

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.112 of 2014

Sunita Sindur and Others

....

Appellants

Ms. Deepali Mohapatra, Advocate

-versus-

***Union of India, represented through
the General Manager, South Eastern
Railways, Garden Reach, Kolkata***

....

Respondent

Mr. J. Nayak, Central Government Counsel

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

30.11.2022

Order No.

10. 1. The matter is taken up through hybrid mode.
2. Heard Ms. D. Mohapatra, learned counsel for the claimant – Appellants and Mr. J. Nayak, learned Central Government Counsel for Respondent – Union of India.
3. Present appeal by the claimants is directed against impugned judgment dated 3rd January, 2014 of the Railway Claims Tribunal, Bhubaneswar passed in OA No.(IIU)/23/2008, wherein the tribunal has refused to grant any compensation in favour of the claimants by disbelieving their case.
4. The case of the claimants is that the deceased namely, Sanjibani Sinduru while going in 2b-B Passenger train from Bimalagarh, he fell down accidentally from the train at the station after it started moving.

Accordingly Bundamunda/GRPS UD case No.35 of 2007 was registered and the dead body was sent for post mortem examination.

5. Initially the claim application was decided by the Tribunal consisting of two members who diverged in their opinion and accordingly the matter was decided by the 3rd Member. The opinion of the 3rd Member confirming the opinion of the Member (Technical) is thus the final decision of the claim application, which is impugned in the present appeal.

6. Ms. Mohapatra submits on behalf of the claimant – Appellants that the learned tribunal has failed to appreciate the facts that the deceased accidentally fell down from the running train and the evidence of the eye witnesses has been disbelieved without any valid reason.

7. Perusal of the impugned judgment reveals that two witnesses have been examined on behalf of the claimants in addition to the documentary evidence like the police inquest report, investigating report, etc. No evidence was adduced from the side of the Railways.

8. AW-2, namely Pramod Jate has stated in his evidence that he accompanied with the deceased in the train and they boarded 2b-B Passenger train from Bimlagarh to Bondamunda station. The train was overcrowded and after it started moving, the deceased lost his balance due to jerk and accidentally fell down. The inquest report reveals that the deceased died due to accidental fall from the running train and accordingly police investigation report was submitted. The tribunal

has disbelieved the evidence of AW-2 as well as the police investigation report mainly on the ground that as per the enquiry report prepared by the Railways, there was no eye-witness to the occurrence and no such report was given by the Railway Guard regarding any untoward incident. Secondly, the deceased was not a bona fide passenger of the said train.

9. There is no quarrel over finding the dead body of the deceased from the railway line. According to AW-2, he along with the deceased boarded the train after purchasing tickets at Bimlagarh. No rebuttal evidence has been adduced from the side of the railways to deny such statement of AW-2. Therefore, no reason is found to disbelieve this eye-witness, who has clearly stated about falling of the deceased from the running train due to jerk. The reason assigned by the Tribunal to disbelieve the police report that the same was prepared without examining any eye-witness, is not found justified since the opinion arrived by police upon completion of investigation is never challenged by anyone else. It is also the case of the Railways that the deceased died by running over the 2b-B Passenger Train at the alleged time and place and the dead body was found on Line No.1 at KM 452/16 near the station building. So the circumstances speak in favour of the claimants that the deceased died in an untoward incident due to accidental fall from the running train.

10. It needs to be mentioned here that non-recovery of a valid railway ticket from the dead body does not always disentitle the claimants, or their case cannot be discarded for the said reason only. The evidence of AW-2 being found trustworthy and the same, coupled

with the circumstances discussed above, establishes the case of the claimants regarding death of the deceased in an untoward incident on 29th October, 2007. As such the impugned judgment is set aside.

11. In view of the discussions made above the appeal is allowed and in terms of the principles decided in the case of ***Union of India Vs- Rina Devi, (2019) 3 SCC 572***, the Respondent – Union of India is directed to pay compensation of Rs.4,00,000/- (four lakhs) to the claimants along with interest @ 6% per annum from the date of accident, within a period of four months from today. The entire compensation amount including interest shall be disbursed among the claimant – Appellants, namely Sunita Sindur, Marry Sindur and Sahil Sindur in the ratio of 50:25:25, and 50% of the share fall due to claimant - Appellants 1 and 2, viz., Sunita Sindur and Marry Sindur shall be kept in fixed deposit in any nationalized bank for a period of five years and the entire amount fall due to the share of claimant – Appellant No.3, namely Sahil Sindur shall be kept in fixed deposit in any nationalized bank for a period of five years or till he attains majority, whichever is later.

12. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge