
(2011) 06 KL CK 0082
In the High Court Of Kerala
Case No : M.F.A. No. 192 of 2010

Krishnakumar. G.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 146
Hindu Succession Act, 1956 — Section 8
Railway Claims Tribunal Act, 1987 — Section 22
Railways Act, 1989 — Section 123, 123(b), 123(c), 124, 124A
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3
Transfer of Property Act, 1882 — Section 5, 6, 6(e)

Citation : (2011) 3 ILR (Ker) 250 : (2011) 3 KLJ 735 : (2011) 3 KLT 329 :
(2011) 8 RCR(Civil) 1401

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : Martin G. Thottan, for the Appellant; C.S. Dias (SC), for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—(I) Is the right under S. 124A 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 u/s 124A and which remains unpaid?

These questions are raised for consideration in this appeal.

A brief reference to facts may be necessary to ascertain the precise dispute. Sreekumar - the victim, a bachelor succumbed to injury suffered by him in an untoward accident on 27.6.2008. He left behind as his kin, his father, mother and one brother. His father as one of the dependents claimed amounts u/s 124A of the Railways Act before the Railway Claims Tribunal. The claim was allowed vide

order dated 24.2.2010. Prior to that, the mother of Sreekumar, the only other dependent, had expired on 6.4.2009.

2. The claimant, father of Sreekumar also expired on 9.4.2010. The amount due under the order dated 24.2.2010 had not been paid to the deceased claimant prior to his death. In these circumstances, the appellant herein, the only legal heir of his deceased father, (admittedly he is not a dependent of the victim Sreekumar) wanted the award to be executed in his favour. He therefore filed application before the Railway Claims Tribunal claiming execution of the order and release of the amounts to him.

3. That application was resisted. The Railway Claims Tribunal by the impugned order took the view that the legal heir of a deceased dependent, who is not himself a dependent of the victim, is not entitled to seek execution of the order in favour of his predecessor/dependent. Accordingly, the Railway Claims Tribunal proceeded to pass the impugned order.

4. The Tribunal appears to have taken the view that only a dependent can seek execution of an order directing payment of amounts u/s - 124A of the Railways Act. In coming to the conclusion, the Tribunal appears to have taken the view that Chapter-XIII of the Railways Act is a self contained code to which other laws and general principles of law are not applicable.

5. The two questions referred to in paragraph-1 arise in this context. We note that question No. 2 directly arises for consideration though question No. 1 also incidentally arises for consideration.

6. While the appellant concedes that a claim u/s 124A can be staked u/s 125 of the Railways Act only by a dependent, it is his contention that the order passed in favour of the dependent can be executed and fruits thereof can be realised by the legal heirs of a deceased dependent - decree holder. The learned counsel for the appellant Sri. Martin contends that it is incorrect to assume that the right u/s 124A is an exclusively personal right for the specified dependent which is not heritable by the legal heirs of the deceased dependent. The learned counsel for the Railways Sri. C.S. Dias on the contrary contends that going by the scheme of Chapter-XIII of the Railways Act, no one other than a dependent is entitled to claim the amount either by filing a petition or by seeking execution of an order passed in favour of a dependent.

7. We deem it necessary to have a survey of all the relevant provisions in Chapter-XIII to consider the crucial questions. Section-123 is the Section defining expressions. It will be appropriate for us to refer to 123(b) which defines a dependent.

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

(emphasis supplied)

8. We must notice two things straightaway. The definition is to apply "unless the context otherwise requires". We must immediately note that the legal heirs/legal representatives of a deceased passenger are not dependents for the purpose of Section 123(b). Only the persons specified in clauses-1 to 4 of Section 123(b) can be reckoned as dependents. We emphasise that all legal heirs/legal representatives are not specified to be dependents.

9. Section- 124 may not be vitally relevant, but in as much as contentions are advanced to bring to our notice the distinction between Sections 124 and 124A , we deem it appropriate to extract Sections 124 and 124A . They read as follows:

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.

(emphasis supplied)

10. While Section 124 deals with the liability of the railways in respect of the accidents occurring either because of collision of trains or derailment etc., section 124A deals with the compensation payable in respect of untoward incidents. An untoward incident is defined in Section-123(c) which we extract below.

