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Andhra Pradesh High Court

Case No: C.M.A. No''s. 2374/98, 1137/99 and 564, 1990 and 2443 of 2000

Union of India (UOI), Secunderabad	APPELLANT
Vs	
B. Koddekar and Another	RESPONDENT

Date of Decision: June 7, 2002

Acts Referred:

- Evidence Act, 1872 - Section 123, 124
- Motor Vehicles Act, 1988 - Section 140
- Railway Claims Tribunal Act, 1987 - Section 18, 23
- Railways Act, 1989 - Section 123, 124A, 2
- Terrorist and Disruptive Activities (Prevention) Act, 1987 - Section 3(1)

Citation: (2003) ACJ 1286 : AIR 2003 AP 23 : (2002) 4 ALT 310 : (2002) 2 AnWR 515 : (2002) 2 APLJ 345

Hon'ble Judges: Motilal B. Naik, J; G. Rohini, J

Bench: Division Bench

Advocate: T. Ramakrishna Rao, for the Appellant; K.S.N. Murthy, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Motilal B. Naik, J.
Since a common question of law is raised in all these appeals, they are being heard and decided together by this common order.

2. These appeals are preferred u/s 23 of the Railway Claims Tribunal Act, 1987 by the Union of India, represented by the General Manager, South Central Railway, Secunderabad, against five different awards made by the Railway Claims Tribunal, Secunderabad.

3. On behalf of the appellant-Railways in these appeals, a common question of law is urged before this Court contending that the payment of compensation in respect of an "untoward incident" arises if the deceased are the bonafide railway passengers with a valid ticket and there should be an accidental fall of the deceased passenger from the train carrying passengers.

4. Before answering the legal issue raised before us, we shall now discuss, in brief, facts of each case separately.

5. CMA No.2374 of 1998 : This appeal is filed against the order in OAA No. 130 of 1997 dated 6-7-1998. Two claimants filed the said OOA claiming compensation for the death caused to the deceased in an untoward incident. According the claimants who are the parents of the deceased, on 16-11-1997 the deceased was proceeding to Vikarabad by Wadi-Falaknuma passenger train, from Dharur on a journey ticket bearing No. 15494.While he was boarding the above passenger train at Dharur Railway station, the train suddenly started moving, as a result of which he slipped and fell down and was run over by the train. Though he was immediately shifted to the Railway Hospital, Vikarabad, he succumbed to his injuries on the said day. The applicants, therefore, claimed a compensation of Rs. 4 lakhs for the death of the deceased.

6. The respondents filed a written statement opposing the claim stating that the deceased attempted to get into a moving train and as a result, the incident occurred and as such, it cannot be termed as an untoward incident and the Railways is not liable to pay compensation.

7. On the basis of the above pleadings, the following issues are settled, viz.,

1) Whether the applicants are dependents of the deceased?

2) Whether the deceased was a bonafide passenger ?

3) Whether the accidental fall as alleged is not an untowards incident?

4) To what relief ?

8. On behalf of the applicants, P.Ws. 1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B.1 was marked.

9. P.W.1 is the father of the deceased who filed Ex.A.6 to show that the deceased who is his son is a resident of Halathkeri. He also filed Ex.A.7 showing that the 2nd applicant is his wife. P.W.2 who is a friend of the deceased and who also traveled along with the deceased to Vikarabad stated that they came to Dharuru from Bidar on 15-11-1997 and as they wanted to travel to Vikarabad, purchased two tickets. He deposed that when the passenger train arrived, he got into the coach first and then the deceased was trying to board the train and the train started and in that process the deceased slipped and fell

under the train. Later, the train was stopped within a few yards. The deceased who was seriously injured, was carried in the same train and taken to Vikarabad Railway Hospital where he died at 8-30 PM.

10. On behalf of the Railways, R.W.1 who is the Assistant Station Master of Dharur Railway Station was examined. He deposed that after the train No.359 started from the station, Government Railway Police reported to the Station Superintendent that a passenger had been run over by the train. Then, the Station Superintendent went to the spot and arranged for hospitalization of the injured and after return the Superintendent informed him that the deceased was holding a journey ticket bearing No.00561 from Dharur to Bidar. Witness deposed that he recorded this fact in his register and set messages to all concerned.

11. On the basis of the oral and documentary evidence, the Tribunal held that the deceased was a bonafide railway passenger and therefore, granted an amount of Rs.4 lakhs for the claimants with 9% interest per annum and also apportioned the same between the applicants.

12. C.M.A.No. 1137 of 1999: This appeal is filed against the order of the Railway Claims Tribunal in OAA No. 23of 1998dated 16-11-1998. There are, in all, five claimants who claimed compensation for the death of M. Papaiah. Claimant No.1 is the wife, claimants 2 to 4 are his sons and claimant No.5 is the daughter is M. Papaiah. According to the claimants, M. Papaiah was traveling from Vijayawada to Mangalagiri on 7-11-1997 and while he was trying to get down at Mangalagiri Railway station at about 2-30 AM, he slipped and fell down from the train resulting in serious injury. He subsequently died in the hospital.

13. The Railways in their written statement denied that the deceased was a bonafide passenger holding a proper journey ticket.

14. On the basis of the pleadings, the Tribunal framed the following issues, viz.,

1) Whether the applicants are dependents of the deceased ?

