

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.232 of 2021

Pramod Kathar and Another ***Appellants***

Ms. Deepali Mohapatra, Advocate

-versus-

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

Mr. Gyanaloka Mohanty, Central Government Counsel

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
4.11.2022

Order No.

- 02.
1. The matter is taken up through hybrid mode.
 2. Heard Ms. D. Mohapatra, learned counsel for the Appellants and Mr. G. Mohanty, learned Central Government Counsel.
 3. Present appeal by the claimants is directed against the award dated 7th September, 2021 passed by the Railway Claims Tribunal, Bhubaneswar Bench in OA(IIU)/169/2017, wherein the tribunal has refused to grant compensation on the ground that the claimants have failed to prove their case.
 4. Ms. Mohapatra submits that the tribunal has failed to appreciate the evidence of AW-2, who was a co-passenger, and it disbelieved the entire case of the claimants for non-production of ticket.
 5. On the other hand, Mr. Mohanty, learned CGC submits for Union of India that the deceased was not a bonafide passenger of the

train and AW-2 being the uncle of the deceased was an interested witness. Therefore, his version cannot be relied on without supporting materials.

6. Perusal of the impugned judgment reveals that the deceased was a boy aged about 15 years travelling in Dhauli Express from Puri to Cuttack. The alleged untoward incident happened on 13th June, 2015 in between Delanga and Kanasa railway station. The dead body of the deceased was recovered from the railway track at KM No.466/32-30 between Delanga and Kanasa.

7. The case of the claimants, who are the parents of the deceased, is that the deceased in course of his journey in the train while washing his face near the wash basin fell down out from the running train due to sudden jerk. The dead body of the deceased was sent for post mortem examination upon holding of Inquest by Police. As per the PM examination report, the upper part of the skull along with brain material was found missing and the cause of death is accidental in nature. Such a finding in the PM report, which remain unchallenged, along with recovery of the dead body from the railway track establishes the fact of death of the deceased involving railway accident or untoward incident.

8. The next and most important question is, whether the deceased was a bonafide passenger in the train? The contention of the claimants that the deceased was a bonafide passenger in Dhauli Express is not denied and said Dhauli Express had passed through the very railway track during the relevant time according to DRM's inquiry report. It is contended by the claimants that the journey ticket of the deceased

might have been lost somewhere. AW-2, a co-passenger of the deceased in the same train, speaks in his evidence that he has seen the deceased purchasing the ticket and traveling in the train with a valid ticket. The tribunal has disbelieved the evidence of said AW-2 for the reason that he has not filed any supportive document to establish that he also travelled with the deceased in the same train. In other words, according to the tribunal, the journey of AW-2 with the deceased in the train cannot be believed in absence of production of his journey ticket. But as per AW-2, he while alighted at Khurda railway station his ticket was kept by the TTE. This aspect of the statement of AW-2 is not dealt with by the tribunal.

9. Admittedly, no rebuttal evidence has been adduced from the side of the railways. The evidence of AW-2 clearly suggests that the deceased was a bonafide passenger in the train having a valid ticket of journey and he died due to fall from the running train. Said evidence of AW-2, in absence of any rebuttal evidence cannot be said to be unbelievable for want of production of a journey ticket by AW-2.

10. When the death is established accidental in nature in the PM report and the dead body was found from the railway track and the alleged train had passed the concerned railway track at the time of relevant time, the case of the claimants regarding death of the deceased in an untoward incident cannot be disbelieved merely for absence of the railway ticket. The circumstances as stated above are all indicative of the fact that the deceased was a bonafide passenger of the train and died in the untoward incident. As such, the claim of the

applicants is allowed and they are found entitled for due compensation under the Railways Act.

11. In the result the appeal is allowed and the Respondent – Union of India is directed to pay the compensation of Rs.8,00,000/- (eight lakhs) in terms of the principles decided in the case of ***Union of India v. Rina Devi, (2019) 3 SCC 572***. The amount shall be paid within a period of two months from today. 50% of the entire compensation amount shall be kept in fixed deposit in any nationalized bank in the name of both the claimants in equal share and balance 50% shall be disbursed in their favour in equal share.

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

(***B.P. Routray***)
Judge

M.K.Panda

