

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.131 of 2016

Smt. Anita Sabora and Others ***Appellants***

Mr. S. Sharma on behalf of Mr. B. Panigrahi, Advocate

-versus-

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

Mr. B.K. Padhi, Central Government Counsel

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
29.9.2022

Order No.

10. 1. The matter is taken up through hybrid mode.
2. Heard Mr. S. Sharma on behalf of Mr. B. Panigrahi, learned counsel for the Appellants and Mr. B.K. Padhi, learned Central Government Counsel.
3. Present appeal by the claimants is directed against the award dated 8th August, 2015 passed by the Railway Claims Tribunal, Bhubaneswar Bench in OA/IIU/BBS/2010/0129 wherein the tribunal has refused to grant compensation on the alleged death of the deceased in railway accident.
4. It reveals from the impugned judgment that the tribunal has disbelieved the claim of the applicants about journey of the deceased in Guwahati – Ernakulam express on the alleged date of accident and thus refused to grant any compensation.

5. As per the claimants, the deceased, namely Mangal Saboro started his journey along with two of his friends in Guwahati – Ernakulam express train No.2508 after purchasing a valid journey ticket. He boarded the train at Guwahati on 27th October, 2009. His dead body was noticed on 30th October, 2009 at KM No.545/8-10 between Khallikot and Rambha Railway Station. The dead body was lying in between the track and as per post mortem examination report the death of the deceased happened on 27th/28th October, 2009 due to hard and blunt force impact resulting cranio cerebral injuries.

6. The tribunal disbelieved death of the deceased in an untoward incident mainly for discrepancies in the evidences of the police investigating officer (C.W.1) and the evidence of the co-passenger (A.W.2). The tribunal raised doubt on the ground that Guwahati – Ernakulam express did not run between Khallikote and Rambha on 28th October morning as alleged by the claimants.

7. The admitted circumstances remain that the dead body of the deceased was found from the railway track between Khallikote and Rambha with the report that his death happened on early morning of 28th October, 2009 as per the PM examination. The deceased is a resident of Guwahati and travelled in the train to his village at Ernakulam. The railway did not bring any rebuttal evidence to suggest any connection of the deceased to the place at Rambha or Khallikote or any other nearby place. The extent of evidence of A.W.2, which is left un-rebutted, is to the effect that the deceased entrained at Guwahati on 27th October, 2009 that left Guwahati Station and passed through Ernakulam station. If the fact that the deceased has boarded a

train at Guwahati on 27th October, 2009 is established along with a valid journey ticket and his dead body is found on the railway track, whose death is confirmed during morning of 28th October 2009 as per P.M. report, then the inference is in favour of the claim of the applicants that the deceased died in course of his journey in the railway. The entire doubt arises due to mentioning of the train number and name. It is clear from the evidence of A.W.1 that they say about the name of the train as recorded by the police investigating officer (CW-1). Admittedly AW-1 and AW-2 both are illiterate persons and the name of the train mentioned by them might be a mistaken one. In such situation, the railway has failed to adduce any rebuttal evidence to suggest that no train started from Guwahati on 27th October, 2009 did pass between Khallikote and Rambha in the early morning of 28th October, 2009. So the claim of the applicants as adduced in course of evidence that the deceased boarded in the train at Guwahati on 27th October, 2009 and passed through Khallikote and Rambha in the early morning of 28th October, 2009 cannot be disbelieved at all. Thus the preponderance of probability is seen in the contention of the claimants that the deceased died in an untoward incident in course of his railway journey. As such, the claimants are found entitled for compensation. For this purpose, the name of the train and its number as per the claim of the applicants is immaterial and the same might have been mistaken.

8. In the result, the appeal is allowed and the impugned judgment is set aside. The Respondent – Railway Authority is directed to grant compensation of Rs.4,00,000/- (four lakhs) in favour of the appellants (claimants) within a period of two months from today, which shall be

disbursed in favour of the claimants by keeping 50% of the same in fixed deposit.

9. The certified copy of the depositions of AW-1 and AW-2 as produced by Mr. Sharma in course of hearing are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda

