the appeal succeeds. The impugned order dated March 19, 1993, is set aside. The Tribunal is directed to redetermine the case of the appellant within an outer limit of six months from today. In the circumstances of

the case, there shall be no order as to costs.

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