2) Whether the deceased was a bonafide passenger ?

3) Whether the accidental fall as alleged is not an untoward incident?

4) To what relief ?

15. On behalf of the applicants, A.Ws. 1 and 2 were examined and Exs.A.1 to A.3 were marked. On behalf of the Railways, none was examined and no documents were marked.

16. The Tribunal on the basis of the oral and documentary evidence found that the deceased was returning from Guntur to Mangalagiri by Guntur-Vijayawada passenger but

he overslept and got up only after the train had crossed Mangalagiri and reached Vijayawada. He got down at Vijayawada and went to the house of P.W.2 Sivaiah an auto driver who is the resident of the same village and the said Sivaiah purchased ticket for him from Vijayawada to Mangalagiri and he traveled back to Mangalagiri which is his native place. The Tribunal also found that the inquest report mentions about the recovery of a ticket bearing No. 57351 from the body of the deceased from Guntur to Mangalagiri. The ticket was kept along with other items in the bag which was lying on the side of the deceased and the bag contained blanket and a mosquito net also. The Tribunal held that since the recovery of ticket was mentioned in the inquest report, the deceased could be termed as a bonafide passenger with a valid ticket. The Tribunal, therefore, held the accident as an untoward incident and awarded compensation of Rs. 4 lakhs to the applicants and apportioned the same among them.

17. C.M.A.No. 546 of 2000 : This appeal is filed against the order made in OAA No. 82 of 1999 dated 22-9-1999. Three claimants have filed the said application seeking a compensation of Rs. Four lakhs for the death of Arumilli Ramakrishna in an untoward incident on 26-2-1999. The first claimant is the wife of the deceased, the second and third claimants are the parents of the deceased. According to the claimants, on 26-2-1999 the deceased Arumilli Ramakrishna was doing milk business and used to travel from Godavari to Nawabpalem on season ticket and as usual traveled from Nawabpalem to Godavari by train No. 474 along with milk cans and was standing at the door. At about 9-20 hours, the deceased slipped and fell down accidentally from the said train due to sudden movement and jerk of the train as a result he went under the wheels of the train, and was cut into pieces and died on the spot.

18. The Railways resisted the claim of the claimants on the ground that the incident does not fall within the provisions of Section 123(C) of the Railways Act and that the deceased was standing at the door-step of the train along with milk can and such standing is prohibited under law. It is contended that since the deceased himself was responsible for his death, the claimants are not entitled for any compensation.

19. On the basis of the pleadings, the Railway Tribunal framed the following issues :

1) Whether the applicants proved that they are the only dependents of late Arumilli Ramakrishna ?

2) Whether the applicants further proved that late Arumilli Ramakrishna was a bonafide passenger travelled by train No. 474 Kakinada-Tirupathi passenger on 26-2-1999?

3) Whether the applicants further proved that late Arumilli Ramakrishna became the victim of untoward incident and died as narrated in para 6 of the claim petition?

4) To what amount of compensation, the claimants are entitled to?

20. In support of their claim, the applicants have produced the affidavit of first applicant. Exs.P.1 to P.5 were also marked on their behalf. On behalf of the respondents, D.W.1 was examined and Exs.D.1 and D.2 were marked on their behalf.

21. On the basis of the oral and documentary evidence, the Tribunal found that the deceased was traveling in Kakinada-Tirupati Passenger on 26-2-1999 as a holder of a monthly season ticket bearing No. 02545 valid from 25-2-1999 to 24-3-1999. The Tribunal found that in the absence of any dispute about the genuineness of the ticket, it could be held that the deceased was a bonafide passenger. While dealing with the contention of the Railways that the deceased stood near the door of the compartment which itself is an illegal act and he died while attempted to board the running train and as such the claimants are not entitled to any compensation, to Tribunal placed reliance on two documents viz., a report along with Guards journal as Ex.D.1 and D.2. The Tribunal observed, on perusal of Ex.D.1, the Guard of the train reported that one male person aged 40 suddenly tried to enter into the train while the train is in motion and fell down between the platform and train. The said report was sent to the concerned police for taking further action and the police registered a case in Crime No. 23/99 and conducted inquest over the dead body. The Tribunal observed that from the inquest report, it is found that the accident was caused as a result of the jerk of the train when the deceased was standing near the door. The investigating officer also expressed the same view. The Tribunal also found that the Railways have not challenged the report before the appropriate forum and as such, the Tribunal held that the death of the deceased could be described as to have occurred in an untoward incident and therefore, the applicants were entitled for compensation. The Tribunal, accordingly, granted Four lakhs compensation and apportioned the same among the claimants.

22. C.M.A.No. 1990 of 2000: This appeal is filed against the order dated 29-12-1999 made in OAA No. 120 of 1998 by the Railway Claims Tribunal. Applicant No.1 is the wife and applicants 2 and 3 are the minor children of the deceased Akkarao. According to the applicants, the deceased Yedlapalli Akkarao had gone to Warangal on his business work. On 23-5-1998 he was returning to Eluru by Train No. 7048 Secunderabad-Kakinada Gautami Express, having purchased a II class general compartment journey ticket bearing No. 57464 from Warangal to Eluru. In the early hours of 24-5-1998, he accidentally slipped and fell down from the train at Km.No. 486/20 at Powerpet Railway Station and sustained multiple injuries leading to his death on the spot. The claimants, therefore, claimed a compensation of Rs. 4 lakhs from the Railways.

23. On behalf of the Railways, a Written Statement is filed admitting that the dead body of the deceased was found lying on the track at Powerpet Railway Station and that as per the Inquest Report, the death appears to have been caused due to careless and negligent act on the part of the deceased. Therefore, the respondent-railways pleaded that the applicants are not entitled for compensation.

24. On the basis of the above pleadings, the Tribunal framed the following issues :

1) Whether the applicants are dependents of the deceased ?

2) Whether the deceased was a bonafide passenger ?

3) Whether the accidental fall as alleged is not an untoward incident?

4) To what relief ?

25. behalf of the applicants, the first applicant filed an affidavit and marked copies of FIR, copy of the Inquest proceedings, copy of postmortem certificate, dependency certificate. On behalf of the respondent-railways, no evidence was adduced.

26. the basis of the evidence, the Tribunal found that the ticket bearing No. 57464 was found in the pocket of the deceased along with visiting cards which were recovered. In the absence of any rebuttal evidence, the Tribunal held that the deceased was traveling on a valid ticket and he was a bonafide passenger. The Tribunal, therefore, held that the death of the deceased is on account of an untoward incident and granted a compensation of Rs. 4 lakhs to the claimants and apportioned the same.

27. CMA No. 2443 of 2000: This appeal is filed against the order dated 29-12-1999 made in OAA No. 102 of 1998 by the Railway Claims Tribunal, Secunderabad. Applicants are the parents of Kolipaka Venkatesh (deceased). According to them, their son Kolipaka Venkatesh was a student aged 18 years. On 4-5-1998, the deceased was traveling from Warangal to Ramagundam in Train No. 5221 Cochin-Baroni Express in general compartment after purchasing journey ticket No. 98896. While the deceased was getting down from the train at Ramagundam Station, he accidentally fell down as a result of which both of his legs were amputated and he died on the same day while on way to Singareni Collery Hospital, Godavarikhani.

28. On behalf of the respondent-Railways, a written statement is filed contending that the incident in which the death of the deceased occurred, does not fall within the ambit of Section 124A of the Railways Act.

29. On the basis of the above pleadings, the Tribunal framed the following issues, viz.,

1) Whether the applicants are the dependents of the deceased ?

2) Whether the deceased was a bonafide passenger ?

3) Whether the accidental fall as alleged is not an untoward incident ?

4) To what relief ?

30. In order to prove her case, the first applicant examined herself as AW.1.Exs.A. 1, A1/2, A.2, A.2/2, A.3, A.3/3, A.4, A.5, A.5/2, A.6 and A.7 were also marked on behalf of the applicants. No evidence was adduced on behalf of the railways.

31. On the basis of the oral and documentary evidence and in the light of the dependency certificate Ex.A.1, the Tribunal held that the claimants are the parents of the deceased and the deceased was traveling as a passenger with ticket No. 98896. The Tribunal also found that the ticket was recovered from the body of the deceased as mentioned in the inquest proceedings. It is also mentioned in the inquest proceedings, that the deceased slipped and fell down from the train accidentally. The Tribunal, therefore, held that the claimants are entitled for compensation and accordingly awarded an amount of Rs. Four lakhs and apportioned the same among the applicants.

32. From the narration of facts relating to each appeal, two questions emerge before us for our consideration, viz.,

1) Whether the deceased persons were bonafide passengers and the manner of accident leading to the death of these persons could be held to be an untoward incident falling within the ambit of Section 123(c) of the Railways Act, 1989 ?

2) Whether the applicants-respondents in these appeals are entitled for compensation u/s 124A of the Railways Act, 1989 for the death of the deceased persons in an untoward incident ?

33. Sri T. Ramakrishna Rao, counsel for the appellant-Railways submitted that the Railway Claims Tribunal without the claimants proving the act of negligence on the part of the Railways, could not have awarded compensation to them. It is contended by the counsel that as per the evidence let in on behalf of the claimants, in few cases, the deceased were either trying to catch a running train slipped from the train fell down and died, or while alighting from the train slipped in the process and died and in other case, the deceased stood at the doorstep of the train, fell down and died. Counsel stated, on the basis of the evidence let in by the claimants, and from the narration of facts, it would appear that the accidents have taken place not on account of negligence on the part of railways, but on account of the negligence on the part of the deceased. Counsel stated that all the deceased who lost their lives in the incidents have committed prohibited acts, such as boarding a running train, alighting from a moving train and standing at the doorstep of a moving train, which are offences. According to the counsel, these incidents of death would fall under exceptions to Section 124A of the Act and therefore, the Railways are not liable to pay compensation in cases of this nature. Even otherwise,according to the learned counsel, the manner in which the deaths were caused, such incidents could not be held to be "untoward incidents" as provided u/s 123(c) of the Act and therefore, the applicants-claimants are not entitled to any compensation. Counsel stated under the Scheme of the Act, the Tribunal has to examine whether the accident is as a result of negligence of the Railways or is there any contributory factor on the part of the deceased or victim. In the absence of sufficient proof, counsel contended, the Tribunal below could not have shifted the burden on the Railways to prove whether the deceased had a valid ticket and death occurred in course of journey in the train, which could be held as untoward incident. In support of his plea, learned counsel has drawn our

