IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 50 OF 2015

1. Mahadev Krishna Tambe (deleted as dead) ...Appellants
2. Smt. Sonal Vaibhav Sawant

Versus

The Union of India
represented by General Manger ...Respondent

Mr. Mohan Rao, for the Appellants.
Mr. Suresh Kumar, a/w Smita Thakur, for the Respondent

CORAM: N. J. JAMADAR, J.
DATED: 19th JUNE, 2025

JUDGMENT:-

1. This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 ("the Act, 1987") is directed against the judgment and award dated 16th June, 2014 passed by the learned Member (Technical) of the Railway Claims Tribunal, Mumbai Bench, Mumbai ("the Tribunal"), whereby the claim application OA No.(IIU)/MCC/2011/0891, preferred by the appellants under Section 124-A of the Railways Act, 1989 ("the Railways Act") for compensation on account of the death of Amit Tambe ("the deceased"), the son of applicant No.1 Mahadev and brother of applicant No.2 Smt. Sonal, in an untoward incident, dated 25th July, 2011, came to be dismissed.

Background facts:

2. The deceased, then 25 years of age, was a bachelor. On 25th July, 2011, the deceased was travelling from Malad to Mahalaxmi Station by a local train on a valid second class season ticket, issued on 17th July, 2011. The applicants assert that, between Lower Parel and Mahalaxmi Station, the deceased accidentally fell off from an unknown running train and sustained fatal injuries. He succumbed to the injuries before he could be admitted in hospital. As the deceased was a bachelor, Mahadev, the father, and Smt. Sonal, the sister, preferred the application for compensation under Section 124-A of the Railways Act.

3. The respondent resisted the application by filing a written statement. Refuting the assertions of the applicants that the deceased died on account of an untoward incident, it was contended that the Charge Report prepared at the Lower Parel Station indicated that an unknown male was found lying dead on the tracks between 7/05 and 7/06 km. but in the absence of evidence regarding the mode and manner of the alleged incident, it cannot be termed as an "untoward incident". Resultantly, the applicants were not entitled to claim compensation. The respondent sought to place the onus of

proof of the fact that the deceased was a *bona fide* passenger, on the applicants.

4. The Tribunal recorded the evidence of application No.1 Mahadev (AW1). It seems that Smt. Sonal (A2) withdrew her claim by filing an affidavit.

Impugned Award:

5. After appraisal of oral evidence and the documents tendered for his perusal, especially, the accident memo and inquest panchnama, the learned Member, (Technical) was persuaded to return a finding that the applicants failed to establish that the deceased died on account of an untoward incident as defined under Section 123(c)(2) of the Railways Act. The fact that the deceased was found lying "Up through fast track next to STA line", weighed with the learned Member in holding that the deceased could not have fallen off from a slow train which stops at Mahalaxmi Station as the slow trains run on the slow track. The fact that the deceased was holding a season ticket did not necessarily justify an inference that the deceased was travelling in the train at the time of the incident, reasoned the learned Member.

Issues in Appeal:

6. Being aggrieved by and dissatisfied with the impugned judgment and award, the applicants have preferred this appeal. It would be contextually relevant to note that during the pendency of appeal, Mahadev (A1), the father of the deceased, passed away. Smt. Sonal (A2), the daughter of Mahadev (A1) and the sister of the deceased, prosecuted appeal as the sole legal representative of Mahadev (A1). Consequently, apart from the legality, propriety and correctness of the impugned judgment and award negativing the claim for compensation on the ground that the incident did not fall within the ambit of an "untoward incident", the question of locus of Smt. Sonal (A2) to prosecute the appeal, after the demise of Mahadev (A1), also crops up for consideration.

7. I have heard Mr. Mohan Rao, the learned Counsel for the appellant, and Mr. Sureh Kumar, the learned Counsel for the respondent, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record especially the pleadings, the deposition of Mahadev (A1) and the documents tendered for the perusal of the Tribunal.

Submissions:

8. Mr. Rao, the learned Counsel for the appellant, would urge that the Tribunal approached the issue from an incorrect perspective. Despite noting that a valid second class season ticket was found on the person of the deceased, alongwith the identity card; thereby establishing the status of the deceased as a *bona fide* passenger beyond the pale of controversy, and that the deceased was found in a fatally injured state on the railway tracks, the learned Member could not have invented a defence neither pleaded by the respondent nor sought to be established either by adducing evidence or by cross-examining Mahadev (AW1) on the said aspect. The learned Member based the finding on an extraneous material that, in his understanding, the journey which the deceased undertook, could not have been "Up through the fast track line". Such a finding was recorded without an iota of material on record. Mr. Rao further submitted that, on the contrary, the material on record indicates that the deceased fell off from a train. Attention of the Court was invited to the contents of the accident report and inquest panchnama. Therefore, the finding being perverse, the impugned judgment and award deserves to be quashed and set aside.

