
(2008) 12 AHC CK 0381

In the Allahabad High Court

Case No : First Appeal From Order No. 100 of 2003

Akhtari

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Railways Act, 1989 — Section 123(c), 124A

Citation : (2008) 12 AHC CK 0381

Hon'ble Judges : Devi Prasad Singh, J and Satish Chandra, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Present appeal has been preferred against the impugned award of Railway Claims Tribunal (in short Tribunal") rejecting the claim of the appellant. Brief matrix of the case is summarized as under:

2. One Mohd. Naim, son of appellant Smt. Akhtari, while travelling by 50 Dn. Passenger train from Hargaon Railway Station to Lakhimpur Railway Station on 26.4.1998 fell down from train due to the sudden jerk at Km. 113/6. According to the appellant, the deceased was having a Second Class ticket. After falling down from the train, he was dragged for more than 100 meters and suffered serious injuries at right leg and knee of the left leg as well as skull. The bruises and scratches were found on the stomach and back of the body of the deceased as per medical report. Clothes were torn and he was only with underwear and terricot shirt when his dead body was recovered. At the time of search by the police, no ticket was recovered from the possession of the deceased's body. According to the appellant, the deceased was the sole earning member of his family leaving behind old mother (appellant), a brother and five sisters. The appellant claimed compensation to the tune of Rs. 4 lacs before the Tribunal.

3. An affidavit was filed before the Tribunal by the appellant Smt. Akhtari, mother of the deceased with the statement that Mohd. Naim was a Motor Cycle Mechanic at Lakhimpur and he was residing at Lakhimpur with his relatives but since last 15 days, he was coming to his village to meet his parent almost daily.

It was pleaded through affidavit that Mohd. Naim before boarding the train had purchased ticket in presence of one Ram Narayan and because of heavy rush and crowd in the train, he was compelled to stand near the door. Since the door was not closed as usual, because of heavy jerk, he fell down from train and dragged upto some distance receiving serious injuries. Mohd. Naim succumbed to the injuries at the spot. From the evidence on record, it seems to be admitted fact that there was heavy rush and crowd in the train and the deceased was standing just in front of the door. Later on, as a result of jerk of the train, he fell down from the moving train.

4. Driver Dan Singh and Guard Ram Dhani of the train had filed their affidavits and written statements that the train was moving slowly without any jerk and it was on the turning point and on account of his own fault that Mohd. Naim who was standing on the footrest of the compartment fell down from the train.

5. From the medical report, it is ample clear that Mohd. Naim fell down from the train and succumbed to the injuries. Learned Tribunal recorded a finding that there was heavy rush and crowd in the train and Mohd. Naim was compelled to stand near the door. However, learned Tribunal accepted the plea of the learned counsel for the respondent that the deceased fell down from the train because of his own reckless and negligent act. The Tribunal has relied upon the judgment of Andhra Pradesh High Court reported in 2001 (3) T.A.C. 319 (A.P.), *Union of India v. Uggina Srinivasa Rao*, where Andhra Pradesh High Court held that the accidental fall from any part of the compartment is covered by "untoward incident". Learned Tribunal had treated the accident as "untoward incident" and held that the deceased was not bonafide passenger and since no ticket was recovered from his possession, he is not entitled for any compensation.

6. While assailing the impugned award, learned counsel for the appellant has vehemently argued that it was because of heavy crowd in the compartment, the deceased was compelled to stand adjacent to the door and since he dragged about 100 meters, the clothes of the deceased were torn hence the ticket purchased by the deceased might have lost. It was further submitted by the learned counsel for the appellant Sri Manish Kumar Srivastava that the deceased was having ticket and since he dragged about 100 meters or more, it was natural that when the body was found, the ticket might not have been found in the possession of the deceased. Learned counsel for the appellant has further given much emphasis on the fact that because of dragging, the deceased was having only underwear on his body apart from torn shirt. It is proved from the medical report that bruises and scratches were found on his body with dragged marks.

7. On the other hand, Sri Anil Srivastava, learned counsel for the Union of India submits that the present case is covered by the "untoward incident" as provided under Section 124A of the Railway Act, 1989. It was also submitted that the accident occurred causing death of Mohd. Naim cannot be treated as "accident" under the Act and it may be treated as "untoward incident" under Section 124A of the Act, for which Railway is not liable to pay any compensation.

8. We have heard learned counsel for the parties and perused the record.

Before considering the statutory provisions and case laws referred by the parties, we may take notice of the fact that there is no restriction with regard to the sale of ticket for unreserved compartment. Railway does not provide any mechanism for the closer of the doors of the compartment when a train leaves the platform like Metro train and Rajdhani train or compartment of higher class etc. In the absence of appropriate safeguard unreserved compartments are over crowded compelling the people to stand in front of the door of the compartment.

9. It is settled law that right to life is fundamental right, guaranteed under Article 21 of the Constitution of India. Once the Railway issues the tickets to board the train, then it is duty of the Railway to take necessary measures for safety and security of the passengers. It is for the Railway to take steps or provide appropriate measures or infrastructures, so that whenever the train moves from the platform, the doors are closed. Whether it is reserved or unreserved compartment, the life of the citizen cannot be put to risk. Lives of the people travelling in reserved compartment cannot be treated superior to the people travelling in unreserved compartment. So far as security measures are concerned, that should be taken by the Railway uniformly for the reserved and unreserved compartments. Necessary steps must be taken by the Railway through mechanical device or by appointment of appropriate staff, so that whenever train moves from the platform, the doors must be closed and on arrival of train on platform, it may be opened. The Railway or the Government cannot shirk from its responsibility with regard to the safety and security of the passengers travelling by train or using the platforms.

