

**(2003) 03 OHC CK 0071**  
**In the Orissa High Court**  
**Case No : M.A. No. 267 of 1994**

|                                                               |            |
|---------------------------------------------------------------|------------|
| The Divisional Mechanical Engineer, S.E. Railways and Another | APPELLANT  |
| Vs                                                            |            |
| P. Adinarayana                                                | RESPONDENT |

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**Date of Decision :** 28-03-2003

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 30

**Citation :** (2005) ACJ 49 : (2003) 95 CLT 776

**Hon'ble Judges :** Pradip Mohanty, J

**Bench :** Single Bench

**Advocate :** B. Pal, Central, for the Appellant; J.K. Mohanty and B. Singh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pradip Mohanty, J.—This appeal is one u/s 30(1)(A) of the Workmen's Compensation Act (hereinafter referred to as "the Act") challenging the order dated 17.2.1994 passed by the Commissioner for Workmen's Compensation, Bhubaneswar, in W. C. Case No. 108 of 1992.

2. The case of the claimant is that while he was working in the S.E. Railways, Khurda Road, as workman on duty along with the driver of Engine No. 494, on 19.4.1990 at about 5 A.M., he got personal injuries in an accident. Due to the said accident he became permanently disabled to some extent. He, therefore, filed a petition before the Commissioner for Workmen's Compensation claiming that the accident was caused in course of his employment and thus prayed for compensation.

The Railway Engineering authorities appeared through their Advocate and contested the case.

3. Upon analysing the evidence on record, the Commissioner for Workmen's Compensation allowed the application and awarded Rs. 14,082.30 paise to the claimant. Being aggrieved by the said order, the Railway Engineering authorities

have preferred this appeal.

4. In course of hearing of the appeal, Mr. Pal, learned counsel for the Railway, submitted that the claimant acted rashly disobeying the safety rules and that the compensation awarded was unjustified.

Mr. Mohanty, learned counsel for the respondent-claimant, supported the finding of the Commissioner.

5. The short question for determination in this appeal as to whether the accident took place in course of employment of the claimant, is the question of fact which is not available to be challenged in appeal.

In order to establish his case, the claimant-respondent examined himself before the Commissioner and stated that he was working as a Supervisor with the S.E. Railway Mechanical Division, Khurda Road. While he was on duty, on 19.4.90 and supervising, the step plate of Engine No. 494 which was rotating came all of a sudden and jammed his fingers, as a result of which his middle finger of the hand got fractured. He stated that he was removed to the Railway Hospital at Khurda Road where he was treated for about a month. Nothing has been brought out by the appellant-Railway authorities to discard the evidence of the claimant-respondent. Rather, they have admitted in the written statement that the engine inter-buffer casting got compressed against the tender buffing block which resulted in jamming of the right hand fingers of the claimant-respondent thereby causing him bodily injury. In the cross-examination of the witness also, except making some bald suggestions, nothing has been elicited by the appellant-Railway authorities so as to disbelieve the evidence of the claimant.

6. While concluding with the judgment it shall be pertinent to reiterate that the appellant-Railway authorities' plea of wilful disobedience on the part of the claimant as to the cause of accident has not been established in any manner. In the decision reported in *Urmila Dasi and Another Vs. Tata Iron Steel Co. Ltd.*, it has been explicitly held that the onus to prove wilful disobedience lies with the employer. Therefore, the finding of the Commissioner on that score is unassailable. Moreover, as has been held in another decision reported in *Tiku Kahar Vs. Equitable Coal Co. Ltd.*, a finding as to wilful disobedience is a finding of fact which might be arrived at on evidence and hence it cannot be interfered with in appeal by the High Court.

This Court, thus, holds that the accident took place in course of employment of the claimant-respondent. Therefore, this Court is not inclined to interfere with the impugned award and the same is affirmed.

7. For the reasons stated above, the miscellaneous appeal fails and is hereby dismissed, but in the circumstance of the case, there will be no order as to cost.