

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 3023 of 2017

Shreya Pandey, daughter of Late Dipankar Pandey and Smt. Puja Kumari, resident of Flat No. 302, Sanskriti Apartment, Dhaiya, P.O. & P.S. -Dhanbad, District -Dhanbad, represented her mother/natural guardian Puja Kumari, wife of Late Dipankar Pandey. Petitioner

Versus

1. The Union of India through its General Manager, South Eastern Railway, P.O. and P.S. -Garden Reach, Kolkata, District - Kolkata (W.B.)
2. The Divisional Railway Manager, South Eastern Railway, Adra Division, Adra, P.O. & P.S. -Adra, District -Adra (West Bengal).
3. Senior Divisional Security Commissioner (RPF), South Eastern Railway, Adra, P.O. & P.S. -Adra, District -Adra, West Bengal.
4. The Divisional Security Commissioner (RPF), South Eastern Railway, Adra, P.O. & P.S. -Adra, District -Adra, West Bengal.
5. Senior Divisional Commercial Manager, South Eastern Railway, Adra, P.O. & P.S. -Adra, District -Adra, West Bengal.

.... Respondents

With

W.P. (C) No. 2991 of 2017

Puja Kumari, wife of Late Dipankar Pandey, resident of Flat No. 302, Sanskriti Apartment, Dhaiya, P.O. & P.S. -Dhanbad, District - Dhanbad.

.... Petitioner

Versus

1. The Union of India through its General Manager, South Eastern Railway, P.O. and P.S. -Garden Reach, Kolkata, District - Kolkata (W.B.)

2. The Divisional Railway Manager, South Eastern Railway
 3. Senior Divisional Security Commissioner (RPF), South Eastern Railway.
 4. Divisional Security Commissioner (RPF), South Eastern Railway.
 5. Senior Divisional Commercial Manager, South Eastern Railway.
- Address of Respondent nos. 2, 3, 4 & 5 -, Adra Division, Adra, P.O. & P.S. -Adra, District -Adra.

.... Respondents

With

W.P. (C) No. 3022 of 2017

Shreshtha Pandey, minor daughter of Late Dipankar Pandey and Smt. Puja Kumari, resident of Flat No. 302, Sanskriti Apartment, Dhaiya, P.O. & P.S. -Dhanbad, District -Dhanbad, represented by her mother/natural guardian Puja Kumari, wife of Late Dipankar Pandey.

.... Petitioner

Versus

1. The Union of India through its General Manager, South Eastern Railway, P.O. and P.S. -Garden Reach, Kolkata, District - Kolkata (W.B.)
2. The Divisional Railway Manager, South Eastern Railway, Adra Division, Adra, P.O. & P.S. -Adra, District -Adra (West Bengal).
3. The Senior Divisional Security Commissioner (RPF), South Eastern Railway, Adra, P.O. & P.S. -Adra, District -Adra, West Bengal.
4. The Divisional Security Commissioner (RPF), South Eastern Railway, Adra, P.O. & P.S. -Adra, District -Adra, West Bengal.
5. The Senior Divisional Commercial Manager, South Eastern Railway, Adra, P.O. & P.S. -Adra, District -Adra, West Bengal.

.... Respondents

With

W.P. (C) No. 3168 of 2017

Puja Kumari, wife of Late Dipankar Pandey, resident of Flat No. 302, Sanskriti Apartment, Dhaiya, P.O. & P.S. -Dhaiya, P.O. & P.S. - Dhanbad, District -Dhanbad.

....

Petitioner

Versus

1. The Union of India through its General Manager, South Eastern Railway, P.O. and P.S. -Garden Reach, Kolkata, District - Kolkata (W.B.)
2. Divisional Railway Manager, South Eastern Railway, Chakradharpur, P.O. and P.S. -Chakradharpur, District - Singhbhum West.
3. Senior Divisional Personnel Officer, South Eastern Railway, Chakradharpur, P.O. and P.S. -Chakradharpur, District - Singhbhum West.

....

Respondents

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioners	: Ms. Chaitali C. Sinha, Advocate
	: Mr. Vijay Shanker Jha, Advocate
For the Respondents	: Mr. Anil Kumar, ASGI
	: Ms. Chandana Kumari, AC to ASGI

.....

