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

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Court : Karnataka

Decided On : Jan-11-1995

Reported in : ILR1995KAR582

Judge : M.F. Saldanha, J.

Acts : Railways Act, 1989 - Sections 128

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

Appellant : Smt. Sofia Bebum 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, Advs.

Disposition : Appeal succeed

Judgement :

Saldanha, J.

1. Heard learned Counsel. The solitary ground on which the Claims Tribunal refused to consider the appellants 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 Railways had on their own account 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 Railway 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 Railway Authorities. In the first instance, he relies on the provisions of Section 128(1) which clearly debars multiple applications in respect of claims 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 respondent's 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 appellants. 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, that 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 reported in A.I.R, 1965 MYSORE 306 Smt. Zaibunnisa v. Divisional Superintendent, Railways, Hubli. 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. Respondent's learned Advocate submits that 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 round 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 19.3.93 is set aside. The Tribunal is directed to re-determine 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.