

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.643 of 2004**

- Union on India through the General Manager, South East Central Railway, Bilaspur (CG)

---- Appellant**Versus**

1. Smt. Ganga Bai W/o. Late Boharanlal Chouhan, aged about 38 years,
2. Ku. Gayatri D/o. Late Boharanlal aged about 12 years,
3. Ravi S/o. Late Boharanlal, aged about 10 years,
4. Chabiram S/o. Late Boharanlal, aged about 8 years,

Respondents 2 to 4 are minor through natural guardian mother Smt. Ganga Bai, W/o. Late Shri Boharanlal Chouhan

Respondents 1 to 4 are R/o. Dhanpur PS Malkharoda, Distt. Janjgir Champa (CG)

5. Siya Ram S/o. Kapilnath Rathore
6. Kanhaiyalal S/o. Shri Ram Kurmi

Respondents 5 & 6 are R/o. Bhargani Thana Distt. Janjgir Champa (CG)

7. The New India Insurance Co. Ltd. Through its Branch Manager, Korba Branch, Distt. Korba (CG)
8. Bhagwat Prasad S/o. Sukul Prasad R/o. Phamgarh Thana Phamgarh Distt. Janjgir Champa (CG)
9. Smt. Ronhi Bai W/o. Late Sri Alkhram Chouhan aged about 56 years, R/o. Dhanpur, Post Nagaroda, Thana Baradwar Tah & Distt. Janjgir Champa (CG)

---- Respondents

 For the appellant : Shri Prateek Sinha, Advocate
 For respondent No.7 : Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

23.8.2019

1. This miscellaneous appeal is preferred against award dated 07.01.2004 passed by Additional Motor Accident Claims Tribunal,

Sakti Distt. Bilaspur (CG) in Motor Accident Claims Case No.06/2002 wherein the said Tribunal awarded compensation to respondents 1 to 4 namely Smt. Ganga Bai, Ku. Gayatri, Ravi and Chabiram to the tune of Rs.2,92,600/- and it is ordered that the appellant and respondent No.5 shall pay 70% of the awarded amount.

2. As per the appellant, respondent No.1 filed claim petition on the ground that Late Boharanlal who was the husband of respondent No.1 and father of respondents 2 to 4 was traveling in a truck bearing registration No. BHT 1265 on 12.12.1995 and when the said truck on the way from Khurdri to Naila reached Khoksa Railway barrier the truck in which the deceased was traveling run into Howrah Kurla Express at around 5.30 am and as a result of which deceased Boharanlal received multiple injuries and succumbed to the injuries. A claim petition was filed before the Tribunal and the said Tribunal awarded compensation as mentioned above.

3. Learned counsel on behalf of the appellant/Railways submits that it was the duty of the driver to drive the truck cautiously and he ought to have stopped at the railway barrier and ought to have carefully waited and watched whether any train is arriving or not and only after having verified that no train is passing, he should not cross the railway barrier till the train crosses. He further submits that imposing 70% of the liability upon the appellant is on higher side and the same may be set aside.

4. On the contrary, learned counsel for respondent No.7/The New India Insurance Company Ltd. submits that the finding of the Tribunal is based on proper marshaling of the evidence which is not liable to be interfered invoking jurisdiction of the appeal.

5. The only question for consideration before this Court is whether the apportioned amount of 70% imposed against the appellant/ Railways is proper or not. From the evidence it is clearly established that the railway barrier was opened while the train was crossing. The incident took place only for the reason that the railway barrier was opened and the security person failed to perform his legal duties imposed on him. Act of the security person is attributed to the Railways and the incident would not have happened if the security person had taken due caution to close the gate at the time of crossing of the train. Therefore, the Tribunal is right in holding that the Railways has to pay 70% of the awarded amount. The Tribunal has elaborately discussed the issues and after reassessing the evidence, this Court has no reason of record a contrary finding.

6. Accordingly, the appeal is liable to be and is hereby dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**