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**(2008) 08 OHC CK 0132**  
**In the Orissa High Court**

Union of India (UOI)

APPELLANT

Vs

Smt. Ahalya Prusti and Another

RESPONDENT

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**Date of Decision :** 06-08-2008

**Acts Referred:**

Railway Claims Tribunal Act, 1987 — Section 13(i)(a)  
Railways (Amendment) Act, 1994 — Section 123(c), 124A

**Citation :** AIR 2009 Ori 68 : (2008) CLT 419 Supp

**Hon'ble Judges :** S.R. Singaravelu, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

S.R. Singaravelu, J.—This appeal u/s 23 of the Railway Claims Tribunal Act, a 1987 (for short, "the Act") has been filed by the appellant/respondents against the award of a statutory compensation of Rs. 2,00,000/- passed on 16-8-1996 in O.A. No. 102 of 1995 u/s 13(i)(a)(ii) read with Section 16 of the Railway Claims Tribunal Act, on the allegation that respective husband and father (one individual) of the claimants while travelling in the train as bona fide passenger (206 Down Bhadrak-Kharagpur local train) died on 19-12-1990 when the train involved in an accident at Sabira Railway Station.

2. Upon condoning the delay in filing the original application and also upon perusal of the oral evidence adduced on behalf of the claimants the Tribunal originally had divergent opinion between the members and ultimately the case of the claimants was upheld and compensation was awarded when the matter was subsequently referred to a 3rd judicial member of Secundarabad Bench.

I have heard the learned Counsel of either side on the following question of law besides other points:

(a) Whether Section 124 of the Act is prospective or retrospective in operation?

(b) Whether on the facts and circumstances of the case the ingredients of Section 124-A have been satisfied in this case?

3. The Railways Amendment Act, 1994 (Act 28 of 1994) provided amendments to Section 123 and insertion of a new Section 124-A. The amendment received the assent of the President only on 26-4-1994; whereas the accident of this case occurred on 19-12-1990 long before the said assent. So the question arises as to the prospective nature of effect of amendment.

4. Prior to the amendment the extent of the liability of the Railway was provided in Section 124 in the following words:

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.

5. Similarly, prior to the amendment Section 123(a) defined accident as one of the nature described in Section 124; thus, prior to amendment Section 124 continued the description of the term accident as well as the extent of consequential liability of the Railway. In fact, as per the said provision that was restricted to accident as a result of collision between trains or the derailment of or other accidents to a train or any part of a train carrying passengers.

6. In fact, a fall from the train could not be held as due to any accident to a train as envisaged in Section 124 of the Act. The only lever that was given u/s 124 of the Act for accident without derailment or collision was the word "all other accident to a train". In fact, it was held by interpreting u/s 124 in the judgment of a case law in Union of India (UOI) and Others Vs. Sunil Kumar Ghosh, , that if a passenger tumble inside the compartment or stepping out of the compartment, it cannot be said that an accident has occurred to the train or a part of the train. It may be doubtless an accident to the passenger but not to the train; what was contemplated u/s 124 was only "all other accident to a train" and not accident to the passenger.

7. The Hon"ble Supreme Court in that case considered the identical expression accident to a train in Section 82-A of the Railways Act, 1890 which corresponds to the pre-amended Section 124 of the Railways Act. Thus, as per the above legal provision as set by the Supreme Court while dealing with pre-amended Section 124 leaves no room for doubt that any accident attributable to the fault on the part of the passenger may not be an accident to the Train. Therefore,

compensation could not be granted.

8. It is to alleviate the difficulty which the passengers felt in such circumstance there was insertion of a new Section 124-A which provided" as follows:

124-A. 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.

9. There is also corresponding definition inserted in Section 123.

The amended Section 123(c) reads as follows:

(c)"Untoward incident" means

(1)(i) to (iii) xxx xxx xxx

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

10. Coming to the present facts of the case it is undisputed fact that the investigating authority had seized the body of the deceased from/nearby railway track. It was also found in the evidence on record that he was dashed by the portion of the train. It was urged from the side of the Railways that he was actually crossing the track from one platform to the other in a hasty manner wrongly thinking that the train that arrived in the platform is the one that he is to board; it is thus while crossing the track the accident took place. Thus, total negligence on the deceased for the said accident it was attributed.

11. What was excluded In Section 124-A from getting compensation was (a) suicide or attempted suicide by the deceased; (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.

12. It was argued on the side of the claimants that there was factually no negligence on the part of the deceased and legally the excluded act on the part of the deceased debarring him from getting compensation is only other such acts enumerated above in the provision of Section 124-A and not any other act as alleged by the Railways.

13. It is to be noted that the Court below found that there was no negligence on the part of the deceased. In fact, negligence is an element to be pleaded and proved by the Railways who actually wants to exclude the claimants from getting the compensation, which is otherwise available on the face of the remaining portion of the evidence on record.

14. Thus, it is by virtue of amendment of Section 123(c) and insertion of Section 124-A, it is not only accident to the train but also an untoward incident in which somebody got affected, the latter would be entitled to compensation. In this view of the matter, the misfortune of the injured seems to have been abated rightly when Parliament enacted Railways Administration Act 28 of 1994.

