

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.361 of 2018

***Union of India, represented through
the General Manager, South Eastern
Railways, Garden Reach, Kolkata*** ***Appellants***

Mr. D. Gochhayat, Central Government Counsel

-versus-

Smt. Gita Dhar ***Respondent***

Mr. Dhananjay Mund, Advocate

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

**ORDER
28.11.2022**

Order No.

13. 1. The matter is taken up through hybrid mode.
2. Heard Mr. D. Gochhayat, learned Central Government Counsel for the Appellant – Union of India and Mr. D. Mund, learned counsel for the claimant - Respondent.
3. Present appeal by the Railways is directed against impugned judgment dated 1st December, 2017 of learned Member (Technical), Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar passed in OA No.102 of 2014, wherein the tribunal has granted compensation to the tune of Rs.8,00,000/- along with interest @ 6% per annum for the death of deceased Sarat Dhara in an untoward incident.
4. Mr. Gochhayat, learned counsel for the Appellant submits that the death of the deceased in an untoward incident during his journey

in railways is not established by adequate evidence and in absence of any credible material to that effect, the findings of the tribunal is liable to be set aside.

5. Upon hearing Mr. Mund, learned counsel for the claimant and perusal of the impugned judgment, the undisputed facts reveal that the deceased was found lying unconscious on the railway track between Rupsa and Basta Railway Station. He was recovered by the RPF personnels on 18th May, 2010 and immediately taken to Balasore District Headquarters Hospital. On the same day he died in course of treatment. The deceased is a resident of Chaitanyabati, Hoogly in West Bengal and the claimant is the mother of the deceased.

6. The claimant examined herself as AW-1 Before the tribunal and no evidence was adduced from the side of the railways, except the report of the DRM. AW-1 in her evidence has stated that the deceased was working at Bangalore and he boarded Yashbantpur – Howrah Express on 16th May, 2010 at Bangalore for returning to home, as intimated by him over phone to AW-1.

7. Keeping in view the circumstances and the statement of police constables recorded in course of enquiry by the DRM as well as the police enquiry, the death of the deceased due to falling from the train is thus established, particularly in absence of any rebuttal evidence led by the railways.

8. The further contention of the railways that no material is there to treat the deceased as a bona fide passenger of Yashbantpur-Howrah

Express is found unsubstantiated keeping in view the circumstance of recovery of the deceased in unconscious stage and his cause of death recorded in the post-mortem report. The tribunal has rightly concluded that for mere absence of recovery of ticket from the possession of the deceased would not be sufficient to treat him as a ticketless passenger of the train.

9. Mr. Gochhayat again contends that grant of interest from 1st January, 2017 is erroneous. This contention of Mr. Gochhayat is rejected outright keeping in view the principles settled in the case of *Union of India Vs- Rina Devi, (2019) 3 SCC 572*. Though the claimant is found entitled for interest from the date of accident, but in absence of any appeal from the side of the claimant, this court is not inclined to interfere in-to that aspect.

10. Therefore, no reason is seen in support of the Appellant to interfere with the impugned award and the Appeal is accordingly dismissed.

11. Send back the LCRs. forthwith.

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

(B.P. Routray)
Judge