

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No.316 of 2013

1. Meera Burnawal
2. Nisha Burnwal
3. Nitesh Kumar

.... **Appellants**

Versus

The Union of India through the General Manager, East Central Railway, Hazipur,
P.O. & P.S. Hazipur, District Patna, Bihar

.... **Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellants	: Mr. Rajesh Kumar Jha, Adv.
For the Respondent	: Mr. Anil Kumar, ASGI
	: Mr. Ravi Prakash, C.G.C

11/Dated: 11th March, 2024

1. Heard the parties.
2. The present miscellaneous appeal has been filed by the appellants against the order dated 24.07.2013 passed by the learned Member (Technical), Railway Claims Tribunal, Ranchi Bench in Case No.OA(IIu)/RNC/2010/007 whereby, the claim of the appellants have been rejected on the ground that the deceased was negligent while boarding the Train.
3. From arguments and pleadings of the parties, it appears that the deceased was travelling from Gaya to Gomoh on 01.09.2008 having valid railway ticket and during course of boarding the Train at Hazaribagh, he fell down and got serious injury, which has resulted in death. The accident was on 01.09.2008 and the death was also on the same day. Thereafter, claim petition has been filed on 12.01.2009.
4. It appears that the claim petition has been entertained. The issues framed in the claim petition are as follows:-

“1. Whether the deceased Om Prakash Burwal was a bonafide passenger of train No.8610DN on 01.09.08 as alleged?

2. Whether any untoward incident as defined under Section 123(C)(2) of the Rlys Act, 1989 occurred to Om Prakash Burnwal?

3. Whether the applicant is entitled for compensation as claimed and other relief if any.”

5. Issue Nos.2 & 3 have been decided against the appellants on the ground that the deceased was negligent on boarding the train.
6. Learned counsel for the appellants has relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Union of India vrs. Rina Devi*** reported in **(2019) 3 SCC 572**. Paragraph Nos. 20 to 25 of the said judgment are as follows:-

“20. 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 124-A 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 124-A. In *Prabhakaran Vijaya Kumar* it was held that Section 124-A 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*.

21. Coming to the proviso to Section 124-A 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 on a par with self-inflicted injury. We may refer to the decisions of the High Courts of Kerala in *Joseph P.T.*, Bombay in *Pushpa* and Delhi in *Shyam Narayan* on this point.

22. In *Joseph P.T.*, 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 124-A 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 : (SCC OnLine Ker para 24)

“24. 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 of his age, circumstances, etc. act to his detriment. Facts of this case show that the appellant attempted to board a moving train from the offside unmindful of his age and fully aware of the positional disadvantage 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 at a lower level. Furthermore, 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 124-A 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 124-A 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 offside, 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 offside, 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 endangering his life or limb and, therefore, it squarely comes within the term “self-inflicted injury” defined in Section 124-A proviso (b) of the Act.”

23. In *Pushpa* 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 : (SCC OnLine Bom para 14)

“14. 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.”

24. In *Shyam Narayan*, same view was taken which is as follows : (SCC Online Del para 7)

“7. I cannot agree with the arguments urged on behalf of the appellant 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.”

25. 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 the judgment of this Court in *United India Insurance Co. Ltd. v. Sunil Kumar* laying down that plea of negligence of the victim cannot be allowed in claim based on “no fault theory” under Section 163-A 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 not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.”

7. ‘*self-inflicted injury*’ and ‘*no fault theory*’ have been explained in the above mention judgment of the Hon’ble Apex Court.

8. Learned counsel for the respondents-railway has opposed the prayer and it has been submitted that the deceased was negligent while boarding the Train.

9. Having heard the learned counsel for the parties and from perusal of the record, it appears that death is due to the accident. Some negligence on his part

cannot be a ground for denial of claim as the claim is based on '*no faulty theory*' and this aspect has already been settled by the Hon'ble Apex Court.

10. Considering the above facts and law, the present miscellaneous appeal is hereby, allowed.

11. The respondent-railway is directed to pay the compensation amount of Rs.4,00,000/- to the claimants with the interest @ 7.5% *simple interest* from the date of death i.e. 01.09.2008.

12. With the above direction, the present miscellaneous appeal is hereby, disposed of.

13. The entire amount should be released within a period of three months in favour of the widow of the deceased because other claimants are major.

14. Let a copy of this order be handed over to the learned counsel for the respondents for compliance of the same.

(Rajesh Kumar, J.)