Statutory Provisions

10. The Indian Railways Act, 1890 was the first legislation of its kind to govern the law relating to railways. The Indian Railways Act, 1890 was enacted at a time when the railways in India were mostly managed by private companies. The Government of India primarily played the role of a coordinating and regulating authority in various matters, such as inter-railway movement of traffic, fixation of rates, sharing of revenue earnings, apportionment of claims, liability amongst the railways, providing reasonable facilities to passenger and goods traffic etc. After independence, the entire railway system has become part of the Government of India. To give effect to the changes in the railway system from time to time and keeping the welfare of the people in view, the Railway Act, 1980 was reenacted by the Parliament. It was done keeping in view the wide demand inside and outside parliament. Chapter III of the Act contains the infrastructure with regard to the Railway safety. Under Section 5 of the Act, the Chief Commissioner of Railway Safety is appointed. Under Sections 6 and 7 of the Act, the Chief Commissioner of Railway Safety and Commissioner of the Railway Safety have been given ample power to make necessary inspection to check the standard of the safety maintained by the Railways. The annual report is submitted by the Chief Commissioner of Railway Safety to place before each

House of Parliament in pursuance to the provisions contained therein.

11. Chapter VIII of the Act relates to the carriage of passengers. Section 49 of the Act provides that every railway administration shall cause to be pasted in a conspicuous and accessible place at every station in Hindi and English and also in the regional language, a table of times of arrival and departure of trains and list of fares. Section 50 of the Act provides that any person desirous of travelling on a railway shall, upon payment of the fare, be supplied with a ticket by a railway servant or an agent authorized in this behalf. Section 51 provides that in case ticket is issued in the class of carriage and train having no accommodation for additional passengers, such ticket holder may travel in the carriage of local class. It further provides that a ticket shall be deemed to have been issued subject to the condition of availability of accommodation. Section 57 provides, that subject to the approval of the Central Government, every railway administration shall fix the maximum number of passengers which may be carried in each compartment and Section 59 provides that there should be communications between passengers and railway servant in charge of train. Section 55 of the Act provides that no person shall enter or remain in any carriage on a railway unless he possessed a valid ticket, meaning thereby it shall always be necessary for the passengers to purchase ticket before entering railway premises or train. For convenience, Sections 51, 55, 57 and 59 are reproduced as under:

"51. Provision for case in which ticket is issued for class or train not having accommodation for additional passengers. (1) A ticket shall be deemed to have been issued subject to the condition of availability of accommodation in the class of carriage and the train for which the ticket is issued.

(2) If no accommodation is available in the class of carriage for which a ticket is issued, and the holder thereof travels in a carriage of a lower class, he shall, on returning such ticket, be entitled to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travels.

55. Prohibition against travelling without pass or ticket. (1) No person shall enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket or obtained permission of a railway servant authorised in this behalf for such travel.

(2) A person obtaining permission under subsection (1) shall ordinarily get a certificate from the railway servant referred to in that subsection that he has been permitted to travel in such carriage on condition that he subsequently pays the fare payable for the distance to be travelled.

57. Maximum number of passengers for each compartment. Subject to the approval of the Central Government, every railway administration shall fix the maximum number of passenger which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment in Hindi, English and also in one or more of the regional languages commonly in use in the areas

served by the railway.

59. Communications between passengers and railway servant in charge of train. A railway administration shall provide and maintain in every train carrying passengers, such efficient means of communication between the passengers and the railway servant in charge of the train as may be approved by the Central Government:

Provided that where the railway administration is satisfied that the means of communication provided in a train are being misused, it may cause such means to be disconnected in that train for such period as it thinks fit:

Provided further that the Central Government may specify the circumstances under which a railway administration may be exempted from providing such means of communication in any train."

12. Chapter XIII of the Act contains provisions (Sections 123 to 129) with regard to liability of the Railway Administration for death and injury to passengers due to accidents. Section 123 defines "accident" as well as "untoward incident". Definition of the "accident" has been correlated with the "untoward incident" given in Section 124.

Section 124 provides that whenever an accident occurs, being either because of the collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 has suffered a loss 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.

13. The plain reading of Section 123 reveals that in the event of accident causing injury or death of the passenger, the Railway shall be responsible to pay damages notwithstanding the fact that the railway administration is not at fault and in view of any other law, railway is not liable to pay compensation to such extent as may be prescribed.

14. Section 124A relates to the compensation on account of "untoward incident". It provides that when during the course of working in 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 killed, the railway administration shall be liable to pay compensation subject to exceptions given in the proviso. For convenience, Sections 123, 124 and 124A of the Act are reproduced as under:

123. Definitions. In this Chapter, unless the context otherwise requires, (a) "accident" means an accident of the nature described in Section 124;

(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 predeceased son, if dependent wholly or partly on the deceased passenger;

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

(iv) the paternal grandparent wholly dependent on the deceased passenger, [(c) "untoward incident" means

(1) (i) the commission of a terrorist act within the meaning of subsection (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shootout or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passenger.]

