

20.2. 2024
item No.7 & 8
n.b.
ct. no. 551

FMAT 1271 of 2019
with
CAN 3 of 2021

**Union of India represented through the
General Manager, Eastern Railway**

Vs.

Gayitri Purkait

With

COT 15 of 2021

Gayitri Purkait

Vs.

**Union of India represented through the
General Manager, Eastern Railway**

Mr. Sukanta Ghosh,
Mr. Paradip Kumar Das,
... for the appellant.

Mr. Jayanta Banerjee,
Ms. Ruxmini Banerjee,
.....for the respondent

The instant appeal and the cross appeal have been preferred against the order dated 20.3.2019 passed by the Hon'ble Member, Railway Claims Tribunal, Kolkata Bench in Case No. OA(IIU) Kol/2012/2007.

The railway authority has preferred the instant appeal and the claimant has preferred the cross appeal against the same award. The award was passed by the learned Tribunal directing the railway authority to pay an amounting of Rs.8,00,000/- towards the compensation. Initially, the appeal was admitted and interim order of stay was granted in favour of the railway authority on condition that they must deposit the awarded sum together with interest through the office of the learned

Registrar General, High Court, Calcutta. The fact shows that the railway authority has not been complied with the order, but deposited the amended amount with the office of the Registrar of the Tribunal and consequently, the order of stay was vacated automatically. During the pendency of the instant appeal and cross appeal, one situation germinates by virtue of the prayer made on behalf of the claimant before the learned Tribunal. By filing an application through the learned advocate on behalf of the claimant intended to receive the entire decretal amount foregoing the interest portion. The prayer was allowed by the learned Tribunal on 02.08.2021.

Learned advocate for the appellant submits that as the appellant has already deposited the entire amount to the office of the learned Registrar of the Tribunal and the same has been received by the claimant. Now, the instant appeal became infructuous more so, the cross appeal also cannot be continued.

Mr. Banerjee, learned advocate appearing on behalf of the claimants submits that the appellants are the poor person and they had to receive the entire decretal amount under the influence of coercion before the learned Tribunal.

The submission of Mr. Banerjee was heavily contested by the learned advocate for the railway authority on the ground that there is no evidence on

record to substantiate or justify the argument on behalf of the Bar.

Let me now consider whether in attending the situation, the appeal or the cross appeal can be continued. It is the fact that the railway authority has already satisfied the awarded amount. So, the instant appeal being, FMAT 1271 of 2019 is not required to be proceeded as it is redundant.

It is submitted by Mr. Banerjee, the same situation has been arisen before the Division Bench of this Court on several occasions and on the same situation, the Hon'ble Division Bench has passed an order in **Smt. Mitali Paul & Anr. Vs. Union of India & Anr.** reported in **(2011) 1 WBLR (Cal) 489**. He referred the observation of the Hon'ble Division Bench at para 44 is quoted below:

“44. In our opinion, in ordinary circumstances of the Matter, we would have found much substance in the submission of Shri Roy that in any other nature of suit these two aspects would have been of a very big hurdle for Shri Banerjee to overcome. But as this is a piece of beneficial Legislation, which has been incorporated in the Statute Book along with Section 124-A for containing the situation of the victims of the circumstances as set out thereunder-all the trappings of a normal Civil Court should not apply and a broad view of the Matter would be required to be taken.”

Mr. Benerjee further submits that the claimants may have received the entire awarded sum but the instant cross appeal may be continued, which was preferred only for getting interest from the date of award till its realization.

Heard the learned advocates and perused the observation of the Division Bench of this Court in **Mitali Paul (Supra)**, the fact of the present case is not similar to the facts of the cited cases. In the cited cases, the appeal was preferred for getting interest from the date of filing of the claim application to the date of award, by virtue of decision of Hon'ble Supreme Court in **Thozhathe Purayil Sarabi & Ors. Vs. Union of India & Anr.** and the decision of the Hon'ble Division Bench of this Court in **Mainura Bibi Vs. Union of India**. At the relevant point of time, the Railway Act has not provided any interest upon the awarded sum. Now, the law has been changed to the effect that the interest has been granted upon the awarded sum by the statute itself. In all cited cases, the decretal amount was satisfied before the learned Tribunal but it was not specifically mentioned anywhere that after filing the cross appeal, the claimant has made an undertaking by foregoing interest so accrued on the principle amount. It appears that the conduct of the present cross objector/claimant is itself a bar under the principle of *estoppel* and constructive *res judicata*.

I have perused the LCR, wherefrom it appears that the learned Tribunal has passed a specific order against the railway authority to place the order of stay from this Court. The learned counsel for the claimant submitted one application on June 29, 2021 contending, *inter alia* that a letter dated 12.03.2021 of the application stated that he is

agreed to accept the decretal amount after foregoing the interest amount. On the basis of such letter, though it was not annexed with the LCR, the learned Counsel appearing on behalf of the claimant filed an application in the form of “put up petition”.

Learned Counsel for the claimant also submitted before the learned Tribunal on 12.4.2021, that he has no objection if the interest amount so accrued on decretal amount is waived. So, the plea of coercion as argued by the Mr. Banerjee has no substance at all. However, considering the facts and circumstances of the case, I find no justification to proceed further with the cross appeal also. The instant cross appeal also dismissed and disposed of without any further order.

Let the LCR be sent down immediately.

Both the appeal being FMAT 1271 of 2019 and COT 15 of 2021 are disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)