

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.254 of 2020

Malati Dalai and others

....

Appellants

Ms. D. Mohapatra, Advocate

-versus-

Union of India

....

Respondent

Mr. D. Gochhayat, C.G.C. for Union of India

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

13.12.2022

Order No.

02.

1. Heard Ms. D. Mohapatra, learned counsel for the Appellants and Mr. D. Gochhayat, learned C.G.C. for the Respondent-Union of India.

2. Present appeal is directed against the judgment dated 28.01.2020 passed in Claim Application No. OA(IIu)/56/2017 by the Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar, wherein the learned Tribunal disbelieving the case of the claimants has refused to grant any compensation.

3. The case of the claimants is that the deceased-Anjan Kumar Dalai while travelling from Bhubaneswar to Sambalpur in Tapaswini Express on 20.2.2017 accidentally fall down from the running train near Mancheswar yard, and died.

4. Two witnesses have been examined from the side of the claimants. The Railways-Respondent disputed the case of the claimants that the death of the deceased is not due to an untoward

incident, but otherwise. Two witnesses have been examined from the side of the Railways.

5. The learned Tribunal disbelieved the case of the applicants mainly on the ground that, no one has seen the deceased falling from the running train and secondly, the deceased is a resident of Chandrasekharpur, which is not far away from the spot where the dead-body was discovered. It is also observed by the Tribunal that finding of the dead-body inside the track is normally impossible in case of falling from the running train.

6. According to the evidence of A.W.2, he went with the deceased to see-off him at Bhubaneswar Railway Station and the deceased after purchasing train ticket boarded Tapaswini Express. After departure of the train, A.W.2 left Bhubaneswar Railway Station. However, no journey ticket was found from possession of the dead-body of the deceased during the inquest. The Police (GRPS) submitted the final report stating that the death of the deceased is due to fall from the train. But in the DRM's enquiry report, it is opined that the death is not due to accidental fall from the running train and further, the travel of the deceased in Tapaswini Express is not supported by any valid journey ticket.

7. The admitted facts remain that the dead-body of the deceased was noticed by the driver of Train No.12838 at 22.15 hours on 20.2.2017 within the down line at KM 429/14-12 at MCS Yd. As per the post mortem examination report, the cause of death is due to severe cranial and cerebral injury, which is ante-mortem in nature and could have been caused by trauma due to heavy blunt

force impact. Tapaswini Express left Khurda Railway Station at 20.55 hours and Bhubaneswar Railway Station at 21.30 hours.

8. The aforesaid admitted circumstances justifies that the deceased was a traveler of Tapaswini Express that left Bhubaneswar Railway Station at 21.30 hours on that day. It is for the reason that, Train No.12838, whose driver noticed the dead-body of the deceased after 45 minutes Tapaswini Express departed from Bhubaneswar. The discovery of the dead-body first by the driver of Train No.12838 is found consistent with the case of the claimants, since Tapaswini Express passed through Mancheswar yard just before that as per the schedule. The other circumstance that justifies the case of the applicants regarding fall of the deceased from the running train is that, the nature of injuries noticed in course of post-mortem examination is well consistent with the theory of falling down of a person from running train.

9. Next coming to the circumstances against the case of claimants are that, no valid journey ticket could be recovered from possession of the dead-body of the deceased. But this would not disprove their case because non-finding of a valid journey ticket would not be always relevant for satisfying a valid journey. Secondly, what the learned Tribunal has doubted regarding position of the dead-body within the down track is that, according to learned Tribunal, in case of a fall from a running train in the mid section, the body would normally be thrown away from the tracks. But this is a presumption only. Such a presumption would not always be held good in absence of supported material. It is

not always true to conclude that in every case of fall from running train, the dead body would be found away from the track. Besides, no definite evidence has been produced on record to reveal that it is the same track on which Tapaswini Express passed through because two tracks are there at the spot. Therefore this presumption taken to discard the case of the claimants by the learned Tribunal is not sustainable.

10. The further suspicion crept into the mind of the learned Tribunal is that the place of temporary residence of the deceased at BDA Colony in Chandrasekharpur is not far away a place from the Mancheswar Yard, where the dead-body was laying. This is again a presumption, without any substantial material brought on record, used against the case of the claimants.

11. The evidences produced by the Railways are not sufficient to counter the evidence of either A.W.1 or A.W.2. Apart from all, when the nature of injuries found on the dead-body are found consistent with the theory of fall from running train, such presumptions taken by the learned Tribunal in absence of specific evidence would not stand against the case of the claimants to deny that the death of the deceased is otherwise than accidental fall from the running train.

12. In view of the discussions made above and based on the evidences brought on record, the case of the claimants is established on record. As such, they are found entitled for the compensation with the finding that the deceased died in an untoward incident while travelling in a train.

13. In the result, the appeal is allowed and the impugned award is set aside. The Respondent-Railways is directed to pay compensation of Rs.8,00,000/- (rupees eight lakhs) in favour of the claimants by depositing the same before the learned Tribunal along with interest @6% per annum from the date of accident, in terms of the principles propounded in the case of *Union of India -vs- Rina Devi, (2019) 3 SCC 572*, which shall be disbursed in favour of the claimants on such terms and proportions to be decided by the learned Tribunal.

14. The copies of the depositions and documents filed by Ms. D. Mohapatra, learned counsel for the Appellants in course of hearing are kept on record.

15. An urgent certified copy of this order be granted on proper application.

(*B.P. Routray*)
Judge