By the Court:-

1. Heard the parties.
2. Since all these four writ applications have been filed in connection of an accident which took place while the Maruti Vehicle driven by the husband of the writ petitioner of W.P.(C) No. 2991 of 2017 namely Dipankar Pandey was crossing the man less unguarded, named Jiara Railway gate under Adra

3

W.P. (C) No.3023 of 2017 with W.P. (C) No. 2991 of 2017
with
W.P. (C) No. 3022 of 2017 with W.P. (C) No. 3168 of 2017

Government Railway Police Station near Railway K.M. Post No. 285/17J dashed with running Burdwan-Asansol to Purulia/Bokaro bound Train No. 63596, the husband of the writ petitioner namely Puja Kumari of W.P.(C) No. 2991 of 2017 died at Adra Railway Hospital with grave injuries in the case while the writ petitioners of W.P.(C) Nos.3022, 3168, 3023 of 2017 have stated to have sustained some injuries and were treated at Bankura Sammilani College through Raghunathpur Sub-Divisional Hospital. The said accident stated to have taken place on 11.09.2016 at about 19:50 hours and the Registration No. of the Matuti Vehicle is stated to be JH-10AW-2591.

3. It is submitted by the learned counsel for the petitioners that it has been contended in the writ petition that all of a sudden the train dashed the vehicle and in connection with the said occurrence UD Case No. 11 of 2016 was registered and after investigation, police submitted the final report stating therein that the said husband namely Dipankar Pandey of the writ petitioner – Puja Kumari died due to man less railway crossing where no guard was present. It has also been averred that Adra GRPS Case No. 16 of 2016 has also been registered under Section 279/337/338/427/304A of the Indian Penal Code in respect of the said accident. It has further been averred that there was no caution board on or before the railway crossing track and the track was bending on the right side of the entrance and there was

also a tree on the right side which obstructed the clear vision of the right side and there was no signal or warning system at the place of accident. The accident took place as the train came with high speed without adequate signals or horns and the accident was a result of negligence on the part of the respondents. After the death of her husband, the petitioner of W.P.(C) No. 2991 of 2017 is facing hardship and is helpless. The monthly income of the said Dipankar Pandey, the husband of the said writ petitioner of W.P.(C) No. 2991 of 2017 was Rs.1,50,000/-. Hence, the petitioners are entitled to compensation of Rs.30,00,000/-.

4. Relying upon the Judgment of a Coordinate Bench of this Court in the case of **Dharam Bidyas Kujur Vs. Union of India & Anr., dated 18.12.2019 in W.P.(C) No. 4543 of 2014**, it is submitted by the learned counsel for the petitioner that the Coordinate Bench of this Court, relying upon the Judgment of a Division Bench of Hon'ble Orissa High Court in the case of **Laxmi Priya Sahoo and Another Vs. Divisional Railway Manager, East Coast Railway, Khurda and Another**, reported in (2013) 3 T.A.C. 352 (Ori.) and the Judgment of **Union of India Vs. Rina Devi**, reported in (2018) 2 JBCJ 478 (SC) awarded the compensation of Rs.8,00,000/- to the father of the deceased person who were crossing the railway crossing and the **L.P.A. No. 238 of 2020** filed against the Judgment of the said Coordinate Bench in **W.P.(C) No. 4543 of 2014** has been dismissed by the Division Bench of this Court vide Judgment

dated 09.05.2023 and the judgment passed by the learned Single Judge has been confirmed.

5. Writ Petition No. 3022 of 2017 has been filed for the injury of “fracture of shaft of right femur” sustained by Shrestha Pandey , in the said accident was travelling in the said Maruti car and a sum of Rs.6,50,000/- i.e. Rs.4,50,000/- towards medical expenses of Rs.2,00,000/- continuation pain and agony has been claimed in the said accident, she being one of the occupant of the said Maruti Vehicle. W.P.(C) No. 3168 of 2017 has been filed praying for compensation of Puja Kumari for “Fracture of Clavicle Left, Fracture Right Scapula with Fracture Right Acromion with Minimal Displacement, Collapse of Right Lobe of Lungs (Medial Segment) Hypothyroidism” and a sum of Rs.10,00,000/- i.e. Rs.6,00,000/- for medical expenses and Rs.4,00,000/- for continuation pain and agony has been claimed by the writ petitioner –Puja Kumari.
6. Writ Petition No. 3023 has been filed for the injury sustained by Shreya Pandey of “Maxillofacial Injury with Liver Laceration” who is also an occupant of the said Maruti Vehicle. Hence, it is submitted by the learned counsel for the petitioners that the compensation as prayed for be allowed.
7. The learned counsel for the respondents raises a preliminary objection regarding the maintainability of the writ petition. It is submitted by the learned counsel for the respondents that Section

