

(2020) 12 JH CK 0072

In the Jharkhand High Court

Case No : Miscellaneous Application No. 243 of 2013

Ajay Kumar Pandit & Ors

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-12-2020

Acts Referred:

Railways Act, 1989 — Section 2(29), 123, 123 (b), 123(c)(2), 124, 124A, 125, 125 (1) (a), 125(d)
Motor Vehicles Act, 1988 — Section 124A, 163A
Code Of Civil Procedure, 1908 — Section 146, Order 22 Rule 3
Transfer of Property Act, 1882 — Section 6
Hindu Succession Act, 1956 — Section 8
Railway Claims Tribunal (Procedure) Rules, 1989 — Rule 26

Citation : (2020) 12 JH CK 0072

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Rajesh Kr. Jha, Ashok Kr. Singh, Vijay Kr. Sinha, Ganga Kumari Kacchap

Final Decision : Allowed

Judgement

Heard, learned counsel, Mr. Rajesh Kumar Jha assisted by learned counsel for the appellants, Mr. Ashok Kumar Singh and learned counsel for the respondent - Railways, Mr. Vijay Kumar Sinha assisted by learned counsel M/s Ganga Kumari Kacchap.

This matter was heard on 23.11.2020, 07.12.2020 and today.

The claimants / appellants have preferred this appeal against the dismissal of the claim application filed vide Case No. TAU/RNC/2003/0032, which

has been dismissed in terms of order dated 23.04.2013 passed by learned Member (Technical), Railway Claims Tribunal, Ranchi Bench, Ranchi

holding that deceased - Bhaskar Pandit was not a bonafide passenger nor

incident is covered under provisions of Section 123(c)(2) of the Railways Act, 1989.

Learned counsel for the appellants, Mr. Rajesh Kumar Jha, has assailed the impugned Award on the ground that the Tribunal has wrongly considered

the material on record. The fact of the case is that Bhaskar Pandit, son of original claimant Triloki Nath Pandit fell down while travelling from Sindri to

Dhanbad in Train No. 407 UP Sindri - Dhanbad Passenger near Barmasia Phatak. He died in PMCH, Dhanbad on the same day. The deceased was

travelling with his friend and brother-in-law of his friend's sister.

Learned counsel for the appellants has submitted that Issue No. (1) that is with regard to the bonafide passenger is concerned, the Tribunal has given

wrong finding contrary to the evidence brought on record by the witnesses and finding recorded by the learned Tribunal is contrary to the judgment

passed by Apex Court in the case of Union of India vs. Rina Devi, reported in (2019) 3 SCC 572.

To buttress his argument, learned counsel for the appellants has brought evidence of A.W.-1 Prabhawati Devi at Para-1, 2 & 3 has deposed which

has been brought on record by way of Annexure-7 at Page Nos. 28 & 29, which reads as follows:-

1) That, my son Bhaskar Pandit fell down accidentally from running train No. 407 UP (Sindri Dhanbad Passenger) at Barmasia Fatak, Near

Dhanbad Station on : 12-12-2001.

2) That, thereafter he was admitted to Patliputra Medical College & Hospital, Dhanbad, where he died during treatment on the same day in the night.

3) That, my deceased son was travelling by the aforesaid train along with friend, Ratan Jyoti Sinha and Ansu Srivastava (Relative of Ratan Jyoti

Sinha) from Sindri Town Stn. to Dhanbad after having proper ticket".

Learned counsel for the appellants has further submitted that Ratan Jyoti Sinha has been examined as A.W.-3. The deposition of this witness has also

been brought on record as Annexure-7 series at Page Nos. 34 & 35, Paras-1 to 3 of which has been referred hereunder:-

1) That, I along with my friend Bhaskar Pandit and my Sister's Debar - Ansu Srivastava was going to Dhanbad by Train No. 407 UP (Sindri

Dhanbad Passenger) on : 12-12-2001 in the evening from Sindri Town Station.

2) That, I purchased three Tickets for us from Booking Counter of Sindri Town Station for going to Dhanbad on : 12-12-2001 in the evening and kept the same in my Pocket.

3) That, we were standing at the gate of the compartment of the train due to heavy rush inside.

Though, this witnesses have been cross-examined by the Railways, but nothing has been elucidated to bring any evidence by the Railways contrary to the claim of the appellants.

Learned counsel for the appellants has submitted that in view of para-29 of the judgment passed by the Apex Court in the case of Rina Devi (Supra), which is profitably quoted hereunder, the deceased was bonafide passenger and as such, the finding recorded by the learned Tribunal is bad in law and not sustainable in the eyes of law:-

29. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances.

Learned counsel for the appellants has further submitted that in inquest report, which has been brought on record as Annexure-5 series at Page-24 of the memo of appeal, it has been categorically mentioned that passenger fell down from running train No.407 UP, Sindri Dhanbad Passenger and the post-mortem report, which has been brought on record as Annexure-5 Series at Page-25 of the memo of appeal shows that death was due to hard blunt force cranio cerebral injuries.

Learned counsel for the appellants has submitted that the evidence brought on record by the claimants witnesses are sufficient to hold that the deceased fell down because of heavy rush inside the running train and as such, the incident comes under the purview of Section 123 (c)(2) of the Railways Act, as an untoward incident.

Learned counsel for the appellants has also referred para-25 of the judgment passed by the Apex Court in the case of Rina Devi (Supra), which is profitably quoted hereunder:-

25. We are unable to uphold the above view as the concept of 'self inflicted

injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in *United India Insurance Co. Ltd. v. Sunil Kumar* laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988.

Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.

Learned counsel for the appellants has referred the case of *Union of India v. Prabhakaran Vijay Kumar* reported in (2008) 9 SCC 527 (Para-14 to 17, 22, 23 & 24) and has submitted that it is evident that the present case also falls under the category of Untoward Incident, which has not been

considered by the learned Tribunal. Para-14 to 17, 22, 23 & 24 of the aforesaid judgment profitably quoted hereunder:-

14. In our opinion, if we adopt a restrictive meaning to the expression ""accidental falling of a passenger from a train carrying passengers"" in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well

known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car.

By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and

middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression ""accidental falling of a passenger from

a train carrying passengers"" includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into

a railway train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression.

15. Section 2(29) of the Railways Act defines ""passenger"" to mean a person travelling with a valid pass or ticket. Section 123(c) of the Railways Act

defines ""untoward incident"" to include the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Railways Act

with which we are concerned states:

124-A. 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 for 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 purposes 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)

16. The accident in which Smt Abja died is clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the

reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of

Section 124-A of the Railways Act, and not its proviso.

17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-

A it is wholly irrelevant as to who was at fault.

22. Strict liability focuses on the nature of the defendants' activity rather than, as in negligence, the way in which it is carried on (vide 'Torts by

Michael Jones, 4th Edn. p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of

another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective

of any fault on their part. As Fleming says ""permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents

it causes, as an appropriate item of its overheads"".

23. Thus in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the

defendant may not have been at any fault.

24. The basis of the doctrine of strict liability is two fold (i) The people who engage in particularly hazardous activities should bear the burden of the

risk of damage that their activities generate and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually

a corporation) being in the best position to spread the loss via insurance and higher prices for its products.

Learned counsel for the appellants has further submitted that in the case of Jameela and others v. Union of India, reported in (2010) 12 SCC 443

(para-7), it has been held that compensation can only be denied for the reasons enumerated in Clause-(a) to (e) of Section 124-A of the Railways Act.

Para-7 of the aforesaid judgment is profitably referred hereunder :-

7. It is not denied by the Railway that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a

passenger"" for the purpose of Section 124A as clarified by the Explanation. It is now to be seen, that under Section 124A the liability to pay

compensation is regardless of any wrongful act, neglect or default on the part of the railway administration. But the proviso to the section says that the

railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the

reasons enumerated in clauses (a) to (e).

Learned counsel for the appellants has submitted that it is not a case of suicide by the deceased nor a self-inflicted injury nor his own criminal act nor

any act committed by him in state of intoxication or insanity nor by any natural cause or disease or medical or surgical treatment as enumerated in

Sub-Clause (a) to (e) of Section 124-A of Railways Act.

Learned counsel for the appellants has submitted that the claim application has been wrongly dismissed by the learned Tribunal contrary to the

evidence brought on record and the contrary to the judgment passed by the Apex Court, though the incident took place on 12.12.2001, the claim

application was filed on 19.03.2002. The same remained pending for filing written statement by the Railway before the Tribunal, which was filed by

the Railway in the year 2012. The claim application was dismissed by the Tribunal on 23.04.2013, which is fit to be set aside and delay in disposal of

the claim application can be attributed to the Railway Authority, for which the claimants / appellants may be compensated with interest in view of the

judgment passed by the Apex Court in the case of Thazhathe Purayil Sarabi and others Vs. Union of India and Another reported in (2009) 7 SCC 372.

Para-38 of the aforesaid judgment is profitably quoted hereunder:-

38. As we have indicated earlier, payment of interest is basically compensation for being denied the use of the money during the period in which the

same could have been made available to the claimants. In our view, both the Tribunal, as also the High Court, were wrong in not granting any interest

whatsoever to the appellants, except by way of a default clause, which is contrary to the established principles relating to payment of interest on

money claims.

Learned counsel for the appellants has further submitted that Railway has amended the Railway Accidents and Untoward Incidents (Compensation)

Rules, 1990 in the year 2016 i.e. the Railway Accidents and Untoward Incidents (Compensation) Amended Rules, 2016 w.e.f. 01.01.2017 as such, the

appellants, now in continuation with the main claim case, in view of the amended rules, are entitled for compensation to the tune of Rs. 8,00,000/-.

Learned counsel for the appellants has fairly submitted that this issue has already been decided by the Apex Court in the case of Union of India Vs.

Radha Yadav reported in (2019) 3 SCC 410 (para-11), which is profitably quoted hereunder:-

11. This issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in Rina Devi (supra) is very clear.

What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability has arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.

Learned counsel for the appellants has thus submitted that the appeal may be allowed with interest.

Learned counsel for the Railway has submitted that the deceased while travelling trying to spit from the running train, fell down and ticket has not been recovered nor the same has been mentioned in the Inquest Report, as such, the learned Tribunal has rightly passed the order considering it to be self-inflicted injury and dismissed the appeal and this Court may not interfere with the same as finding recorded by the learned Tribunal is just and proper.

Learned counsel for the respondent - Railway has submitted that though on the previous occasion i.e. on 23.11.2020 adjournment was sought on the ground that he wants to assist this Court on the judgment of Union of India Vs. Prabhakaran Vijay Kumar and Jameela and others Vs. Union of India, but as on today, he does not want to distinguish the case of Union of India Vs. Prabhakaran Vijay Kumar from Jameela Vs. Union of India.

Learned counsel for the respondent - Railway has submitted that the issue

involved in the case is that whether the present appellants are the claimants

in view of Section 123 of the Railway Act, where dependents has been defined under Section 123 (b) of the Railway Act, which are as follows:-

123. Definitions. - In this chapter unless the context otherwise requires.-

(a)

(b) "dependent" means any of the following relatives of a deceased passenger, namely :

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependent

wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependent on the deceased passenger;

(iv) the paternal grandparent wholly dependent on the deceased passenger

Learned counsel for the respondent - Railway has further submitted that in view of the Section 125 (2) of the Railway Act, the application is not

maintainable, as such, this Court may not interfere with the same. Section 125 of the Railway Act is profitably quoted hereunder:-

125. Application for compensation. - (1) An application for compensation under Section 124 (or Section 124-A) may be made to the Claims Tribunal -

(a) by the person who has sustained the injury or suffered any loss, or

(b) by any agent duly authorized by such persons in this behalf, or

(c) where such person is a minor, by his guardian, or

(d) Where death has resulted from the accident, (or the untoward incident) by any dependent of the deceased or where such a dependent is a minor,

by his guardian.

(2) Every application by a dependent for compensation under this Section shall be for the benefit of every dependent.

Learned counsel for the respondent - Railway relied on judgment of Punjab and Haryana High Court passed in the case of Union of India Vs. Kumari

Diptee (Minor) reported in 2000 ACJ 1179, where on such ground the claim application has been dismissed.

Learned counsel for the appellants has drawn attention towards the order dated

19.05.2019 passed by the Coordinate Bench of this Court, whereby the substitution petition filed vide I.A. No. 4193/2018 has been allowed for substituting the name of legal heirs as respondents has not objected the same.

Learned counsel for the appellants has submitted that the fact of the case is as follows:- deceased Bhaskar Pandit died on 12.12.2001, the claim

application was filed by his father being the dependent before the Railway Claim Tribunal, Ranchi Bench on 19.03.2002. The written statement was

not filed and the claim application remains pending, in the meantime, Triloki Nath Pandit, original claimant, father of the deceased died on 15.01.2009,

leaving behind his wife, Prabhawati Devi, mother of the deceased. Substitution Petition was filed before the learned Tribunal, which was allowed by

substituting the name of Prabhawati Devi on 26.04.2012. The claim application has been dismissed on 23.04.2013 by the learned Tribunal after the

written statement was filed by the Railway in the year 2012, on the ground that the deceased was not a bonafide passenger and the incident was not

an untoward incident as defined under Section 123 (c)(2) of the Railways Act and as such, this Court has to only consider whether the findings

recorded by the learned Tribunal on these two scores are sustainable in law on the basis of evidence adduced by the claimants and the judgment

passed by the Apex Court.

The objection raised by the Railway before Appellate Court is not sustainable in the eyes of law nor raise ever.

The appeal was filed with delay of 24 days and for condonation of the same, I.A No. 3921/2014 has been filed which was allowed without objection

on behalf of the railways which will be apparent from order dated 13.06.2018 passed by the Coordinate Bench of this Court. The appeal remained

pending, in the meantime, claimant - Prabhawati Devi (appellant) also died on 25.08.2016 for which substitution petition has been filed under Order

XXII Rule 3 C.P.C. vide I.A. No. 4193/2018, which was also allowed vide order dated 09.05.2019 passed by Coordinate Bench of this Court as

respondent has no objection, as such, the name of substituted legal heirs and successors of Prabhawati Devi namely, Ajay Kumar Pandit, Sohan

Kumar Pandit, Manoj Kumar Pandit, Alakh Niranjana Pandit and Asha Devi, all sons and daughter of Late Prabhawati Devi, wife of Late Triloki Nath

Pandit, resident of Rani sagar, P.O. & P.S. - Shahpur, District - Bhojpur (Bihar) have been substituted in place of original appellant. There is nothing

wrong in the same and the same cannot be challenged by the Railway at the time of hearing as substitution has been allowed without any objection.

The said order dated 09.05.2019 passed by Coordinate Bench has not been assailed before the Apex Court and on flimsy ground such objection

cannot be allowed to raise, otherwise, the same will deny the fruits of beneficial legislation in favour of the claimant which has already been delayed

as the claim application remained pending for 10 years because of non-filing of written statement by the Railway before the Tribunal.

Learned counsel for the appellants has submitted that this situation has been dealt by Division Bench of Kerala High Court in the case of Krishna

Kumar Vs. Union of India reported in 2011 (4) TAC 77 (Ker.), though there is slight difference as in the appeal before the Division Bench of Kerala

High Court, the Award was passed and thereafter, plea was taken by the Railway by formulating two issues :-

(i) Is the right under Section 124-A of the Railways Act one that is personal to the one on whom the right vests and consequently not heritable ?

(ii) Cannot the sole legal heir of a decree holder step into his shoes after his death and claim recovery of the amount that has fallen due under Section

124-A and which remains unpaid ?

The Division Bench of the Kerala High Court has dealt both the issues. However, this Court has only to adjudicate on Issue No. (i) i.e. Is the right

under Section 124-A of the Railways Act is personal to the one on whom the right vests and consequently not heritable ?

The Kerala High Court has dealt with these issue in detail. The Kerala High Court has held that the language of Section 124 and 124-A impose only a

liability on the railways to pay compensation. They do not specifically say who all will be entitled to the compensation, though it can clearly be seen

that the compensation will be liable to be paid in the event of injury suffered or death incurred in consequence of an accident or untoward act. Liability

of the Railways is declared but the beneficiary is not expressly specified.

Learned counsel for the appellants has submitted that the Division Bench of Kerala High Court has considered that the scope of statutory liability

under Section 124-A. It is not as though the Railway by an order voluntarily

declared that the amount shall be paid to the victim of an untoward incident, rather Parliament stepped into enact a law whereunder statutory liability is imposed on the railways. It is quite true that the liability does not depend upon the familiar concept of 'wrong' or 'fault' as understood in the law of Torts. There is an absolute statutory liability which obliges the railways to make the payment specified under Section 124-A. The Legislature creates an absolutely statutory liability against the railways and in favour of the victims of untoward incidents. The compassion of the Legislature is in favour of the weak and the suffering is eloquently declared in statutory provision.

