

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.15779 of 2012

In the matter of application under Articles 226 & 227 of the Constitution of India.

Prabir Kumar Das Petitioner

-Versus-

State of Odisha & others Opp. Parties

For Petitioner : In person

For Opp. Parties: Addl. Govt. Advocate
(For O.P.Nos.1, 5, 6 & 7)
M/s. P.K.Mishra, A.Sahu,
S.Bhanja, B.K.Dash and
Mr.Piyush Mishra
(For O.P. Nos. 2, 3 & 4).

P R E S E N T:

THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA

A N D

THE HONOURABLE SHRI JUSTICE B.K.MISRA

Date of Judgment: 26.11.2012

B.K.MISRA, J The petitioner, who is a practicing advocate and human rights activist has approached this Court under Article 226 of the Constitution of India for exercising extra-ordinary jurisdiction in granting compensation of Rs.10,00,000/- to the families of each one of the deceased persons and to adequately compensate the injured persons, who were the victims of the

railway accident i.e. the collusion of a speeding Express Train with a trolley auto rickshaw on 24.8.2012 morning i.e. at 8.40 A.M. at Khairpali unmanned level crossing in the district of Sambalpur resulting in the death of 14 persons in all. Besides payment of compensation to the victims of such accident the petitioner has also prayed that direction to be issued to the Railway Authorities of East Coast Railways as well as the Railway Board to convert all the unmanned level crossing in the district of Sambalpur to manned level crossing and to construct over bridges/under bridges for preventing such accidents especially in unmanned level crossings for ensuring public safety. It is also prayed that direction may be issued to the State Government to extend all cooperation to the Railway Authorities in such construction of over bridges/under bridges at such unmanned level crossings etc.

2. The factual matrix reveals that on 24.8.2012 at 8.40 A.M. female agricultural labourers including some minor girls were proceeding to Sindurapank from village Ainapali for working in paddy fields in a trolley Auto Rickshaw bearing Registration No.OR-15-3-3034. It is alleged that the ill fated trolley auto rickshaw while crossing the unmanned level crossing at Khairapali was rammed by the Rourkela-Bhubaneswar intercity

Express causing instantaneous death to 12 ladies and leaving many women injured who were in that Cargo Auto. Later on two ladies succumbed to the injuries while undergoing treatment in the hospital and therefore the death toll rose to 14. It is further alleged that all the victims of the accident belong to the below poverty line category. The driver of the ill fated trolley auto rickshaw, Satyaranjan Nath, besides agricultural labourers, namely, Champa Bhoi, Pooja, Gouri Sahu, Medam Sahu, Anu Bhoi, Arati Bhoi, Bharati Bhoi, Buli Bhoi, Khatkuri Bhoi, Jayanti Bag, Ahalya Badhei, Dukhi Pradhan and Sanjukta Rout died because of the accident whereas Nirupama Bhoi, Hemalata Bhoi, Subasini Rana, Chandini Rout, Mohini Bhoi and Brundabati Bhoi had sustained injuries because of the aforementioned accident. According to the petitioner, the accident took place because of the indifferent and callous attitude of the railway administration and failure to discharge the obligation to ensure public safety especially at all unmanned level crossings. According to the petitioner the District Administration after the accident in question granted a paltry sum of Rs.5,000/- to each of the family of the deceased and the Railway Administration assured payment of only Rs.2,000/- which are grossly inadequate by all standards. Accordingly, the petitioner decided to take up the cause of the

poor and hapless persons belonging to the marginalized sections of the society for grant of compensation to the next of kith and kin of each of the deceased person to the tune of Rs.10,00,000/- and also to compensate injured persons adequately etc.

3. The opposite party nos.2, 3 and 4 have filed their counter affidavit wherein while admitting the accident in question it is their case that the accident in question took place solely because of the careless and negligent driving of the Mahindra Alfa Cargo Auto by its driver which is not a passenger vehicle. Besides that it is the case of the opposite parties that the driver of the Train no.18105 Rourkela-Bhubaneswar Intercity Express while approaching the level crossing no.ST-7 between Sambalpur City – Maneswar the Loco pilot, observed one Cargo Three Wheeler Auto Mahindra Alfa suddenly crossing the unmanned level crossing and on seeing that he applied the emergency brake, but since the train was very close to the level crossing it could not be stopped short of the level crossing and rammed into the Cargo Auto which had already entered the level crossing and trying to cross the same resulting in the death of 12 passengers of the Cargo Auto at the spot and injuring seven persons who were in the said Auto. Out of the said seven injured, one of them died on the way to the hospital and another person succumbed to the injuries in the

hospital. Out of the five injured persons, two had sustained grievous injuries while three had simple injuries. It is the specific case of the opposite party nos.2, 3 and 4 that though the train driver was blowing horn but unfortunately the deceased driver of the Auto was listening to music by using the head phone attached to his mobile phone and the said driver of the Auto did not bother to look both sides of the track before crossing the unmanned level crossing in question for which the accident took place. According to the opposite parties, 19 persons were travelling in the Cargo Auto at the time of the accident including the driver though the same was registered as a goods vehicle and had no permission for carrying passengers and the letter of the R.T.O., Sambalpur to that effect has been annexed as Annexure-A/1 series. It is also their case that at all unmanned level crossings warning boards have been provided at a distance of 40 meters from the crossing and stop boards are provided at 05 meters besides speed breakers have also been provided at a distance of 20 meters to ensure that the vehicle drivers do not approach the rail crossing at a high speed.

4. Opposite party No.5 namely, the Superintendent of Police, Sambalpur filed the counter affidavit wherein it is his stand that for the alleged collusion between the train and the

Autorickshaw U.D. Case No. 15 of 2012 was initially registered at Dhanupali Police Station which was subsequently registered as Dhanupali P.S. Case No. 154 of 2012 dated 26.8.2012 under Sections 337, 338 and 304-A of the Indian Penal Code and the investigation of the case is on. It is the specific stand of the opposite party No.5 that the present writ petition is not maintainable in view of the availability of alternative remedy before the Railway Claims Tribunal.

5. We have heard the learned counsel appearing for the respective parties and also perused the materials placed before us. There is no controversy about the accident which took place at the unmanned level crossing at Khairpali i.e. in between Sambalpur City and Maneswar on 24.8.2012 at 8.40 A.M. resulting in loss of 14 lives and injuring five ladies some of whom had grievous injuries. The only controversy is with regard to the cause of the accident that is to say as to whether the accident in question took place because of the deliberate negligence on the part of the Railway Authorities or because of the careless and negligent deceased driver of the ill fated Cargo Auto which was carrying the unfortunate poor victims who were on their way to eke out their living by working in the paddy fields in village Sindurapank.

6. There is no controversy at all about the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution for awarding compensation to a victim consequent upon deprivation of fundamental rights to the life and liberty as they suffered due to negligence of the State or its functionaries. The aforesaid principle has been laid down by the Apex Court as well as by this Court and it has become the trite law.

7. Section 18 of the Railways Act, 1989 makes it obligatory on the Railway Administration in providing sufficient safeguards like suitable gates, chains, bars, styles and handrails and to employ persons to open and shut gates, chains or bar. In the instant case, admittedly the accident took place at an unmanned railway level crossing, namely, Khairpali which falls in between village Ainapali and Sindurapank. As we see from the counter affidavit of the opposite party nos.2, 3 and 4, unmanned level crossings do not require any signal gate as per Indian Railway standards. But, however other sign boards for the road users like speed breaker board, stop board as well as whistle boards for train drivers were available on both side of unmanned level crossing and the visibility for the road users at the level crossing in question was 850 meters minimum from any direction which meets the minimum requirement of visibility of 800 meters.

While meeting the allegation of the petitioner that the driver of the Autorickshaw could not see the approaching train because of the trees and bushes, in their counter opposite party Nos. 2, 3 and 4 have stated that the last jungle cutting was done on 29.6.2012. The learned counsel appearing for the railway authorities have produced some photographs before us which clearly shows the existence of big trees and wild bushes near the stop signal. Thus, it appears that there is substance in the allegation of the petitioner that the view of the approaching train from the road was obstructed because of existence of trees and wild bushes. Even if we accept the contention of the learned counsel for the railway authorities that the last bush cutting was done on 29.6.2012 but at the same time this Court cannot loose sight of the fact that the accident took place on 24th August, 2012 i.e. about two months after the alleged bush cutting. It is an admitted fact that the occurrence took place during rainy season and during that period, trees and wild bushes have very luxurious growth.

