
(2014) 09 OHC CK 0083
In the Orissa High Court
Case No : W.P. (C) No. 13531 of 2012

Debahuti Parida

APPELLANT

Vs

The General Manager East Coast Railway

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Railways Act, 1989 — Section 124

Citation : (2014) 118 CLT 826 : (2015) 1 ILR 200 : (2014) 2 OLR 703 Suppl. : (2014) 2 OLR 703

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Biswanath Rath, J.—The petitioners are the wife and minor child of the deceased Kshirod Kumar Parida by filing this writ petition have claimed for direction to the opposite parties for paying compensation amount of Rs. 8,00,000/- (rupees eight lakhs) along with interest at the rate of 10% per annum from the date of filing of the writ petition till payment is made on account of the death of the deceased due to railway accident in an unmanned level crossing.

2. The fact reveals that the deceased Kshirod Kumar Parida, while was returning to his house from Pankapal after finishing his work as a Masson by his Motor Cycle bearing Registration No. OR-21-B-8549, he was ran over by a goods train coming from the side of the Cuttack and going towards Paradeep at the unmanned level crossing "Banikundo". This fact was published in the local daily newspaper "The Sambada" dated 09.01.2012, faced an agitation in the locality. Besides the above an F.I.R. was also lodged before Police Station, Paradeep G.R. Out-post registered as G.R.O.P. U.D. Case No. 2/12 being reported by Station Master, East Coast Railway, Paradeep dated 08.01.2012 as appearing vide Annexure-1 series.

3. It is on the basis of admission of the railway authority vide their F.I.R. dated 08.01.2012 as appearing at Page-9 of the writ petition. The petitioners expected

Railway authority to respond to their call for reasonable compensation but, finding no response from the Railway authority in the matter of compensation to the bereaved family the petitioners choose to file the writ petition claiming therein compensation of Rs. 8,00,000/- (rupees eight lakhs) along with interest at the rate of 10% per annum from the date of filing of the writ petition till the date of payment. On their appearance, the Railway authority filed a counter affidavit disputing the claim of the petitioners regarding compensation to the bereaved family solely on the ground that as per the latest Railway Board guideline manned level crossing is made basing on TVU (Train Vehicle Unit) and the level crossing less than the required TVU with more visibility from both sides cannot be declared as manned level crossing.

4. It is on this premises, the railway authority claimed that in spite of their sufficient indications at the unmanned level crossing, the deceased did not cared for the instructions and for his negligence, the deceased who was moving in a Motor Cycle bearing Registration No. OR-21-B-8549 was ran over by goods train between RHMA-BDBA near "Banikundo" at Km 472/29 as clearly reveals from para-8 of the counter affidavit. It is also admitted by the Railway authority that in connection with the said accident F.I.R. is also lodged by G.R.P.F. Out-post Paradeep vide U.D. Case No. 02 of 2012. The Railway authority challenged the maintainability of the writ petition as it contained disputed question of facts.

During the course of argument, since petitioners made their claim for compensation, on the basis of their claim that the deceased was a Masson and earning Rs. 300/- (rupees three hundred) daily besides looking after his own cultivation they are entitled to get a sum of Rs. 8,00,000/- (rupees eight lakhs) as compensation along with interest at the rate of 10% per annum. Answering the question of maintainability of the writ petition, learned counsel for the petitioner has brought to my notice to a reported decision in AIR 2012 Orissa 38 justifying his claim for compensation by filing a writ petition.

5. On perusal of the aforesaid judgment of this Court, it is found that in the said case taking into consideration that the claim of the petitioners in relation to a person died in a railway accident confined to Rs. 4,00,000/- (rupees four lakhs) and considering the provision made at Section 124 of the Railway Act, 1989, which makes provision for "no fault of liability" of Rs. 4,00,000/- (rupees four lakhs) in case of accident involving Railway and since it was matching to the claim of the petitioners therein, this Court allowed the writ petition in the special circumstances and directed the Railway authority to pay Rs. 4,00,000/- (rupees four lakhs) as claimed by the petitioner therein. In view of the provision contained in Section 124 of the Railway Act, 1989, the aforesaid decision would have been made applicable to the case of the petitioners if the petitioners claim confined to the amount available under "no fault liability". On the other hand, in filing the writ petition since the petitioners is making claim of Rs. 8,00,000/- (rupees eight lakhs) as compensation and interest at the rate of 10% for the period of non-payment based on the fact that the deceased, was working as a

Masson and was earning of Rs. 300/- per day, I do not feel that the matter at hand is squarely covered by the decision referred to by the petitioners and reported in Shyam Naik and Others Vs. General Manager, East Coast Railway. Rail Vihar, Chandrasekharur, Bhubaneswar and Others, for which, I leave the matter open to the petitioners to agitate before the appropriate authority and get proper compensation subject to satisfying their claim in the particular court. But, however, considering the fact that in view of admission of railway authority, particularly counter statement in paragraph-8 that the deceased was ran over by the particular train, taking into consideration of the fact that it is only Railway authority, who had lodged F.I.R. before the concerned Police Station involving the death of the deceased and taking into account the provision contained at Section 124 of the said Act read with the Railway Accident and Untoward Incident (Compensation) Rule, 1990 the victims by way of interim compensation entitled to a sum of Rs. 4,00,000/- (rupees four lakhs) towards "no fault liability" as decided in AIR 2012 Orissa 38. While keeping it open for the petitioners to raise the claim of grant of appropriate compensation, I direct the Railway authority-opposite parties to release a sum of Rs. 4,00,000/- (rupees four lakhs) towards interim compensation on the head "no fault liability" to claimants along with interest at the rate of 10% per annum from the date of accident till the date of payment and the amount as directed above be released in favour of the claimants within a period of eight weeks from the date of receipt of this judgment. It is open to the petitioners to move appropriate Forum for balance compensation, if they are so advised.

6. The writ petition succeeds to the extent directed above. However, there shall be no order as to costs.