Section 124-A creates and declares a new absolute statutory liability for the railways in favour of the suffering humanity which has suffered loss / injury on account of user of the railway. The Parliament of the Socialist Republic of India has chosen to enact such a law to alleviate the sufferings of the victims (their dependents) of such untoward incidents. Liability is declared under Sections 124 and 124-A. Persons who can file applications to claim the amounts are specified under Section 125. It is crucial and significant that there is no non-obstante clause in the statutory stipulations to exclude such application of other laws. Para-20 to 36 of the aforesaid judgment are profitably quoted hereunder:-

20. Having thus understood the nature of the liability/right under Section 124A, the next question to be considered is whether Chapter-XIII is a complete Code in itself. Liability is declared under Sections 124 and 124A. Persons who can file applications to claim the amounts are specified under Section 125. We have gone through all the stipulations of Chapter-XIII. We are unable to find anything which can suggest that Chapter-XIII is a complete Code in itself which expressly or by specific implication bars the application of all other laws. It is crucial and significant that there is no non-obstante clause in the statutory stipulations to exclude such application of other laws. We are not unmindful of the fact that in Sections 124 and 124A, it is stated that the railways shall be liable to make the payment "notwithstanding anything contained in any other law". To us, it appears that the purpose of that non-obstante clause is only to clarify that this payment by the railways will not affect other claims if any available under other laws.

Such non-obstante clause cannot obviously lead to the conclusion that other provisions of relevant laws shall not be applicable.

21. The expression 'dependent' is to be understood as defined under Section 123(b) ""unless the context otherwise requires"" as can be seen from

Section 123 which starts with the words ""In this chapter unless the context otherwise requires"". We shall initially refer to Section 125 (1)(a). An

application under Section 125(1)(a) can be made by the person who has sustained the injury or suffered any loss. We have also got to refer to the fact

that Section 124 deals with injury suffered or loss of property. In respect of loss of property, we find no reason to assume that the legal

heirs/representatives of a deceased passenger will not be entitled to claim compensation. If we were to read Section-125(1)(a) in any constricted or

narrow sense, that would mean that even if a deceased person has suffered loss of property, his legal heirs cannot stake a claim under Section 125(1)

(a). That would certainly be an unjust and absurd constriction. In Section 124, there is no insistence on proof of negligence evidently, because the

claim under Section 124 can arise only on account of an accident of collision between the trains and derailment or other accidents. Negligence of the

railways is implicit in Section 124 though proof is dispensed. If two trains collide or one gets derailed or other similar accidents take place, negligence

is transparently there on the part of the railways and the dispensation of the obligation to prove negligence does not alter the nature of liability. In such

a case to say that only the owner of the goods and not his legal heirs/legal representatives will be entitled to claim compensation, would be patently

unjust. Therefore, the expression ""person who has suffered a loss appearing"" in clause-a of Section125(1) will certainly have to include the legal

heirs/legal representatives of such deceased person who has suffered loss.

22. Coming to Section 125(1)(d) also, when the dependent of the deceased is given right to claim compensation by filing an application, the expression

'dependent' in the context must certainly be held to refer to those who represent the estate of a deceased dependent where death has occurred

subsequent to the vesting of the right. To construe otherwise will, according to us, render the provision unjust.

23. In this context, we again note that there is no specific stipulations in chapter-XIII of the Railways Act as to what is to happen when the dependent

of a victim of an accident expires. The law is silent on that aspect. Perhaps, more importantly, we must note that there is no specific provision in

Chapter-XIII which can lead us to the inference that there would be abatement or extinction of the claims of a dependent on his death. While

considering whether the right to claim compensation under Section 124A read with Section 123(b) and 125(d) can lead to the conclusion that only the

dependent and not the legal heirs of the deceased dependent would be entitled to claim compensation, it is important that we note that there is no

specific statutory stipulation suggesting abatement or extinction of the claim in the event of death of a dependent/claimant. The vested rights of a

dependent obviously cannot vanish into thin air or disappear merely because death of the dependent takes place. This is all the more so because we do

not find any provisions in Chapter- XIII which can suggest that a dependent where the context so requires cannot include the legal heirs of a deceased

dependent.

24. We must in this context refer to Section 146 of the Code of Civil Procedure also. Section 146 incorporates a general principle of law and declares

as follows:

146: Proceedings by or against representatives. - Save as otherwise provided by this Code or by any law for the time being in force, where any

proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or

against any person claiming under him.

25. Under the general law, a legal heir claiming under a dependent is certainly entitled to continue the claim or stake his own claim as a legal

representative/person claiming under the dependent. In that view of the matter also, a claim which the dependent can make can be staked or

continued by the legal heir/legal representative of a deceased, i.e. one claiming under the deceased dependent.

26. We may note that while under the general law all legal heirs/legal representatives may be entitled to make an application or continue the

application in the light of the declaration under Section 146, so far as a claim under Section 124A is concerned, not all the legal heirs of the deceased

victim, but only the dependents can stake the claim. Section 146 CPC incorporates the principle that where a dependent can make an application, his

legal heirs can also make the application.

27. We have gone through all the statutory stipulations in chapter-XIII. We are unable to find any specific provision or any necessary implication

which can suggest that what can be claimed by a dependent cannot be claimed (or his claim cannot be continued) by the legal representatives of a

dependent. We conclude by holding that the expression 'dependent' in Section 125(1)(d) must necessarily include the legal representative of the estate

of the deceased dependent, if such dependent prior to his death is entitled to make such an application.

28. Similar questions appear to have arisen for consideration earlier and binding precedents must guide us, we feel. Our attention has been drawn to a

decision in Union of India and others v Iqbal Singh (1976 SC 211). The Supreme Court was considering whether the compensation payable to a

displaced person under the Displaced Person's Compensation and Rehabilitation Act, 1954 could be claimed by the legal representatives of a deceased

person, i.e. the legatee of the displaced person. Paragraph-9 of the said decision appears to be of crucial relevance and we extract the same below.

9. It is true that the Act is intended for payment of compensation for rehabilitation of displaced persons and matters connected therewith. There is,

however, nothing in the Act to prevent a claimant from making a gift or a will in respect of the amount he may be entitled to get. No provision of the

Act take away rights of transfer of or inheritance to verified claims. Nothing like an abatement or extinction of a claim by the death of the claimant is

provided for by the Act. Inheritance to and devolution of rights of claimants are clearly beyond the purview or scheme of the Act. They are untouched

by the provisions of the Act and are governed by other provisions of law. The statutory rights of claimants to compensation, which crystalize on

assessment and verification of claims are separate rights to property of each claimant covered by the wide definition of ""property"" in Section 6 of the

Transfer of Property Act. They cannot evaporate or vanish suddenly with the death of a claimant.

29. In Chapter XIII of the Railways Act also, we find no direction for abatement or extinction of a claim by the dependant of a person, who has

suffered death in an untoward incident. No provision in Chapter XIII deals with or modifies the rights of inheritance and devolution of the right of a

claimant/dependant on his death. The general provisions of law relating to inheritance and succession are untouched by the provisions of Chapter XIII.

The statutory rights of the dependent/claimant to claim compensation which gets crystalized on the date of the death of the victim in an untoward

incident are certainly part of the right to property of the dependent/claimant and the same is covered by the wide specification of transferable property

in Section 6 of the Transfer of Property Act. As held by the Supreme Court, they cannot evaporate or vanish into thin air suddenly with the death of

the dependent/claimant.

30. A Division Bench of this Court had occasion to consider the right of a dependent to bequeath his property in favour of another after the claim

arose and before his death. In *General Manager v. Sri. Suresh M.K* (2009 KHC 4368), the learned Judges considered that question. The court held

that the bequest made by a deceased dependent after he became entitled to claim the amount under Section 124 A and before his death

(notwithstanding the fact that the deceased dependent had not staked the claim prior to his death) can be claimed by a legal representative/legatee of

the deceased claimant. The relevant observations appear in para-2 which we extract:

This amount could have been claimed by the husband who was alive. It is not a mere right to sue but right to receive compensation which crystalized

on the husband. But the husband of Betty Shri. Shaji subsequently died while undergoing treatment in the Kochi Military Hospital. Therefore, on his

behalf his brother who got his rights bequeathed by Shaji made an application for compensation. Tribunal granted the same.

31. The claim of such a legal representative of the deceased dependent was upheld by the learned Judges with the following observations in

paragraph-4.

It is contended that elder brother of the husband of the deceased is not dependent and therefore he cannot maintain an application. But we note that

he claimed only as legal representative of the husband of the deceased. Husband is a dependent. The moment the accident occurred the amount fell

due. There is nothing to be adjudicated in that matter. Railway, being a public sector undertaking ought to have disbursed the amount as per the Act

immediately on the death of Betty, to the husband, the only surviving dependent,

without making an application by him during his life time. He has bequeathed his right including the right to receive this amount which already fell due, to the brother and the brother filed the application. He stepped into the shoes of the husband of Betty. So, the above agent is to be considered as it is justified by the husband of the deceased. No doubt husband is a dependent as provided under Section 123(b)".

