



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12405 of 2015

and

batch of cases

(In the matters of applications under Articles 226 and 227 of the Constitution of India, 1950).

(In W.P.(C) No.12405 of 2015)

Hema Pradhan & Anr.

....

Petitioner(s)

-versus-

Union of India & Ors.

....

Opposite Party (s)

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s)

:

Ms. D. Mohapatra, Adv.

Mr. Amit Pr. Bose, Adv.

Mr. S. Sourav, Adv.

Mr. S. K. Nanda, Adv.

Mr. G. C. Swain, Adv.

Mr. G. P. Dutta, Adv.

Mr. D. Mund, Adv.

Mr. A. S. Nandy, Adv.

Mr. S.K. Pradhan-3, Adv.

Mr. Santosh Ku. Nanda, Adv.

Mr. S.B. Mohanty, Adv.

(in all the respective Writ Petition)

For Opposite Party (s)

:

Mr. P. K. Parhi, DSGI

Mr. A. Routray, CGC

Mr. B. S. Rayaguru, CGC

Mr. D. Gocchayat, CGC

Mr. M. K. Pati, CGC

(in all the Writ Petitions)



CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-21.03.2024

DATE OF JUDGMENT: -19.04.2024

W.P.(C) No.12405 of 2015

along with

W.P.(C) No.9792 of 2012, W.P.(C) No.12529 of 2012, W.P.(C) No.12532 of 2012, W.P.(C) No.12535 of 2012, W.P.(C) No.25483 of 2012, W.P.(C) No.15200 of 2013, W.P.(C) No.11470 of 2015, W.P.(C) No.15053 of 2015, W.P.(C) No.15054 of 2015, W.P.(C) No.20798 of 2015, W.P.(C) No.20799 of 2015, W.P.(C) No.7886 of 2017, W.P.(C) No.7887 of 2017, W.P.(C) No.7116 of 2019, W.P.(C) No.15533 of 2020, W.P.(C) No.21575 of 2020, W.P.(C) No.21576 of 2020 and W.P.(C) No.6692 of 2023.

Dr. S.K. Panigrahi, J.

1. Given the comparable factual situations present in W.P.(C) No.12405 of 2015 the connected cases could be consolidated and are jointly addressed in this judgment. The Court's ruling shall apply directly to all the cases without exception. In fact, the issues involved in all the cases are pertaining to deaths occurred in unmanned railway crossings in different forms and shape but are purely on account of their own negligence while crossing the railway track. Despite the presence of some minor incongruity in facts, the principle involved in the cases is the same.



2. In this Writ Petition, the Petitioners have prayed for a direction to the State (Railway Authorities) to pay compensation against the unnatural death of the kin of the petitioners in a railway accident.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts are summarized as follows:

- (i) In the first case i.e. in W.P.(C) No.12405 of 2015, Biswanath Pradhan, serving as the Station Master at Jujumura Railway Station, issued a report to the Jujumura Police Station on 20th July, 2011 at 1.30 PM, notifying the discovery of a deceased male individual lying on railway track No.43/7 near Andhari village.
- (ii) The deceased was identified as Bhakta Pradhan, approximately 40 years old, who happened to be the offspring of the petitioners. It was disclosed that the deceased was mentally challenged, and while he was traversing towards the railway track near Andhari village, a passing train collided with him, resulting in his demise.
- (iii) In a similar unfortunate occurrence, the petitioner's son, Sri Diptikanta Padhy, encountered a fatal incident where he was struck by a goods train at Soro railway station on 18.02.2020, leading to his demise due to the sustained injuries.

4. The arguments put forth by the legal representatives of the petitioners and the opposing parties are being considered concurrently.

II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:

5. Learned counsel for the Petitioners earnestly made the following submissions in support of their contentions:



- (i) Section 124-A of the Railways Act, 1989, provides for compensation against untoward incidents. This provision specifies that if there is any wrongful act, negligence, or default on the part of the Railway administration resulting in injury or death to a passenger, compensation is liable to be paid. This compensation is applicable solely for losses caused by the death, regardless of any other laws in place.
- (ii) The petitioners have a very genuine grievance as there has been a death. The dependents of the deceased should receive the necessary compensation. There is a legal principle, "*Ubi jus ibi remedium*," which means where there is a right, there must be a remedy. The death of the petitioner's son did not occur naturally; rather, it was a negligent, irresponsible, and blatant act on the part of the Opp. Party Nos.1 to 3. In this writ petition, compensation is warranted for the death of the deceased.
- (iii) If the Opp. Party Nos.2 and 3 had acted diligently and with prudence in this case, the accident that resulted in the death of the petitioner's son could have been avoided. Since irreparable damage has occurred, it should be remedied through compensation. As there has been a loss of life, and the deceased was the sole breadwinner for the family, responsible for supporting his wife and parents, it is imperative that the petitioners receive adequate compensation for the damages incurred. Without such compensation, there would be a disregard for the law of the land. Considering the pecuniary position of the Opp. Parties, it is both equitable in the eyes of law and essential for justice to rectify the harm caused by their negligent actions.



(iv) In the case of *Shyam Naik v. General Manager, East Coast Railway*,¹ this Court adjudicated a matter pertaining to fatalities occurring at railway crossings and was benevolent enough to award compensation to the kin of the deceased due to the negligence of the railway authorities.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES :

6. In reply, learned counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:
- (i) In the first case, it was observed that the incident occurred at Railway Kilometer 43/7-8, situated between Charmal and Jujumura Railway Station, where neither manned nor unmanned level crossings exist. The area is characterized by a conventional railway track, and it was determined that the deceased had unlawfully trespassed onto the railway line, contravening Section 147 of the Railway Act, 1989.
- (ii) In the second case, the accident trespassed at the Soro Railway Station, where the deceased intentionally placed himself in the path of an oncoming Goods Train. The deceased deliberately positioned himself on the railway track just before the train's engine, which could potentially be interpreted as an act of suicide, attempted suicide, or self-inflicted harm. This action may have been influenced by factors such as negligence, intoxication, or mental incapacity, rendering it legally unsustainable. Despite the presence of a Foot Over Bridge at Soro Railway Station, the deceased's entry onto the railway track is deemed unlawful and constitutes a criminal offence punishable by law.

¹ AIR 2012 ORISSA 38



- (iii) The deceased was neither a passenger nor authorized to go over the railway line. The spot in question belonged to the railway, and any unauthorized access to such land without precaution can be termed as criminal trespass, a violation of Section 147 of the Railway Act, 1989. Hence, the instant case is a clear case of trespass and refusal to desist from trespass, which is a violation under Section 147 of the Indian Railway Act, 1989. Therefore, the railway cannot be held responsible for the said loss of life.
- (iv) Section 124 of the Railway Act, 1989 pertains to the no-fault liability of passengers who expire in railway accidents. However, in the instant case, the same does not apply. This provision cannot be extended to the present case because the death occurred due to the deceased's own negligence/fault, and the deceased violated Section 147 of the Railway Act, 1989. As such, the above Writ Petition is devoid of merit and liable to be dismissed.

IV. COURT'S REASONING AND ANALYSIS:

7. In the present case(s), inter alia, the provisions of Section 124A of the Railway Act, 1989 must be expressly considered which provides for payment of compensation on account of any untoward incident, resulting in injury or death of a passenger, irrespective of whether there has been any wrongful act, negligence or default on the part of the Railway Administration. The Section is produced hereinbelow:

*“124A. Compensation on account of untoward incidents-
When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway*



administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only of loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to--

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.--For the purpose of this section, "passenger" includes--

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]

(Emphasis Supplied)

8. Now, there is little dispute as to the essential facts. The death of the deceased persons was not caused due to 'untoward accident'. The evidence presented indicates that the deceased individuals perished as a result of being struck by a train while traversing the railway tracks, a fact which remains uncontested by the Petitioners. It is, thus, clear that



the deceased is not a 'passenger' under the provisions of Section 124A of the Railway Act. The principal question to be considered is whether in the given facts, it is established that the Opposite Parties had been negligent or had failed to discharge their duty of care towards the trespass of the deceased. The deceased was allegedly mentally challenged but this fact is immaterial to the question of computation of compensation.

