

(2012) 01 OHC CK 0012

In the Orissa High Court

Case No : Writ Petition (C) No's. 3324 and 3325 of 2010

Laxmi Priya Sahoo and Another

APPELLANT

Vs

Divisional Railway Manager, East Coast Railway and Another

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 41
Motor Vehicles Act, 1988 — Section 163A, 173
Railways Act, 1989 — Section 11, 113, 114, 115, 124

Citation : (2012) ACJ 2535

Hon'ble Judges : V. Gopala Gowda, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Advocate : Kishore K. Jena, Mr. A.K. Mohapatra, Mr. S.N. Das and Mr. S.K. Panda, for the Appellant; Anindya Mishra, H.M. Das and Mr. A.K. Sahoo, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, C.J.—These two writ petitions have been listed together as the facts and reliefs sought for are common and they arise out of the same accident. Therefore, they are heard and disposed of together by this common judgment. The first writ petition [W.P. (C) No. 3324 of 2010] is filed by the parents of the deceased minor child who died on account of the railway accident claiming compensation and praying for issuance of a writ of mandamus against the opposite parties to take appropriate steps in the unmanned level crossing situated in village Saradola in between Cuttack-Jaipur Road so that future accidents can be avoided and to pay compensation to the petitioners for loss of their son to the tune of Rs. 4,00,000 with interest at the rate of 9 per cent per annum, which is the minimum liability of the railway authority to a passenger as per section 124 of the Railways Act, 1989.

2. The second writ petition [W.P. (C) No. 3325 of 2010] is filed by the minor claimant (represented by father), who sustained severe injuries on account of

the very same accident and became disabled, seeking suitable compensation though the prayer in the writ petition is not properly couched.

3. Brief facts as have been narrated in the above writ petitions are stated below with a view to find out as to whether the petitioners are entitled to reliefs as prayed for and to appreciate the legal contentions raised are as follows:

On 25.2.2009 at about 10.30 a.m. while the son of the petitioners [in W.P. (C) No. 3324 of 2010] Prakash Ranjan Sahoo aged about 27 years along with pillion rider Maheswar Sahoo aged about 14 years (the claimant-petitioner) [W.P. (C) No. 3325 of 2010] was going on a motor cycle through the unmanned level crossing situated in village Saradola in between Cuttack and Jaipur Road in the district of Cuttack, the motor cycle faced an accident and Prakash Ranjan Sahoo expired when a train, i.e., Jaswantpur Special Express ran over him and the pillion rider Maheswar Sahoo sustained severe injuries on his person. On account of the said injuries he became disabled due to fracture on his left leg and other parts of the body.

4. It is the case of the petitioners that deceased Prakash Sahoo along with pillion rider Maheswar Sahoo was going on a motor cycle but unfortunately when they were crossing the unmanned level crossing the alleged accident occurred as both sides of the railway lines were not visible to the persons crossing the railway line. The railway authorities have not taken sufficient precautions in the particular level crossing for which every year the people are facing the accident causing their death and bodily injuries without any fault from their side. In support of their claim, petitioners have collected the complete address of family members whose family members have faced accidents in the last few years at the said level/crossing. For the alleged accident a U.D. case has been registered through the Officer-in-Charge, G.R.P., Cuttack bearing G.R. Case No. 196 of 2009 which is pending in the court of the J.M.F.C. (R), Cuttack. The certified copy of the F.I.R. final form, inquest report, P.M. report, zimanama are produced as Annexure 1 series. About the accident there was a paper publication in the Oriya local daily "The Samaja" dated 26.2.2009. Xerox copy of the paper clippings is produced as Annexure 2.

5. It is stated that the deceased Prakash Sahoo was a graduate in Arts and after his academic career he had completed Diploma in Computer Application Course. It is also stated that the deceased was a sportsman. In support of their claim, they have filed certain certificates as under Annexures 4, 5 and 6. After completion of his aforesaid courses the deceased was doing service and was getting Rs. 5,000 per month.

6. Insofar as the case of the petitioner Maheswar Sahoo is concerned, it is stated that he was studying in Class IX at the time of the alleged accident. In support of his claim, he has filed transfer certificate issued by the concerned Headmaster of the school and disability certificate issued by the District Medical Board, Cuttack as per Annexures 4 and 5 respectively.

7. It is stated that the alleged level crossing is situated in the village Saradola and the houses of the village Saradola are lying on both sides of the level crossing. Through this level crossing the villagers of the nearby villages cross the said level crossing every day to approach NH 5. The railway authorities neither put any level crossing nor appointed any person to check the traffic at the time of passing of trains through the level crossing. Besides that, the railway authorities have not taken any precaution to make the people aware and conscious about the passing of the train.

8. It is stated that u/s 11 of the Railways Act, 1989 the Central Government is empowered to execute all necessary works for convenient running of the trains in the country. u/s 18 of the Railways Act, 1989 that corresponds to section 13 of the Railways 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 authorises 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 signalling 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.

9. It is stated that a level crossing on the one hand is a dangerous spot in view of the possible movement of trains and on the other hand is an invitation to the passerby to cross the railway line through the said level crossing. This is a public crossing and not merely one by private accommodation. Therefore, it is the legal duty of the Railways to assure the reasonable safety. The most obvious way of doing it is to provide gates or chain barriers and to post a watchman who should close them shortly before train passes. But failure to do so is not by itself an act of negligence provided that the Railways had taken other steps sufficient in those circumstances to caution effectively a passer-by of average alertness or prudence. At a reasonable distance of either side prominently written boards can be fixed asking the road users to be aware of trains. If the track in either side is visible from near the caution board or within a short distance of crossing this should be sufficient because a diligent road user could look around and see the train. On the other hand, if there is bend in the track or there are trees and bushes in between or the road on the either side of crossing is very far below the level of the railway track or for any other similar reasons the railway track is not visible beyond a short distance, then even the caution boards are useless. In the present case the railway track was not visible due to which the accident occurred.

10. Petitioners placed reliance upon the decision of Assam High Court in Swaranlata Barua v. Union of India, 1958 - 65 ACJ 365 (Assam), wherein it is held by the said High Court that there is an obligation on the part of the railway

company or administration to ensure that whenever a train passes over a thoroughfare adequate warning should be given to the public of the passing of the train at the time they pass, so that accident may be avoided. The said 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 precautionary measure either by putting a railway gate for keeping it closed at the time the train was due to pass or putting some other obstruction which could have prevented the public from passing through the level crossing that would be the information and notice to the public that the train will pass through the railway track, then accident of this kind that had happened in this case would not have occurred.

11. It is the further case of the petitioners that soon after such accident occurred, after receiving notice u/s 113 of Railways Act, 1989, an inquiry must have been conducted u/s 114 or 115 of the Railways Act, 1989. If such report could have been called for by the competent authority of the Railways, the same would have disclosed the negligence on the part of the railway authorities, which had resulted in the accident.

12. The petitioners placed reliance upon the judgment of the Apex Court in *N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others*, wherein it is observed that road accidents are one of the top killers in our country, especially when truck and bus drivers operate nocturnally. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there.

13. Petitioners further placed reliance upon section 124 of the Railways Act read with the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, whereunder no fault liability of the passenger who expires in a railway accident has been fixed at Rs. 4,00,000. The said facility should also be extended to the accident victims who lost lives or become disabled on account of the railway accident on the level crossing due to negligence of the railway administration, particularly when level crossing is a place where the public are allowed to cross the railway track.

14. Reliance has also been placed on *Rudul Sah Vs. State of Bihar and Another*, wherein the Apex Court observed that in appropriate cases, the court discharging constitutional duties can pass orders of payment of money in the nature of compensation consequent upon deprivation of a fundamental right to life and liberty of a petitioner as State must repair the damage done by its officers to the petitioner's right.

15. Learned counsel also placed reliance upon the decision in *Smt. Kalawati and Others Vs. State of Himachal Pradesh and Another*, and also in the case of *Kumari Seemu alias Seema Vs. Himachal Pradesh State Electricity Board and Others*, wherein the aforesaid High Court ruled that the writ court can grant relief

to the petitioners claiming damages for the injuries arising out of the accident occurred due to negligence of the State authorities like the Electricity Board. In the case of Smt. Kumari Vs. State of Tamil Nadu and others, the Apex Court overruling the decision of the High Court of Madras observed that the writ jurisdiction under Article 226 of the Constitution of India can be invoked by the writ court for awarding compensation to a victim, who suffered due to negligence of the State or its functionaries. In that case six years' old child had fallen down in the uncovered sewerage tank. The High Court refused to entertain the claim of compensation in a writ petition under Article 226 of the Constitution, but the Apex Court directed the State to pay compensation. In the case of Parikhita Behera and Another Vs. The Divisional Railway Manager, South Eastern Railway and Others, , this court also took the same view that jurisdiction under Articles 226 and 227 of the Constitution can be invoked and direction for payment of compensation can be issued in favour of the claimants, if there was deliberate act of negligence on the part of statutory authorities, namely, the railway administration.

16. It is submitted that section 18 of the Railways Act, 1989 contemplates putting gates, chain, bars, etc. at the level crossing for smooth running of the trains. It is not a mandatory provision and that the railway administration are liable to put such gates, bars, etc. only at the level crossing, where the traffic flow is considerable and/or where the visibility of the level crossing and approaching train to the pedestrian or vehicles is not clear. In the present case, neither the coming of train was visible nor have the authorities taken sufficient precautions to avoid the accident. Therefore, it is pleaded by the petitioners' counsel that the accident occurred on account of negligence on the part of the railway authorities for not putting gates, bars and not appointing watchman on that unmanned level crossing and not taking sufficient precautionary measures. The accident occurred due to deliberate act of negligence on the part of the railway administration. Therefore, the petitioners are entitled to compensation claimed in these writ petitions.

17. A common counter-affidavit has been filed on behalf of the opposite parties. It is stated therein that the writ petitions are not maintainable both on facts and in law as they involve disputed questions of facts, which cannot be adjudicated by this court in writ jurisdiction. It is further stated that writ is not maintainable in law, as no fault can be attributed to the Railways for the alleged death and injuries caused due to the said accident. Certain background facts of the case are stated briefly in the counter, which are as in the following paras.

18. It is stated that unfortunate incident has occurred due to careless driving by late Prakash Ranjan Sahoo, male, 25, of Hero Honda CD Dawn motor cycle bearing registration No. OR 05-T 7191 through the unmanned level crossing No. 175 at KM395/27-29/28-30 between NRG-KIS. The said accident has taken place on 25.2.2009 at about 9.05 a.m. with 0201 Express with motor cycle driven by one Prakash Ranjan Sahoo of which one Maheswar Sahoo was the pillion rider.

The accident has occurred due to sheer negligence on the part of late Prakash Ranjan Sahoo and Maheswar Sahoo who did not take minimum prudence before crossing the unmanned level crossing which is equipped with all kinds of safety norms, namely, W/L Board, Stop Board and Speed Breaker Board. The visibility of the level crossing is also adequate, i.e., more than 600 metres for both up and down trains.

19. It is also stated that Prakash Ranjan Sahoo, the driver of the motor cycle, has completely failed to ensure minimum prudence and is fully responsible because of his carelessness. The level crossing surface is provided with cement concrete blocks. Hence, it is not a fact that the accident occurred because of low visibility. Further, the level crossing in question does not fulfil the criteria for manning as TVU as per December 2006 has been determined at 1276. The revised criteria for unmanned level crossing as circulated by the Government of India, Ministry of Railways, is produced as Annexure A/1.

20. It is stated that the said level crossing till date does not qualify for manning as per the latest Railway Board guidelines. However, the level crossing is equipped with all kinds of safety provisions as per the norms of the railway administration. The Railways liability for putting chains, bars, etc. at every level crossing is not absolute. Therefore, railway authorities have acted in responsible manner by complying with all the norms at the unmanned level crossing and no negligence, therefore, can be attributed on the part of the Railways.

21. It is pleaded that there being violation of section 147 of the Railways Act, the railway administration cannot be held responsible for the said mishap. Moreover, the decisions cited have absolutely no application to the present case. The said decisions do not deal with railway accident nor section 147 of the Railways Act as well as section 18 of the Railways Act. Also, the benefit of section 124 of the Railways Act cannot be extended to such an accident to cover the incident which is outside the purview of section 124 itself.

22. It is stated that there being violation of section 147 of the Railways Act, the railway administration cannot be held responsible for the said mishap. In the present case the incident has occurred due to sheer negligence and lack of minimum prudence on the part of the driver of the motor cycle as well as the pillion rider. Further, there is no statutory obligation on the part of the Railways to man all level crossings, fence such level crossing u/s 18 of the Railways Act. The decisions cited have no application to the facts of the case particularly when the said decisions do not deal with the provisions of the Railways Act. So far as the decision in Parikhita Behera and Another Vs. The Divisional Railway Manager, South Eastern Railway and Others, , is concerned, this court came to a conclusion that there is some negligence on the part of the Railways. In the present case, the entire negligence is attributed to the driver of the motor cycle as well as the pillion rider who have taken no minimum prudence before crossing the level crossing. Hence, no compensation is payable as the railway administration is not at all at fault and the level crossing is equipped with all

norms to be complied with in an unmanned level crossing.

23. It is stated that there being violation of section 147 of the Railways Act, 1989, the railway administration cannot be held responsible for the said mishap. The allegation of the petitioners that the accident has occurred due to unmanned level crossing and the negligence of the Railways is absolutely wrong, Therefore, in such a fact situation no compensation is payable by the Railways.

24. With reference to the aforesaid rival legal contentions raised at the Bar, the questions that fall for consideration by this court are as follows:

(i) Whether the writ petitions are maintainable in law?

(ii) Whether the accident occurred on account of negligence on the part of the railway administration by not providing sufficient protection at the level crossing and without deploying guard or putting check gate as required u/s 18 of the Railways Act, 1989?

(iii) Whether on account of not providing safeguard to the level crossing by the railway administration, the petitioners are entitled to compensation as claimed?

(iv) What order?

25. To answer the above points, we have carefully examined the facts and rival legal contentions urged in the above writ petitions. As can be seen from the provisions of section 18 of the Railways Act, 1989, the railway administration has the statutory obligation to provide sufficient safeguards to the level crossing by putting railway check gate and keeping it closed at the time when train is due to pass at the level crossing area. In the instant case, had the railway administration taken the precautionary measure either by putting 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 had happened in this case could have been avoided. After receiving notice u/s 113 from the petitioners as per the Railways Act, 1989, an inquiry must have been conducted by the railway authorities under sections 114 and 115 of the Railways Act, 1989. If such report would have been produced, then it could have disclosed whether there is negligence on the part of the railway administration on account of which the accident took place resulting in death of the deceased and severe injuries to the minor boy. Therefore, the said inquiry report as required u/s 113 of the Railways Act having not been produced, this court draws an adverse inference against the Railways that there is negligence on the part of the railway administration in not taking sufficient precautionary measures by posting guard or keeping the railway gate closed at the time while the train was due to pass through that level crossing. Non-compliance with the aforesaid statutory obligations by the railway administration, we reject the contentions urged by the learned counsel for the Railways that there are serious questions of disputed facts and due to carelessness on the part of the deceased

and the injured the alleged accident occurred on the fateful day resulting in death of deceased and severe injuries to the minor boy. For the above reasons, we hold that the writ petitions are maintainable in law. Further, the Apex Court in *N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others*, upon which reliance is placed by learned counsel for the petitioners, made certain observations, the relevant portion of which is extracted as hereunder:

(3) Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based upon the doctrine of *res ipsa loquitur*. Accidents Claims Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by Tribunals. We must remember that the judicial Tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of Tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

26. Further, the High Court of Assam in *Swaranlata Barua's case*, 1958-65 ACJ 365 (Assam), 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.

27. Having answered point Nos. 1 and 2 in favour of the petitioners, and against the railway administration, we are required to answer point No. 3 with regard to compensation in favour of the petitioners with the following reliefs.

28. u/s 124 of the Railways 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. 4,00,000. In the instant case, the victims lost their lives or became disabled in the said accident due to negligence on the part of the railway administration in putting gates at the level crossing or public are allowed to cross the railway line without providing precautionary measures as indicated above. Further, the Apex Court in *Rudul Sah Vs. State of Bihar and Another*, , 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.

29. Further, in *Smt. Kalawati and Others Vs. State of Himachal Pradesh and Another*, and in *Kumari Seemu alias Seema Vs. Himachal Pradesh State Electricity Board and Others*, , the High Court of Himachal Pradesh ruled that writ court can grant relief to the petitioners claiming damages for the injuries arising out of negligence of the State authorities like the Electricity Board. In *Smt. Kumari Vs. State of Tamil Nadu and others*, the Apex Court overruling the decision of the High Court of Madras observed that the writ jurisdiction under Article 226 of the Constitution can be invoked for awarding compensation to a victim, who suffered due to negligence of the State or its functionaries. The same view has been taken by this court in *Parikhita Behera and Another Vs. The Divisional Railway Manager, South Eastern Railway and Others*, wherein it is observed that jurisdiction under Articles 226 and 227 of the Constitution can be invoked and direction for payment of compensation can be given if there is deliberate act of negligence on the part of the railway administration.

30. In this regard, the undisputed fact is that in the alleged accident one person died and a minor boy sustained severe injuries. u/s 124 of the Railways Act read with Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, no fault liability of the passenger who expires in a railway accident has been fixed at Rs. 4,00,000. The same amount can be awarded to sine petitioners for the reason that there cannot be any discrimination between passenger and non-passenger who died in railway accident.

31. It will be useful to refer to the judgment of the Supreme Court in the case of *Priya Vasant Kalgutkar v. Murad Shaikh*, 2009 ACJ 2665 (SC), wherein the Supreme Court considered the case of a minor boy aged 9 years who met with an accident and suffered 10 per cent permanent disability and after examining the provisions u/s 163-A and Second Schedule to the Motor Vehicles Act, 1988, observed that the compensation for injuries suffered by a person in a motor vehicle accident can be determined either on the basis of actual damages

suffered or upon application of structured formula. In the said judgment at para 9, the Supreme Court has referred to the case of *Lata Wadhwa and Others Vs. State of Bihar and Others*, . In the said case, compensation awarded in respect of the minor children was divided into two groups, i.e., the first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In the case of children between the age group of 5 to 10 years, a uniform sum of Rs. 50,000 has been held to be payable by way of compensation, to which the conventional figure of Rs. 25,000 is to be added and as such to the heirs of the 14 children, a consolidated sum of Rs. 75,000 each, has been awarded. So far as the children in the age group of 10 to 15 years are concerned, there are 10 such children who died on the fateful day and having found their contribution to the family at Rs. 12,000 per annum, multiplier of 11 has been applied, particularly, depending upon the age of father and then the conventional compensation of Rs. 25,000 has been added to each case and consequently, the heirs of each of the deceased above 10 years of age have been granted compensation to the tune of Rs. 1,57,000. After referring to the case of *Taff Vale Railway Company v. Jenkins*, (1913) AC 1, it has been observed that in the case of *Lata Wadhwa* (supra) no iota of material was produced to enable the learned Judge to arrive at a just compensation in such case. Therefore, he determined the same on an approximation on the basis of the submission of the learned senior counsel appearing for TISCO that compensation determined for the children of all age groups could be doubled, as in his view also, the determination made is grossly inadequate. On the basis of the said submission made in the said case it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs. 1,50,000 to which the conventional figure of Rs. 50,000 should be added and thus the total amount in each case would be Rs. 2,00,000. Insofar as children between the age group of 10 to 15 years are concerned, they are all students of class VI to X and are children of employees of TISCO. Having regard to the facts of the said case, the contribution of Rs. 12,000 per annum was on the lower side and, therefore, the contribution should be Rs. 24,000 and instead of 11 multiplier, the appropriate multiplier would be 15 which is worked out to Rs. 3,60,000 to which an additional sum of Rs. 50,000 has to be added, thus making the total amount payable at Rs. 4,10,000 for each of the claimants of the aforesaid deceased children. Keeping the aforesaid criteria followed in awarding the compensation in view, though section 124 of the Railways Act, 1989 read with Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, provides for a compensation for no fault liability to the passenger who expires in railway accident of Rs. 4,00,000, considering the fact situation of the case and keeping in view the future prospect of the deceased children and prospective loss of future earnings which would have benefited the parents, we deem it appropriate to award Rs. 3,50,000 to the legal representatives of each one of the deceased children.

32. In the instant case, the disability certificates dated 19.9.2009 and 6.3.2010

(Annexure 6 series) issued in favour of the petitioner Maheswar Sahoo in W.P. (C) No. 3325 of 2010 by the District Medical Board, Cuttack disclose that the petitioner Maheswar Sahoo sustained fracture of left leg with "malunited left femur and tibia and shortening of leg and stiff knee" on his person. It is further certified that he suffers from 40 per cent permanent physical disability. In this view of the matter, the petitioner throughout his life has to suffer. More so, malunited left femur and tibia and shortening of leg and stiff knee indicate that he will be requiring assistance throughout his life and as he has lost ability of using left leg. Therefore, it would be just and proper for this court to grant him reasonable compensation of Rs. 65,000 (rupees sixty-five thousand) under all heads such as fracture of one leg and shortening of leg and stiff knee, pain and suffering, loss of amenity, medical expenses, nutritious food and attendant charges during the medical treatment. Insofar as the death of Prakash Ranjan Sahoo (deceased) is concerned, the compensation of Rs. 4,00,000 (rupees four lakh) under all the heads to the claimants-petitioners would be just and proper.

33. It is worthwhile to extract the relevant paras from the judgment of Karnataka High Court in the case of K. Narasimha Murthy Vs. The Manager, Oriental Insurance Company Limited and Another, wherein the Division Bench in an appeal preferred by the claimant u/s 173 of Motor Vehicles Act, 1988 succinctly laid down the legal principle after extracting the relevant paras from the decision of the appeal cases in *Livingstone v. Rawyards Coal Co.*, (1880) 5 AC 25 and *Basavaraj Vs. Shekhar and Others*, in support of our conclusion for determination of the compensation for personal injury both for pecuniary and non-pecuniary loss in favour of the injured petitioners, which reads as under:

(19) Lord Blackburn in *Livingstone v. Rawyards Coal Co.*, (1880) 5 AC 25, has held thus:

Where any injury is to be compensated by damages, in settling the sum of money to be given...you should as nearly as possible get at that sum of money which will put the person who has been injured...in the same position as he would have been in if he had not sustained the wrong.

(22) In the above case, their Lordships of the House of Lords observed that the bodily injury is to be treated as a deprivation which entitles the plaintiff to the damages and that the amount of damages varies according to the gravity of the injury. Their Lordships emphasised that in personal injury cases the courts should not award merely token damages but they should grant substantial amount which could be regarded as adequate compensation.

(23) In *Ward v. James*, (1965) 1 All ER 563, speaking for the Court of Appeal in England, Lord Denning while dealing with the question of awarding compensation for personal injury laid down three basic principles:

Firstly, accessibility: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience

or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise, there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.

(25) In *Basavaraj Vs. Shekhar and Others*, a Division Bench of this court held:

If the original position cannot be restored--as indeed in personal injury or fatal accident cases it cannot obviously be--the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so "make good" the damage.

(26) Therefore, the general principle which should govern the assessment of damages in personal injury cases is that the court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame.

(27) Lord Morris of Borth-y-Gest in *Perry v. Cleaver*, 1969 ACJ 363 (HL, England), said:

To compensate in money for pain and for physical consequences is invariably difficult but...no other process can be devised than that of making a monetary assessment".

34. The Apex Court in the case of *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, at para 10 of the judgment has also held as under:

(10) It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by the courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human suffering or personal deprivations. Money cannot renew a broken and shattered physical frame.

In view of the above, the claimant-petitioners in both the cases are entitled to compensation. Hence non-grant of the compensation to the claimant-petitioners by the railway administration is not sustainable in law. Hence, we answer point No. 3 in the affirmative by awarding compensation of Rs. 4,00,000 (rupees four lakh) to the petitioners in W.P. (C) No. 3324 of 2010 whose child died in the said

railway accident and Rs. 65,000 (rupees sixty-five thousand) to the injured-claimant in W.P. (C) No. 3325 of 2010. The petitioners are also entitled to interest at the rate of 7 per cent per annum on the compensation amount from the date of the claim made before the opposite parties till realization. The same shall be computed and disbursed to the claimant-petitioners within 4 weeks from the date of receipt of the certified copy of this judgment.

The writ petitions are allowed to the aforesaid extent.

B.N. Mahapatra, J.

I agree.