

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.803 of 2012

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 31.01.2011, in RP.No.20 of 2009 in OAA.No.255 of 2003, on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, the Tribunal).

2. The brief facts are that the respondents herein presented a claim before the Secunderabad Bench of Railway Claims Tribunal, vide OAA No.255 of 2003 for compensation for the death of a railway servant in an untoward incident. The claim petition was allowed vide order dated 12.06.2009 awarding compensation of Rs.4,00,000/-. The appellant-Railway filed RP.No.20 of 2009 seeking to review the order dated 12.06.2009 in OAA.No.255 of 2003 on the ground that as the Railway had paid an amount of Rs.3,22,100/- to the respondents under the Workmen Compensation Act, 1923 (for short, the W.C. Act), the respondents are not entitled to further compensation as per Section 128 of the Railways Act, 1989 (for short, the Railways Act), which says that no person shall be entitled to claim compensation more than once in respect of the same incident.

3. The Tribunal, taking into consideration the amount paid to the respondents by the Railway under the W.C.Act, allowed RP.No.20 of 2009, by order dated 31.01.2011, directing the

appellant-Railways to pay a sum of Rs.77,900/- instead of Rs.4,00,000/-. Challenging the said order, the appellant-Railways filed the present appeal.

6. Learned Standing Counsel appearing for the appellant-Railways contended that the Railway had already paid a total sum of Rs.5,00,000/- to the respondents herein i.e., Rs.3,22,100/- under the W.C. Act and Rs.1,77,900/- towards *ex-gratia* for the death of the deceased and hence, the Tribunal ought not to have directed the Railways to pay a sum of Rs.77,900/- and she prays to set aside the order of the Tribunal.

7. On the other hand, learned counsel appearing for the respondents/applicants contended that granting of *ex-gratia* to the respondents under the W.C. Act is nothing to do with the amount awarded by the Tribunal and the same does not attract the provisions of Section 128 of the Railways Act and he prays to dismiss the appeal.

8. It is to be noted that *ex-gratia* compensation is payable under the administrative orders of the Government and the payment is in the form of *ex-gratia* payment only, and cannot therefore be regarded as compensation payable under an Act or Law. Section 128-A of the Railways Act provides that no person may receive compensation twice for the same incident, but this compensation refers to compensation payable under an Act or Law and not *ex-gratia* amounts sanctioned by an administrative order of the Government. No decision/authority is placed before

me to show that the amount given by the Railway as *ex-gratia* has to be deducted from the amount ordered by the Tribunal. In the circumstances, I find no reason to interfere with the order of the Tribunal and the appeal is liable to be dismissed.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the order, dated 31.01.2011, in RP.No.20 of 2009 in OAA.No.255 of 2003 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. There shall be no order as to costs. Miscellaneous petitions pending in this appeal, if any, shall stand closed.

Date: 28.11.2019
TJMR

T.AMARNATH GOUD, J

