

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.375 of 2012

Dungi Isswarmma

....

Appellant

Ms. Deepali Mohapatra, Advocate

-versus-

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

....

Respondent

Mr. A. Pradhan, Central Government Counsel

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

19.10.2022

Order No.

- 15.
1. The matter is taken up through hybrid mode.
 2. Heard Ms. D. Mohapatra, learned counsel for the claimant – Appellant and Mr. A. Pradhan, learned Central Government Counsel for Union of India – Respondent.
 3. Present appeal by the claimant is directed against impugned judgment dated 6th February, 2009 passed by the Railway Claims Tribunal, Bhubaneswar bench in OA/36/2006, wherein the tribunal has refused to grant any compensation in favour of the Appellant.
 4. The case of the Appellant is that on 16th February, 2006 her deceased husband died in an untoward incident due to accidental fall from the train at Bhubaneswar Railway Platform. Two witnesses including the claimant were examined in support of the claim but no evidence was adduced from the side of railway administration.

5. Upon adjudication the tribunal came to the conclusion that, there is no valid proof regarding bonafide journey of the deceased in the train in absence of any ticket or pass and as such, no compensation was granted.

6. Ms. Mohapatra, learned counsel submits that despite the fact of having railway pass with the deceased, the same was not considered by the Tribunal. It is further submitted that the death of the deceased in railway accident though has been established, but the same was not taken into account by the tribunal.

7. Mr. Pradhan, learned CGC on the other hand supports the impugned judgment by submitting that the deceased as a bonafide passenger of the concerned train is not established on record.

8. As per the claim, the deceased was boarding Coromondal Express at Bhubaneswar Railway Platform and due to sudden jerk of the train at the time of entraining, he fell down and sustained injuries and died. As per the eye-witness, namely V. Tirupati Rao, the brother-in-law of the deceased, he was travelling in the said Coromondal Express along with the deceased with valid railway pass granted in their favour and he is an eye-witness of the incident. The deceased was a retired railway employee. As per the inquest report and the post mortem examination report, the nature of injuries mentioned therein are found supportive to the fact of accidental death of the deceased. Recovery of the dead body from the Platform as mentioned the police UD case report is not disputed. But the tribunal has disbelieved about valid railway pass on the ground that no such pass was found from possession of the deceased. This finding of the Tribunal is not supported with materials. In the inquest report it is clearly mentioned

in column 8 that a 'train pass' was seized from the shirt pocket of the deceased. The evidence of AW-2, V. Tirupati Rao is thus confirmed that the deceased was travelling with a valid railway pass. It means that the deceased was a bonafide passenger of the train.

9. The deceased died while boarding the train. Law has been settled in the case of ***Union of India vs- Rina Devi, (2019) 3 SCC 572***, that, *the death in course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor*. So there being no doubt about death of the deceased in an untoward incident, based on the evidence of the witnesses and the materials produced in the claim application, no reason is found to disentitle the claimant from getting compensation prescribed under the Railways Act.

10. Now the question comes about payment of interest. In ***Thazhathe Purayil Sarabi and Others vs- Union of India and another, 2010 (1) TAC 420 SC***, Hon'ble Supreme Court have held that, both the Tribunal and High Court were wrong in not granting any interest whatsoever to the appellants, except by way of a default interest, which is contrary to the established principles relating to payment of interest on money claims.

Again in the case of *Rina Devi* (supra), while clarifying the position, it is held as follows:-

“19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two

amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon and Kalandi Charan Sahoo* stands explained accordingly. The four –Judges Bench judgment in *Pratap Narain Singh Deo* holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

XX

XX

XX

30. As already observed, though this Court in *Thazhathe Purayil Sarabi* held that rate of interest has to be @6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in *Mohamadi*, rate of interest has to be reasonable rate on a par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises up to the date of payment, without any difference in the stages. Legal position in this regard is on a par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner.”

11. In view of the principles stated above, the claimant is entitled for interest on compensation amount. In the instant case, the accident took place on 16th February 2006 and order of the Tribunal is dated 6th February 2009. Thus as per applicable compensation, the claimant is entitled to Rs.4,00,000/- with interest @ 6% per annum from the date of accident till realization.

12. In the result the appeal is allowed and Union-Respondent is directed to pay compensation of Rs.4,00,000/- (four lakh) to the claimant along with simple interest @ 6% from the date of accident within a period of four months from today, which shall be disbursed in favour of the claimant by keeping 50% of the same in fixed deposit in any nationalized bank in her name for a period of five years.

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

(B.P. Routray)
Judge

M.K.Panda

