Union Of India vs Rina Devi on 9 May, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2362, 2019 (3) SCC 572, 2018 AAC 991 (SC), 2018 (4) ABR 217, (2018) 2 ACC 591, (2018) 2 PAT LJR 447, (2018) 2 WLC(SC)CVL 70, AIR 2019 SC (CIV) 409, (2018) 3 RECCIVR 40, (2018) 71 OCR 10, (2018) 7 SCALE 274, (2018) 3 CIVLJ 740, (2018) 2 KER LT 1060, (2018) 3 ACJ 1441, (2018) 3 BOM CR 729, (2018) 3 CAL HN 238, (2018) 4 ALL WC 3776, (2018) 190 ALLINDCAS 142 (SC), (2018) 130 ALL LR 789, (2018) 6 ANDHLD 122, (2018) 3 TAC 26, (2018) 3 JCR 241 (SC)

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Bench: Rohinton Fali Nariman, Adarsh Kumar Goel

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4945 OF 2018
(SPECIAL LEAVE PETITION (CIVIL)NO.10223 @ D.NO.6059 OF 2018)

UNION OF INDIA …APPELLANT

VERSUS

RINA DEVI ...RESPONDE

JUDGMENT

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred against award of compensation of Rs.4 lakhs under Section 124A of the Railways Act, 1989 (1989 Act).

2. The respondent filed claim for compensation for death of her husband Jatan Gope in an 'untoward incident' on 20 th August, 2002. Her case is that the deceased had purchased a ticket of second class for Karauta to Khusrupur by train No.532. He fell down from the train due to rush of passengers and died on the spot. One Kailash Gope who witnessed the deceased purchasing the

ticket and boarding the train filed an affidavit stating these facts. He was not cross-examined. Case of the respondent is that the ticket was not recovered from possession of the deceased as it may have been lost somewhere.

3. The claim was contested by the appellant. It was stated that the deceased was not a passenger but was wandering near the railway track. Cousin of the deceased who lodged FIR stated the deceased was suffering from mental disorder and was wandering in that state of mind. However, he was not examined as a witness.

4. The Tribunal dismissed the claim on the ground that it was not a case of 'untoward incident' but a case of 'run over'. The deceased was not a bona fide passenger.

5. The High Court set aside the order of the Tribunal by relying upon the evidence of Kailash Gope who filed affidavit to the effect that the deceased had purchased the ticket and had boarded the train. The said witness has not been cross-examined. Reliance was placed on a Division Bench judgment of the High Court in Kaushalaya Devi versus Union of India through General Manager, North Eastern Railway, Gorakhpur, U.P. 1 to the 1 PLJR 2008 (3), page 711 effect that if a dead body is found in the precincts of the Railway Station, there is a presumption that the deceased was a bona fide passenger. Onus to prove that he was a ticketless traveller was on the Railway. Judgment of this Court in Kamrunissa versus Union of India2 to the effect that the 'run over' was different from 'untoward incident' was distinguished. Therein, there was no evidence about the deceased purchasing the ticket as in the present case.

6. This appeal has been preferred mainly on the ground that the claim of the respondent was not admissible in absence of an 'untoward incident' as defined under Section 123(c) of the 1989 Act as rightly held by the Tribunal. Mere presence of body in the precincts of the Railway was not enough to presume that he was a bona fide purchaser particularly when no ticket was found from the deceased.

7. Learned ASG made it clear that the appellant was interested only in laying down of law on the subject even if the impugned judgment was not disturbed. Accordingly, we requested Shri Mukul Rohtagi, learned senior counsel to assist the court as Amicus, instead of issuing notice to the respondent. We do not propose to 2 AIR 2017 SC 1436 = 2017 SCC Online SC 304 disturb the impugned judgment irrespective of its correctness and we propose to consider the legal issue sought to be raised and the issues that have been brought to our notice by the Railway Tribunal as shown later.

8. Vide order dated 13th March, 2018, we noted the issue of apparent conflict in Rathi Menon versus Union of India 3 and Kalandi Charan Sahoo versus General Manager, South-East Central Railway, Bilaspur4 as to the relevant date for applying the rate of compensation when different rate is applicable at the time of filing of claim and on the date of the order. A submission has been filed by the Registrar Principal Bench, Railway Claims Tribunal seeking clarification on four subjects which repeatedly arise before the said Tribunal i.e. :

(i) Quantum of compensation: It is stated that there is a conflict in the decisions in Rathi Menon (supra) and Kalandi Charan Sahoo (supra) which needs clarification. We have already taken note of this issue.

(ii) Definition of passenger: Whether any person found dead near the track on Railway Precincts can be held to 3 (2001) 3 SCC 714, para 30 4 Civil Appeal No.5608 of 2017 decided on 25.4.2017 be a bona fide passenger for maintainability of a claim for compensation in absence of recovery of a ticket from his body. Conflicting decisions of Andhra Pradesh High Court in Agam Shanthamma versus Union of India 5;

Kerala High Court in Union of India versus Leelamma6; Bombay High Court (Nagpur Bench) in Union of India versus Surekha7; Ramdhan versus Union of India8; & Union of India versus Nandabai 9;

Calcutta High Court in Asharani Das versus Union of India10; and Madhya Pradesh High Court in Raj Kumari versus Union of India11 are required to be resolved on this subject.

(iii) The concept of self inflicted injury: Whether attempt of getting into or getting down a moving train resulting in an accident was a case of 'self inflicted injury' so as not to entitle to any compensation or no such concept could not apply under the scheme of law which casts strict liability to pay compensation by the Railway under 5 (2004) ACJ 713 6 2009 (1) KLT 914 7 (2011) ACJ 1845 8 (2009) ACJ 2487 9 (2016) ACJ 411 102009 (2) CalLT 467 11 (1993) ACJ 846 Sections 124 and 124A. In this regard views of the High Courts of Kerala in Joseph PT versus Union of India12, Bombay in Pushpa versus Union of India13 and Delhi in Shayam Narayan versus Union of India 14 may appear to be against the decisions of this Court in Union of India versus Prabhakaran Vijaya Kumar15 and Jameela versus Union of India16.

(iv) Award of interest. The Act is silent about the interest.

In Thazhathe Purayil Sarabi versus Union of India 17, this Court held that the CPC could be invoked and interest awarded at the rate of 6% p.a. from the date of application till the date of award and 9% p.a. interest from the date of award till the date of payment. In Mohamadi versus Union of India18 interest at the rate of 9% was awarded without any difference between the date of application and date of award or for subsequent award.

12 AIR 2014 Kerala (12) 13 (2017) III ACC 799 (Bom) 14 (2018) ACJ 702 15 (2008) 9 SCC 527 16 (2010) 12 SCC 443 17 (2010) TAC 420 SC 18 (2011) ACJ 2356

9. An additional affidavit has been filed on behalf of the appellant to the effect that judgment in Rathi Menon (supra) did not lay down correct law to the effect that rate of compensation should be as applicable on the date of order. It is submitted that the said judgment did not consider the decision of 4-Judge Bench decision in Pratap Narain Singh Deo versus Srinivas Sabata 19 to the effect that liability to pay compensation arises as soon as injury is caused. This was reiterated in

Kerala State Electricity Board versus Valsala K.20. Kerala High Court took the same view in United India Insurance Company Ltd. versus Alavi21.