33 of the Railways Act, 1989 envisages establishment of Railways Claims Tribunal under Section 3 of the Railways Claims Tribunal Act, 1987 for the purposes of Railways Act 1989. It is next submitted by the learned counsel for the respondents drawing attention of this Court to Section 16 of the Railways Claims Tribunal Act, 1987, it is submitted by the learned counsel for the respondents that the petitioners could have filed the claim for compensation before the Railway Accident Claims Tribunal but having not done so, these writ petitions are not maintainable. It is next submitted that Section 18(2) of the Railways Claims Tribunal Act, 1987 envisages that the claim tribunal shall decide every claim application as expeditiously as possible and ordinarily every application shall be decided on perusal of the document. Hence, the word 'every application' vests the jurisdiction upon the claims tribunal to entertain the application for compensation in respect of which these writ petitions have been filed.

8. The learned counsel for the petitioners opposes the contention of the learned counsel for the respondents and submits that Section 3 of the Railway Claims Tribunal Act, 1987 envisages establishment of Claims Tribunal to be known as Railway Claims Tribunal to exercise the jurisdiction, power and authority conferred on it by or under Chapter -VII of the Railways Act, 1989. It is next submitted by the learned counsel for the petitioners that Chapter-VII of the Railways Act, 1989 which starts from Section 32 and ends with

Section 36 envisages complaint against the Railways Administration alleging contravention of Provisions of Section 70 or alleging charging for the carriage of any commodities between two stations at a rate which is unreasonable or that levying of any other charge which is unreasonable and Section 124A of the Railways Act, 1989 envisages compensation on account of untoward incident but there is no provision in the Railways Act, 1989 which specifically provides for compensation to be paid in accidents resulting in death or bodily injury to any person because of a collusion between a motor vehicle and a train. Hence, it is submitted that this kind of compensation cannot be raised before the Railways Claims Tribunal.

9. In view of the preliminary objection of the learned counsel for the respondent, this Court feels it necessary to first decide the preliminary issue of jurisdiction. As already mentioned above, the Railways Claims Tribunals have been established to exercise jurisdiction, power and authority conferred on it by or under the Railways Claims Tribunal Act, 1987 and Chapter-VII and the Railway Act, 1989. Section 13 of the Railway Claims Tribunal Act, 1987 which reads as under:-

“13. Jurisdiction, powers and authority of Claims Tribunal.—(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act, —

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for –

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable under Section 82-A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

[(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124-A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under Section 124-A of the said Act or the rules made thereunder.]

10[(1-B) The Claims Tribunal shall also exercise, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, the jurisdiction, powers and authority conferred on the Tribunal under Chapter VII of the Railways Act, 1989.]

(2) The provisions of the [Railways Act, 1989 (24 of 1989)]¹¹ and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.”

vests the power and authority upon the Railways Claims Tribunal that were exercisable immediately before the Railways Claims Tribunal came into existence, by the Civil Court or a Claims Commissioner appointed under the provisions of the Railways Act (a) relating to the responsibility of the Railway Administration as carriers under Chapter-VII of the Railways Act in respect of claims for compensation, for loss, destruction, damage, deterioration or non-delivery of animals, goods

entrusted to a railway administration for carriage by Railways in respect of claims for refund of fares or part thereof etc.

10. Sub-section 1-A was inserted by Act 28 of 1994 with effect from 01.08.1994 vests the power upon the Railways Claims Tribunal to exercise all jurisdiction, power and authority as were exercisable by the civil court in respect of claims for compensation payable by the Railway Administration under Section 124A of the said Act or Rules made thereunder.
11. Section 124A of the Railway Act, 1989 refers to untoward incident. Section 124A which reads as under:-

“[124-A. Compensation on account of untoward incidents.—*When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:*

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to –

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation. –*For the purposes of this section, “passenger” includes –*

- (i) a railway servant on duty; and*
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a*

valid platform ticket and becomes a victim of an untoward incident.]”

Do not cover a claim of compensation relating to an accident in man less railway gate by a person other than a passenger of the train. Chapter-VII of the Railways Act, 1989 also, as already discussed above do not covers such a claim. Hence this Court has no hesitation in holding that the Railways Claims Tribunal has no jurisdiction to entertain a claim of this nature for claiming compensation arising out of an accident in which a motor vehicle was dashed by a train at a man less railway crossing; when the aggrieved persons are not the passenger of the Railways and holds that there is no bar to entertain a writ application, for such claim.

12. Now coming to the facts of the case, the respondents have not filed any counter affidavit in these cases. The averments made in the writ petitions have remained unchallenged. Perusal of the annexure-10/2 at page no.16 of the supplementary affidavit dated 02.09.2020 filed in W.P.(C) No. 2991 of 2017 which is the report submitted by the Sub-Inspector of Police, Adra General Railway Police Station to the Additional Chief Judicial Magistrate, Raghunathpur in the District of Purulia, it remains uncontroverted that the deceased Dipankar Pandey was driving the Maruti Vehicle bearing Registration No. JH-10AW-2591 and Puja Pandey being his wife and two daughters namely Shreya and Suruti were travelling in that Maruti Van. Perusal of the charge

sheet/final report, the copy of which has been annexed as annexure-2 reveals that the alias name of Suruti was Shrestha and it is crystal clear that because of the said accident which occurred due to man less railway crossing, the death of Dipankar Pandey has occurred and Shrestha Pandey sustained "fracture of major bone that is femur of one limb but so far as the injuries of Puja Kumari and Shreya Pandey is concerned the injuries claimed to have been sustained by them, are not the injuries; mentioned in the Schedule of compensation, prepared in terms of Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

13. Now coming to the Judgment relied upon by the petitioners, the Division Bench of Hon'ble Orissa High Court in the case of **Laxmi Priya Sahoo and Another Vs. Divisional Railway Manager, East Coast Railway, Khurda and Another** (supra) has observed thus in para-27 & 29:-

"27. Further, the High Court of Assam in Swarnalata Barua's case (supra) has held that there is an obligation on the part of the Railway Administration to ensure that whenever a railway passes over a thoroughfare adequate warning should be given to the public about passing of the train at the time they pass so that accidents may be avoided. This duty need not necessarily be a statutory duty. It is implied and inherent in the functions to be discharged by the Railway Administration in the matter of running their railways. It is not disputed that had the Railway Administration taken the precaution of either putting up of a railway gate and keeping it closed at the time the train was due to pass or put up some other obstruction which could prevent the public from passing over the level crossing giving them information and notice of the approaching train, the accident of the kind that happened in this case could not have happened.

29. Under Section 124 of the Railway Act read with the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the no fault liability of the passenger who expires in a railway accident has been fixed at Rs.4.00 lakh. In the instant case, the victims lost their lives or became disabled in the said accident due to the negligence on the part of the Railway Administration in putting gates at the level crossing is placed or public are allowed to cross the railway line without providing precautionary measures as indicated above. Further, the Apex Court in *Rahul Sah's case (supra)* has observed that in appropriate cases, the Court discharging Constitutional duties can pass orders for payment of money in the nature of compensation. Consequent upon deprivation of the fundamental right to life and liberty of a petitioner the State must repair the damage done by its officers to the petitioner's right."

14. In L.P.A. No. 238 of 2020, the applicability of the ratio of **Union of India Vs. Rina Devi** (supra) by the Coordinate Bench was challenged but the Division Bench of this Court in no uncertain manner has rejected the argument advanced by the appellant of the L.P.A. regarding applicability of the Judgment of **Union of India Vs. Rina Devi** (supra) and the Division Bench also in L.P.A. No. 238 of 2020 has approved the ratio of the Judgment of Hon'ble Division Bench of Orissa High Court in the case of **Laxmi Priya Sahoo and Another Vs. Divisional Railway Manager, East Coast Railway, Khurda and Another** (supra).
15. Now in view of this undisputed fact, so far as the writ petition W.P.(C) No. 2291 of 2017 is concerned, as per the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the Schedule of compensation was amended and the amount has been enhanced to Rs.8,00,000/-. Hence, the Respondent-Railway Authority is directed to pay compensation amount of

Rs.8,00,000/- to the petitioner who is the wife of the deceased Dipankar Pandey within a period of eight weeks from the date of receipt/production of the copy of this Judgment.

16. So far as the writ petition W.P.(C) No. 3022 of 2017 is concerned, as per the Schedule under Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the petitioner Shrestha Pandey @ Suruti is entitled to Rs.80,000/- under serial no.33 which refers to fracture of major bone inter-alia femur or one limb. Hence, the respondents of W.P.(C) No. 3022 of 2017 are directed to pay Rs.80,000/- to the petitioner of W.P.(C) No. 3022 of 2017 within eight weeks from the date of receipt/production of the copy of this Judgment.
17. So far as the writ petitions i.e. W.P.(C) Nos. 3023 of 2017 and 3168 of 2017 are concerned, the petitioners thereof having not sustained any injury for which compensation has been provided for in the said Schedule under Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Hence, this Court is not inclined to allow the prayer of compensation to the petitioners of those two cases.
18. In view of the discussions made above, all the four writ petitions are disposed of accordingly.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 9th April, 2024
AFR/Sonu-Gunjan/-