

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C)No.18866 of 2013
(Through hybrid mode)**

Pratima @ P. Nayak and another

Petitioners

Mr. J.K. Mohapatra, Advocate

-versus-

***G.M. East Coast Railway and
another***

Opposite parties

Mr. Gyanalok Mohanty,
Central Government Counsel

CORAM: JUSTICE ARINDAM SINHA

**ORDER
22.06.2022**

Order No.

- 15.** 1. Mr. Mohapatra, learned advocate appears on behalf of petitioners, who are the widow and son of a person deceased, having been run over by a train. He relies on judgment of a Division Bench of this Court in **Shyam Nayak Vs. General Manager, East Coast Railway** reported in **AIR 2012 Orissa 38**. He submits, in the reported case a person while crossing the railway line dividing the village, was run over by a train coming at high speed without blowing horn at the unmanned level crossing. The incident happened at midnight. In this case the deceased, according to Mr. Mohapatra, was crossing the railway line at the same unmanned level crossing, was dashed by the train, which approached without blowing horn

and dragged the deceased 300 meters. On query from Court regarding post-mortem he draws attention to paragraphs 3 and 7 of the petition to submit, the victim was going for marketing and crossed railway line at Boinda level crossing. It was around 10.00 a.m., when train no.18105 approached without blowing horn and ran over him. As a result, the victim was dragged a distance of 300 meters and died at the spot. Post-mortem could not be done since the local people cremated the body due to the police concerned not taking appropriate steps. He submits, there be interference since the Railway Claims Tribunal is empowered to only deal with claims of passengers and the victim was not a passenger.

2. Mr. Mohanty learned advocate appears on behalf of Union of India (railways) and submits, **Shyam Nayak** (supra) is distinguishable on facts inasmuch as therein the accident happened at midnight, but in this case the victim was run over in broad day light at 10.00 a.m. in the morning. The victim was careless. He also relies on **Shyam Nayak** (supra), paragraph 6 to submit, the level crossing involved in this case is of 'C' class and does not qualify for manning of Train Vehicle Unit (TVU). All prescribed safety measures are provided such as indication boards, speed breakers, caution boards and signage in three languages. Also provided are whistle boards to give advance indication to drivers for blowing horn. He submits, there was no negligence on the part of railways. The accident occurred due to

carelessness of the victim.

3. Documents annexed to the petition show that on 22nd January, 2013 the Station Master, Jarapada had informed Officer-in-Charge of Jarapada Police Station that a male aged about 55 years was run over and died by train no.18105 express and lying at kilometer 130/5-6 between Jarapada and Boinda, as reported by two guards of the train. Pursuant to the information received the police station drew up a First Information Report (FIR). The report says it was drawn up at 12.00 p.m., i.e., within two hours of the accident. In spite thereof, there was omission to conduct post-mortem of the deceased. There is no document disclosed in the petition regarding averment that the villagers cremated the body due to inaction on the part of the police. State has not been made party though aforesaid allegation against the police was made.

4. There is also nothing on record to substantiate the averments that the accident took place at the level crossing (Boinda) and the victim was dragged 300 meters. At 10.00 a.m. in the morning, it appears, there was no witness at the level crossing. This goes to show that the level crossing is of the category stated by the railways in their counter as mentioned in **Shyam Nayak** (supra). Otherwise, the accident can also be presumed to have taken place at kilometer 130/5-6 between Jarapada and Boinda.

5. On analysis of facts available on the documents and particulars of the level crossing at Boinda available from **Shyam Nayak** (supra), this Court can only conclude that the evidence is insufficient to fix the railways with charge of negligence. Section 124 in Railways Act, 1989 provides for extent of liability of the railway administration to pay compensation to such extent as may be prescribed and to that extent only for loss suffered by the death of a passenger, dying as a result of the accident and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in the compartment or on the train, sustained as a result of the accident. The deceased not being a passenger is not covered by the extent of liability provided by the section.

6. Court has relied upon description of the level crossing from **Shyam Nayak** (supra) because nothing has been disclosed regarding notification of requirement(s) made by the Central Government in respect of any or all the clauses under section 18. In the circumstances, this Court is confronted with a person having lost his life on being run over by a train, the claim of compensation consequent thereto made by the widow and son by the writ petition presented on 14th August, 2013, and contention of the railway that there was no negligence on its part. On query from Court Mr. Mohanty submits, compensation under section 124 as prescribed and prevailing in year 2013 was Rs.4,00,000/- per death.

7. In view of the language in section 124 that the railways have liability to pay compensation notwithstanding anything contained in any other law, but it relating to a passenger and the fact that the deceased lost his life by being run over, this Court feels fit to direct compensation to be paid at the earlier prescribed sum of Rs.4,00,000/- to petitioners and not the higher present prescribed amount of compensation, as there must, in the circumstances, be presumption of carelessness by the victim. Compliance must be within four weeks of communication.

8. The writ petition is disposed of.

(Arindam Sinha)
Judge

RKS

