
(2016) 03 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 2580 of 2001

Charanjit Kaur

APPELLANT

Vs

South Eastern Railway

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Railways Act, 1890 — Section 13

Citation : (2016) 03 OHC CK 0027

Hon'ble Judges : Dr. B.R. Sarangi, J.

Bench : Single Bench

Advocate : R. Mohapatra, M.K. Mohapatra, S.K. Bisi and P. Jena, for the Appellant; K. Jena, A.K. Mohapatra, S.K. Dash, A.K. Mishra, S.K. Ojha, N.R. Pandit, H.M. Das, A.K. Sahoo, B.K. Jena and S.K. Khandayatrai, for the Respondent

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—1. The petitioner, who is the widow of late Manjit Singh, has filed this application seeking for a direction to the opposite parties to pay adequate compensation for untoward accident that took place on 11.10.1998 causing death of her husband.

2. The factual matrix of the case in hand is that the petitioner's husband late Manjit Singh came from Jamshedpur to Rourkela to attend the marriage ceremony of his niece at Panposh Basti (Raghunathpalli) on 10.10.1998. After attending the marriage, he left the house at about 12.20 A.M. on 11.10.1998 to catch the train for Jamshedpur. He was a physically handicapped person and using artificial right leg for last 22 years. From the inception of Bombay-Howrah Railway line, the inhabitants of Raghunathpalli Basti which is otherwise known as Panposh Basti are using to cross over the railway line which is closed to Panposh Chhak for either catching train or bus or Auto Rickshaw to go to any destination or even for marketing purposes which is within the knowledge of railway authorities. On 11.10.1998, late Manjit Singh while crossing over the railway

line, run over by Puja Special (Express Train) as because his artificial foot was somehow entangled in the gap of the track and the gap was caused due to negligence of railway and by the time he retrieved his leg, the train ran over him resulting in his sudden death. The G.R.P.S. took up the matter and without any proper enquiry or establishing the identity of the victim, cremated the body without conducting post mortem. When late Manjit Singh did not reach Jamshedpur on 14.12.1998, a missing report was lodged before Raghunathpalli police station of Rourkela. Information of his missing was flashed to all the police stations including G.R.P.S., but of no result. On 16.10.1998, Mahinder Singh and Kuldeep Singh who are cousins of late Manjit Singh came to know about running over of train on a man at Ponposh Railway Station and after making personal enquiry, requested the Sub-Collector, who in turn authorized the Magistrate to exhume the body in presence of witnesses and after exhumation, the dead body was identified as of Manjit Singh. Consequentially, G.R.P.S., U.D. Case No. 21 of 1998 dated 31.10.1998 corresponding to G.R. No. 208 of 1998 was registered for the unnatural, sudden and accidental death of Manjit Singh and final report was submitted by O.I.C., Rourkela G.R.P.S. indicating that the cause of death of the deceased was due to accidental run over by the train (Puja Special) on 11.10.1998 at about 2.20 A.M. and there was no suspicion of any foul play. Accordingly, it has been noted in the final form that "under the above facts and circumstances, I close the case declaring the death of the deceased due to accidental run over by train. There is no suspicion of any foul play." The deceased Manjit Singh had left behind his old parents, wife, two daughters and a son, who are minors and dependant on him. The deceased was working in Payal Talkies at Jamshedpur as guest house attendant and was being paid a monthly consolidated salary of Rs. 3000/- and was the only earning member of the family and his pay was the only source of income of the family. After his death, the family suffered a misery and as such the entire livelihood of the family has been affected due to untoward accident that took place on the fateful night. Hence, the wife of the deceased Manjit Singh has filed this application claiming compensation.

3. Mr. P. Jena, learned counsel for the petitioner strenuously urged that due to the untoward incident, the petitioner being the legal heir of the deceased is entitled to get compensation. In order to substantiate his contention, reliance has been placed on the judgments in Laxmi Priya Sahoo and another v. Divisional Railway Manager, East Coast Railway and another, , 2012 (I) OLR 468 and Edgula Babu Rao and others v. The General Manager, East Coast Railway and others, , 2015 (I) OLR 1100 : , 2015 (I) ILR-CUT-627.

4. Mr. K. Jena, learned counsel though initially appeared on behalf of opposite party No. 1, subsequently Mr. A.K. Mishra, learned counsel appeared on behalf of opposite party No. 1 and filed counter affidavit. But at the time of call, none appeared for opposite party No. 1. This being a year old case, considering the counter affidavit filed by opposite party No. 1, wherein it is urged that the death of the husband of the petitioner had not been caused due to railway accident nor

due to untoward incident as defined under section 124(A) of the Indian Railway Act so as to hold the Railway liable for any compensation and death has been occurred due to deliberate negligence on the part of the deceased. It is stated that the deceased was not a bonafide passenger of the train, therefore the claim so made cannot sustain in the eye of law and accordingly he seeks for dismissal of the writ application. It is further urged that the petitioner has not disclosed the number and name of the train in which the deceased had travelled and also has not disclosed the purchase of any ticket. It is stated that while crossing the railway line if the incident occurred that itself cannot be stated to be violative of safety rules, thereby the death of the petitioner's husband was due to the fault of railway cannot sustain. Accordingly, the claim of compensation as prayed for in the writ application has been denied.

