

GAHC010190652023



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5059/2023

NITU SINHA AND 3 ORS.
W/O- LATE RAKESH KR. SINHA

2: NILAM SINHA
MOTHER OF LATE RAKESH KR. SINHA

3: AARTI SINHA
SISTER OF LATE RAKESH KR. SINHA

4: ROSHAN KUMAR SINHA
BROTHER OF LATE RAKESH KR. SINHA

ALL ARE R/O VILLAGE NO-2
PADUM NAGAR
NIZ KADAMANI

P.O/P.S- DIBRUGARH

DIST- DIBRUGARH
ASSAM
PIN-78600

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP . BY THE CHIEF EXECUTIVE OFFICER ,
MINISTRY OF RAILWAYS (RAILWAY BOARD), RAIL BHAWAN, RAISINA
ROAD, NEW DELHI, PIN-110001

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
SHUTTLE GATE

GUWAHATI
ASAM
PIN-781011

3:THE PRINCIPAL CHIEF SECURITY COMMISSIONER
NORTH EAST FRONTIER RAILWAY
MALIGAON
SHUTTLE GATE
GUWAHATI
ASAM
PIN-781011

4:THE DIVISIONAL RAILWAY MANAGER
NORTH EAST FRONTIER RAILWAY
NEAR RAILWAY OVERBRIDGE
NH-52B
TINSUKIA
PIN-78612

Advocate for the Petitioners : Mr. D. Saikia, Advocate

Advocate for the Respondents : Mr. C. K. S. Baruah, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 11.11.2024

Date of Judgment : 11.11.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. Saikia, the learned counsel appearing on behalf of the petitioners and Mr. C. K. S. Baruah, the learned counsel appearing on behalf of the Railway Administration.

2. The instant writ petition has been filed by the petitioners who claim to be the legal representatives of one Rakesh Kumar

Sinha (since deceased) seeking compensation to the tune of Rs.40,00,000/- on account of the death of Late Rakesh Kumar Sinha in connection with DBRT/GRP/OP vide G.D.E. No.356 dated 26.11.2022 corresponding to Tinsukia GRPS U/D Case No.75/2022.

3. The facts leading to the filing of the instant writ petition is that Late Rakesh Kumar Sinha while was returning from school on 26.11.2022 met with an accident at KM-3/0 – 3/2 at 12:15 PM between JM/DBRG to GRP/DBRT and succumbed to his injuries. The petitioners thereupon submitted a representation before the Divisional Railway Manager Tinsukia as well as the General Manager, North East Railway, Maligaon with a prayer to pay compensation against the death of Late Rakesh Kumar Sinha which as per the petitioner was caused due to complete violation of all the norms of railway level crossing at KM-3/0 – 3/2 in respect to the Tinsukia GRPS U/D Case No.75/2022. However, those representations having gone unredressed, the petitioners have approached this Court by filing the instant writ petition.

4. It is seen that pursuant to the issuance of notice, affidavit-in-opposition has been filed by respondent No.2 wherein it has been categorically mentioned that there was negligence which led to the death of Late Rakesh Kumar Sinha. It was further mentioned that the unfortunate death of Late Rakesh Kumar

Sinha was due to the illegal trespassing of the railway track as the crossing at KM-3/0 – 3/2 which was unauthorized. It was further mentioned that under Section 147 of the Railways Act, 1989, any person found trespassing the railway track would be liable for prosecution which entails punishment with imprisonment for a term upto 6 months or with fine of Rs.1,000/- or both. Under such circumstances, it was therefore stated that the question of payment of compensation do not arise.

5. To the said affidavit-in-opposition, a reply has been filed by the petitioners to the effect that the respondents have duly admitted that it is a death case of run over and knock down as per the Station Master's report as well as the police report submitted by the in-Charge, Dibrugarh, GRPO. It was decided that Late Rakesh Kumar Sinha had made illegal trespassing on the railway track in as much as the said allegations in the affidavit-in-opposition is contrary to the report of the Station Master and the police report. It was also decided that the untoward incident which had taken place was due to illegal trespassing of the railway track.

6. This Court on the basis of the materials on record enquired with the learned counsel appearing on behalf of the petitioners as to how the instant proceedings would be maintainable taking

into account that the fact as to whether there was an illegal trespassing or not are question of facts which can only be adjudicated in the proceedings wherein evidence can be led.

7. Mr. C. K. S. Baruah, the counsel appearing on behalf of the Railways submitted that the petitioners ought to avail remedy before the Railway Claims Tribunal in terms of the Railway Claims Tribunal Act, 1987 (for short, 'the Act of 1987'). The learned counsel appearing on behalf of the petitioners on the other hand submitted that the question of approaching the Railway Claims Tribunal do not arise taking into account that the jurisdiction that can be exercised by the Railway Claims Tribunal is when a case falls within the ambit of Section 13 of the Act of 1987. He therefore submitted that the writ proceedings herein is the appropriate remedy for which the petitioners have approached this Court.

8. Upon hearing the learned counsels for the parties and upon perusal of the materials on record, it transpires that the jurisdiction of the Railway Claims Tribunal have been categorically mentioned in Section 13 of the Act of 1987. From the perusal of Sub-section 1 (a) and 1 (b) of Section 13 of the Act of 1987, it transpires that the dispute in the present case would not be covered within the fold of Section 13 of the Act of 1987 in as much as the dispute herein arises on account of an

accident which took place while crossing a railway line by a person who was not a passenger within the meaning of Section 124A of the Railways Act, 1989. Under such circumstances, the question of the petitioners approaching the Railway Claims Tribunal for compensation does not arise.

9. Be that as it may, a question however arises as to whether this Court would be in the position to exercise its jurisdiction taking into account that there are disputed questions of facts as to whether Late Rakesh Kumar Sinha had illegally trespassed upon the Railway tracks which have been averred by the respondents in the affidavit-in-opposition. In the opinion of this Court, such factual disputes can only be adjudicated in a proper forum wherein evidence can be led. Apart from that, the question of determining the compensation has also to be decided on the basis of evidence.

10. Accordingly, this Court is of the opinion that this is not a fit case which should be entertained under Article 226 of the Constitution for which the instant writ petition therefore stands dismissed on being not entertained.

11. Before parting with the report, this Court however makes it clear that the dismissal of the writ petition on being not entertained shall not preclude the petitioners to approach the

competent Civil Court seeking compensation, if they are aggrieved. In addition to that, this Court also observes that the period from 24.08.2023 till today be excluded while computing the period of limitation.

12. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant