

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 13-7-2018

Judgment delivered on 24-7-2018

FA No. 120 of 2012

- Jairam Chouhan S/o Chitram Chouhan Aged About 26 Years
Nawrangpur, Tah. And Distt. Raigarh C.G., Chhattisgarh

---- Appellant.

Versus

- Bharat Sangh Thrs.Gen. Manager Through- General Manager,
Mahaprabandhak South Easter Railway Garden Rich Calcutta,
West Bengal

---- Respondent

For appellant	:	Mr. Alok Bakshi, Advocate.
For respondent	:	None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Section 96 of Code of Civil Procedure against the judgment and decree dated 31-1-2004 passed by the First Additional District Judge, Raigarh (CG) in Civil Suit No. 2-B/2002 wherein the said court dismissed the suit for compensation against the respondent for negligence of Railways causing permanent disability to the appellant.
2. As per appellant/plaintiff's case, on 9-6-1993 appellant was going to his native village from Sonmuda, Raigarh and on the way

when he was crossing the Railway line he was struck with a passenger train coming from Bilaspur and going towards Raigarh Railway Station. In the said accident right palm of the appellant was detached and during the treatment his left palm was also amputated. He remained in Government Hospital, Raigarh for more than a month and spent Rs.5,500/- on his medical treatment. This appeal is filed on the ground that no caution board or warning etc., was displayed at the place of incident which was the fault of Railways. It was the duty of the respondent to arrange for safety of persons passing through Railway line. As the accident did not occur due to negligence of the appellant and the place of incident has also not been mentioned as prohibited zone, the trial Court ought to have granted the compensation to the appellant.

3. I have heard learned counsel for the appellant and perused the record of the court below.
4. The only question for adjudication of this appeal is whether the injuries sustained by the appellant were caused due to breach of duty or negligence of the Railways. It is admitted by the appellant in his examination-in-chief that he was crossing the Railway line and at the same time he was dashed by the engine of Bilaspur Jharsugda passenger train. Arsit Bala (DW/1) deposed that the people of Sonmuda locality used the Railway over-bridge for

crossing the Railway track. Appellant has also admitted that the Railway bridge was constructed for going towards village Sonmuda. Navin Kumar Prasad (DW/2) was the Assistant Driver in the said train on the date of incident. He deposed that whistle was blown by him, but it was not possible for him to stop the train at once. He further deposed that people of the locality do not cross the Railway line and no one is expected to cross the Railway line without being ascertained whether any train is coming near the railway line. Every person is expected to stop and see both sides before crossing the railway line. One can hear the sound of train from the distant place and, therefore, every one is expected to take great care and caution while crossing the railway line.

5. From the evidence of both sides, it appears that the appellant was not vigilant at the time of crossing the railway line and without stopping before crossing the railway line, he crossed it and the same is lack of caution and care and the incident occurred due to negligence of the appellant. The appellant can be compensated only when he proved that there is breach of duty or negligence on the part of the Railway Administration, but he is unable to discharge the burden. When Railway bridge is already constructed for crossing the railway line, it is not expected from any one to cross the railway line without using the

facility of bridge provided by the Railways. When negligence is not proved on the part of the Railways, the trial Court was not in a position to grant compensation to the appellant.

6. Considering all the facts and the material available on record, this court is of the view that the finding arrived at by the trial Court is based on proper marshalling of evidence and the same is not liable to be interfered while invoking jurisdiction of this appeal.
7. Accordingly, the decree is passed against the appellant/plaintiff and in favour of respondent on the following terms and conditions.
 - I) The appeal is dismissed with cost.
 - ii) Parties to bear their own cost.
 - lii) Counsel fee, if certified be calculated as per certificate or as per Schedule whichever is less.
 - iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE