

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.55 of 2021

Pankaj Kumar Nayak and another ***Appellants***
Mr.D.Mohanty, Advocate

-versus-

Union of India ***Respondent***
Mr.B.K.Padhi, Advocate

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
10.10.2022

Order No.

5.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Mohanty, learned counsel for the Appellants and Mr.Padhi, learned Central Government Counsel for the Union of India.
3. The claimants are the Appellants before this Court and challenge the impugned award of the learned Railway Claims Tribunal, Bhubaneswar wherein their prayer for compensation on account of death of their son (the deceased) in an untoward incident has been rejected.
4. The case of the claimants is that the deceased was travelling from Berhampur to Bangalore in Santragachi – Bangaore Express on 14th April, 2016 with a valid journey ticket. He accidentally fell down from the said train due to jerk between the Berhampur-Golanthara and died. The dead body of the deceased was found at up line Km. No.602/33-35.

5. It reveals from the impugned award that the Tribunal disbelieved the case of the claimants regarding journey of the deceased as a bona fide passenger of the train in absence of trustworthy evidence and in absence of production of journey ticket.

5. Mr.Mohanty submits on behalf of the claimants that though the deceased was travelling in the train in a general compartment with valid journey ticket, but the Tribunal has erred on facts to say that he was travelling in second class compartment. It is further submitted that the case of the claimants about loss of journey ticket has not been properly appreciated by the Tribunal.

6. It is seen that, in the opinion of the Tribunal the Guard of train no.22851 denied to get any information about the incident during his duty period and no report of untoward incident was submitted by the SS/BAM. Further, no travelling authority or train journey ticket could be found during investigation and therefore, the entire claim was disbelieved.

7. As per the postmortem report, the deceased died instantaneous death due to head injury and other multiple injuries found on his person. The dead body was admittedly found on the rail track at Km.No.603/33-35 between Berhampur-Golanthara Railway point on 15th April, 2016 morning. AW-1, the witness on behalf of the claimants, has said in his evidence about purchase of journey ticket by the deceased before boarding the train. AW-2, the other witness, has said to have seen the

deceased, who is his nephew, travelling in same train. But the Tribunal has disbelieved the statement of AW-2 by opining that he is an unreliable witness, for his name was not mentioned in the claim application as an eyewitness. When the evidence of AW-2 is found corroborating to the evidence of AW-1 about boarding of the deceased in the train and moreover, no rebuttal evidence has been adduced from the side of the railway, no reason is found to disbelieve the evidence of AW-2 regarding travelling of the deceased in the train. Such fact is further corroborated by discovery of the dead body of the deceased on the railway track. The cause of death as per the post mortem report is supporting accidental fall of the deceased from the train. Therefore all such circumstances coupled with evidence of AW-1 and 2 suggest the death of the deceased due to accidental fall from the train during his journey.

8. Next coming to the question of bona fide travelling of the deceased in the train with a valid journey ticket, the same cannot be totally disbelieved for want of production of the journey ticket. It is not always be proper to seek for production of train ticket or recovery of the same from the possession of the deceased in railway accident claims. When all such circumstances, as discussed above, are justifying accidental fall of the deceased and his death in the accident is supported by post-mortem examination report, the absence of production of journey ticket is immaterial for proof of the claim. Keeping all such circumstances in view, it is held that the deceased died an

untoward incident concerning his journey in the train from Berhampur to Bangalore.

9. In the result, the appeal is allowed and the Respondent-Union of India is directed to pay the compensation of Rs.4,00,000/- (four lakhs) to the Appellants by depositing the same before the Tribunal within a period of two months from today, which shall be disbursed in favour of the claimants in equal share keeping 50% of the same in fixed deposits in the name of each Appellant separately in any Nationalized Bank for a period of five years.

10. Copies of postmortem report and the claim application as produced by Mr.Mohanty are kept on record.

11. Urgent certified copy of this order be granted on proper application.

(*B.P. Routray*)
Judge