

(2014) 12 OHC CK 0056
In the Orissa High Court
Case No : Writ Petition (C) No. 6923 of 2008

Edgula Babu Rao and Others

APPELLANT

Vs

The General Manager, East Coast Railway and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Citation : (2016) 1 ACC 766 : (2015) 120 CLT 245 : (2015) 1 ILR 627 : (2015) 1 OLR 1100

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : A.K. Panda, for the Appellant; K.K. Sahoo, for the Respondent

Final Decision : Allowed

Judgement

Biswanath Rath, J.?Fact involved in this case is that on 21.08.2006 at about 9.30 A.M., one R.N. Prasad Rao, Station Superintendent (East Coast Railway), Rayagada lodged a written report in Rayagada G.R.P.S. through daily Entry No. 472, basing on an information given by the Driver of Tirupati-Bilaspur Express Train that the aforesaid train run-over a girl, at K.M. No. 343/4-3. On the basis of such report, U.D. Case No. 34 of 2006 dated 21.08.2006 was registered in Rayagada G.R.P.S. and necessary Post-mortem was also conducted. Upon completion of enquiry and investigation a Final Form was filed revealing the death of the deceased at daily market level crossing and an accidental one. From the said enquiry, it revealed that Edgula Karuna, the daughter of present petitioner, who was a student of +2 Arts Rayagada Womens" College, was going to the college by walk. While crossing the railway track at the daily market level crossing, her Chapal stuck on the track for which she tried to collect the same, in the process the Express Tirupati-Bilaspur Train, which was moving from the left side of the Rayagada Railway Station dashed and run over the girl student consequently the girl student died on the spot itself. The Police Report further also reveals that the death of the deceased was due to train accident at the Unmanned Level Crossing, petitioners alleged that due to gross negligence,

apathy, carelessness of both the opposite parties, the unnatural death of the daughter has taken place. Statements of different persons have been recorded, which indicate the victim was crossing an Un-manned Level Crossing when the accident took place. It is further alleged by the petitioners that the death of their daughter took place owing to breach of safety standard and on dereliction of bounden duty by the opposite party No. 1, i.e., Railway Authority. Further it is also alleged that the death has taken place for no precautionary measures taken by the Railway Authority at the spot in spite of the area remaining busy. Petitioners also accused District Administration for their not taking any precaution in the locality. In the above premises, the petitioners claimed a sum of Rs. 5,00,000/- (rupees five lakhs) against the opposite party No. 1 and Rs. 2,00,000/- (rupees two lakhs) against opposite party No. 2. In this way they claimed a whole sum of Rs. 7,00,000/- (rupees seven lakhs) as compensation as against the opposite parties. Per contra, the District Administration on its appearance filed a counter through opposite party No. 2 inter alia contending therein that though the daughter of the petitioners met with an accident with the Tirupati-Bilaspur Express Train, which run over her on 21.08.2006 the same is on account of negligence of her own and the opposite party No. 2 has nothing to do with the same. The opposite party No. 2 further claimed that the writ petition claiming compensation on account of death due to negligence by the Railway Authority cannot be maintainable. It also submitted that the Track where the accident took place since passes through a daily market, the Railway Authority constructed a fly-over bridge over the said railway track for the convenience of the people of the locality. The fly-over is already available and no one in the locality is permitted to cross the railway line.

2. Similarly in filing a counter affidavit, the opposite party No. 1 while admitting the accident to have taken place at the particular spot states that the particular train has run over the deceased and the fact that a U.D. Case is registered on the basis of F.I.R. lodged by the Station Superintendent, Rayagada Railway Station even then it is not responsible for the death of the deceased. It is claimed that the deceased was a girl student of "+2 Arts Rayagada Womens" College. There is no Manned/Unmanned Level Crossing in the area but there is a fly-over bridge near the track. The deceased did not use Fly-over Bridge but trespassed the railway track and met the consequence. It is submitted that there is a road over bridge at the spot of accident and in this view of the matter, the Railway Authority cannot be held responsible for the death of the deceased consequently Railway Authority is also not liable to pay compensation.

3. Heard the parties. Taking into consideration the respective pleas and the documents available on record, I find there is no dispute on the death due to Rail Accident. The copy of the First Information Report of the Station Superintendent East Coast Railway Rayagada reveals that the train in question run over the girl at K.M. No. 343/4-3. The Final Report attached therein also reveals that the death of the deceased was due to running over a particular train at that particular site. The Final Form was submitted with the observation that the death of Edgula

Karuna is due to accidental death. The statements attached to the Final Form also establish that the death is due to rail accident, involving the particular train. Some evidence indicates that the deceased was passing through the railway line whereas some evidence discloses that the death has taken place due to railway accident while the deceased was crossing the level crossing. At the same time, counters filed by both the parties reveal that the accident has taken place in the busy locality. Even though the Railway Authority has constructed a railway over bridge near the particular site it no where appear that there was any prohibition to cross the rail line by sufficient notice at the particular area or even by placing a display Board. The District Administration as well as the Railway Authority have emphasized on the availability of a railway over bridge in the locality but both the counters remain silent as to whether there was an indication by way of Notice Board/display Board or Bar bade wire fencing in the locality parallel to the Railway line considering the same to be a busy area, thereby, restricting the movement of the local people to avoid the railway track. I held the Railway Authority is responsible for the loss of the life. Further, from the facts as has been admitted by the parties the accident has taken place on 21.08.2006 and this writ petition could not be heard till end of 2014, at this stage there is no possibility of asking the petitioners to claim compensation by instituting a proceeding before the Competent Authority, which would be grossly barred by this time.

4. Under the circumstances considering the peculiar facts involved in the case and the fact that petitioners have lost their young daughter in a railway accident, further considering that no proceeding before Competent Authority claiming appropriate court is permissible at this stage, I direct the Railway Authority the opposite party No. 1 to make payment of at least a sum of Rs. 3,00,000/- (rupees three lakhs) as ex-gratia compensation to the bereaved family. The amount as directed be paid to the bereaved family within a period of one month from the date of judgment. The writ petition succeeds to the extent directed above. However, there shall be no order as to costs.