

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.323 of 2014

Bhaktahari Rout and another ***Appellants***

Mr. B.B. Singh, Advocate

-versus-

Union of India ***Respondent***

Mr. B.K. Padhi, C.G.C. for UoI

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

16.09.2022

Order No.

10.

1. Heard Mr. B.B. Singh, learned counsel for the claimants-Appellants and Mr. B.K. Padhi, learned C.G.C. for Union of India-Respondent.

2. Present appeal by the claimants is directed against the judgment dated 06.05.2014 passed in O.A. No.141 of 2005 by the Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar, wherein the Tribunal has rejected the prayer of Appellants for compensation.

3. The facts of the case reveal that on 13.08.2004 the deceased namely, Amresh Rout boarded in Triupati-Howrah Express at Visakhapatnam to Bhubaneswar. He died by accidental fall from the said train near Patharkata level crossing at KM No.514/25-26 under Nirakarpur GROP. His dead body was recovered on 19.8.2004 upon complaint received from the father, present claimant-Appellant No.1.

4. Learned Tribunal upon adjudication refused to grant any compensation disbelieving the case of the claimants on the ground that the alleged eye-witness – A.W.2 cannot be believed to have seen the fall of deceased in any untoward incident.

5. Mr. Singh submits that, when the ticket was recovered from possession of the dead body of deceased and there is categorical evidence of A.W.2 as eye-witness regarding fall of the deceased from the train, the reasons assigned to disbelieve him or he did not intimate the same to the father of the deceased for four days, is illegal and erroneous.

6. Mr. B.K. Padhi, learned C.G.C. on the other hand submits for the Union of India-Respondent that, the claimants remained unsuccessful in proving their case before the Tribunal for want of material evidence and keeping in view the enquiry report of the DRM, the reasons shown are justified.

7. Admittedly, it is the consistent case of the claimants that the deceased was travelling in Tirupati-Howrah train on the alleged date of accident after purchasing journey ticket No.P22350300 dated 13.8.2004. The sole reason assigned by the Tribunal to disbelieve this eye-witness (A.W.2) is that, he did not intimate the father of the deceased till 18.8.2004. Finding of the ticket from possession of the deceased was also disbelieved by the learned Tribunal saying that the same was not mentioned in the inquest report and as per the inquest report only skull and bones were recovered.

8. A perusal of copy of the enquiry report of the DRM dated 16.01.2006 reveals that on enquiry, it was found that Ticket No.P22350300 is not meant for train of 2842 Down as per the rules where no ticket can be issued for less than 600 km. distance. In other words, the enquiry report of the DRM does not disqualify the statement of the claimants about purchase of Ticket No.P22350300 by him at Visakhapatnam station. The further admitted fact remains that the dead body was recovered from the railway track at KM No.514/25-26. So the presumption is in favour of the claimants that the deceased might be a victim of untoward incident in course of his journey in Railway from Visakhapatnam to Bhubaneswar. The evidence of A.W.2, which is not rebutted, speaks to the effect that he also travelled in the same train on 13.8.2004.

9. Perusal of the final report submitted in Police UD Case No.5/04, the inquest report and the dead body chalan sent to the Chief Medical Officer, Bhubaneswar dated 19.8.2004 reveal that, a money purse was found from the body in course of the inquest by the Police, and documents found there-from established identity of the body. Therefore, the findings of the Tribunal that only skull and bones were discovered, are not found correct on record. What is mentioned in letter dated 19.8.2004 of the IO while sending the dead body for post mortem examination has been probably overlooked by the Tribunal.

10. Now looking to the evidence of A.W.1, who is the father of the deceased, it reveals that his statement is corroborated by the evidence of A.W.2. A.W.2 has explained in his evidence that

since he along with his family members were going to his house to see his ailing father, who died by the time they reached, he therefore could not intimate the fact of fall of the deceased to A.W.1 till 18.8.2004. It was only intimated when he returned to the place of his residence. Therefore no reason is there to disbelieve him. It is to be remembered here that communication system by use of phones was not that frequently spread during 2004 as it is in the present days. So the conduct of A.W.2 cannot be disbelieved as unusual on his part.

11. It is further seen that neither the enquiry report of DRM nor the evidence of R.W.1 do speak anything contradictory to the evidence of A.W.1 & 2.

12. In view of the circumstances discussed above, the death of the deceased due to untoward incident in course of his railway journey, supported by evidence of A.W.1 & 2, is thus established on record.

13. Resultantly, the impugned order is set aside and the Respondent-Railway authorities are directed to pay compensation of Rs.4,00,000/- (rupees four lakhs) by depositing the same before the learned Tribunal, which shall be disbursed in favour of the claimants in equal share subject to deposit of 50% in fixed deposits separately for a period of five years.

14. The copies of the documents like evidences and exhibits produced in course of hearing are kept on record.

15. With aforesaid observations and directions, the appeal is disposed of.

(B.P. Routray)
Judge



B.K. Barik