15. In this context, the learned Counsel for the Railways raised a legal objection by contending that u/s 13 of the Claims Tribunal Act there was no jurisdiction for the Claims Tribunal to have dealt with a case the accident of which happened on 19-12-1990. The next limb of the argument is that as the accident took place roughly four years prior to the coming into effect of the amendment of Section 124-A and insertion of Section 123(c) and that the said provisions could not be given retrospective effect. True it is that the Railways Amendment Act 28 of 1994 received the assent of the President only on 26-4-1994. But there are case laws in support of the claimants' contention that the above amendment is not prospective in nature. This decision could be arrived by discerning the other provisions of the Claims Tribunal Act, which too were amended along with the amendment of the Railways Act.

16. Section 13 of the Claims Tribunal Act dealt with jurisdiction of the Claims Tribunal. Sub-section 1(A) has been added to it by the same Amendment Act which reads as under:

1(a) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124-A of the Railways Act, 1989, all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil Court in respect of claims for compensation now payable by the railway administration u/s 124-A of the said Act or the rules made hereunder.

17. In this context, it is relevant to refer to Section 24 of the Claims Tribunal Act also. As per that provision every suit pending in Court immediately before appointed day or on the date of commencement of provisions of Sub-section (1A) of Section 13, being a suit the cause of action whereon it is based, is such that it would have arisen after the appointed day or as the case may be, shall

stand transferred to the Claims Tribunal. In the of Vijaysankar v. Union of India reported in case 1995 (2) TAC 664 : 1995 AIHC 6309 (Ker), the Division Bench held as follows:

When Section 13(1-A) is read along with Section 24 it is clear that Parliament has transplanted the Civil Court jurisdiction regarding all claims for compensation (relating to trains) with Claims Tribunals from, 1-8-1994 onwards. Even cases, which could be held in Civil Courts before the date could be entertained only by the Claims Tribunal. Similarly those cases, which were in fact filed before Civil Courts prior to that date could only be dealt with by Claims Tribunals after that date. It cannot, therefore, be contended that Claims Tribunal has no jurisdiction to entertain the present claim of the appellant.

Thus, it is understandable that the amendment by way of Section 13(1-A) is retrospective in nature.

18. Similarly, while dealing with the prospective nature of Rule 3 of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, wherein" the amount of compensation payable in respect of death or injuries was provided as specified in the schedule thereto. It was held in the case of Rathu Menon Vs. Union of India, that:

The determination of the amount by the Claims Tribunal shall be based on the relevant rules as on the date of determination. In the said case the incident occurred on 3-9-1996. At the time of the accident the Railway Accident Compensation Rules, 1990 was in operation fixing the amount of compensation payable for the death and injuries. Thereafter, the said rules were amended with effect from 1-11-1997 enhancing the compensation payable for death and injuries. The contention of the Railways that amended rules are not operative for the accident occurred prior to 1997 was rejected by the Apex Court.

19. Similar view was taken in N. Parameswaran Pillai and Another Vs. Union of India (UOI) and Another, wherein it was held as follows:

...It cannot be conceived that the Government wanted to make a discrimination between those victims who suffered an injury in an accident prior to 1-11-1997 and those who suffered an identical injury in a similar accident on or after that date. The reason for making such variation is easily discernible, the Central Government wanted to update the compensation amount. Rupee value is not an unchanging unit in the monetary system. What you are to pay 10 years ago to one person cannot be same if it is paid later.

20. Thus, after discerning the other limbs of the Act it was also held by a Division Bench of Allahabad High Court that the above amendment was not prospective in nature and the said amendments were only retrospective in nature.

21. In the case of Union of India v. Gayatri Srivastava 2002 All LJ 1710, it was held that the language used in Section 124-A of the Act is couched in a very wide and general terms and is not restricted to take within its embrace only such

accidents wherein a passenger has been injured or killed subsequent to that date. It was further held that the expression untoward incident given in Section 123(c) of the Act must be extended to the accidents occurred prior to the amended Act came into force. In the said case the Division Bench considered the contention of the appellants that the insertion of Sections 123(c) and 124-A have no application and rightly held that Section 124-A is not restricted to the accidents occurred subsequent to 1-4-1994.

22. It was also held by a single Bench of the Andhra Pradesh High Court in a case-law, Union of India (UOI) Vs. Aggala Dilleswara Rao, that any section if inserted in the original enactment may relate back to the date of the original Act. It was held as follows:

Therefore, a combined reading of Sections 123(c), 124-A, 125, 128 of Railways Act, 1989 read with Sections 2(1), 13(i)(a), 16 and 17 of the Railways Claims Tribunal Act, 1987 goes to show that Section 124-A is not prospective. It has retrospective effect entitling the claimants to claim compensation for the accident occurred prior to the insertion of the Section 124-A.

23. The delay in preferring the application by the claimants was rightly condoned u/s 17-A of the Railway Claims Tribunal Act. The quantum is also found not excessive.

So the appeal is accordingly dismissed.