123(c) "untoward incident" means-

- (1)(i) the commission of a terrorist act within the meaning of sub section (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 dacoit; or
- (iii) the indulging in rioting, shoot-out 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 passengers.

11. It may be apposite in this context to note that the language of Section 124 and 124A 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.

12. We now come to Section 125 which deals with the manner in which an application is to be made to the Claims Tribunal where the claim is u/s 124 or 124A . We extract below Section 125.

125. Application for compensation.- (1) An application for compensation u/s 124

or Section 124A 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 authorised by such person 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 other dependent.

Section 125 covers applications u/s 124 and 124A . u/s 125(a), the person who has suffered injury or suffered any loss can stake the claim for compensation. A reading of Section-124 would suggest that compensation can be claimed in respect of loss to property suffered in a railway accident also. Section 125 (d) deals with the claim arising in respect of the death which has resulted from the accident or untoward incident. In such case, the dependent of the deceased or his guardian of the dependent alone are entitled to make the application.

13. A survey of these provisions unmistakably reveals that the claim for compensation can be staked, in the event of death of a passenger only by a dependent and not a mere legal heir/legal representative of such passenger. There can be no semblance of doubt on that aspect.

14. The question that arises for consideration is not whether the legal heirs/legal representatives of a victim of an accident or untoward incident can make the application or seek execution. The dispute is only whether the legal heirs of a dependent (which defendant admittedly is entitled to stake the claim u/s 125) is entitled to continue the proceedings or claim the enforcement of an order passed in favour of the deceased dependent.

15. The nature of the liability created by Section 124A appears to be important. The Tribunal in the impugned order understands the liability in a peculiar manner as can be understood from the following observations in paragraph-12.

12. It is also necessary to appreciate the nature of Section 124A of the Railways Act. Section 124A is a unique legislation, which has no corresponding or similar law in any other legislation. It is unique not only in India, but even in the world. It was not even the result of judicial evolution. The closest the courts have come, as a result of judicial evolution, to such legislation is the "no fault" liability. Whereas in Section 124A of the Railways Act, the Railway has by its own magnanimity taken on the liability to pay compensation where no fault has to be proved against them. In such a unique law, it is only fair to assume that it cannot be bound by procedure and precedent nor should anyone be allowed to recourse to sections of other laws. The Section 124A is in the nature of a rich philanthropist making a declaration to award certain persons from his personal

wealth. In such a circumstance, he has the right to give the award to whomsoever he selects and the law cannot force him to give to any other, merely by claiming that there are laws and rules that limit his desire. The Railway Claims Tribunal Act is therefore correct in limiting adjudication in such cases to only the provisions of the Act and not beyond.

The Tribunal understands the payment u/s 124A to be akin to the voluntary charitable act on the part of the Railway in the nature of a Philanthropist making a declaration to award certain persons from his personal wealth.

16. We are afraid that the Tribunal has not correctly appreciated the scope of the statutory liability u/s 124A . It is not as though the railways by an order voluntarily declares that the amount shall be paid to the victims of an untoward incident Parliament stepped in to 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. We need only mention that there is an absolute statutory liability which obliges the railways to make the payment specified u/s 124A . It has absolutely no incidents of a Philanthropist voluntarily making payments. The Legislature creates an absolutely statutory liability against the railways and in favour of the victims of untoward incidents. The compassion of the Legislature in favour of the weak and the suffering is eloquently declared in the statutory provision. We feel that the Tribunal erred cardinally in assuming that it is a charitable payment of a wealthy Philanthropist. The Tribunal appears to have understood Section-124A akin to a gratuitous or charitable payment There, perhaps started the error committed by the Tribunal.

17. To us, it appears that Section 124A eloquently expresses the concern of a compassionate State in favour of the victims of accidents involuntarily suffered. Clauses (a) to (e) of the proviso excludes self inflicted injuries, suicidal attempts or injury suffered by the criminal acts of the victim. The Legislative compassion only flows in favour of a person (or his dependent) who has suffered injuries/death on account of involuntary risks to which a person in the modern complex society is exposed to. Concern for the weak, compassion for the suffering, and empathy for the misfortunate is the foundation of liability u/s 124A . The railways, which has the monopoly rights to run the railway industry, has been obliged by the State to discharge that compassionate duty. Yes, the foundation of liability is perhaps unknown to the traditional Anglo Saxon law which always searches for fault or guilt on the part of a person before making him liable to pay amounts. But under the modern/socialist jurisprudence the foundation of liability is shifted from fault to suffering and that explains the rationale behind Section 124A . To sum up, we find that Section 124A 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.