10. In its written submissions, the appellant has dealt with the issues of quantum of compensation, definition of passenger and strict liability. It has been submitted that the view taken in Kalandi Charan Sahoo (supra) was a correct view. Reference has also been made to the view taken by the Railway Claims Tribunal, Bangalore Bench in its judgment dated 19 th February, 2018 in Rahamath Ulla and Ors versus Union of India 22. As regards the definition of passenger and presumption to be drawn from the dead body found on the railway premises without any 19 (1976) 1 SCC 289 20 (1999) 8 SCC 254 21 (1998) 3 LLN 285 22 Claim Application No.OA(II)U/168/2013 ticket, it is submitted that if no ticket is found from the body of the person, presumption of being a bona fide passenger could not be drawn. Contra view of the Patna High Court in Kaushalya Devi (supra) was erroneous and view of Delhi High Court in Gurcharan Singh versus Union of India 23 and Andhra Pradesh High Court in Jetty Naga Lakshmi Parvathi versus Union of India 24 was correct law. With regard to strict liability, it is submitted that a distinction has to be drawn between an 'untoward incident' and a 'run over'. It is submitted that in view of Kamrunissa (supra) claimants should be put to strict proof of liabililty. There are 38000 cases pending in Tribunals. Railway administration grants compensation in all genuine cases. If in spite of non recovery of ticket, the claimant is exempted from the burden of proof and the Railway is required to meet such claim, the liability of the Railway will increase disproportionately. At present, Railway was paying approximately Rs.350 crores as compensation. There are 68,000 kilometers of railway tracks which are porous/unmanned resulting in untoward incidents for which liability ought not to be fastened on the Railways without valid proof of its liability. Andhra Pradesh High Court in Union of India versus Kurukundu 23 (2015) ACJ 171 24 2013 ACJ 1061 Balakrishnaiah25 rightly held that norms of evidence cannot be completely ignored.

11. Shri Rohtagi, learned Amicus submitted that the view taken in Rathi Menon (supra) ought to be preferred and rate of compensation as on the date of the order should be applied. He submitted that in common law the amount becomes due on the date of assessment as laid down in Union of India versus Raman Iron Foundry26 and Kesoram Industries & Cotton Mills Ltd. versus CWT Central Calcutta 27. Moreover, the present being case of a beneficial legislation, if two interpretations are possible interpretation beneficial to the claimant has to be preferred, consistent with the law laid down in Prabhakaran Vijaya Kumar (supra). He submitted that Workmen's Compensation Act (now named as Employee's Compensation Act, 1923) was amended in the year 1958 and in clause 5 of notes on clauses in the Bill, it was stated:

> "Clause 5. – This provision is being made in order to ensure that the workman is able to get whatever amount the employer is prepared to pay immediately pending a decision on the amount of compensation actually due.
>
> 25 (2004) ACJ 529 26 (1974) 2 SCC 231, para 11 27 (1966) 2 SCR 688, para 33 This clause also provides for payment of interest if the compensation is not paid within one month from the due date and for a penalty if the Commissioner does not consider the delay to be justified."

12. This shows that intention of law is that compensation due is only after a decision even though amount may be required to be immediately paid. In case compensation is not immediately paid, Section 4A of the 1923 Act provides for interest and penalty. Thus, the rate applicable should be as on the date of order.

13. We have anxiously considered the rival submissions. We consider it necessary to quote the relevant provisions of the 1989 Act :

> "S.123. Definitions. - In this Chapter, unless the context otherwise requires,-
>
> (a) "accident" means an accident of the nature described in section 124;
>
> (b) xxxx xxxx xxxx xxxx
>
> 1[(c) "untoward incident" means--
>
> xxxx xxxx xxxx xxxx
>
> (2) the accidental falling of any passenger from a train carrying passengers.] S.124. Extent of liabililty - 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. S.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 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.]"

14. In exercise of power under Section 129 of the 1989 Act, the Central Government framed rules called Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The rules provided for a schedule prescribing the amount of compensation payable in respect of death and injuries. The said rules have been amended w.e.f. 1st January, 2017 by notification dated 22nd December, 2016 substituting the schedule by higher amount of compensation.

15. We now proceed to deal with the following issues seriatim:

(i) Whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application/incident or on the date of order awarding compensation;

(ii) Whether principle of strict liability applies;

(iii) Whether presence of a body near the railway track is enough to maintain a claim.

(iv) Rate of interest.

Re: (i) Quantum of Compensation

15.1 In Rathi Menon (supra), this Court considered the

question whether the compensation to be applied would be as per rules applicable on the date of the order or as per the rules in force at the time of accident or the untoward incident. Reversing the view taken by the Kerala High Court that the liability to pay compensation arises as soon as accident happens and not when the quantum is determined, this Court held that liability is to pay compensation 'as may be prescribed' which means as on the date of the order of the Tribunal. This Court observed that if interpretation placed by the Kerala High Court was to be accepted and the claimant was to get compensation in terms of market value which prevailed on the date of the accident, the money value of the compensation will be reduced value on account of lapse of time. The revision of rate by the Central Government may itself show that the money value has come down. The Tribunal must apply the rate applicable as per the rules at the time of making of the order for payment of compensation 28. This Court distinguished judgments of the larger Bench in Pratap Narain Singh Deo (supra), P.A. Narayanan versus Union of India 29 and Maghar 28 Paras 29 and 30 29 (1998) 3 SCC 67 Singh versus Jashwant Singh30. It was observed that Pratap Narain Singh Deo (supra) and Maghar Singh (supra) were judgments under the Workmen Compensation Act where the scheme was different as in the said Act there was a provision for interest and penalty if deposit was not made. Judgment in P.A. Narayanan (supra) was relied upon to support the view that therein compensation was awarded even though accident was of a date much earlier to the rules providing for compensation.

15.2. Learned ASG for the appellant submitted that view in Rathi Menon (supra) stands watered down by subsequent decisions especially in Thazhathe Purayil Sarabi (supra), Mohamadi (supra) and Kalandi Charan Sahoo (supra). Rathi Menon (supra) was premised on the basis that there was no law for interest and there will be injustice if compensation was paid at money value which had got reduced by the time the compensation was paid. Factually interest was awarded in Rathi Menon (Supra). It was on that basis that judgments in Workmen Compensation cases were held to be distinguishable though the said judgments are of larger Benches31. Subsequently in Thazhathe Purayil Sarabi (supra) it has been held by this Court, after referring to 30 (1998) 9 SCC 134 31 Para 33 of the judgment Rathi Menon (supra), that right to claim compensation accrued on the date of the incident though compensation is computed on the date of the award of the Tribunal. To compensate for loss of money value on account of lapse of time and for the denial of right to utilize the money when due, interest was required to be paid 32. Accordingly, this Court directed payment of interest on the awarded sum from the date of application till the date of recovery. This view was followed in Mohamadi (supra). In Kalandi Charan Sahoo (supra), without any specific discussion on the legal issue involved, direction was issued for payment of compensation which was applicable at the material time and the same was assumed to be of Rs.4 lakhs. In that case, the accident took place in the year 2005 and the award of the Tribunal was in 2009 i.e. prior to 1 st January, 2017.

15.3. Learned amicus has referred to judgments of this Court in Raman Iron Foundry (supra) and Kesoram Industries (supra) to submit that quantum of compensation applicable is to be as on the award of the Tribunal as the amount due is only on that day and not earlier. In Kesoram Industries (supra), the question was when for purposes of calculating 'net wealth' under the Wealth Tax 32

Para 26 Act, 1957 provision for payment of tax could be treated as 'debt owed' within the meaning of Section 2(m) of the said Act. This Court held that 'debt' was obligation to pay. The sum payable on a contingency, however, does not become 'debt' until the said contingency happens. The liability to pay tax arises on such tax being quantified. But when the rate of tax is ascertainable, the amount can be treated as debt for the year for which the tax is due for purposes of valuation during the accounting year in question. There is no conflict in the ratio of this judgment with the principle propounded in Thazhathe Purayil Sarabi (supra) that in the present context right to compensation arises on the date of the accident. In Raman Iron Foundry (supra), the question was whether a claim for unliquidated damages does not give rise to 'a debt' till the liability is determined. It was held that no debt arises from a claim for unliquidated damages until the liability is adjudicated. Even from this judgment it is not possible to hold that the liability for compensation, in the present context, arises only on determination thereof and not on the date of accident. Since it has been held that interest is required to be paid, the premise on which Rathi Menon (supra) is based has changed. We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Once concept of interest has been introduced, principles of Workmen Compensation Act can certainly be applied and judgment of 4-Judge Bench in Pratap Narain Singh Deo (supra) will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation.33 15.4 Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the 33 Prabhakaran Vijaya Kumar (supra) Para 12 Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in Rathi Menon (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given. Re: (ii) Application of Principle of Strict Liabillity – Concept of Self Inflicted Injury 16.1 From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and Section 124A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the railway administration in the case of an accident or in the case of an 'untoward incident'. Only exceptions are those provided under proviso to Section 124A. In Prabhakaran Vijaya Kumar (supra) it was held that Section 124A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in Jameela (supra).

16.2 Coming to the proviso to Section 124A to the effect that no compensation is payable if passenger dies or suffers injury due to the situations mentioned therein, there is no difficulty as regards suicide or attempted suicide in which case no compensation may be payable. Conflict of opinions in High Courts has arisen on understanding the expression 'self inflicted injury' in the proviso. In some decisions it has been held that injury or death because of negligence of the victim was at par with self inflicted injury. We may refer to the decisions of High Courts of Kerala in Joseph PT (supra), Bombay in Pushpa (supra) and Delhi in Shayam Narayan (supra) on this point.

16.3. In Joseph PT (supra), the victim received injuries in the course of entering a train which started moving. Question was whether his claim that he had suffered injuries in an 'untoward incident' as defined under Section 123(c) could be upheld or whether he was covered by proviso to Section 124A clause (b). The High Court held that while in the case of suicide or attempt to commit suicide, intentional act is essential. Since the concept of 'self inflicted injury' is distinct from an attempted suicide, such intention is not required and even without such intention if a person acts negligently, injuries suffered in such an accident will amount to 'self inflicted injury'. Relevant observations are :

> "Therefore, the two limbs of the Proviso should be construed to have two different objectives to be achieved. We can understand the meaning of the term "self-inflicted injury" not only from the sources provided by the dictionaries, but also from the context in which it is used in the statute. The term "self-inflicted injury" used in the statute can be deduced as one which a person suffers on account of one's own action, which is something more than a rash or negligent act But it shall not be an intentional act of attempted suicide. While there may be cases where there is intention to inflict oneself with injury amounting to self-inflicted injury, which falls short of an attempt to commit suicide, there can also be cases where, irrespective of intention, a person may act with total recklessness, in that, he may throw all norms of caution to the wind and regardless to his age, circumstances, etc. act to his detriment. Facts of this case show that the appellant attempted to board a moving train from the off side unmindful of his age and fully aware of the positional disadvantageous and dangers of boarding a train from a level lower than the footboard of the train. It is common knowledge that the footboard and handrails at the doors of the compartment are designed to suit the convenience of the passengers for boarding from and alighting to the platform. And at the same time, when a person is trying to board the train from the non- platform side, he will be standing on the heap of rubbles kept beneath the track and that too in a lower level. Further more, he will have to stretch himself to catch the handrails and struggle to climb up through the footboard hanging beneath the bogie. The probability of danger is increased in arithmetic progression when the train is moving. Visualising all these things in mind, it can only be held that the act of the appellant was the height of carelessness, imprudence and foolhardiness. It is indisputable that the purpose of Section 124A of the Act is to provide a speedy remedy to an injured passenger or to the dependants of a deceased passenger involved in an untoward incident. Section 124A of the Act provides for compensation to a passenger or his dependants who suffers injury or