32. This decision is authority for the proposition that the right to claim compensation by a dependent does not get abated or extinguished on the death of a dependent. A clear indication justifying that conclusion is available from the relevant rules. The Railway Claims Tribunal (Procedure) Rules in Rule 26 clearly indicates that there can be substitution of a deceased party to the proceedings by his legal representatives. We extract Rule 26 below:

26. Substitution of legal representatives:- (1) In the case of death of a party during the pendency of the proceedings before Tribunal,, the legal representatives of the deceased party may apply within ninety days of the date of such death for being brought on record.

(2) Where no application is received from the legal representatives within the period specified in sub-rule (1), the proceedings shall abate;

Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased".

33. Rule 26 applies to all claims made by applicants under Section 125 including dependents who stake the claim under Section 125 (1)(d). If that be so, Rule 26 is therefore a clinching indication that the law did not expect the claim of dependent/claimant to come to an end with the death of such dependent/claimant. If the legal heirs under Rule 26 can get impleaded and substituted to continue the claim, there can be no justification for the theory that the claim ends or dies with the dependent/claimant.

34. The learned counsel for the Railway submits that the Rules under the Railway Claims Tribunal (Procedure) Rules cannot alter the nature of the payment and liability under Section 124 A. The right is personal to the claimant and in the light of that, Rule 26 cannot alter the nature of liability, contends the learned counsel. We are unable to agree. Rule 26 clearly indicates that the claim of a dependent/claimant can be continued by a legal representative on the death of the dependent/claimant and in that view of the matter the theory that the right/liability is personal cannot be accepted.

The validity of the rule is not under challenge at all.

35. We must also refer to the provisions of the Hindu Succession Act. Section 8 of the Hindu Succession Act declares that the property of a male

Hindu dying intestate shall devolve in accordance with the stipulations in that provision. Vested right to claim amounts or rights which have crystalized

into a decree are certainly property and therefore the legal heirs of a dependent under the general law are certainly entitled to claim amounts due

under Section 124 A and to continue prosecution of such claims.

36. The up shot of the above discussions is that the amount due under Section 124 A can be claimed only by a dependent and not by a mere legal

heir/legal representative. But the legal heirs of such dependent/claimant in the event of death of the dependent/claimant can certainly initiate or

continue the proceedings for recovery of the amount. There is absolutely nothing in Chapter XIII which can suggest that it is a self contained Code

which deals with inheritance/succession etc. The general law of the land will certainly apply, in the absence of an express provision or necessary

implication that can be drawn, to such claims of deceased dependent. The claim can be continued by the legal representatives of such

dependent/claimant. We are unable to agree that the right under Section 124 A is not heritable. Question No.1 is so answered.

Thus, learned counsel for the appellants has submitted that the Division Bench of Kerala High Court has answered the Issue No. (i) that right under

Section 124-A is heritable.

Learned counsel for the appellants has thus submitted that so far as maintainability is concerned, it is only to be considered at the time of filing of the

claim application, which was rightly done by Triloki Nath Pandit, father of the deceased - Bhaskar Pandit being the dependent. In efflux of time, father

died, mother was substituted, the appeal was preferred by the mother, she also died and the legal heirs have been substituted, as such, maintainability

question raised by learned counsel for the respondent is not sustainable in the eyes of law and the appeal may be allowed, considering the evidence

and the judgment relied by the appellant. Such question of maintainability is an attempt by the Railway to frustrate the bonafide claim of the claimants,

which cannot be allowed at this stage.

Heard, learned counsel for the appellants, learned counsel for the respondent

and perused the material brought on record, including the judgment relied by both the sides. So far maintainability is concerned, the judgment relied by the learned counsel for the railway i.e. Union of India Vs. Diptee (Minor) passed by the Punjab and Haryana High Court is not applicable in the present case. The fact of that case was different, where the Tribunal has allowed the Award which was assailed by Union of India before the Punjab and Haryana High Court. The Single Judge has held that the death has resulted because of the accident and the dependent of the deceased could file the claim. The respondent - claimant cannot be presumed to be dependent upon the deceased passengers, who were minors nor anything shown that they could be treated as dependents. The point has also not argued before the Tribunal. Considering the claimant - respondent not to be dependent upon minor deceased, the Single Judge of Punjab and Haryana High Court has set aside the Award passed by the learned Tribunal, but in the present case, this is not a fact rather Bhaskar Pandit was major and he died in an untoward incident at the age of 18 years and his father Triloki Nath Pandit was the claimant and because of laches on the part of Railway, the claim application remained pending.