124. Extent of liability. When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train sustained as a result of such accident.

Explanation. For the purposes of this section "passenger" includes a railway servant on duty.

124A. Compensation on account of untoward incident. 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 dependent 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.

15. For interpreting the aforesaid provisions reproduced here above, it is ample clear that Parliament to its wisdom had provided that burden is of railway to take necessary safety measures. The combined reading of Section 57 of the Act further provides that in every compartment of the train, the maximum number of passengers shall be indicated. In case Sections 50, 51, 57 of the Act read combinedly then inference may be drawn that maximum number of passengers keeping the seating capacity of the compartment should be regulated by the Railway. Though Act does not provide in what manner that should be done but intention of the legislation is clear by making provisions that in case accommodation is not available in the class of carriage or train for which ticket is issued then price of ticket should be refunded. Once the maximum number of passenger has been notified for each compartments then burden lies on the Railway to ensure that compartments of the train are not over crowded to such extent which may hazardous to the public life or may cause to accident.

16. Legal Maxims *Salus Populi Est Supreme Lex* means "regard for the public welfare is the highest law".

Sections 57, 58 and 59 have been provided in the Act to secure safety measures and welfare of the people at large. The burden lies on the Railway to give effect the statutory provisions in its letter and spirit.

17. The next question is with regard to the "accident" and "untoward incident". It was vehemently argued by the learned counsel for the respondent Sri Anil Kumar that death of the deceased was not caused because of accident. The specific case of the appellant before the Tribunal was that deceased fell down from train because of sudden jerk caused by the train and dragged for about 100 meters or more. Injuries found on the body of the deceased contain bruises and dragged marks. Clothes were torn. The tearing of the clothes and dragging marks show that deceased fell down from train because of jerk. In case statement of driver and guard is accepted that because of turning point the train was moving slowly then there was no occasion for the deceased to suffer bruises and dragging marks on the body which were serious injuries causing death at the spot. Though, it was stated by the defence witness that deceased was travelling on footrest but it seems to be an afterthought statement as the driver and guard will have no occasion to see the position of the deceased when he was travelling on train.

18. Section 124A categorically provides that "whether or not, there has been any wrongful act, neglect or default on the part of the railway administration", the injured or the dependent of a passenger who has been killed shall be entitled for damages in respect thereof. Accordingly, the passenger travelling on train shall be entitled for damages or compensation. In the event of accident or untoward incident, the presumption shall always be in favour of the passenger with regards to bonafide unless rebutted by the material and cogent evidence. In the present case, driver and guard in ordinary course cannot be the eyewitnesses to establish that the deceased was at fault. Moreover, keeping the provisions contained in Sections 50, 51, 57, 58, 59 of the Act, since the respondent has failed to discharge statutory obligation to regulate the passengers in the compartment of the train and because of necessity the deceased or the people are even in over crowded train generally used to travel in second class, their bonafide may not be doubted.

19. According to Legal Maxims, "Necessitas Inducit Privilegium Quoad Jura Privata" means, necessity gives a privilege as to private rights. In the Broom's Legal Maxims, it has been observed as under:

"The law chargeth no man with default where the act is compulsory and not voluntary, and where there is not a consent and election; and therefore if either there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason as in presumption of law man's nature cannot overcome, such necessity carrieth a privilege in itself."

20. In the present case, nothing has brought on record by the respondent by filing affidavit that compartment where the deceased was travelling, was not crowded. Tribunal had also recorded finding that compartment was overcrowded and there was no place to accommodate the deceased inside the compartment. Under compulsion and to attend his job at Lakhimpur, he had to stand near the door of the compartment. In such situation, deceased cannot be faulted of

travelling adjacent to open door of the compartment which admittedly was not closed by the Railway authorities when the train left the Hargaon Railway Station. The responsibility to provide safety measures by taking necessary steps, falls within the domain of the Railway authorities and in default of such obligation, the passengers cannot be faulted while travelling with a position near the door.

21. It was vehemently argued by Sri Anil Sirvastava learned counsel for the respondent that deceased was not having ticket. There appears to be no dispute of the fact that body of the deceased was dragged sufficiently for long distance and when the train was stopped. The clothes were torn. In such situation, in normal course, it can be presumed that the ticket would have lost. It is noted that not only ticket but other necessary things like cash and other belongings of the deceased, were also not recovered by the police from the possession of the deceased's clothes. It happens because of the fact that the body of the deceased was dragged sufficiently for a long distance and when the train was stopped by that time he succumbed to injuries. This could not have happened in case train would have been moving in low speed without jerk.

22. The provisions contained in Chapter VIII and Chapter XV of the Act give ample power to the Railway to check the unauthorised travellers. Unless and until the passenger is caught hold by the railway authorities or is charged of travelling without ticket, it shall be presumed that person travelling in the train was having valid ticket. However, such presumption is rebuttable. In the present case, since clothes were torn and the body of the deceased was dragged for about 100 meters or more, the presumption lies in favour of the deceased that he was possessing valid ticket while travelling from Hargaon Railway Station to Lakhimpur Railway Station.