8. Mr.B.K.Dash and Mr.Piyush Mishra, learned counsel appearing for opposite party Nos. 2, 3 and 4 in course of his argument contended that the accident took place only because of the carelessness of the driver of the Cargo Auto vehicle in

question as the driver was listening to music by using head phone and he did not care to stop the vehicle to see if any Loco is coming on the railway track and, therefore, when the accident in question took place solely because of the negligent crossing of the unmanned level crossing, under Section 161 of the Railways Act, the driver of the said Cargo Auto vehicle is responsible and not the railways. Similarly, it was also urged before us that when the driver of the Autorickshaw did not perform the duty while approaching the unguarded railway level crossing within the meaning of Section 131 of the Motor Vehicles Act, 1988, it is the driver of the Cargo Auto for whose negligence the unfortunate accident in question took place and the Railway authorities cannot be fastened with any liability. But this contention of the learned counsel for the opposite party Nos. 2, 3 and 4 falls to the ground because of the fact that the driver of the Cargo Auto namely, Satya Narayan Nath also has died in the said accident and therefore cannot be prosecuted. But the fact remains that the innocent ladies and minor girls who were travelling in the Cargo Auto at the time of accident for no fault, met with the horrific accident for which thirteen of them died and some others sustained grievous and simple injuries. It is the settled position of law that the railway authorities are bound to take steps from time

to time by considering the increase in the rail and road traffic at the level crossing and they cannot wash of their hands by saying that their proposal for having over bridges/under bridges at all unmanned level crossing is pending with the Collector, Sambalpur. The failure of the Railway authorities in our humble view, is an act of negligence on their part in not providing adequate safety measures in unmanned level crossing to avoid any mishap of the magnitude that happened on the morning of 24th August, 2012.

9. The stand taken by the Railway authorities are not acceptable to us as this Court in several decisions on similar matters i.e. in the case of **Shyam Nayak and others V. General Manager, East Coast Railway**, reported in **A.I.R. 2012, Orissa 38**, **Phula Nayak and others V. G.M. East Coast Railway and others** reported in **2011(II) Indian Law Reports-Cuttack 540**, **Sajeeda Begum and others V. Divisional Railway Manager (Safety), S.E. Railways and another, 2004 (Supp.) OLR 914** and **Parikhita Behera and another V. the Divisional Railway Manager, South Eastern Railway, Khurda Division and others, 1997 (II) OLR 69** is of the consistent view that where a railway line crosses highway path, reasonable precaution must be taken by the Railway authorities to reduce the damage to the public to

the minimum. The Railway authorities cannot shut their eyes nor they can ignore the recurring accidents taking place at unmanned level crossings. The Railway authorities cannot simply abdicate their responsibilities on the pretext that the concerned State Government or the departments of the State Government is sitting over their proposal for construction of the over bridges or under bridges at unmanned level crossing spots. The human aspect cannot be overlooked. The bureaucratic apathy in dealing with the life and liberty of the human being which is well protected by the Constitution of this country is definitely condemnable especially when 80% of our population live in villages and belong to the marginalised sections of the society suffering from all forms of deprivation. The poor Scheduled Caste women labourers who are also illiterate cannot be expected to have the luxury of having a Cell phone and to decipher the SMS messages sent through cell phones by the railway authorities as to how to cross the unmanned level crossing. The plea of the opposite party Nos. 2, 3 and 4 that to educate people about crossing of unmanned level crossing, SMS messages are being sent can tantamount to an apology. The facts scenario of this case convinces us that the Railway authorities were negligent in keeping the unmanned level crossing in question vulnerable to pedestrians and people in the

locality and they have failed to discharge their statutory and moral obligations.

10. Even if it is admitted that the Cargo Auto being driven by its driver did not listen to the advice of the labourers as he had put on head phones and was listening to music and therefore, the accident took place but what was the fault of the innocent persons who were travelling in the said Cargo Auto? Some of them died instantaneously at the spot and some others received grievous or other form of injuries. They were in no way involved in the driving of the Cargo Auto nor they were a part in taking the decision in crossing the level crossing at the time of accident. Therefore, the theory of contributory negligence cannot be applied to the innocent passengers who were travelling in the Cargo Auto.

11. A level crossing is on the other hand a danger spot in view of the possible movement of trains and on the other is an invitation to the passerby. The road which crosses the railway track at Khairpali is a public road and therefore it is the legal duty of the railway to assure reasonable safety by way of providing gates or chain barriers and to post a watchman who should close them shortly before the trains pass. In the instant case, existence of wild bushes having luxurious growth and trees might have caused hindrance to the driver of the ill fated Auto to

see the approaching train before crossing the railway track. It is an admitted fact that in the Puri-Sambalpur line many passenger and goods train are running and volume of passenger traffic and introduction of many long distance trains in that route have made it a busy one. Therefore, it is the bounden duty of the Railway to take all precautions which will reduce the danger to the minimum and they are duty bound to take steps from time to time by considering the increase in the rail and road traffic at the level crossing.

12. So far as the quantum of damages is concerned, the Apex Court in the case of **M.S. Grewal and others V. Deep Chand Sood & Others, (2001) 8 S.C.C. 151** have held that the placement in the society or the financial status of the victim can be good guide for determining the quantum of compensation. Under Section 124 of the Railways Act read with the Railway Accidents and Untowards Incidents (Compensation) Rules, 1990, no fault liability of the passenger who died in a railway accident has been fixed at rupees four lakhs. In the instant case, it is alleged that the authorities immediately paid Rs.5,000/- to the family members of each of the person who died in the said accident and railways also assured to pay Rs.2,000/- which according to us is grossly inadequate by all standards.

13. Admittedly in this case Champa Bhoi, Pooja, Gouri Sahu, Medam Sahu, Anu Bhoi, Arati Bhoi, Bharati Bhoi, Buli Bhoi, Khatkuri Bhoi, Jayanti Bag, Ahalya Badhei, Dukhi Pradhan and Sanjukta Rout so also the driver of the ill fated Auto Satya Narayan Nath died because of the accident. Thus, it would be just and proper to award compensation of Rs.5,00,000/- (Rupees five lakhs) each to the aforementioned persons who have lost their life in the accident. They are also entitled to get interest at the rate of 6% per annum on the compensation amount from the date of presentation of this writ petition i.e. 28.8.2012. But with regard to payment of compensation to the injured Subashini Rana, it is seen from the photocopy of the injury report produced by the Railway authorities before that she had two lacerated wounds i.e. over the iliac crest and on upper thigh on the anterior part. Besides that she had another lacerated injury over the anterior aspect of right leg with fractures of tibia and fibula and there was a swelling with tenderness with abnormal mobility of left arm with fracture of Humerous. The later two injuries were reportedly grievous whereas the former two injuries were simple. Thus, taking into consideration the pain and suffering of the injured Subashini Rana, it would be just and proper to direct the railway authorities to pay her a sum of Rs.1,00,000/- (Rupees one lakh)

as compensation from the date of filing of the writ petition. The said Subashini Rana is also entitled to get interest at the rate of 6% per annum on the said compensation amount from the date of filing of writ petition i.e. 28.8.2012 till the actual payment is made. Injury report of Hemalata Bhoi aged 37 years shows that she had no external injuries and C.T. scan of head appeared normal but there was injury to hip joint for which she was referred to Dr.S.K.Mishra, who is an Orthopedician for further opinion but the opposite party Nos. 2 to 4 have not produced any other material to show if the injury to hip joint was grievous or simple one. Thus, taking into consideration the injury sustained by injured Hemalata Bhoi, it would be just and proper to direct the railway authorities to pay a sum of Rs.25,000/- (Rupees twenty five thousands) from the date of filing of the writ petition. The said Hemalata Bhoi is also entitled to get interest at the rate of 6% per annum of the said compensation amount from the date of filing of writ petition i.e. 28.8.2012 till the actual payment is made. Injury report of Nirupama Bhoi the girl aged about 16 years simply reveals that she complained of pain over right shoulder and flap but there was no external injury. Thus, it would be just and proper to direct the railway authorities to pay a sum of Rs.5,000/- (Rupees five thousand) towards compensation to

the injured Nirupama Bhoi. The said Nirupama Bhoi is also entitled to get interest at the rate of 6% per annum on the said compensation amount from the date of filing of writ petition i.e. 28.8.2012 till the actual payment is made. Injury report of Mohini Bhoi aged about 40 years simply reveals that she had a lacerated wound over the right forehead which was reportedly simple and the C.T. scan of brain was found normal. Thus, it would be just and proper to direct the railway authorities to pay compensation of Rs.5,000/- (Rupees five thousand) to the injured Mohini Bhoi. The said Mohini Bhoi is also entitled to get interest at the rate of 6% per annum of the said compensation amount from the date of filing of the writ petition i.e. 28.8.2012 till the actual payment is made. Coming to Brundabati Bhoi the other girl aged about 17 years, the doctor found an abrasion over left temple which was simple in nature and the C.T. scan of head shows contusion on the left side of brain. Thus, in view of the head injury it would be just and proper to direct the railway authorities to pay compensation of amount Rs.25,000/- (Rupees twenty five thousands) to the injured Brundabati Bhoi. The said Brundabati Bhoi is also entitled to get interest at the rate of 6% per annum from the date of filing of the writ petition i.e. 28.8.2012 till the actual payment is made.

