

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.400 of 2014

Kunja Bihari Mishra and Another ***Appellants***

Ms. Deepali Mohapatra, Advocate

-versus-

***Union of India represented through its
General Manager, Western Railways,
Western Zone, Church Gate, Mumbai*** ***Respondents***

Mr. D.K. Sahoo, C.G.C.

**CORAM:
SHRI JUSTICE B. P. ROUTRAY**

**ORDER
18.11.2022**

Order No.

- 04.
1. The matter is taken up through hybrid mode.
 2. Mr. D.K. Sahoo, learned Central Government Counsel enters appearance for Respondent - Union of India. The earlier lawyer, namely Mr. S.N. Das objects appearance of Mr. Sahoo on behalf of Respondent by stating that he was entrusted with the brief by the Respondent.
 3. Mr. Sahoo produces the office memorandum dated 1st February, 2022 issued by the Ministry of Law and Justice, wherein the order has been passed that henceforth the counsels empanelled by the Department of Legal Affairs, Ministry of Law and Justice shall defend all the cases on behalf of the Ministry of Railways pending in various High Courts and sub-ordinate courts in the country.

4. In view of clear notification of the Ministry of Law and Justice stated above, the power of Mr. S.N. Das is struck off from the record and Mr. D.K. Sahoo is engaged to defend Union of India. Office is directed to indicate the name of Mr. D.K. Sahoo as the counsel for Respondent – Union in the brief as well as in the cause list by deleting the name of Mr. S.N. Das.

5. Heard Ms. D. Mohapatra, learned counsel for the claimant – Appellants and Mr. D.K. Sahoo, learned counsel for Respondent – Union of India.

6. Present appeal by the claimants is directed against impugned judgment dated 14th July, 2014 of learned Members (Judicial) and (Technical), Railway Claims Tribunal, Bhubaneswar Bench passed in OA No.182 of 2006, wherein the tribunal has refused to grant any compensation.

7. The case of the claimants is to the effect that their son, namely Sanjaya Kumar Mishra (hereinafter referred as the deceased) while going to board Okha-Puri Express on 25th January, 2006 at Surat Railway Station, due to push and pull of the passengers on platform No.1, fell down and the train ran over him causing his death.

8. The tribunal in the impugned judgment disbelieved such contention of the claimants on the ground that the dead body of the deceased was detected and recovered on the railway track at KM No.266/12-14 in between Surat and Udhna Railway Station on the down line. Therefore, the tribunal observed that the case of claimants that the deceased died at Surat Railway Station near the platform is found incorrect.

9. Ms. Mohapatra, learned counsel for claimants submits that such conclusion of the tribunal is against the record and no such plea has been taken by the railways in their WS. She further submits that mere absence of journey ticket from possession of the deceased would not disentitle the claimants to get the compensation.

10. Mr. Sahoo submits that finding of the dead body of the deceased from the down line in between Surat and Udhana Railway station itself falsifies the contention of the claimants regarding any untoward incident and moreover, neither any journey ticket was recovered from possession of the deceased nor AW-2 could able to say his bonafide presence at the spot.

11. Perusal of the impugned award reveals that the two witnesses Viz. AW-1, the father of the deceased and claimant No.1, A.W.-2 the elder brother of the deceased and an eye witness to the occurrence, have been examined from the side of the claimants along with the documents prepared in course of police investigation. No evidence has been led from the side of the Respondent – Railways. It is seen from the spot Panchanama under Ext.A/3, the copy of which is produced by Ms. Mohapatra in course of hearing, that the dead body of the deceased was detected and recovered from the railway track seven steps border of platform No.1 of Surat Railway Station. The exact finding recorded in Ext.A/3 is reproduced below:-

“xxxx xxxxx xxxxx

Said incident place is situated at nr. K.M. No.:266/12-14 looking that place left side of down railway lines track deceased put under train whose blood stain seen there moreover dead body abressed 5 steps between two railway track wherein Railway

metal and slipper found blood stain at the eastside of incident place up and other railways lines and Westside railways years situated. From the north side 7 steps border of platform No.:1 of Surat railway station situated and south side up-down Railway lines situated. Examining the place wear of Incident place non any articles recover and you the Police have no recover any articles from the that place;”

12. On the face of the finding recorded in the spot Panchanama, the conclusion arrived by the tribunal that the dead body was recovered from the railway track in between Surat – Udhana Railway Station on the down line is not found correct. Accordingly the same is set aside.

13. It needs to be mentioned here that the Respondent – Railways neither adduced any documentary evidence or examined any witness on their behalf. Further, in their WS, they have not stated anything specifically regarding finding of the dead body from any other place away from Surat Railway Station. In view of contents of Ext.A/1, A/2 and A/3 and specific finding recorded in Ext.A/3, as stated above, if the dead body is found at seven steps away from the platform on the down line, then the conclusion of the tribunal regarding detection and recovery of the dead body from a place away from the railway station is not correct.

14. Thus the evidence of AW-2 in support of the death of the deceased that the same is due to commotion on the platform, is established keeping in view such findings recorded in the police papers, as brought on record by the claimants,.

15. Non-recovery of journey ticket from the possession of the deceased is not disputed at the Bar. But the same itself would not

nullify the case of the claimants. The law is well settled that mere absence of journey ticket from possession of the deceased does not preclude his genuineness as a bonafide passenger in the train nor it would disentitle the claimant from getting compensation.

16. Keeping in view the specific evidence of AW-2 as well as the documents exhibited from the side of the claimants, the death of the deceased at Surat Railway station on 25th January, 2006 in an untoward incident is thus established. The claimants being the parents of the deceased are found entitled for compensation.

17. In the result 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 two months from today, which would be disbursed in favour of both the claimant – Appellants in equal share keeping 50% of the share fell due to each claimants in fixed deposit in any nationalized bank for a period of five years.

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

(B.P. Routray)
Judge