

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.634 of 2012

Kabita @ Kabitarani Lenka and Others* *Appellants

Ms. Deepali Mohapatra, Advocate

-versus-

***Union of India, represented through
the General Manager, East Coast
Railway, Bhubaneswar***

Respondent

Mr. B.S. Rayaguru, Central Government Counsel

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

**ORDER
1.12.2022**

Order No.

- 17.
1. The matter is taken up through hybrid mode.
 2. Heard Ms. D. Mohapatra, learned counsel for the claimant – Appellants and Mr. B.S. Rayaguru, learned Central Government Counsel for Respondent – Union of India.
 3. Present appeal by the claimants is directed against impugned judgment dated 30th August, 2012 of the Member (Technical), Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar passed in OA No.40 of 2006, 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 Abhimanyu Lenka died due to fall at Haridaspur Railway Station while getting into the train, i.e. 208 Khallikote-Bhadrak DMU Local on 24th January, 2006 in the morning at around 7.50 am.

5. Three witnesses were examined from the side of the claimants besides inquest report, PM report etc collected in police investigation were relied on. Only one witness was examined from the side of the Railways and the enquiry report of the DRM is relied on.

6. The undisputed case remains that the deceased was an employee of the Railways working at Mancheswar Railway Workshop and he had a valid journey pass between Howrah to Bangalore. He resides at Haridaspur in the district of Jajpur. His dead body was found from the Railway line and as per the post mortem examination report, crush injuries over the left leg and crushed bone on the upper part, possibly caused by running over of a train, was found. There was an entry in the Register of the Station Master of Haridaspur regarding requisition of an Ambulance and there was also an entry in RPF Post regarding receipt of information for sending an injured person to Cuttack.

7. A.W. 2 and 3 examined from the side of the claimants are the eye witnesses of the accident and as per them, the deceased while trying to get into the train (208 passenger), fell down as the train suddenly started moving without blowing whistle. The deceased fell between the train and the platform and he was dragged around 100 feet by the train. The evidence of these two eye witnesses have been disbelieved by the tribunal for some discrepancies present in their evidence. Such discrepancies as pointed out by the tribunal seem very trivial, as for example, in the opinion of the tribunal the deceased was first taken by an auto-rickshaw and the time of entry in SCB Medical College is mentioned around 9 pm in the night, etc. Such minor

discrepancies, as discussed by the tribunal, are immaterial for the purpose of claim application to doubt credibility of these two eye witnesses because the undisputed circumstances including entry in the Station Master's Register and the information received by the RPF Post justifies that the deceased had met with an accident while getting into the train on that relevant date and time.

8. As per the Post Mortem examination report as well as the DRM report, the nature of injuries sustained by the deceased justifies a case of running over by the train. The tribunal disbelieved the case of the claimants in absence of any fall injury on his person. It needs to be mentioned here that in a case of falling while getting into the train would not necessarily be associated with any noticeable fall injury and in the instant case while it is the consistent case of the claimants that the deceased fell down while getting into the train between the platform and the train, such crush injuries noticed on his person during post mortem examination cannot be said as contrary to the story of falling down. Moreover, such injuries found on the dead body do not exclude sustenance of fall injury also. So, in the opinion of this court, the PM injuries even if speaks a case of running over, the same would not nullify the case of the claimants regarding death of the deceased due to falling down while getting into the train. Accordingly, it is held that the circumstances justify the death of the deceased due to accidental fall from a running train at the station.

9. So far as possession of valid pass is concerned, though the validity of the journey pass issued in favour of the deceased has not been doubted, but in the opinion of the tribunal non-finding of the

same from possession of the dead body at the time of inquest would reveal that he is not a bona fide passenger. This conclusion of the tribunal is found unjustifiable. It is for the reason that the status of the deceased as a railway employee is never disputed and the validity of the pass issued in his favour is also not doubted. The journey-pass was produced by the relatives of the claimants and it is the admitted case that the deceased immediately after the accident was taken to hospital by his near relatives and he died at the hospital. Therefore, it is very probable that the pass and other belongings of the deceased had been kept with the claimants. So this reason as stated by the tribunal to disbelieve the deceased as not a bona fide passenger of the train does not sustain and accordingly discarded.

10. 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 claimants – Appellants by keeping 50% of their share fall due to each claimant in fixed deposit in their names, in any nationalized bank for a period of five years.

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

(B.P. Routray)
Judge