14. Let the payments be made within a period of two months from the date of receipt of the copy of this judgment. The family members of the deceased persons must keep 50% of the awarded amount in any one of the Nationalized Banks for a period a period of five years and the interest accrues on such deposit can be withdrawn by them. In this regard they have to file compliance report in this Court.

15. Now coming to the other prayer of the petitioner for a direction to the State Government for extending its cooperation to the Railway Authorities for construction of over bridges/under bridges at such posts of unmanned level crossings in the State, we are to observe that where Railway Administration has laid lines of rails across a public road at the same level, in the interest of the public safety the Railway Administration as well as the State Government or the local authority maintaining the road are to take the road either under or over the railway lines by means of a bridge or arch with convenient ascents or descents and other convenient approaches instead of crossing the road on the level or to execute such other works as may in the circumstances of the case appear to the State Government or the local authority maintaining the road to be best adopted for removing or diminishing the danger arising from the unmanned level crossing.

To avert any accident involving loss of life, injury to the public, the Union Government and the Administration of Railways have to take appropriate remedial measures. It is brought to our notice that the Railway Authorities at the highest level have taken a decision to eliminate all unmanned level crossings on Indian Railways within a time frame of 5 years by construction of road over bridges, road under bridges, Limited Height Subway, Diversion, Closure/Manning and to continue as manned and the East Coast Railways in the Sambalpur Railway Division has adopted an action plan to eliminate all of its 263 numbers of unmanned level crossings in a phased manner and those proposals are pending at various stages of approval and execution at the level of Railway Authorities and the District Administration. We direct the appropriate authorities to act in right earnest in accomplishing the job in construction of road over bridges/road under bridges and to eliminate all unmanned level crossings in the country within a reasonable time frame of six months so that precious human lives and properties can be saved. Priority should be given to such type of projects without resorting to the bureaucratic wranglings. Till such construction of road over bridges/under bridges, the Railway Authorities are to take the following appropriate steps to avert any accident:-

(i) Posting Home Guards with red flag so that like manned level crossings they can also caution the pedestrian/cyclist/scooterist/Biker or any four wheeler which approaches the unmanned level crossing when a train be it passenger or goods is to cross such level crossings,

(ii) Extensive campaigning in the adjoining villages and areas near the unmanned level crossings are to be carried out by the Railway Authorities as well as the Public Relation Department of the State Government about the danger of crossing a railway line when a train is about to pass over that track,

(iii) The Law Enforcing Agency including the officers of the Motor Vehicles Department so also the Transport Commissioner is to take effective steps for banning use of mobile phone by a person while driving a two wheeler or three wheeler or a four wheeler. Use of Head phones while driving is to be banned forthwith. Such persons who would be violating the provisions of the Motor Vehicles Act and Rules should be visited with exemplary and stringent penalty and the driving licence should be impounded, in this regard Rules may also be amended

(iv) All wild bushes and creepers by the side of railway track and the approach road to the unmanned level crossing should be regularly cut and pruning should be done regularly so

that the people in general and drivers of the vehicles can have a view of any approaching Loco which is about to cross the unmanned level crossing,

(v) Any structure be it dilapidated or abandoned found near the unmanned level crossings should be demolished and,

(vi) All sign posts on both sides of the unmanned level crossing must be in bold letter i.e. in the vernacular language as well as in Hindi and English and clearly readable from a distance. The rumbler strips must have Thermoplastic paints fitted with Cat's eye system.

16. We trust and believe that the directions/suggestions which we are making are not exhaustive in nature and we leave it to the Railway Authorities and the District Administration as well as the Law Enforcing Agency to ponder over the matter and take appropriate remedial measures in the right direction as early as possible and periodical report of compliance be furnished to the Registrar General of the Court, preferably once in every quarter. We know our limitations that the Courts are not there to legislate but these are some of our pious wishes for the betterment of the society and humanity at large.

Accordingly, the writ petition stands allowed in the above terms. Rule issued.

Let a copy of this judgment be sent to the Chairman,
 Railway Board, Ministry of Railways, Government of India, New
 Delhi, Chief Secretary, Government of Odisha,
 Bhubaneswar/Principal Secretary, Home/Director General of
 Police for information.

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B.K.Misra,J

V.Gopala Gowda, C.J. **I agree.**

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V.Gopala Gowda,C.,J.

Orissa High Court, Cuttack
The 26th November, 2012/RNS