The original claimant died, his wife Prabhawati Devi was substituted in place of her husband Triloki Nath Pandit. The matter remained pending for 12 years because of laches on the part of the railway and ultimately the claim application was dismissed on merit not on technicalities.

The appeal was preferred by mother of the deceased being the dependent with delay of 24 days. The limitation was condoned without any objection from railways in terms of order dated 13.06.2018 passed in I.A. No. 3921/2014. During pendency of the appeal, Smt. Prabhawati Devi also died and

her legal heirs and representatives have been substituted without any objection from railways in terms of order dated 09.05.2019, as such the right to

sue survives with the substituted legal heirs. The question of maintainability has never been raised rather substitution petition was allowed without

objection from the railways and as such, in view of the judgment passed by the Division Bench of the Kerala High Court, this Court also finds that the

legal heirs are the rightful persons to pursue the application / appeal So far the merit of the case is concerned with regard to bonafide passenger and

untoward incident are concerned, this Court has considered the evidence of

claimant witnesses A.W.-1 Prabhawati Devi and A.W.-3 Ratan Jyoti

Sinha, where the evidence with regard to purchase of ticket has been brought on record. No contrary evidence has been brought by the Railways and

as such, in view of the judgment passed by the Apex Court in the case of Rina Devi (Supra), this Court set aside the finding recorded by the learned

Tribunal and considered the deceased Bhaskar Pandit to be a bonafide passenger.

So far Untoward Incident is concerned, considering the evidence brought on record including the inquest report and the post-mortem report and

considering the judgment passed by the Apex Court of Prabhakaran Vijay Kumar (Supra) and case of Rina Devi (Supra) (Para-25), this Court

considers the incident to be an untoward incident. None of the material suggest that the case of the deceased falls under Clause (a) to (e) of Section

124-A. Accordingly, the miscellaneous appeal is allowed by setting aside the Judgment passed by the learned Tribunal.

So far quantum of compensation is concerned, it appears that incident is of 12.12.2001, the claim application was filed on 19.03.2002, the same

remained pending because of laches on the part of the Railways till 23.04.2013 when claim application was dismissed. The appeal was preferred by

claimant Smt. Prabhawati Devi with delay of 24 days. The said delay has also been condoned without objection from the Railways. In the meantime,

Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 has been amended in 2016 which was made applicable w.e.f. 01.01.2017 by

enhancing the compensation from Rs. 4,00,000/- to the tune of Rs. 8,00,000/-. This situation has been dealt by Apex Court in the case of Radha

Yadav (Supra) whereby, the claimants are entitled for Rs. 4,00,000/- with interest @ 7.5% per annum from the date of filing of the claim application

or Rs. 8,00,000/- whichever is higher in favour of the claimants, but from perusal of record of this case, it appears that the appeal remained pending

partly because of laches on the part of the claimants also, as such, if the interest is granted @ 7.5% per annum from the date of filing of claim

application before the learned Tribunal, it may go high than Rs. 8,00,000/- but that would not be proper because of laches in pursuing the appeal before

this Court is also attributable to the appellants / claimants, but admittedly because of change in amount of compensation from Rs. 4,00,000/- to Rs.

8,00,000/- claimants are entitled for Rs. 8,00,000/-.

Accordingly, this Court held that fact is slightly different than that was placed before the Apex Court in the case of Radha Yadav (Supra), where it

has been held that maximum amount should be paid to the claimants either Rs. 4,00,000/- with interest or Rs. 8,00,000/-, but in this case under peculiar

circumstances, the matter remained pending before the learned Tribunal because of laches on the part of the Railway and the matter remained

pending before this Court in appeal because of laches on the part of the claimants.

Under the aforesaid circumstances, this Court directs that the Railway to pay a sum of Rs. 4,00,000/- with interest @ 7.5% from the date of filing of

the claim application i.e. 19.03.2002 till the date of filing of the appeal before this Court i.e. 06.09.2013 or Rs. 8,00,000/- in view of the subsequent

amendment, whichever is higher to the claimants / appellants.

Accordingly, the instant miscellaneous appeal is allowed.