23. The New Oxford Dictionary of English (4th impression 2002) defines "accident" as "an unfortunate incident that happens unexpectedly and unintentionally typically resulting in damage or injury; an event that happens by chance or that is without apparent or deliberate cause". "Accidentally" is defined as "happening by chance, unintentionally or unexpectedly."

24. Stroud's "Judicial Dictionary" (5th Edition 1986) defines "accident" as : "(a) An effect is stated to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precaution against it. (b) Accident includes an unlocked for mishap, or an untoward event which is not expected or designed (c) Suppose a man was to go blindfold along the street and to run against something could any one say, he met with an accident". He would do an act that would be very likely to lead to a mischief. It is different with the person who might suffer by such act; he might fairly say that he met with an accident a peril which is liable to every man who goes out in the road and meets with negligent people. (perBramwell B., Lloyd v. General Iron Screw Collier Co,

33 L.J. ex 269]. (d) "Injury caused by accidental" in an insurance policy means an injury caused by some acts of the insured, which he had not intended and was an involuntary act on his part (Steinke v. Australian Provincial Assurance Association Ltd., 1940 St. R. Qd. 7)."

25. The Law Lexicon by Ramanatha Aiyar (2nd Edn. 1977) defines an accident, inter alia, as (a) An undesigned, sudden or unexpected event; mishap; misfortune; disaster, (b) An occurrence which is due neither to design nor to negligence. An act that is intentional is clearly not accident. If it be the result of culpable negligence then by due care it could have been avoided and the negligent person cannot be allowed to excuse himself by declaring it an accident, (c) Accident generally denotes an event that takes place without one's foresight or expectation" an event which proceeds from an unknown cause, or is an unusual effect of a known cause and therefore not expected chance, casualty, contingent; an event happening without the occurrence of the will of the person by whose agency it was caused.

16. The permanent Edition of "Words and Phrases" has included a host material defining the expression "accident" and "accidental" by illustrations through cases. Accordingly:

(a) An accident is an event that takes place without one's foresight or expectation" an undersigned, sudden and unexpected event.

(b) Accident denotes an event that proceeds from an unknown cause or is a unusual effect of a known cause and is therefore unexpected. [Choctaw County v. Bateman, 252 p. 2d 465]

(c) An accident is an occurrence that could not have been foreseen by a prudent person. (Smith v. Roane Anderson Co., 207 S.W. 2d 353].

(d) Accident means an unusual fortuitous, unexpected, unforeseen or unlocked for event, happening or occurrence, attending operation or performance of usual or necessary act or event. (Wright v. Wyoming State Training School 255 p. 2d 211]

(e) Accident is the result of an unknown cause or of an unusual and unexpected event happening in such an unusual manner from a known cause that it could be reasonably expected or foreseen and that it was not the result of any negligence. [Allied Mills v. Miller, 132 N.E. 2nd 425].

(f) Accident is an event which occurs without the fault, carelessness or want of proper circumspection of the person effected, or which could not have been avoided by use of that kind and degree of care necessary to the exigencies and in the circumstances in which one was place. (Massey v. Georgia Power Co., 69 S.E. 2d 824]

(g) An accident in its strict sense implies the absence of negligence. [Everett v. Clegg, 96 S.E. 2d 382].

(h) An accident is an occurrence which human prescience and prudence cannot foresee or forestall. [St. Louis I.M. & S. Railway Co. v. Barnett, 45 S.W. 550]

26. It also requires to be noticed that the Permanent Edition of Words and Phrases illustrates the expression "accident" where it has been interpreted in its expansive sense: "Since the Compensation Act is a remedial statute which must be construed liberally in order to carry out its beneficent purpose, the popular and ordinary definition of the word "accident" and not the stricter definition used in considering health and accidental policy is to be used in compensation cases" [Hertzberg v. Kapo Dyeing and Printing Co., 18A 2d 736].

"Accidental" has also been defined by illustrations in "Words and Phrases":

"(a) Accidental means involuntary as distinguished from wilful or intentional. (Murill v. State Board of Accountancy of Department of Professional and Vocational Standards, 218 p 2d 569]

(b) Neither the word "accident" nor "accidental" has a technical, legal meaning but must be considered in the light of the common and accepted meaning and construed according to common speech and usage, which contemplates something unanticipated, unforeseen and unusual, without design, intention or premeditation. [Wills v. Midland nat LIC, 91 p 2nd 695],

27. It is well established principle of interpretation that in the construction of legislative expressions the interpreter must avoid the error of adopting a strictly lexicographic approach and constructing a fortress out of a dictionary. Lexicographic illuminations of an expression are but among the guides to legislative intention and as all guides are often fallible more so as every expression is defined in a dictionary to include a host of meanings. It has been tritely stated by Julius Stone, in "Precedents and Law" that all language is often plurisignative and English language is chronically plurisignative. Dictionaries exemplify this truism.

