
(2014) 04 OHC CK 0053
In the Orissa High Court
Case No : WP (C) No. 16471 of 2008

Nakula Nayak

APPELLANT

Vs

Divil. Railway Manager

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304(A), 337, 338
Railways Act, 1989 — Section 124

Citation : (2014) 04 OHC CK 0053

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Judgement

B.K. Patel, J.—Heard learned counsel for the parties.

2. Petitioners have filed this writ petition claiming compensation of Rs. 4.00 lakh on account of death of their son deceased Anup @ Ananta Charan Nayak in a railway accident while crossing the unmanned level crossing.

3. Petitioners' case is that due to negligence of the opp. parties who represent East Coast Railway in maintaining the unmanned level crossing, the deceased was hit by running train and sustained injuries as a result of which he died.

4. In the counter affidavit filed by the opp. parties the factum of death of deceased on account of railway accident while crossing the unmanned level crossing is not disputed. However, it is averred in the counter affidavit and also submitted by the learned counsel for the opp. parties that the accident occurred due to negligence of the deceased himself as he did not take precaution before passing through level crossing. The railway authorities had put speed breakers as well as sign boards to take precautions in the level crossing. However, the deceased did not take any precaution.

5. Learned counsel for the petitioner submits that a police case was instituted in connection with death of the deceased bearing Cuttack GRPS No. 60/05. Upon conclusion of enquiry, police report was submitted indicating the case to be true.

Accordingly, it was reported F.R.T. under Sections 279/337/338/304(A) of the IPC. Copies of FIR, Post Mortem Report and Final Report are at Annexure-1 series to the writ petition. It is argued that while submitting the final report, police has concluded that the case is one u/s 304(A) of the IPC which indicates that death was caused due to negligence. Placing strong reliance on the decision of this court in Phula Naik and Others Vs. G.M., East Coast Railway and Others, , it is contended by the learned counsel for the petitioners that the petitioners are entitled to compensation.

6. Having heard the learned counsel for the parties and upon perusal of averments made in the writ petition and counter affidavit, it is found that facts and circumstances of the case are squarely covered by the decision of this Court in Phula Naik & Ors. Vs. G.M., East Coast Railway & Ors. (supra) wherein upon reference to several authoritative judicial pronouncements of the Supreme Court as well as High Court of Assam and of this Court it was held:

14. In this regard, the undisputed fact is that in the accident the deceased Pradeep Naik died. u/s 124 of the Railway Act read with the 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 lakh. The same amount can be awarded to the petitioners for the reason that there cannot be any discrimination between passenger and non-passenger who died in railway accident. Keeping the aforesaid decision in view, in awarding the compensation, Section 124 of the Railway Act, 1989 read with the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 provides for a compensation for no fault liability to the passenger who expires in railway accident is Rs. 4,00,000/-.

7. In view of the above, the petitioners are entitled to compensation for the death of the deceased in the accident.

8. Accordingly, the opp. parties are directed to pay compensation of Rs. 4.00 lakh along with interest @ 6 % per annum on the award amount from the date of filing of this writ petition i.e. on 10.11.2008 till the date of payment. 50% of the awarded amount shall be deposited jointly in the names of petitioners in any nationalized bank for a period of five years and the balance amount be disbursed to the petitioners within two months from today. The petitioners shall be entitled to periodically withdraw interest accrued with fixed deposit.

9. Issue urgent certified copy.