9. Railways, like any entity responsible for maintaining public safety, have a degree of responsibility towards trespassers. While they may not owe the same duty of care to trespassers as they do to authorized users or passengers, they still have a legal obligation to take reasonable steps to prevent foreseeable harm.
10. Railway operators often implement safety measures such as fencing, warning signs, and gates to deter trespassing and minimize the risk of accidents. However, if someone does trespass and gets injured, the railway may not be held liable if it can be shown that they took reasonable precautions to prevent trespassing and accidents. It is relevant to refer to Section 13 of the Indian Railway Act, 1890 which reads as under:-

“13. Fences, screens, gates and bars.-The Central Government may require that, within a time to be specified in the requisition, or within such further time as it may appoint in this behalf,-

(a) Boundary-marks or fences be provided or renewed by the railway administration for the railway or any part thereof and for roads constructed in connection therewith;

(b) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway



be provided or renewed by a railway administration for the purpose or preventing danger to passengers on the road by reason of horses of other animals being frightened by the sight or noise of the rolling-stock moving on the railway;

(c) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level;

(d) persons be employed by a railway administration to open and shut such gates, chains, or bars."

11. In cases where it is found that the Railways were in breach of their duty to take adequate measures for safety, the railway authorities could be held liable for payment of damages. But, no hard and fast or absolute rule can be laid down in this behalf. The question of erecting a fence or gate would depend on the situation of the crossing, visibility of the rail track from the road, any sharp turns or curves and the extent of the road traffic etc. However, it must be noted that, in the present case, the tragic incident did not take place on a level crossing or at a place where the railway tracks crossed a well-used path. Thus, there is no question of any frequent traffic at the site of the accident.
12. In *Klaus Mittelbachert v. East India Hotels Ltd.*² the Delhi High Court has explained the conditions required for the applicability of the principle of *res ipsa loquitur*. The relevant passage from the said judgment reads as under:-

"Under the doctrine of res ipsa loquitur a plaintiff establishes a prima facie case of negligence where:

² 1997 SCC OnLine Del 22



(1) *it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident, and;*

(2) *on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety.*

There must be reasonable evidence of negligence. However, where the thing which causes the accident is shown to be under the management of the defendant or his employees, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care.

Three conditions must be satisfied to attract applicability of rest ipsa loquitur: (i) the accident must be of a kind which does not ordinarily occur in the absence of someone's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (iii) it must not have been due to any voluntary action or contribution on the part of the plaintiff. (See Ratanlal & Dhirajlal on Law of torts, edited by Justice G.P. Singh, 22nd edition 1992, pp 499-501 and the Law of Negligence by Dr Chakraborti, 1996 edition, pp 191-192.) (Emphasis supplied)

13. In the present case(s), the aforementioned criteria would not be met, given that the deceased was clearly trespassing and demonstrated negligence by hurrying onto the tracks in front of an approaching train. In the second case, the deceased was trespassing on the railway tracks at the railway station, despite the availability of a Foot Over Bridge designed for pedestrian use.



14. The Opposite Parties cannot be held to have failed in its duty to take adequate care. In view of the paucity of evidence on these points in the present case, this Court is unable to hold that the failure of the railway administration to erect a gate and post a gateman amounted to an actionable negligence by itself.
15. In this regard, the Delhi High Court in *Mohd. Quamuddin & Ors. vs Union Of India*³ has held as under:

“Clearly, there is no obligation on the respondent to fence the entire length of railway tracks and the question whether non-fencing of railway tracks amounts to negligence or a failure to take due care would depend on the probability of persons crossing the tracks and also the number of persons so crossing the tracks. In cases of accidents on an unmanned railway crossing, the duty of care expected of the railway administration is much higher as compared to tracks at other places because public are expected to cross the railway track at level crossings. The same standard of safeguards, as required in an unmanned crossing, are not necessary to be placed across the entire length of the tracks, since public are not permitted to cross the tracks except at the designated crossing.”

16. The counsel representing the petitioner(s) have cited the judgment of this Court in the case of *Shyam Naik v. General Manager, East Coast Railway* (supra), wherein compensation was awarded to the family members of the deceased following his demise at an unmanned railway crossing. However, it is evident that the factual circumstances of the aforementioned case differ significantly from those of the present cases.

³ 2015 SCC OnLine Del 10229



17. In *Shyam Naik* (supra), the Court acknowledged the negligence of the Railway Authorities in overlooking unmanned crossings, thereby subjecting numerous individuals to the perilous task of crossing busy railway lines without adequate safety measures provided by the authorities. Conversely, in the present case, the petitioners' counsel has failed to substantiate any claims regarding the negligence of the railway authorities, instead relying solely on appeals for the Court's sympathy. While this Court extends its deepest sympathies to the family of the deceased, it is imperative to note that mere sympathy cannot serve as a basis for compensating the family in the absence of a compelling legal argument.
18. Railways often emphasize the importance of safety around railway tracks, but it is true that trespassing on tracks is a significant safety concern. While railways implement safety measures and regulations to prevent accidents, ultimately, individuals who trespass on railway tracks are responsible for their own safety. Railway tracks are designed for the safe passage of trains and are not intended for pedestrian use.
19. Trespassing on tracks poses serious risks, including the danger of being struck by trains or encountering other hazards associated with the railway environment. Therefore, individuals who choose to cross railway tracks unlawfully assume the risk of potential accidents and cannot blame the railways for the consequences of their actions.
20. The Indian Railways stands as the backbone of the nation, with an extensive network of railway tracks spanning thousands of kilometers, catering to the diverse needs of the Indian populace. As a crucial mode



of transportation, it plays an indispensable role in connecting remote areas, facilitating economic activities, and enabling the movement of millions of passengers and freight across the country. In true sense, it is the lifeline of the nation.

21. However, alongside its pivotal role, the Indian Railways also grapples with a concerning issue – the occurrence of rail accidents. In 2021, a total of 1,752 rail deaths took place of which 1,114 were due to line crossing, 277 due to falling off trains and 258 due to natural causes. Out of the 1,752 deaths, 1,557 victims (89 per cent) were men. A majority of the deaths every year on the railway tracks occur due to crossing the tracks, which is an illegal act.⁴ Despite stringent safety measures and continuous efforts to enhance infrastructure and operational protocols, these accidents persist, posing risks to the lives and well-being of passengers and railway staff alike.
22. These incidents not only result in tragic loss of lives but also inflict economic losses and disrupt the smooth functioning of the railway system. Addressing the root causes of such rail accidents in India requires a multifaceted approach, encompassing aspects such as infrastructure modernization, technology integration, robust maintenance practices, rigorous safety regulations, and effective participation of the stakeholders. By prioritizing these initiatives and fostering a culture of safety and accountability, the Indian Railways can

⁴ 'GRP files FIRs against commuters who die while crossing rail tracks' (June 1, 2022)
<<https://indianexpress.com/article/cities/mumbai/grp-files-fir-commuters-who-die-while-crossing-rail-tracks-7946473/>>



strive towards mitigating the incidence of accidents and ensuring the continued safety and reliability of this vital lifeline of the nation.

23. For the reasons recorded above, W.P.(C) No.12405 of 2015 is dismissed. Accordingly, all the connected Writ Petitions are dismissed. No order as to costs.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 19th April, 2024/