

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.706 of 2014

Union of India

Appellant

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

-versus-

Smt. Namita Behera and others

Respondents

....
Mr. B. Panigrahi, Advocate for Respondent Nos.1 to 4

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

05.09.2022

Order No.

03.

1. Heard Mr. B.K. Padhi, learned C.G.C. for the Union of India-Appellant and Mr. B. Panigrahi, learned counsel for Respondent Nos.1 to 4-claimants.

2. Present appeal is directed against the judgment and award dated 30.09.2014 passed in Case No. OA/IIU/2010/0023 by the Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar wherein compensation to the tune of Rs.4,00,000/- along with interest @6% per annum from the date of filing of the claim application, i.e.,13.11.2010 has been granted to the claimants-Respondent Nos.1 to 4 on account of death of the deceased, namely Sudam Behera in the railway accident dated 16.11.2008.

3. The main contention raised on behalf of the Appellant is that the date of accident being 16.11.2008 and the date of death on 17.2.2009, the death is not established to be arising out of the

accident. Secondly, it is submitted that the death of the deceased in an untoward incident is not established.

4. Upon hearing Mr. B. Panigrahi, learned counsel for the claimants-Respondent Nos.1 to 4 and perusal of the impugned judgment, it reveals that the fact of valid journey of the deceased in Palasa-Cuttack DMU Passenger Train at the time of accident with journey ticket is not disputed. A.W.2, the co-passenger has said that the deceased was travelling in the train and he found him missing at Khurda Road Station. It is to be noted that the deceased in an injured condition was recovered from the railway line at KM 600/10 between Berhampur and Jagannathpur Railway Station on 16.11.2008 and immediately admitted in the hospital with multiple injuries. After his discharge from the Neurosurgery Department of MKCG Medical College & Hospital, Berhampur in comma condition, he died on 17.2.2009. Taking advantage of absence of post mortem examination report of the deceased, the railway authorities raised their doubt about death of the deceased due to the injuries arising out of the accident.

5. For this purpose, the court examined two witnesses, viz., C.W.1 and C.W.2, who are the Doctors. They categorically have said that as per the discharge certificate, the deceased was in comma and he was admitted in the medical with history of RTA having injuries of hemorrhagic contusions with penilesionale-dema along with lacerated injuries over right and left orbital ridges etc. Therefore, the learned Tribunal upon analysis has

concluded about death of the deceased arising out of the injuries from the railway accident.

6. With regard to the contention made by the Appellant to dispute about the untoward incident, it is seen that no ticket was found from the person of the deceased at the time of his recovery from near the railway track. But in view of the categorical evidence of A.W.2 that remains un-rebutted from the side of the railways, nothing is found there to disbelieve about the fact of journey of the deceased in the Palasa-Cuttack DMU at the time of accident. It is true that possession of ticket from the injured particularly when he lost the sense cannot always be expected. When the injured succumbed to the fatal injuries in the accident there are many reasons to miss the ticket from his possession. In the circumstances, it is important to see the evidence adduced from the side of the claimants. Here in the instant case, the oral evidence adduced from the side of the claimants that the deceased was a *bona fide* passenger of the train has not been rebutted with sufficient counter material and therefore cannot be distrusted.

7. In the result, the conclusion arrived based upon the analysis made in the impugned award cannot be faulted with to disbelieve the case of the claimants.

8. Resultantly, the appeal is dismissed.

(B.P. Routray)
Judge