5. On the basis of the facts pleaded, there is no iota of doubts that the death of the husband of the petitioner has been caused due to the run over by the train and the G.R.P.S. has registered U.D. Case No. 21 of 1998 corresponding to G.R. Case No. 208 of 1998 on 31.10.1998 after long lapse of the incident on 11.10.1998. Even if the petitioner has not disclosed the number and name of the train that ipso facto cannot disentitle her to get compensation as the factum of death is due to running over of train is admitted. In final form submitted after investigation, it has been stated that case was closed declaring the death of the deceased due to accidental run over by train and there is no suspicion of any foul play. Section 124(A) of the Railway Act which has been inserted by way of amendment of (Railway Amendment Act 28 of 1994) clearly states that no compensation shall be payable under the section by railway administration if the passenger died or suffered injury due to clauses- A to E mentioned therein. None of the provisions is applicable to the present context, thereby the petitioner cannot be deprived of getting compensation as claimed in the present writ application.

6. On perusal of section 11 of Railway Act, 1989 it appears that the Central Government is empowered to execute all necessary works for convenient running of the trains in the country. Under Section 18 of the Railways Act, 1989 that corresponds to section 13 of the Railway Act, 1890 for the said convenient running of the trains, the authorities may construct suitable gates, chains, bars, etc. at the level crossing. The aim and object of the legislation is to protect the living beings who are supposed to be affected by the running of the trains and for that Parliament authorizes the railway authorities to work in a responsible manner with a view to see that the persons who will be crossing the railway crossing either to reach residences or other places shall not be affected. The railways would work in crossing a footway on level, as to the mode of working their railway, as to the rate of speed, and signaling and whistling and other ordinary precautions in the working of a railway to do every thing which is reasonably necessary to secure the safety of persons who have to cross the railways by means of the footway.

7. From the date of inception of Bombay-Howrah Railway line, the inhabitants of Raghunathpalli Basti which is otherwise known as Panposh Basti used to cross over the railway line which is closed to panposh chhak for either catching train or bus or auto rickshaw to go to any destination or even for marketing purposes, which is within the knowledge of railway authorities and no remedial measures have been taken for quite long time leading to an untoward incident of accidental death caused to the husband of the petitioner. This clearly amounts to negligence on the part of the railway authority for which the petitioner claims compensation for premature death of bread winner of the family at a premature age. The deceased being a physically handicapped persons and was moving with artificial foot which was entangled in the gap of the track, which was caused due to the negligence of the railway. By the time, the deceased retrieved his leg, the Puja Special train has already run over him, resulting in his sudden death. Instead of enquiring into the matter and establishing the identity of the victim, the G.R.P.S. took up the matter and cremated the body without conducting post mortem. That further shows the negligence of the railway authority because of the reason to wipe out the evidence such undue act has been done. But on the basis of the missing report lodged before the Raghunathpalli police station when subsequent inquiry was caused, G.R.P.S. U.D. Case No. 21 of 1998 corresponding to G.R. Case No. 208 of 1998 was registered on 31.10.1998. In the final report, it has been specifically stated that cause of death of the deceased was due to accidental run over by the train and there was no suspicion of any foul play. The negligence on the part of the railway authority being apparent on the face of record and taking into account the social status of the deceased, this Court is of the considered view that the petitioner is entitled to compensation as claimed by her.

8. Similar question came up for consideration before this Court in Laxmi Priya Sahoo and another (supra), wherein while crossing an unmanned level crossing along with the pillion rider, the motor cycle faced an accident and the person expired due to ran over of the train Jaswantpur Special Express and the pillion rider sustained severe injuries on his person. Taking into account various judgments of the High Courts as well as the apex Court, this Court directed for payment of compensation of Rs. 4,00,000/- for death of the person and Rs. 65,000/- for the injured person and also awarded interest at the rate of 7% per annum from the date of claim made till realization.

9. In Edgula Babu Rao and others (supra), due to run over by Tirupati-Bilaspur train on a girl, on the basis of the information given by the driver, U.D. Case No. 34 of 2006 dated 21.8.2006 was registered in Rayagada, G.R.P.S. and such run over was due to negligence on the part of the railway authority and as no ply over had been constructed to allow the local people of the locality to cross over the railway line, this Court awarded ex-gratia amount of Rs. 3,00,000/- to the bereaved family.

10. Applying the ratio decided in the aforementioned judgments (supra) to the

present context, it appears that due to the negligence on the part of the railway authority for having not constructed any fly over or foot bridge over the railway line, death has occurred to the deceased. Therefore, there is gross negligence on the part of the railway authority entitling the petitioner to get compensation. Accordingly, this Court directs the railway authority for payment of compensation of Rs. 4,00,000/- (Rupees four lakhs) to the petitioner within a period of three months from the date of passing of the judgment along with interest at the rate of 7% from the date of accident till actual payment is made. The interest is awarded in view of the fact that there is gross negligence on the part of the railway authority to the extent that in order to wipe out the evidence, the deceased was cremated without causing inquiry, which is not permissible under law.

11. Accordingly, the writ application is allowed.