

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 12087 of 2016

Date of Decision: 07.09.2018

BHAGWATA DAMASE AND OTHERS

..... Petitioners

V/s.

UNION OF INDIA AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. P.S. Poonia, Advocate
for the petitioners.

Mr. Vikas Chatrath, Advocate,
with Ms. Komal Bidhan, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J. (Oral)

The petitioners are the widow and two minor children of one Damodar Marasani, who have prayed for grant of compensation on account of death of Damodar Marasani in a railway accident.

In brief, Damodar Marasani (since deceased) was working as a Cook in Kathi King Hotel, Kurukshetra w.e.f. 01.12.2015 and was drawing a salary of ₹12,000/- per month. On 02.01.2016 at about 1:00 p.m., while he was crossing the unmanned railway crossing near Daka Basti on his bicycle, he was run over by Train No. 12046 (Shatabdi Express) at KM No. 155/36-34. In the inquest report No. 1 dated 02.01.2016, prepared under Section 174 of the Criminal Procedure Code, 1973, by the SHO, GRP, Kurukshetra, it has been opined that the death was caused due to the railway accident. In the postmortem report dated 03.01.2016, conducted by the LNJP Hospital, Kurukshetra, the apparent cause of death has been mentioned as railway

accident. The railways had also got investigation of the said accident and a report was prepared by the Sub Inspector, RPF, Kurukshetra who had recorded the statements of Harish Kumar-Driver, Ran Singh-Guard of train No. 12046 (Shatabdi Express) and Station Master-Gopal Sharma who all have testified that one person alongwith bicycle has met with an accident with train but in the report, the said Sub-Inspector has recorded that the deceased had died due to his own negligence while crossing the railway lines without checking the track.

Learned counsel for the petitioners has submitted that from the aforesaid facts and circumstances which have emerged from the record, it is apparent that Damodar Marasani had died due to railway accident on the unmanned railway crossing, having been run over by the Shatabadi Express train which runs at more than 100 KMs per hour speed.

The case set up by the respondents is that the deceased himself was negligent and in this regard, learned counsel for the respondents has referred to Section 131 of the Motor Vehicles Act, 1988 which read as under:-

“131.

Duty of the driver to take certain precautions at unguarded railway level crossings. - Every driver of a motor vehicle at the approach of any unguarded railway level crossing shall cause the vehicle to stop and the driver of the vehicle shall cause the conductor or cleaner or attendant or any other person in the vehicle to walk up to the level crossing and ensure that no train or trolley is approaching from either side and then pilot the motor vehicle across such level crossing, and where no conductor or cleaner or attendant or any other person is available in the vehicle, the driver of the vehicle shall get down from the vehicle himself to ensure that no train or trolley is approaching from either side before the railway track is crossed.”

He has also referred to Section 161 of the Railways Act, 1989 which reads as under:-

“161. Negligently crossing unmanned level crossing.

If any person driving or leading a vehicle is negligent in crossing an unmanned level crossing, he shall be punishable with imprisonment which may extend to one year.

Explanation.- *For the purposes of this section, "negligence" in relation to any person driving or leading a vehicle in crossing an unmanned level crossing means the crossing of such level crossing by such person-*

(a) without stopping or caring to stop the vehicle near such level crossing to observe whether any approaching rolling stock is in sight, or

(b) even while an approaching rolling stock is in sight.”

It is also submitted that the deceased should have been careful while crossing the unmanned railway track and due to his own negligence, he has suffered death for which railways administration cannot be made liable to pay the compensation.

Learned counsel for the petitioners has submitted that it has not come on record that there was any kind of sign board/notice installed by the respondents-railways for the commuters who were to cross the unmanned railway crossing, to remain careful, while crossing the railway tracks as the trains like Shatabdi Express were being run at a very high speed on the said track. In the report (Annexure R-3/1) of the investigation carried out by the respondent-Railways, there is nothing mentioned by the Sub-Inspector, RPF nor any evidence has been led or placed on record in this regard by the respondents in order to avoid its liability. Learned counsel for the petitioners, while referring to the decision rendered in the case of Union of India Vs.

United India Insurance Co. Ltd.; 1998(1) ACJ 342 has submitted that it has been held that in the absence of gates and caution boards, the level crossings are in the nature of traps and in common law the Railways have to be held negligent in not converting unmanned level crossings into manned ones with gates.

Learned counsel for the petitioners has also relied upon the Division Bench judgement of the Orissa High Court in the case of Guri Behera and Others Vs. DRM East Coast Railway, Khurda and others ; 2012 AIR (Orissa) 62 in which the accident had occurred on the unmanned level railway crossing and the minimum amount of ₹4,00,000/-, as allowed to be awarded in the case of passenger, was awarded to the non-passenger also.

I have heard learned counsel for the parties and perused the records with their able assistance.

There is no dispute that the deceased was a young man who has left behind a widow and two minor children and died on the railway track while crossing the unmanned railway crossing after having been run over by a high speed train i.e. Shatabdi Express. The respondents-railways is trying to find fault with the deceased on the ground that he should have been careful while crossing the unmanned crossing but it is also a fact that there was no precautionary sign boards on both sides of unmanned railway crossing, in the regional language of the area mentioning that the track is being used by high speed trains like Shatabdi Express which may appear to be at a distance but their speed is such that they cover lots of distance in a flash giving hardly any time to the person to move out from the track. Had there been said

precautionary sign boards on both sides of the railway crossing, then perhaps, the deceased would not have tried to cross the same. Therefore, no negligence can be attributed to the deceased for the purpose of denying compensation to his widow and two minor children.

Thus, in view of the decision in the case of Guri Behera and Others (Supra), present writ petition is allowed and the deceased-Damodar Marasani, though was not a passenger but minimum amount to the tune of ₹4,00,000/- is hereby awarded to the family of the Damodar Marasani i.e. the petitioners, which shall be paid by the respondents within two months from the date of receipt of certified copy of this order.

07.09.2018

Ess Kay

(RAKESH KUMAR JAIN)

JUDGE

Whether speaking / reasoned :

Whether Reportable :

✓
Yes / No

Yes / No