attention to few decisions reported in PURUSHOTHAMA DEVADIGA Vs. THANGAMMA AND OTHERS1, PRAKASH ANAND PEDNEKAR Vs. SITABAI R. GAWAS AND OTHERS2, SMT. SUNDRI AND OTHERS Vs. UNION OF INDIA3 and in SMT. SUDHA SRIVASTAVA Vs. CLAIMS COMMISSIONER, NORTHERN RAILWAY, ALLAHABAD4. Elaborating further, counsel submitted that as held by Courts in these decisions, in awarding compensation, the Tribunal has to insist for proper evidence by the claimants who shall prove their case for award of compensation and the burden of proof cannot be shifted on the railways. Counsel also submitted that in the event the Tribunal finds that there is contributory negligence, it shall accordingly deduct the proportionate amount from the compensation granted by the Tribunal to the claimants, Counsel, therefore, pleaded that the impugned orders of the Tribunal cannot be sustained and liable to be set aside.

34. We have also heard learned counsel representing respondents-applicants who supported the impugned orders of the Tribunal below.

35. In order to appreciate these aspects, we have to examine, apart from the legal contentions, few provisions in the Railways Act, 1989 and also the scope and powers of the Railway Claims Tribunal constituted under the Railway Claims Tribunal Act, 1987.

36. Section 2 clause 29 of the Railways Act, 1989 defines "passenger" to mean "a person traveling with a valid pass or ticket". Chapter XIII of the Act deals with liability of Railway Administration for death and injury to passengers due to accidents. Under the said Chapter, Section 123 provides for definitions. Clause (a) of Section 123 defines "accident" to mean an accident of the nature described in Section 124. Clause (c) of Section 123 defines untoward incident, thus :

(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 dacoity; 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.

37. Another important provision in the Act is Section 124A which deals with providing compensation on account of untoward incident. It reads thus:

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 dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation: For the purpose of this section, "passenger" includes -

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

38. We shall now proceed to examine the scheme of the Railway Claims Tribunal Act, 1987.

39. Section 18 of the Tribunal Act contemplate the procedure and power of the Tribunal as under :

18. Procedure and powers of Claims Tribunal: (1) The Claims Tribunal shall not be bound by the procedure laid down by the CPC 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.

(2) The Claims Tribunal shall decide every application as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents, written representations and affidavits and after hearing such oral arguments as may be advanced.

(3) The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil Court under the CPC 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

a) summoning and enforcing the attendance of any person and examining him on oath;

b) requiring the discovery and production of documents;

c) receiving evidence on affidavits;

d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 19872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

e) issuing commissions for the examination of witnesses or documents;

f) reviewing its decisions;

g) dismissing an application for default or deciding it ex parte;

h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

i) any other matter which may be prescribed.

40. From a reading of these provisions, it would appear to us that the Claims Tribunal is not bound to follow the procedure laid down in the CPC but it has the power to regulate its own procedure. Sub-section 2 of Section 18 specifically provides that the Claims Tribunal shall decide every application as expeditiously as possible and ordinarily every application shall be decided on a perusal of the documents, written representations and affidavits and after hearing such oral arguments as may be advanced. It is, therefore, clear that the Claims Tribunal shall be entitled to follow its own procedure while disposing of the claim petitions without regard to the enormous procedure contemplated under the Civil Procedure Code. We may, also say that the procedure provided u/s 18 of the Claims Tribunal Act is a summary procedure intended to adjudicate the claims within a short span of time.

41. In all these cases, it is the finding of the Tribunal below that the deceased persons are bonafide passengers and had valid tickets which were recovered from their possession or baggage, as is evident from the inquest reports, as found by the Tribunal below. As indicated above, clause (29) of Section 2 defines "passenger" which means a person traveling with a valid pass or ticket. In view of the categorical finding of the Tribunal below that all the deceased persons in these cases were having valid journey ticket, we are inclined to hold that the deceased persons were bonafide passengers within the meaning of clause (29) of Section 2 of the Railways Act, 1989.

42. By Amendment Act No. 28 of 1994, clause (c) was inserted to Section 123 of the Railways Act, 1989 bringing the accidental falling of any passenger from a train carrying passengers into the fold of "untoward incident".

43. As extracted above, Section 124A of the Railways Act, 1989 provides that 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, a passenger who was injured or killed is entitled for compensation. Therefore, in our considered view, as provided in this section, there is no obligation on the part of the injured/claimants of the deceased to prove whether there was a wrongful act, neglect or default on the part of the railway administration. Suffice it to say, if any bonafide passenger having a ticket, as defined under clause (29) of Section 2 of the Act dies in an untoward accident, it is incumbent upon the Railways to pay the compensation to the victim/claimants of the deceased without putting up any dispute, provided the death of the deceased does not fall within any of the five exceptions (a) to (e), as indicated above, of the said Section 124A of the Act. Under Explanation (ii) to Section 124A of the Act, a valid platform ticket-holder is also brought within the fold of the term "passenger" and if such a platform ticket holders dies in any untoward incident, his Legal Heirs are entitled to seek compensation.

44. Sri T. Ramakrishna Rao, counsel appearing on behalf of the appellant-Railways placed reliance on two decisions cited (1) and (2) supra and contended that having regard to the ratio laid down in these two decisions, the respondents-applicants are not entitled for any compensation. We are at a loss to understand as to how the ratio laid down in these two decisions which arise out of Motor Vehicles Act, could be made applicable to the facts of the instant case. In these two decisions, it was held that the injured were not even passengers unlike in the instant cases where all the deceased were holding valid journey tickets. Moreover, under the Scheme of the Motor Vehicles Act, the burden is on the claimants to prove the manner in which the accident took place and after they discharge their initial burden, then the Motor Accidents Claims Tribunal would award compensation taking into account the age, income, status and other relevant factors of the injured/deceased.

45. Under the Motor Vehicles Act, compensation is awarded under two heads viz., under "No fault Liability" and under "Fault Liability". u/s 140 of the Motor Vehicles Act, 1988, the liability to pay compensation under No fault Liability in cases of death is Rs.50,000/- and in case of disability is Rs.25,000/-. This provision does not require the claimants to plead and establish that the death or permanent disability resulting from the accident was due to the wrongful act or negligence on the part of the owner/driver of the offending vehicle. The other provision which is provided for awarding compensation under the M.V.Act is Section 168. This provision enables the Motor Vehicles Accidents Claims Tribunal to hold an elaborate enquiry and on the basis of the evidence adduced by the injured/claimants of the deceased relating to the age, income, status and other relevant factors, to award reasonable compensation applying the relevant multiplier. Therefore, the enquiry

contemplated u/s 168 is a detailed enquiry and the initial burden is on the claimants to prove that the offending vehicle is at fault.

46. On the contrary, under the Scheme of the Railways Act, 1989, as is evident from Sections 123 and 124A as extracted in the forgoing paragraphs, after Amendment Act 28/94 came into force,in order to claim compensation, the burden is not cast on the claimants to prove negligence, wrongful act or default on the part of the railway administration. This provision u/s 124A inserted by Amendment Act 28/94, prima-facie, in our view is somewhat similar to Section 140 of the Motor Vehicles Act, 1988 whereunder "No fault liability" payment of a fixed compensation of Rs.50,000/- is provided in case of death of a person without regard to proof of the accident and Rs.25,000/- in case of disablement. However, under the Scheme of the Railways Act, a fixed compensation of Rs. 4 lakhs is provided in cases of death on account of untoward incidents without any elaborate enquiry about the income, age or status of the deceased. The only factor relevant is whether the passenger is a bonafide passenger having a valid journey ticket. The procedure for such adjudication is only summary in nature. We, therefore, hold that these two decisions have absolutely no bearing on the facts of the case and the ratio laid down therein has no application to the facts of the instant case.

47. Learned counsel for the appellant-Railways cited two Division Bench decisions of the Allahabad High Court (4) and (5) supra and contended that the respondents-claimants are not entitled for any compensation. On a perusal of the decision cited (4) supra, we are inclined to hold that the ratio laid in this decision has also no application to the facts of the case. This decision was rendered by a learned Division Bench of the Allahabad High Court prior to the amendment brought to Section 123 of the Railways Act, 1989. It was held in the said decision that the dependants of a bonafide passenger are entitled to get compensation in case of death occurring in an accident but, however, the dependants of a trespasser are not entitled for such benefit.

48. Insofar as the decision cited (5) supra, a Division Bench of the Allahabad High Court held that the burden of proof lies on the claimant and in that case there was no direct evidence to prove that the deceased died in consequence of train accident and no reliable evidence was also placed to show that the deceased purchased ticked and boarded the train. In those circumstances, the Division Bench of the Allahabad High Court held that the claimants were not entitled for any compensation as they failed to discharge the burden in this regard However, in this case, there is a categorical finding of the Tribunal that all the deceased were bonafide passengers from whose possession valid journey tickets were found. Therefore, as held by us in the foregoing paragraphs, the claimants-respondents are entitled for compensation for the death of the deceased in untoward incidents. This decision also does not lend any assistance for the appellant-railways.

49. In RAJ KUMARI AND ANOTHER Vs. UNION OF INDIA5, a Division Bench of the Madhya Pradesh High Court while dealing with Sections 82-A and 68 of the Railways Act,

1890 (old) observed thus :

"Normally, under Sections 101 and 102 of the Evidence Act, the burden to prove such facts, on which the legal right or liability depends, is on such person who asserts existence of these facts. But the question before us is whether the burden of proof that the deceased held a valid ticket, pass or permission during his journey, in which he died in accident, can be placed on his dependants. Obviously, such burden of proof is impossible to be discharged by the dependants, who can have no means of knowledge, whether the deceased, before boarding the train had purchased a valid ticket, pass or permission from the railway authority. It is likely that such a deceased passenger held a valid ticket, pass or permission, but the same is lost in the accident with the death of person and loss of his belongings, if any."

50. The facts in the said case are that on account of the death of Sheo Ram Singh, who died in a railway accident on 16-7-1991, his dependants laid a claim before the learned Judge-cum-Ad hoc Claims Commissioner, for compensation, which was denied to them on the ground that the claimants failed to prove that the deceased was a bonafide passenger, that means, he did not hold a valid railway ticket, pass or permission for the journey. Under these circumstances, the Division Bench, apart from observing as cited supra, has held thus :

"In our opinion, when a person is found dead as a result of accident in a railway carriage, in which he was traveling, a presumption may be drawn u/s 114 of the Evidence Act keeping in view of the prohibition u/s 68 of the Act against boarding a train without ticket that the deceased was a bonafide passenger. Since ticketless travel is an illegal act and exposes such traveler to penal action, the presumption is of innocence in favour of such one of the travelers or passengers in a train. It is for the railway administration to prove contrary and the burden in such circumstances that the deceased was a ticketless traveler or was not a bonafide passenger should be on the railway administration which has special means of knowledge as to whether any ticket was issued to that deceased or whether at any point, before or at the end of journey, he was checked and detected by staff of the railway as an unauthorized person without ticket, pass or permission."

51. Therefore, what is deducible from the above pronouncement of the Division Bench of the Madhya Pradesh High Court is that the burden does not lie on the dependants of the deceased to prove that the deceased was a bonafide passenger and the burden is on the railway administration to prove that the deceased was a ticketless traveller or was not a bonafide passenger. We entirely agree with this view of the Madhya Pradesh High Court. We may also say this view of the Madhya Pradesh High Court is prior to the amendment brought to Section 123 of the Railways Act. Now, as a result of the amendment brought to Sections 123 and 124 of the Act, the burden is on the railways to prove that the deceased is not a bonafide passenger with a valid ticket and the nature of death falls within any of the exceptions to Section 124 of the Act.

52. Under sub-clause 2 of clause (c) of Section 123 of the Act, after the incident of accidental falling of any passenger from a train carrying passengers is also brought within the ambit of "untoward incident". That being so, the accidental falling of a passenger shall include a passenger trying to board a train and also trying to alight a train and in that process loses control and falls down and sustain injuries which results his/her death. In our view, accidental falling of a passenger provided under sub-clause (2) of Clause (c) of Section 123 is capable of taking within its fold such incidents of falling as narrated by us and as such, the death/disability so caused would fall within the ambit of "untoward incident" as provided under clause (c) of Section 123 of the Act, which provision was inserted through amendment Act No. 28 of 1994.

53. Having regard to the categorical findings of the Tribunal below that all the deceased persons were bonafide passengers holding a valid journey ticket, we are inclined to agree with the findings of the Tribunal below in this regard. We, are of the view, in the light of the discussion made by us on the legal proposition urged before us, we find no merits in these appeals and we accordingly dismiss the same with costs.

54. This appeal is filed assailing the order made in OAA No. 66 of 1998 dated 10-9-1999 by the Railway Claims Tribunal, Secunderabad.

55. Appellants, six in all, residents of Budigadda Basthi, Bellampally, Adilabad District, instituted the said O.A.A.No.66 of 1998, seeking compensation of Rs.4 lakhs for the death of Godisela Rajaiah. The 1st appellant is the wife, 2nd appellant is the mother and appellants 3 to 6 are the daughters of the deceased Godisela Rajaiah. The case of the appellants before the Tribunal was that on 8.3.1998 Godisela Rajaiah was travelling in DN Mangala Express train from Chandrapur to Ramagundam in a general compartment with ticket bearing No.25674. He accidentally fell down from the train at the place between Rechini RD/Bellampally at Kms.239/20-22 and died on the spot. On account of the death of Godisela Rajaiah, the appellants herein claimed a compensation of Rs.4 lakhs.

56. On behalf of the Railways, a written statement was filed denying the fact that the death was caused on account of falling from any train. However,the respondent admitted the fact that the ticket bearing No.25674 is a II class ticket issued at Chandrapur on 8.3.1998.

57. On the basis of the pleadings, the Railway Claims Tribunal framed the following issues:

1) Whether the applicants are dependants of the deceased?

2) Whether the deceased was a bona fide passenger?

3) Whether the accidental fall as alleged is not an untoward incident?

4) To what relief?

58. On behalf of the appellants-applicants, the wife of the deceased G. Rajamma, who is the 1st appellant, was examined as AW.1. Certified copies of final report and postmortem examination report were marked as Exs.A.5 and A.6. The Photostat copies of ration card and dependant certificate were marked as Exs.A.8 and A.9. On behalf of the respondent, one N. Venkataiah, was examined as RW.1. The Govt. Railway Police produced the record of the original ticket bearing No.25674 and the voter identity card was also produced on behalf of the Railways.

59. On the basis of the material, the Railway Claims Tribunal (hereinafter referred to as "the Tribunal"), on issue No.1 held that all the applicants are the dependants of the deceased. On issue No.2, the Tribunal, on the basis of the record relating to the issuance of ticket bearing No.25674 on 8.3.1998 for the journey from Chandrapur to Ramagundam, held that that the deceased was a bona fide passenger. On issue No.3, the Tribunal held that since no material is placed before the Tribunal to show that the deceased had an accidental fall from a train and in view of the report of the Deputy Superintendent, Bellampally that one male dead body aged about 40 years is lying inside of Down line between Rechini Road/Bellampally at Kms.239/20-22, there was no accidental fall from a particular train in which the deceased supposed to have travelled. The Tribunal further held that there is no substantial evidence to show how the body was brought to the accident site. Relying on a decision of the Supreme Court in Union of India and others vs. Sunil Kumar Ghosh (1) the Tribunal decided the 3rd issue against the applicants as if there was no accidental fall by the deceased from the train. Having decided the 3rd issue against the applicants, with regard to issue No.4, which relates to granting relief, the Tribunal held that no relief could be granted and accordingly dismissed the O.A.A. by order dated 10.9.1999. It is this order, which is assailed before this Court in the present appeal.

60. It is submitted by the learned counsel for the appellants that the Tribunal though held that the deceased was a bona fide passenger having purchased valid ticket and that the applicants are the dependants of the deceased, yet the Tribunal applying the ratio laid down by the Supreme Court in the decision (1 supra) rejected the claim of the appellants on the ground that there was no accidental fall and the accidental fall has necessarily to be preceded by an accident as defined u/s 124A of the Railways Act, 1989. The learned counsel stated that the Tribunal has totally ignored Clause "c" to Section 123, through which necessary amendment (Act 28 of 1994) was brought to Sec. 123. Under clause "c" the expression "untoward incident" was also brought under Chapter 13, which provides for determination of liability on the Railway Administration, for the death and injury to the passengers due to accident. The learned counsel stated that as provided under clause "c" of Section 123 and sub-clause (2) of Section 123 of the Act, accidental fall of any passenger from a train carrying passengers would also amount to untoward incident. Laying emphasis on the provision, the learned counsel stated that the Legislature visualized such instances of deaths which are difficult to prove by cogent evidence and as

such this provision has been inserted for granting appropriate compensation. The learned counsel took us to the document filed on behalf of the applicants i.e., certified copy of final report Ex.A.6, in which it is categorically mentioned that from the investigation done and from the evidence collected it is established that the deceased G. Rajaiah s/o. Aarkaiah r/o. Bellampally was traveling in DN Mangala Express Train on 8.3.1998 from Chandrapur to Ramagundam on ticket No.25674 and at K.M.No.239/20-22 between Rechini Road and Bellampally Railway Station, the deceased fell down from the running train and received injuries and died on the spot. It is further mentioned in the final report that it is a clear case of accident and there was no foul play or suspicion about the death of the deceased. Relying on Ex.A.6 final report submitted by the Sub Inspector of Railway Police, R.P.S. Bellampally, the learned counsel submitted that Ex.A.6 final report itself would speak that the death of the deceased is due to accidental fall from the running train and that this is a vital document, which has been ignored by the Tribunal only on the basis of the ratio laid down by the Supreme Court in the decision (1 supra), which is prior to the amendment brought to Section 123 of the New Act and stated that this is a fit case for granting compensation.

61. We have also heard Sri Ramakrishna Rao, learned counsel appearing on behalf of the respondent, who opposed the claim of the appellants on the ground that the claimants have not proved the cause of death by adducing cogent evidence to show that the deceased died on account of falling from the train and as such, the Tribunal is justified in dismissing the claim of the appellants.

62. In the light of these submissions, the point for consideration is whether the Tribunal is justified in rejecting the claim of the appellants for compensation only on the ground that the manner of the accident and the cause of the death of the deceased have not been proved by the claimants?

63. Admittedly the decision of the Supreme Court (1 supra) relied on by the Tribunal was rendered in the year 1984. The facts obtaining in the said case are that the respondent-Sunil Kumar was traveling by a train as a bona fide passenger. While the bogie in which he was traveling was being shunted at a Railway Station, he accidentally fell down from the train near the water column at the end of the platform and his right hand was crushed by that part of the train which was being shunted. The respondent laid a claim before the District Judge seeking compensation u/s 82A of the Railways Act, 1890. It was contended on behalf of the Railways that the respondent sustained injury while going to the rear end of the train and possibly boarding one of the bogies which was being detached during the shunting operation and in this process he appears to have been hit by the water column when these bogies were being moved during the shunting operation. On the basis of these pleadings, the District Judge did not accept the version of the respondent that the bogie in which he was traveling received a sudden jerk and he fell down on that account. Aggrieved by rejection of compensation, the respondent preferred an appeal before the Madhya Pradesh High Court. The Madhya Pradesh High Court while considering the provisions u/s 82A of the Act, 1890, held that "Any mishap or

misfortune in the working of a railway involving a passenger train or a part thereof resulting in the death of or personal injury to a passenger traveling therein, during his rail journey is an accident within the ambit of Section 82A." By holding so, the Madhya Pradesh High Court allowed the claim of the passenger (Sunil Kumar). The Railways, however, carried the matter before the Supreme Court. The Supreme Court, while interpreting the provisions under Sec. 82-A of the Railways Act (9 of 1890), observed thus:

"In the case of a mishap to the passenger in such circumstances it cannot be said that there has been an accident to the train and the mishap has nexus with it. The liability u/s 82A will not, therefore, be attracted in such cases. Or in the case of a mishap to a passenger in similar circumstances, such as an injury sustained on account of falling down whilst getting on or off a running or stationery train or sustained when he slips in a compartment or when something falls on him whilst traveling. All such mishaps, when not connected with the accident to the train, or a part of it, would be accidents to the passenger only. And until both the mishaps take place, one to the train and another, a sympathetic one, to the passenger, the liability u/s 82A of the Act will not be attracted."

