

(2011) 08 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (C) No. 79 of 2008

Phula Naik and Others

APPELLANT

Vs

G.M., East Cost Railway and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 41
Railways Act, 1989 — Section 124, 18

Citation : (2011) 2 ILR (Ori) 28

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

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Gopala Gowda, C.J.—The petitioners (1st petitioner is the mother and others are the younger brothers and sister of the deceased represented by mother-guardian-1st petitioner) have filed this writ petition for the death of the deceased Pradeep Naik who died on account of railway accident claiming compensation to the tune of Rs. 4 lakhs, which is the minimum liability of the Railway authority to a passenger as per Section 124 of the Railways Act, 1989, urging various facts and legal contentions.

2. The brief facts as stated in the petition is that on 13.8.2006 at about 6.30 P.M. while the deceased Pradeep Naik came to purchase the household articles to the nearby market situated in his village within 1/2 kilometer from his house by walking and at the time of crossing the railway line, the Sambalpur-Bhubaneswar Up Express dashed against him and dragged him to Bar No. 111/3-4, which is about 200 meters away from the place of accident as a result he died at the spot. Accordingly the younger brother of the deceased lodged an F.I.R. in the Hondapa Police Station as per Annexure-1. It is further stated that the railway line passes through the village Gundurimunda dividing the village in two parts crossing the busy Panchayat Road. The Road touches either side of the railway line and thousands of people are crossing the railway line every day for

marketing, going to their work places and children use the road for going to school.

3. It is stated that the residents of the village were using the said road as their path and they have approached the Station Master on several occasions for installation of check gate and to appoint a guard to avoid danger and save the valuable lives of the persons and also domestic animals which are died while crossing due to the railway accident. Despite their request, no steps have been taken by the authorities due to their carelessness.

4. The railway line not only divides the village and the Panchayat Road but also the railway line has diversion at that spot for which passing of train cannot be seen from a distance of 200 metres due to residential houses on account of which many valuable lives of human beings and animals are lost. On account of the railway accident which have been taken place and in the instant case on account of not providing manned railway gate and posting of guard, the railway accident took place on 13.8.2006. Due to the death of the deceased, F.I.R. (Annexure-1) was lodged, on the basis of which an enquiry was conducted by the O.I.C., Hondapa P.S. and an U.D.G.R. Case no. 11/2006 was registered and report was submitted to the S.D.M., Athamallick. Post-mortem was conducted by the Medical Officer of Government Hospital, Hondapa who opined that the death was caused due to shock of external-internal hemorrhage due to grievous injuries on vital organs. From the report of the O.I.C., Hondapa P.S., it is revealed that the railway accident occurred due to negligence on the part of the railway authority, resulting in the death of the deceased. The copies of the report submitted by the O.I.C., Hondapa P.S. and the post-mortem report are annexed as Annexures 3 & 4 respectively.

5. It is the case of the petitioners that the death of the deceased Pradeep Naik was due to the accident caused on account of the negligence and carelessness on the part of the railway authorities as they have not paid any attention to install the check gate at the level crossing spot which is connected with the busy road and divides the village into two parts. The railway authorities failed to perform their statutory duties to save the valuable lives of the human beings and animals. Therefore, they are before this Court claiming compensation as the petitioners, the mother, brothers and sister of the deceased. It is further stated that they are fully dependant upon the income of the deceased as he was the only earning member of the family. It is further stated that the deceased was hale and healthy and energetic person. He was working as a driver of the heavy vehicles and was earning Rs. 6,000/- per month. After the death of the deceased, the petitioners have been suffering a lot financially and mentally. Since the railway authorities did not take any step to pay the compensation, the petitioners have approached this Court by filing this writ petition seeking for compensation of Rs. 4,00,000/- which is just and reasonable compensation to compensate the loss of the death of an earning member of the family of the petitioners.

6. Counter-affidavit is filed on behalf of the opposite parties swear by Senior Divisional Manager, East Coast Railway, Sambalpur at paragraph-4 traversing the petition averments he has stated that on the basis of the enquiry from Station Diary, Boinda, it is revealed that on 13.8.2006 at about 18.51 hours one male person was run over under train No. 2894 (Sambalpur-Bhubaneswar Express) at unmanned level crossing, Km. 111/2-3 and dragged upto Km. 111/3-4. The unfortunate accident occurred due to lack of minimum prudence and non-following of the safety rules by the deceased at the time of crossing. Therefore, it is stated that the deceased is fully responsible and not the Railway as no negligence can be attributed against it. In view of the aforesaid stand taken by the opposite party-Railway, he has prayed for dismissal of the writ petition stating that it is neither maintainable either on facts and/or on law. Further it is stated that the nature of the claim made by the petitioners also cannot be adjudicated by this Court in a writ petition as their being disputed questions of complicated facts. It is further stated that the petitioners has got alternative remedy for which the writ petition is not maintainable and prayed for dismissal of the same. It is further stated that the writ petition is barred by limitation. The railway incident, if any purely because of the laches of the deceased and further denied the averments made at para-5 of the writ petition as they are not true. It is further stated the people of the village Gundurimunda and nearby villages have not approached the Railway authority for installation of check gate and to appoint a guard. No such record is available nor any representation is received by the Railway authority. Further it is stated that as per the railway norms, the unmanned level crossing involved in the case, which is of "C" class, does not qualify for manning as TVUs is very less i.e. 942 (as per census of April, 2007). All prescribed safety measures have been provided such as level crossing indication Boards, speed breakers, caution boards for the road users as "stop, look out for trains before crossing" written in three languages (Oriya, Hindi and English) for better understanding and clear observance by the road users. Whistle boards are also provided along the track on either side of the level crossing to give advance indication to train drivers to train drivers to continuously blow whistle in approach of level crossing. Hence it is stated that the accusation that Railway authorities have taken no safety steps and due to the carelessness of the railway authorities, the accident occurred, is not correct at all and the said claim of the petitioners is denied. Further with reference to the allegations made at para-7 of the writ petition, it is stated that the allegations leveled by the petitioners against the Railway authorities as it has not taken any effective steps to install a check gate and engage a guard at an unmanned level crossing check gate, is not correct and denied specifically. Further it is stated that the alleged representation is only an after thought. In order to deny the claim of the petitioners with reference to the averments made in paragraph-8 of the writ petition, it is stated that all the train drivers strictly follow the prescribed safety rules at an approaching manned and unmanned level crossing gate to whistle continuously to pre-warn the road users regarding the approach of train. Therefore, the allegations made by the petitioners in the writ petition that the

Sambalpur-Bhubaneswar Express passed in high speed without blowing horn and dashed the deceased, is not correct and the same is denied specifically. So also the averments made in paragraphs 9 & 10 of the writ petition are denied as incorrect.

In view of the aforesaid stand taken by the Senior Divisional Manager, East Coast Railway, Sambalpur, Learned Counsel for the Railway authorities has prayed for dismissal of the writ petition stating that the petitioners are not entitled to the compensation, as claimed.

7. With reference to the aforesaid rival legal contentions raised at the Bar, the questions that fall for consideration by this Court are as follow:

- (i) Whether the writ petition is maintainable in law ?
- (ii) Whether the petition is liable to be dismissed on the ground of delay, laches and limitation ?
- (iii) 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 Railway Act, 1989 ?
- (iv) Whether on account of not providing safeguard to the level crossing by the Railway Administration, the petitioners are entitled to compensation as claimed ?
- (v) What order ?

8. 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 Railway 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. Therefore, 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 installing a check gate and to keep the same 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. Therefore, we have to hold that by itself amount to negligence as they have failed to discharge their statutory duty 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, the alleged accident, occurred on the fateful day resulting in his death and, therefore, writ

petition can not be entertained by this Court can not resolve the disputed questions of fact and record a finding on the relevant contentious issue by conducting a roving enquiry. For the above reasons, we hold that the writ petition is maintainable in law.

9. In the decision of the Apex Court in the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, it has been held:

11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. this Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, held that the expression "sufficient cause" employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice -- that being the life-purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

We conclude on this aspect, saying that on the ground of delay, laches and limitation this writ petition can not be rejected for more than one reason:

(i) The Railway Administration should have paid the compensation as per the provisions of Railway Act read with the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990;

INDIAN LAW REPORTS, CUTTACK SERIES (2011)

(ii) There is no limitation prescribed under the Constitution of India to exercise this Court"s discretionary and judicial review power when it feels great injustice is caused to the petitioners as their fundamental rights are flagrantly violated on account of negligence on the part of the Railway Administration in not providing check gate and posting the guard to man the same;

(iii) Awarding just compensation to the legal representatives of the deceased is

relatable to social justice which concept is recognised under Article 41 of the Directive Principles of the State Policy which is interrelated to the fundamental rights of the petitioners as stated supra;

(iv) The relief regarding the award of interest can be moulded for granting from the date of filing this petition.

10. While deciding the questions that arise for consideration similar to the present case in a batch of cases in W.P.(C) No. 3214 of 2010 and W.P.(C) Nos. 1455, 1456 and 1457 of 2008, disposed of on 10.2.2011, this Court has referred to the various provisions of the Railways Act, 1989 and relied upon the decision of the Apex Court and other High Court. One such decision is, N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, upon which reliance is placed by the Learned Counsel for the petitioners, the Apex Court has made certain observations, the relevant portion of which is extracted as hereunder:

...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 on the doctrine of *res ipsa loquitur*. 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. 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 emphasizing this aspect because we are often distressed by transport operators getting away with 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.

PHULA NAIK V. G.M., EAST COST RLY. (V. GOPALA GOWDA, CJ.) 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 parcimony practiced by tribunals. We must remember that judicial tribunals are State organs and Art. 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 disposal 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....

10. Further, reliance is placed on the decision of the High Court of Assam in Swarnalata Barua v. Union of India and others, AIR 1963 Assa 117, wherein it has been 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 precautionary measure 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 and the deceased could not have died in the Railway accident.

11. Having answered the point nos. 1 to 3 in favour of the petitioners, and against the Railway Administration, we are required to answer the point no. 4 with regard to compensation in favour of the petitioners with the following reliefs.

12. u/s 124 of the Railway 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 lakh. In the instant case, the victim lost his life in the accident due to the negligence on the part of the Railway Administration in not putting gates at the level crossing and the general public are allowed to cross the railway

INDIAN LAW REPORTS, CUTTACK SERIES (2011)

line without providing precautionary measures as indicated above. Reliance is also placed on a decision of the apex Court in Rudul Sah v. State of Bihar and another, AIR 1983 SC 1086 wherein the apex Court 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/Railway Administration must repair the damage done by its officers to the petitioner's right.

13. The apex Court in the case of Smt. Kumari Vs. State of Tamil Nadu and others, , the apex Court overruling the decision of the High Court of Tamil Nadu 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.

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 Railways 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/- .

15. In view of the above, the petitioners are entitled to compensation for the death of the deceased in the accident. Hence non-grant of the compensation to the petitioners by the railway administration is not sustainable in law. Hence we answer the point No. 3 in affirmative by awarding compensation of Rs. 4,00,000/- to the petitioners since the son of the petitioner no. 1 and the brother of the minor petitioners died in the railway accident. The petitioners are also entitled to get interest @ 6% per annum on the compensation amount from the date of claim made with the opposite

PHULA NAIK V. G.M., EAST COST RLY. (V. GOPALA GOWDA, CJ.) parties i.e. from 2.1.2008 the date on which they have filed this writ petition till realization. Out of the awarded amount of Rs. 4,00,000/- , Rs. 1,00,000/- shall be deposited in a fixed deposit in any local nationalized bank and Rs. 50,000/- each shall be deposited in fixed deposit in each of the remaining petitioners in any nationalised bank in favour of petitioner no. 1 for five years and shall not be disbursed till they attain majority. The rest amount of Rs. 1,00,000/- shall be computed and disbursed to the petitioner no. 1 within four weeks from the date of receipt of the certified copy of this judgment. This amount shall be exclusively spent for the welfare of the minor children and their education and to maintain herself and the family members. The petitioners are entitled to draw the interest that would be earned on the deposit amount as directed above, for the welfare of the minor children and maintenance of the first petitioner.

The writ petition are allowed to the aforesaid extent.