9. The learned Member of the Tribunal, according to Mr. Rao, also lost sight of the object of the provisions contained in Section 124 and 124-A of the Railways Act, the welfare character of the legislation and the imperative to resort to a purposive interpretation so as to advance the object of the Act. To this end, Mr. Rao placed reliance on the judgments of the Supreme Court in the cases of ***Union of India vs. Prabhakaran Vijay Kumar and others***[1] and ***Union of India vs. Rina Devi***[2]***.***

10. On the aspect of the locus of Smt. Sonal (A2) to prosecute the appeal, after the demise of Mahadev (A1), Mr. Rao would urge that Mahadev (A1), who had filed the application for compensation, was undoubtedly a dependent, within the meaning of Section 123(b) of the Railways Act. Thus, the appeal would not abate and Smt. Sonal (A2), being a legal representative of Mahdeo (A1), is entitled to prosecute the appeal. Mr. Rao submitted that the controversy sought to be raised on behalf of the respondent is covered by a decision of this Court in the case of ***Kiran Damodar Paygode and another vs. Union of India***[3]***.***

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1 2008 Acj 1895.

2 (2019) 3 SCC 572.

3 2022 SCC OnLIne Bom 1312.

11. Mr. Suresh Kumar, the learned Counsel for the respondent, made an endeavour to support the impugned judgment and award by asserting that the findings of the Tribunal are required to be appreciated in the light of the fact that the learned Member was a Technical member and the movement of the slow trains on the slow track and the fast trains on the fast track is a matter of common knowledge and, thus, an admitted fact. Therefore, the submission on behalf of the appellant that the learned Member had returned the finding on no evidence, does not merit acceptance.

12. Mr. Suresh Kumar further submitted that Smt. Sonal (A2), being a married sister of the deceased, was not a dependent within the meaning of Section 123(b) of the Railways Act. In fact, as recorded by the Tribunal, Smt. Sonal (A2) had withdrawn her claim. Therefore, after the demise of Mahadev (A1), the appeal stood abated as the right to sue did not survive. Thus, on this count also, the appeal deserves to be dismissed.

Consideration:

13. In the backdrop of the aforesaid rival submissions, consideration deserves to be bestowed in two segments. First, the legality and correctness of the impugned judgment and award. Second, the locus of the Smt. Sonal (A2) to prosecute

this appeal and claim compensation, in the capacity of the legal representative of Mahadev (A1), after the demise of Mahadev (A1) during the pendency of the appeal.

Legality and Correctness of the Impugned Award:

14. In the first segment, at the outset, it is necessary to note that the fact that the deceased was found lying on the railway tracks, between 7/05 to 7/06 km. is incontrovertible. The Charge Report as well as Accident Memo submitted by the Station Master, Lower Parel Station, vouch for the same. In the report submitted by Mumbai Central Railway Police, it was recorded, *inter alia,* that an intimation was received that a person was lying in an injured state on the railway tracks between Lower Parel and Mumbai Central Railway Station at 7/04 to 7/05 km. The deceased was shifted to Nair Hospital. He was declared dead.

15. It would be contextually relevant to note that in the inquest panchnama, it was recorded that the deceased might have fallen down from an unknown local train and sustained grievous injuries on head. The inquest panchnama records, *inter alia,* the following injuries:

> "On right side head 2 inch injury and skull is broken and heavy bleeding, on right side forehead 1 inch two injuries, on left side

eye horizontal 2 inch injuries, on right side nose 1 inch injury is seen, on left hand elbow is fracture and left leg 2 in ch injury is seen, various parts of the body are scratches."

16. In the face of the aforesaid material, it has to be seen whether the finding of the Tribunal that the applicant failed to establish that the deceased died in an "untoward incident", is sustainable. Under Section 123 of the Railways Act, an "untoward incident" is defined as under:

"**Section 123. Definitions.— In this Chapter, unless the context otherwise requires,—**

.....

(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."

17. In addition to violent and criminal acts attributable to third parties, the accidental falling of any passenger from a train carrying passengers is an untoward incident within the meaning of Section 123(c)(2) of the Railways Act. At this stage, it would be contextually relevant to note the provisions of Section 124-A of the Railways Act, which provide for

compensation on account of an untoward incident. It reads as under:

> **"124-A. Compensation on account of untoward incidents.—**
>
> When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only of 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 travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

18. From the phraseology of Section 124-A, it becomes abundantly clear that the provision incorporates the principle of 'no fault liability', unless the case falls within the ambit of any of the exclusionary clauses covered by the proviso thereto. The use of the expression '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 a dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof', emphasises the avowed legislative intent to award compensation to the injured or the dependents of the deceased, where the passenger becomes victim of an untoward incident. The fact that there was no wrongful act, neglect or default on the part of the railway administration is of no significance. The provisions of Section 124-A, in essence, incorporate the principle of strict liability. Therefore, while determining the question as to whether the passenger suffered injury or death on account of untoward incident, the ameliorative object of the provisions ought to inform the interpretation thereof as well as their application to the facts of a given case.