64. Thus, while interpreting the provisions u/s 82A of the Railways Act, 1890, the Supreme Court held that any injury sustained on account of falling down whilst getting on or off a running or stationary train or sustained when a passenger slips, while not connected with the accident to the train or a part of it would be accidents to the passenger only and unless both accidents, viz., one to the train and one to the passenger in the same transaction take place, the liability on the part of the Railways u/s 82A would not be attracted. In those circumstances, the Supreme Court held that since no accident has taken place to the train, there is no liability on the part of the Railways to pay compensation.

65. However, under the Railways Act, 1989 (New Act) the liability of the Railway Administration has been dealt with u/s 123 in Chapter 13. Section 123 deals with the definitions of ''accident'' and ''dependant'' etc. Section 124 deals with the extent of liability and Section 124A deals with compensation on account of untoward incident. By amendment (Act.28 of 1994)) clause ''c'' was inserted to Section 123 through which ''untoward incident'' is also included. As per clause ''c'' of Section 123, ''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 dacoity; 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."

66. From a reading of Sub-Section (2) of Section 123 and clause "c" of Section 123 as provided in the New Act, 1989, if there is an accidental fall of any passenger from a train carrying passengers, such accidental fall would come within the ambit of "untoward incident."

67. Coming to the facts of the instant case, on a perusal of the final report Ex. A.6, it is clear that the deceased was traveling by DN Mangala Express Train on 8.3.1998 from Chandrapur to Ramagundam with a valid ticket bearing No.25674 and that the deceased fell from the said train between Rechini and Bellampally Railway Station, and died on the spot. When the Investigating Authority itself submitted the final report Ex.A.6 narrating the incident, there is no reason for the Tribunal to disbelieve the said report only relying on the decision of the Supreme Court (1 supra), which is rendered in the year 1984 which has arisen under the Railways Act, 1890. The Tribunal, as discussed above, has not referred to the amended provision inserted by amendment Act (28 of 1994) under clause "c" to Section 123 defining "untoward incident", and has only placed reliance of the decision of the Supreme Court cited (1) supra and rejected the claim of the appellants. We are of the view, the impugned order of the Tribunal, rejecting the claim of the appellants, without even considering the amended provisions brought under Amending Act 28/94 to Section 123 of the Act, cannot be sustained.

68. We may further add that through amendment (Act 28 of 1994) Section 124A was also inserted, which deals with the determination of compensation on account of untoward incident. Section 124A reads as under:

"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 dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident."

69. 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."

70. However, as indicated above, five exceptions are provided in Section 124A and if the death of the passenger falls in any of those exceptions, no liability can be fastened on the Railway Administration for payment of compensation to the dependants of such deceased. If the Railway Administration satisfactorily proves the case that the death of the deceased falls within the five exceptions provided to Section 124A, then only the Tribunal can decline payment of compensation to the dependants. Here it is not the case of the respondent that the cause of death of the deceased falls within the five exceptions provided u/s 124A of the Act.

71. In C.M.A.Nos.2374 of 1998 and batch, by a separate judgment, we have discussed as to what extent the burden could be cast on the claimants to claim compensation and the true meaning to be given to the provisions under Sections 123, 124 and 124-A of the Railways Act, 1989 in detail and held that even if there is any default on the part of a passenger, the Railways are liable to pay compensation regardless of such default. In this case, as discussed above, it is proved beyond doubt that the deceased had purchased a valid ticket bearing No.25674 for the journey from Chandrapur to Ramagundam and the said fact was proved by cogent evidence. Therefore, in the absence of any evidence to the contrary, the inescapable presumption is that the deceased was traveling in DN Mangala Express Train on 8.3.1998 as was reflected in the report of the Investigating authority under Ex.A.6 on 2.6.1998.

72. In view of our discussion in the foregoing paragraphs, we hold that the Railways is liable to pay the statutory compensation of Rs.4 lakhs to the appellants-applicants and the Tribunal is not justified in rejecting the claim of the appellants in the manner narrated by us.

73. For all the reasons, we allow the appeal with costs and set aside the judgment, dated 10.9.1999 made by the Railways Claims Tribunal, Secunderabad in O.A.A.No.66 of 1998 by awarding a compensation of Rs.4,00,000/- with interest at 9% per annum from the date of filing of the claim petition till the date of realization. The respondent shall deposit the above compensation along with costs and interest within a period of three months from today to the credit of O.A.A.No.66 of 1998 on the file of the Railway Claims Tribunal, Secunderabad.

74. There are six applicants in the claim petition. 1st applicant is the wife, 2nd applicant is the mother and applicants 3 to 6 are the daughters of the deceased. As on the date of filing of the claim petition, the age of the mother of the deceased-applicant No.2 was shown as 68 years and applicants 4 to 6 were shown as minors. By now applicants 4 to 6 would have attained majority. As the 1st applicant is the wife, and applicants 3 to 6 are

the daughters of the deceased, they shall be entitled to compensation at the rate of Rs.70,000/- each and the 2nd applicant, who is the mother of the deceased, shall be entitled to compensation of Rs.50,000/-. The applicants shall be entitled to withdraw the entire amounts allotted to them along with accrued interest.