18. If one were not satisfied with this explanation and should invariably look for guilt or fault, he can locate the failure or inability of the railways to prevent or avoid the untoward incident as the foundation of liability, as appropriate technology can certainly help the Railways to prevent even accidental fall from a railway coach. It is not impossible certainly for the railways to prevent or avoid untoward incidents by employment of adequate technology and personnel warranting enormous investment.

19. Having thus understood the nature of the liability/right u/s 124A , the next question to be considered is whether Chapter-XII 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 u/s 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.

20. The expression "dependent" is to be understood as defined u/s 123(b) "unless the context otherwise requires" as can be seen from S. 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 u/s 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 u/s 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 u/s 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 S. 125(1) will certainly have to include the legal heirs/

legal representatives of such deceased person who has suffered loss.

21. 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.

22. 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 u/s 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.

23. We must in this context refer to Section 146 of the CPC 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.

24. 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.

25. 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 u/s 146, so far as a claim u/s 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.

26. 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.

27. 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 (UOI) and Others Vs. Iqbal Singh, . 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.

28. 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 dependant/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 dependant/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 dependant/claimant.

29. A Division Bench of this Court had occasion to consider the right of a dependant 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 dependant after he became entitled to claim the amount u/s 124A and before his death (notwithstanding the fact that the deceased dependant 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.

30. The claim of such a legal representative of the deceased dependant 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 dependant 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 "dependant. 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 dependant, 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 dependant as provided under S. 123(b).

31. This decision is authority for the proposition that the right to claim compensation by a dependant does not get abated or extinguished on the death of a dependant 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.

32. Rule 26 applies to all claims made by applicants u/s 125 including

dependants who stake the claim u/s 125 (1)(d). If that be so, Rule 26 is therefore a clinching indication that the law did not expect the claim of dependant/claimant to come to an end with the death of such dependant/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 dependant/claimant.

33. 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 u/s 124A . 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 dependant/claimant can be continued by a legal representative on the death of the dependant/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.

34. 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 dependant under the general law are certainly entitled to claim amounts due u/s 124A and to continue prosecution of such claims.

35. The up shot of the above discussions is that the amount due u/s 124A can be claimed only by a dependant and not by a mere legal heir/legal representative. But the legal heirs of such dependant/claimant in the event of death of the dependant/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 dependant. The claim can be continued by the legal representatives of such dependant/claimant. We are unable to agree that the right u/s 124A is not heritable. Question No. 1 is so answered.

36. In this case, we are concerned with question No. 2 primarily. This is not a case where right to claim had only vested on the dependant father on the death of his son Sreekumar by operation of law. The claimant became entitled to the amounts u/s 124A on the death of his son. Even before his death, he had applied for claiming compensation. Even before his death, he had succeeded in obtaining a tangible order/award in his favour. In any view of the matter, a decree/award in his favour was property in the hands of the deceased. There can be no semblance of doubt that a decree is property u/s 6 of the Transfer of Property Act. The learned counsel Sri. Dias argues that Sections 5 and 6 of the Transfer of Property Act will have no application as those provisions can guide only transactions from one living person to another living person. We do not find

much relevance in that contention as it is evident that Section 6 deals with transfers specifically from one living person to another living person and deals with property which is capable of transfer. In that view of the matter, there can be no doubt that a decree is transferable. Decree is a transferable property. It is only for that purpose that Section 6 is pressed into service by the learned counsel for the appellant.

37. That the order passed by the Tribunal is a decree cannot possibly be doubted. Section 22 of the Railway Claims Tribunal Act is relevant which we extract below:

22. Execution of orders of Claims Tribunal:- (1) An order made by the Claims Tribunal under this Act shall be executable by the Claims Tribunal as a decree of civil court, and, for this purpose, the Claims Tribunal shall have all the powers of a civil court.

(2). Notwithstanding anything contained in sub-section (1), the Claims Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

38. Section 22 clearly shows that the order by the Tribunal has all incidents of a decree of civil court. The fiction employed by Section 22 that the order shall be executable as a decree of the civil court eminently suggests that the order is to be reckoned as a decree. Doubts if any on these aspects are laid to rest by Rule 31(2) of the Railway Claims Tribunal (Procedure) Rules which we extract below:

31 (2). An order made by the Tribunal shall be executable by the Tribunal as a decree of a Civil Court and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of decree of a Civil Court.

39. The decree in favour of the claimant/dependant had been passed prior to his death. u/s 146 of the CPC which we have extracted already as also under Order 21 Rule 16, the legal heir of a deceased decree holder is certainly entitled to claim execution. We extract Order 21 Rule 16 below:

16. Application for execution by transferee of decree:

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

40. The Tribunal evidently appears to have read Rule 16 inadequately. The Tribunal, we find, had omitted to note the word "or" appearing after the words "where a decree". That misreading of the provisions led the Tribunal to go astray and commit mistakes. On the death of the deceased claimant/dependant/decreed holder, by operation of the law relating to inheritance, the legal heirs (in this case the sole legal heir) of the deceased dependant/claimant are entitled to step into the shoes and make an application for execution. In that view of the matter, we find that the petitioner was perfectly justified in filing an application for execution as the sole legal heir of his deceased father, who was the dependant/claimant, who had secured a decree/order in his favour.

41. On this aspect, on the right of a legal heir to claim the amount due to his deceased predecessor under a decree, we think it apposite to refer to two precedents. In Commissioner for Workmen's Compensation Vs. P.V. Mohanan and Others, , a Division Bench of this Court was called upon to consider an identical question under the provisions of the Workmen's Compensation Act, which expressly declares the right of a dependant to be not alienable or attachable. The question arose whether the rights of a dependant/claimant can pass on to his legal heirs on his death. Notwithstanding the very strict provisions in the Workmen's Compensation Act, the question referred was ultimately answered by the Division Bench in the following words:

When the compensation amount is deposited with the Commissioner for Workmen's Compensation, it becomes the property of the sole dependant of the deceased workman, and if that sole dependant dies prior to the allotment of that compensation, the said amount would devolve on the heirs of the dependant and not on the heirs of the deceased workman, whether there is opposition or not.

42. In the light of that declaration of law, it is evident that the amount due to the deceased dependant/claimant can be claimed and recovered by the petitioner, sole legal heir of the deceased/defendant.

43. In Mono Mohan v. Kali Kinkar Chakravarty, the question arose whether decree is a property and whether the same can be attached even if the decree has been rendered in enforcement of a right to sue. The relevant observations appear in the penultimate paragraph of the judgment which we extract:

A right to sue is not saleable property, and cannot be transferred; but in the case before us, the claim for money or rendition of accounts has been established in favour of the judgment debtor, and the claim has now been merged in a decree by a competent Court. The right under the decree is assignable although the cause of action so far as the judgment debtor's right to get money on accounts being taken was concerned., was not. A right to take accounts, and to recover such sums, as may be found due, is not assignable, being a right to sue within

the meaning of S. 6 (e), T.P. Act.

We concur with those observations. Even if the right u/s 124A of the Act were to be construed (we do not agree that it can be so construed) as a mere right to sue, the legal incidents do get transformed and altered when that mere right to sue gets crystallised into an order/decreed.

44. Sri. Martin, the learned counsel for the appellant, has drawn our attention to the observations of Mulla in the Transfer of Property Act which deals with transfer of decree. The following observation by the learned author does appear to be crucially relevant on this aspect:

When a claim has merged in a judgment and has been decreed, it is no longer a right to sue and is assignable as a decree although the original cause of action was not assignable.

45. Even if for the sake of argument, we were to assume that the right to claim u/s 124A read with 125(1)(d) is only a mere right to sue, the position transforms and changes once the right to sue has been adjudicated and has resulted in a binding decree. In this view of the matter the right of the petitioner to claim execution of the decree secured by his father as a dependant cannot obviously be doubted. The second question also in these circumstances deserves to be answered in favour of the petitioner. In the result:

- a. This appeal is allowed.
- b. The impugned order is set aside.
- c. The Railway Claims Tribunal is directed to dispose of the petition for execution filed by the petitioner expeditiously. If the payment is not made on or before 10.8.2011, the petitioner shall be entitled to recover the amount due along with cost of Rs. 10,000/-.