death, as the case may be, in an untoward incident even where the untoward incident is not the consequence of any wrongful act, neglect or default on the part of the Railway Administration. To this extent, it can be said to be a no-fault liability. Even though the provisions relating to payment of compensation in the Act can be said to be a piece of beneficial legislation, it cannot be stretched too much to reward a person who acts callously, unwisely or imprudently. There is no provision of law brought to our notice permitting the passengers to entrain from the non-platform side of the railway track. However, the counsel for the respondent did not show any provision of law prohibiting the same. The question whether an act by which a passenger sustains injury while boarding a train through the off side, is a self- inflicted injury or not depends on the facts of each case. Merely because a person suffered injury in the process of getting into the train through the off side, it may not be sufficient to term it as a self- inflicted injury, unless the facts and circumstances show that his act was totally imprudent, irrational, callous and unmindful of the consequences. All the facts and circumstances established in this case would show that the act of the appellant was with full knowledge of the imminent possibility of dangering his life or limb and therefore, it squarely comes within the term "self-inflicted injury" defined in Section 124A Proviso (b) of the Act." 16.4 In Pushpa (supra) a hawker died in the course of boarding a train. It was held that he was not entitled to compensation as it was a case of 'self inflicted injury'. The relevant observations are :

"Such an attempt by a hawker has been viewed by the trial Court as something amounting to criminal negligence on his part and also an effort to inflict injuries to himself. The trial Court reasoned that if the deceased had to sell his goods by boarding a train, he should have ensured to do so only when it was quite safe for him to get on to the train or otherwise he could have avoided catching the train and waited for another train to come. It also hinted that there was absolutely no compulsion or hurry for the deceased in the present case to make an attempt to somehow or the other board the train while it was gathering speed." 16.5 In Shyam Narayan (supra), same view was taken which is as follows :

"6(ii) I cannot agree with the arguments urged on behalf of the appellants/applicants in the facts of the present case because there is a difference between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, self inflicted injury, bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity." 16.6 We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree.

Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar34 laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will 34 2017 (13) SCALE 652 not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor. Re: (iii) Burden of Proof When Body Found on Railway Premises – Definition of Passenger :

> 17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a 'passenger'. In Raj Kumari (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bonafide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in Gurcharan Singh (supra) held that initial onus to prove death or injury to a bona fide passenger is always on the claimant.

However, such onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows :

> "3(ii) In my opinion, the contention of the learned counsel for the appellants/claimants is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bona fide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bonafide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a leaned Single Judge of this Court in the case reported as Pyar

Singh Vs. Union of India 2007 (8) AD Del. 262 which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of Leelamma (supra)." 17.2 In Jetty Naga Lakshmi Parvathi (supra) same view was taken by a single Judge of Andhra Pradesh after referring to the provisions of the Evidence Act as follows :

"22. So, from Section 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of A.W.1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. Section 114(g) of the Indian Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such an evidence. The Claims Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal." 17.3 In Kamrunnissa (supra), from the circumstances appearing in that case it was held that there was no evidence that the deceased had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of 'untoward incident' but a case of run over. It was observed :

"7. The aforestated report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals, that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept, that such an accident could have taken place while boarding a train.

8. In addition to the factual position emerging out of a perusal of paragraphs 7 & 8 extracted hereinabove, the report also reveals, that besides a pocket diary having been found from the person of the deceased a few telephone numbers were also found, but importantly, the deceased was not in possession of any other article. This further clears the position adopted by the railway authorities, namely, that the deceased Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere railway station." 17.4 We thus hold that mere presence of a body on the

> Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.

Re: (iv) Rate of Interest

18. As already observed, though this Court in Thazhathe Purayil Sarabi (supra) held that rate of interest has to be at the rate of 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in Mohamadi (supra), rate of interest has to be reasonable rate at par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises upto the date of payment, without any difference in the stages. Legal position in this regard is at par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner.

The appeal will stand disposed of accordingly.

.....J. [ADARSH KUMAR GOEL] .....J. [ROHINTON FALI NARIMAN] NEW DELHI;

MAY 09, 2018.