28. The expression "untoward incident" as defined in Section 123 (c) of the Act enumerates categories of meanings and in a restrictive and exclusionary sense as already notices. Each of the enumerated meanings clearly exclude the volition and participation of the victim in the act which denotes an "untoward incident". From the structure of Clause (c) an "untoward incident" has been defined also to mean the accidental falling of any passenger from a train carrying passengers. Three classes of occurrences viz., commission of a terrorist act, or the indulging in rioting, shootout or arson, have been included in subclause (1) and exemplified as events consequent on the act by any person in or on any train carrying passengers or in the enumerated premises.

29. The "proviso" is an ancient and well established verbal formula. It enables a general statement to be made as a clear proposition, any necessary qualification being kept out of it and relegated to a proviso at the end. In the case of precision drafting the proviso is to be taken as limited in its operation to the Section or

other provision it qualifies, [vide *Lloyds and Scottish Finance Ltd, v. Modern Cars and Carbons (Kingston) Ltd.*, 1996 (1) Q.B. 764 at 780].

30. *Lush, J. in Mulins v. Treasury of Surrey*, (1880) 5 Q.B.D. 170, stated "when one finds a proviso to a section, the natural presumption is that, but for the proviso the enacting part of the section would have included the subjectmatter of the proviso."

31. In *Shah Bhojraj Kuveiji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*, AIR 1961 SC 1596, Hidayatulla, (as His Lordship then was) exemplified the general rule as to the purposes of a proviso "as a general rule a proviso is added to an enactment to clarify or create an exception to what is in the enactment and ordinarily a proviso is not interpreted as stating a general rule". The proviso is also a drafting device intended to be a guide to the construction of the enactment; if the enacting portion of a section is not clear or plurisignative a proviso is appended to it to illustrate the true meaning. As stated by Lord Herschell in *West Derby Union v. Metropolitan Life Assurance Society*, (1897) AC 647." Of course, a proviso may be used to guide you in the selection of one or the other of two constructions of the words to be found in the enactment, and show when there is doubt about its scope, when it may reasonably admit of doubt as to having this scope or that, which is the proper view to take of it".

32. In *Hindustan Ideal Insurance Co. Ltd. v. L.I.C.*, AIR 1963 SC 1083, Hon'ble Supreme Court observed the principle to quote: "There is no doubt that where the main provision is clear its effect cannot be cut down by the proviso. But where it is not clear, the proviso, which cannot be presumed to be a surplusage can properly be looked into to ascertain the meaning and scope of the main provision."

33. Thus a proviso is being added in a Section to qualify or create an exception to the original enactment. It qualifies the generality of the main enactment by providing an exception. Lord Macmillan in a case reported in AIR 1944 PC 171, *Madras & Southern Maharashtra Ry.Com. Ltd. v. Bezwada Municipality* held that:

"The proper function of a proviso is to accept and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case."

34. Hon'ble Supreme Court had followed the proposition of *Madras & Southern Maharashtra Ry.* in a case reported in AIR 1959 SC 713, *CIT, Mysore etc. v. Indo Mercantile Bank Ltd.* in the following words:

"The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of proviso to read it as providing something by way of an addendum or dealing with a subject which is

foreign to the main enactment.

It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.....

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other."

35. It appears that deceased was standing adjacent to the door not voluntarily but it was because of over crowd in the compartment. The incident of jerk caused by train may be unexpected and unforeseen and because of such jerk, if a person falls down from train, it may be treated as an accident. However, in the present case, the Tribunal as well as learned counsel for respondents had treated the accident in question as untoward incident as defined under subsection (1) of Section 123 of the Act and alternatively it has been submitted by the learned counsel for the respondent that accident may be treated as criminal act on the part of the deceased. We are afraid to draw such inference from the plain reading of the statutory provisions.

36. So far as subsection (1) of Section 123 is concerned, the same is not attracted at all from the plain reading of the statutory provisions. The accident in question is neither due to fall of terrorist attack or violent attack or the commission of robbery or dacoity or indulging in rioting, shootout or arson etc. So far as the exception given in Section 123 is concerned, it also does not seem to be attracted.

37. It was vehemently argued by Sri Anil Srivastava, learned counsel for the respondent that Mohd. Naim suffered injuries because of his own criminal act. The argument advanced by the learned counsel for the respondent seems to be misconceived as discussed hereinabove. The proviso is exception to the general provision of the main enactment. There is nothing on record which may indicate that Mohd. Naim attempted to commit suicide or suffered selfinflicted injuries.

38. To constitute an act as "Crime" mens rea of the person concerned must be looked into. In the Law Laxicon Dictionary written by P. Ramanatha Aiyar's, the word "Crime" has been defined as under: "Crime". A crime is an act or omission which is prohibited by law as injurious to the public and punished by the State. "Disobedience to a command or prohibition made with reference to a matter affecting public peace, order, or good Government to which a sanction is attached, by way of punishment or pecuniary penalty, in the interest of the State by way of punishment or as a whole, and not by way of compensation for the injury which the act or omission may have caused to an individual." (Govt. Legal Glossary)

"Crime" is an offence against the Crown punishable by fine or imprisonment. Thus, a power to a Colonial Governor to pardon any offenders "Convicted of any

Crime." enables him to pardon Contempt of Court and to remit its punishment [Re Moseley, (1893) AC 139]

Crime. Certain kinds of wrongs are considered as of a public character because they possess elements of evil which affect the public as a whole and not merely the person whose rights of property or person have been invaded. Such a wrong is called a crime. It can best be defined as any act of omission which is forbidden by law, to which a punishment is "annexed, and which the State prosecutes in its own name.

A crime is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual. P.S.R. Sadhanandham v. Arunachalam, AIR 1980 SC 856, 862 (Constitution of India Article 136, 21]."

39. The person who commits crime is called criminal. In the present case, the deceased Mohd. Naim was bona fide passenger boarded the train to reach his destination at Lakhimpur Kheri to attend his work. Right from very beginning, there is no mens rea which may indicate that he committed some criminal act. There is also nothing on record to show that accident occurred causing death of Mohd. Naim was due to act of the deceased which may be termed as criminal act.

40. Thus, the occurrence in question when Mohd. Naim fell down from train does not fall within the category provided under the proviso to Section 124A of the Act. The present case seems to cover by main provision contained under Section 124A of the Act.

41. Learned counsel for the respondents submits that a person who endangers safety of persons travelling by railway by wilful act or omission or by rash or negligent act or travels on roof, step, or engine of a train, is prohibited under Sections 153, 154 and 156 of the Act and since the deceased had acted in violation of statutory provisions, the dependents are not entitled to compensation. Learned counsel for the respondent seems to be incorrectly appreciated the provisions contained under Sections 153, 154 and 156 of the Act which for the convenience are reproduced as under:

"153. Endangering safety of persons travelling by railway by wilful act or omission. If any person by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling on or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any railway, he shall be punishable with imprisonment for a term which may extend to five years.

154. Endangering safety of persons travelling by railway by rash or negligent act or omission. If any person in a rash and negligent manner does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

156. Travelling on roof, step or engine of a train. If any passenger or any other person, after being warned by a railway servant to desist, persists in travelling on the roof, step or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both and may be removed from the railway by any railway servant."

42. The plain reading of Section 153 shows that in case any person by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling in railway, he shall be punishable with imprisonment for a term upto five years. The provision contained under Section 153 does not seem to be attracted to the facts and circumstances of the present case. The deceased had not endangered the safety of any person travelling in the train, because of his rash or negligent act. There appears no iota of evidence on record which may indicate that while travelling, the deceased acted in such manner to endanger the safety of other persons travelling in the train.

43. Section 156 of the Act also does not seem to come in the picture which provides that in spite of being warned by the railway servant in case the person travels on roof, step or footboard, he may be fined with Rs. 500/ or may be removed by the railway servant. There is no evidence on record which may indicate that railway employee or competent authority had warned the deceased because of his travelling on roof, step or footboard.

44. Similarly, reliance placed by the learned counsel for the respondent on Sections 137 and 139 of the Act with submission that deceased was fraudulently travelling without proper pass or ticket, hence he is liable to be punished, is not attracted. The deceased's clothes were torn and he was dragged for petty long distance, hence nonrecovery of ticket from the dead body of the victim seems to be natural consequence and no adverse inference may be drawn to the effect that deceased was not possessing ticket while travelling from train. It is settled law that from the evidence on record, in case two interpretations may be made then one which is beneficial to the victim should be taken into account.

45. Learned counsel for the respondents tried to submit that Sections 151, 153, 157 and 139 should be interpreted in such a manner which may cover every persons who suffered in an accident resulting in nonrecovery of ticket. Such interpretation of law by addition of word seems to be not permissible. It is settled rule of construction that when words and phrases are clear and unambiguously "casus omissus" should not be supplied.

46. In case argument of learned counsel for the respondents is accepted then it shall amount to addition of words to the statute. Ordinarily the Courts should not add or delete words in a statute, vide AIR 2007 SC 2625, Mohan v. state of Maharashtra and AIR 2007 SC 1984, Southern Petrochemical Industries Co. Ltd.

v. Electricity Inspector & ETIO and others.

The golden rule of construction of a statute is that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute, vide AIR 2007 SC 1956, Promoters & Builders Association of Pune v. Pune Municipal Corporation and others.

47. Moreover, the Act being beneficial legislation and for the maintenance of human rights the functional realism should be seen and not facial cosmetics as held by Hon"ble Supreme Court in the case reported in AIR 1987 SC 1086, M.C. Mehta and another v. Union of India and others. While reiterating the principle involved in the case of Ramana Shett's case (AIR 1979 SC 1628), the Constitution Bench of Hon"ble Supreme Court has held in para 17 as under:

"17. The criteria evolved by this Court in Ramana Shett's case (AIR 1979 SC 1628) (supra) were applied by this Court in Ajay Hasia v. Khalid Mujib, (1981) 2 SCR 79: (AIR 1981 SC 487 at pages 492,493,494), where it was further emphasised that:

Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool for constitutional law must seek the substance and not the form. Now it is obvious that the Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of judicial persons to carry out its function.....It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality work for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government.....for it the Government acting through its officers is subject to certain constitutional limitations it must follow a fortiori that the Government acting through the instrumentality or agency of a corporation should be equally subject to the same limitations.

On the canon of construction to be adopted for interpreting constitutional guarantees the Court pointed out:

..... Constitutional guarantees should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The Courts should be anxious to enlarge the scope and width of the fundamental rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities to the basic obligation of the fundamental rights."

48. In the case of M.C. Mehta (supra), the Constitution Bench of Hon"ble Supreme Court held that we have to develop our own law and new principle of liability to deal with an unusual situation. The relevant portion is as under:

".....We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and nondelegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate visavis the tortious principle of strict liability under the rule in *Rylands v. Fletcher*."

49. The aforesaid principle has been reiterated by the Hon"ble Supreme Court in the case reported in (1995) 6 SCC 326, *Hindustan Lever Ltd. v. Ashok Vishnu Kate and others*.

50. In (1999) 3 SCC 601, *Secretary, H.S.E.B. v. Suresh and others*, the Hon''ble Supreme Court while dealing with labour welfare legislation ruled that beneficial construction of the statutory provision must be given keeping the public interest at large and Courts must decide while interpreting the statutory provisions keeping in view the interest of the public inspired by principles of justice, equity and good conscience, (para 14, 17 and 18).

51. In the case reported in (2002) 8 SCC 400, *Essen Deinki v. Rajiv Kumar*, the Hon''ble Supreme Court held that when the question arises with regard to the interpretation of welfare legislation, it is the duty of the Courts to give broad interpretation keeping in view the purpose of such legislation of preventing arbitrary action though the statutory requirements cannot be ignored.

52. In the case reported in (2003) 4 SCC 27, *S.M. Nilajkar and others v. Telecom District Manager, Karnataka*, the Hon''ble Supreme Court has held that while interpreting the welfare legislation in case of doubt or two possible views, the interpretation should be done in favour of beneficiaries.

53. In the case reported in (2004) 5 SCC 385, *Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd. Baroda*, the Hon''ble Supreme Court again reiterated that beneficial legislation should be interpreted liberally keeping in view the purpose of enactment and reading entire statute in its totality. The purport and object of the Act must be given its full effect by applying the principles of purposive construction (para 56).

54. In the latest judgment relied by the learned counsel for the appellant reported in 2008 (2) TAG 777 (SC), *Union of India v. Prabhakaran Vijaya Kumar and others*, while interpreting the Section 123 of the Railway Act, the Hon''ble Supreme Court reiterated the aforesaid proposition of law and held that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. It has further been held by Hon''ble Supreme Court that it shall not legally make any difference whether the deceased was actually inside the train when he fell down or whether he was only trying to get into the train when he fell down. The falling down from train has been treated as untoward incident and Hon''ble Supreme Court held that restrictive meaning should not be given to the accidental falling of a passenger from a train. Section 124A of the Act had held to be a case of strict liability or no fault liability in the event of accidents. The fault cannot be looked into. The Hon''ble Supreme Court reiterated the principle enunciated in the case of *M.C. Mehta* (supra). The relevant portion of the judgment in the case of *Prabhakaran Vijaya Kumar and others* (supra) are reproduced hereunder:

"10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an "accidental falling of a passenger from a train carrying

passengers". Hence, it is an "untoward incident" as defined in Section 123 (c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression "accidental falling of a passenger from a train carrying passengers", the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide *Kunal Singh v. Union of India*, (2002) 4 SCC 524 (Para 9), *B.D. Shetty v. Ceat Ltd.*, (2002) 1 SCC 193 (Para 12), *Transport Corporation of India v. ESI Corporation*, (2000) 1 SCC 332 etc.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. v. The Workmen*, A.I.R. 1961 S.C. 647 (para 7), *Jeewan Lal Ltd. v. Appellate Authority*, A.I.R. 1984 S.C. 1842 (para 11), *Lalappa Lingappa and others v. Laxmi Vishnu Textile Mills Ltd.*, A.I.R. 1981 S.C. 852 (para 13), *S.M. Nilajkar v. Telecom Distt. Manager*, (2003) 4 S.C.C. 27 (para 12) etc.

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 bonafide 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.

17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault.

39. In India the landmark Constitution Bench decision of the Supreme Court in

M.C. Mehta v. Union of India, AIR 1987 S.C. 1086 has gone much further than Rylands v. Fletcher, (supra) in imposing strict liability. The Court observed "if the enterprise is permitted to carry on any hazardous or inherently dangerous activity for its profit the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads". The Court also observed that this strict liability is not subject to any of the exceptions to the rule in Rylands v. Fletcher (supra)".

Sri Manish Kumar learned counsel for the appellant has rightly relied upon the present case which seems to cover the present controversy.

55. Learned counsel for the respondent relied upon the judgment of Hon'ble Supreme Court reported in AIR 1984 SC 1737, Union of India and others v. Sunil Kumar Ghosh, where Hon'ble Supreme Court has held that when the passenger fell down from train during shunting, he shall not be entitled for compensation. Judgement of Sunil Kumar Ghosh (supra) does not seem to be applicable to the facts and circumstances of the present case being based on different factual dispute. Moreover, if there is conflicting view between two judgments of Hon'ble Supreme Court having same number of Hon'ble Judges, the latter should be followed. The case of Prabhakaran Vijaya Kumar and others (supra) which is a recent judgment seems to cover the present controversy.

56. Another case relied upon by the learned counsel for the respondent reported in 2003 AIR SCW 4228, Sukhdev Singh v. Delhi State (Govt. of NCT of Delhi) relates to different facts and circumstances where the accident took place during scuffle and use of gun and firing shots at the deceased deliberately. The other judgment reported in 2004 (22) LCD 986, Union of India v. Smt. Jameela and others as well as Full Bench judgment of Andhra Pradesh High Court reported in 2004(2) TAG 130 (AP), Union of India, South Central Railways, Secunderabad v. Karukundu Bala Krishnaiah, Dhone, Kumool District and others is of no relevance in view of the recent judgment of Hon'ble Supreme Court in the case of Prabhakaran Vijaya Kumar and others (supra).

57. The case reported in AIR 1999 SC 3571, Ravindra Kumar Sharma v. State of Assam and others relates to the situation where the suit was filed for tortious liability and does not relate to Railway Act, in question, being passed on different facts and circumstances. The learned counsel for the respondent has also relied upon the case reported in AIR 2003 SC 183, PostGraduate Institute of Medical Education and Research and another v. A.P. Wasan and others and AIR 2008 AP 211, Union of India v. Konduru Venkata Reddy which seem to be not applicable to the facts and circumstances of the present case.

58. On the other hand learned counsel for the appellant relied upon the judgment reported in 2007 (2) TAG 981 (Raj), Union of India v. Hari Narayan Gupta and another, wherein the Rajasthan High Court held that in the event of untoward incident, the railway is liable to pay compensation to the claimant. It

has also been held by Rajasthan High Court that under Section 101 of the Evidence Act, the burden lies on the railway to prove that passenger was not having ticket. In the case reported in 2005 (3) T.A.C. 67 (A.P"), Union of India v. Borra Vijayalakshmi and others where the passenger fell down from running train and sustained fatal injuries, the Andhra Pradesh High Court observed that passenger shall be entitled for compensation under the provision contained under Section 124A of the Act.

59. Madhya Pradesh High Court in the case reported in 2003 ACJ 2081, Union of India v. Satish Patidar and another has held that where the person fell from a train and sustained fatal injuries and the claimant could not be able to establish that whether he was having ticket, the presumption should be drawn that deceased was bonafide passenger and had valid ticket and onus of rebuttal shall be on the railway. The aforesaid provision of law has been reiterated by Madhya Pradesh High Court in the case reported in 1994 (1) TAG 67, Rajkumari and another v. Union of India.

60. In view of the above, the Tribunal seems to have failed to exercise the jurisdiction vested in it. The deceased was travelling on over crowded train and fell down and dragged for sufficiently long distance. His clothes were torn and nothing was recovered from his body. The respondents had failed to prove by cogent and trustworthy evidence that deceased was not having ticket. The presumption may be drawn that deceased was a bonafide passenger and the dependents are entitled for compensation.

61. We also reiterate that not only right to life but also right to quality and dignity of life are fundamental rights protected by Article 21 of the Constitution of India. Right to life does not mean the mere animal existence. The inhibitions contained in Article 21 against its deprivation extends even to those faculties by which life is enjoyed, vide AIR 1990 SC 605, Kubic Darusz v. Union of India; AIR 1963 SC 1295, Kharak Singh v. State of U.P.; AIR 1984 SC 802, Bandhua Mukti Morcha v. Union of India; AIR 1978 SC 597, Maneka Gandhi v. Union of India; AIR 2000 SC 988, Chairman, Railway Board and others v. Mrs. Chandrima Das and others; AIR 1991 SC 1902, Bangalore Medical Trusty. B.S. Mudappa; 2001 (6) SCC 496, Hinch Lal Tewari v. Kamala Devi and AIR 2007 SC 1046, Milkmen Colony Vikas Samiti v. State of Rajasthan and others.

While dealing with the matters relating to the right to life which are fundamental in nature and constitutionally protected, the authorities have got no right to act in arbitrary manner. Corollary to these rights, the rights to safety and security are also fundamental rights and it shall be incumbent upon the railways to provide all necessary safeguards for safety and security to its passenger.

62. We also reiterate the observations made in the preceding paras that keeping in view the statutory provisions (supra), it is the duty of the railway to make necessary arrangement to regulate the entry of passengers in the compartment. The lives of the people travelling in second class or upper class are equally

precious for the respective family and nation. It does not make any difference as to whether the passengers are travelling in the second class or upper class. The burden lies on the railway to make necessary arrangements by mechanical/electronic/manual device so that in the event of departure of the train from platform, the doors are shut and on arrival at the station, it may be open. Further, it is the duty of the railway to make necessary arrangements to regulate the safe entry of the passengers in the compartments. We expect that railway shall look into this aspect of the matter for safety and security of the passengers by taking necessary steps at the earliest.

63. Subject to above, the findings recorded by the learned Tribunal deserve to be set aside and the appeal is liable to be allowed. Keeping in view the family conditions and material on record, we assess the entitlement of the appellant for damages to the tune of Rs. 4 lacs.

64. Accordingly, the appeal is allowed. The judgment and order dated 21.3.2002 passed by the Railway Claims Tribunal is set aside. The original application filed for compensation is also allowed. The appellant shall be entitled to the compensation of Rs. 4 lacs along with interest at the rate of 10% from the date of filing of original application in the Tribunal.

65. The Registry shall send a copy of this judgment to the Chairman, Railway Board for consideration and necessary action within a week.

No order as to costs.