19. It is evident under Section 123(c)(2) the expression, "accidental falling" is the linchpin of the term, "untoward incident". Accidental falling is, however, susceptible to different connotations in the context of the facts of the case. "Accidental falling" can be in a myriad situations and does not envisage only a case where a person falls off, after having comfortably boarded the train. Having regard to the object of the beneficial

legislation, the Tribunal and Courts are expected to construe the expression, "accidental falling", in a purposive manner.

20. In the case of ***Prabhakaran*** (supra), on which reliance was placed by Mr. Rao, the Supreme Court adverted to two possible interpretations of the expression, "accidental falling" of a passenger from a train carrying passengers and, thereafter, delineated the approach to be adopted. The observations in paragraphs 11, 12 and 14 of the judgment in the case of ***Prabhakaran*** (supra) are instructive and, hence, extracted below:

> "11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide *Kunal Singh vs. Union of India (2003) 4 SCC 524 (para 9), B. D. Shetty vs. CEAT Ltd. (2002) 1 SCC 193 (para 12), Transport Corporation of India vs. ESI Corporation (2000) 1 SCC 332* etc.
>
> 12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S.*

M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc.

.....

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression."

(emphasis supplied)

21. The Supreme Court has emphasised the necessity to give a purposive, and not literal, interpretation to the expression, "accidental falling", so as to advance the object of the beneficial and welfare legislation, lest a large number of victims of train accidents, particularly poor and middle class people, would be deprived from getting compensation under the Railways Act.

22. Reverting to the facts of the case, first and foremost, it is imperative to note that the respondent apart from contending that there was no evidence to show that the deceased died in an "untoward incident" did not specifically raise the ground that the place at which the deceased was found, on the tracks, ruled

out the possibility of accidental falling. Moreover, the testimony of Mahadev (A1) that the deceased was travelling from Malad to Mahalaxmi and fell off the running train, went completely unimpeached during the course of the cross-examination. The sole question that was put to Mahadev (A1) was that, he was informed about the incident by others and he had no personal knowledge thereof. Nor the respondent adduced evidence to show that it was impossible for the deceased to fell off at the place where he was found as the slow trains did not pass over the said track.

23. This absence of pleading and evidence gives heft to the submission on behalf of the appellant that the learned Member of the Tribunal invented the defence and returned the finding sans evidence. Even if the submission of Mr. Suresh Kumar that it was a matter of common knowledge that the slow trains passed through the slow tracks is accepted, yet the contemporaneous circumstances that transpired on the day of the incident ought to have been brought on the record of the Tribunal. In the absence thereof, the finding of the learned Member are in the nature of surmises and conjunctures premised on a hazardous guess.

24. The nature of the injuries found on the person of the deceased also assumes significance. The injuries were predominantly on the head and face. Apart from the fracture of left elbow and injury on the left leg, the fatal injuries were on the head. Had the deceased met death while crossing the railway track as was sought to be inferred, on a tangent, by the learned Member, it was highly unlikely that there would have been no other injuries on the upper and lower limbs of the deceased. The injuries on the head and face, in the facts and circumstances of the case, appear more compatible with the case that the deceased fell off the train carrying the passengers.

25. The learned Member of the Tribunal was, therefore, not justified in holding that the incident in question did not amount to an untoward incident as there was no evidence or material to draw such an inference. Therefore, I am impelled to hold that the deceased succumbed to the injuries on account of an "untoward incident".

26. With regard to the deceased being a *bona fide* passenger, the very fact that, during the course of the inquest panchnama itself, the season ticket and identity card were found on the person of the deceased, seals the issue. The learned Member of the Tribunal has, in terms, recorded that Mahadev (A1) was the

dependent within the meaning of Section 123(b) of the Railways Act. Thus, the Tribunal could not have deprived Mahadev (A1) of the legitimate compensation which the Railway Administration was statutorily and absolutely enjoined to pay under the provisions of Section 124-A of the Railways Act.

Locus of the legal representative to prosecute the appeal:

27. This leads me to the second part. The question that wrenches to the fore is, whether the legal representative of a dependent can prosecute the appeal where the dependent dies after preferring an appeal against the award of the Tribunal, dismissing the application for compensation under Section 124-A of the Act?

28. The thrust of the submission of Mr. Suresh Kumar, the learned Counsel for the Respondent, was that Sonal (A2) is not a dependent within the meaning of Section 123(b) of the Railways Act, 1989, and, therefore, she was not entitled to maintain the claim for compensation and had, thus, advisedly withdrawn her claim. Mr. Sonal (A2) cannot be now permitted to revive her claim for compensation in an indirect manner by approaching the Court in a different capacity i.e. as a legal representative of Mahadev (A1). Being a married sister of the deceased, Sonal (A2) does not fall in any of the sub-clauses of

clause (b) of Section 123. On account of the dismissal of the claim for compensation by the Tribunal and the subsequent death of Mahadev (A1), during the pendency of the appeal, the appeal stood abated and Sonal (A2) was not entitled to further prosecute the appeal as she was not a dependent of the deceased.

29. Section 125 of the Railways Act enumerates the persons who can make an application under Sections 124 or 124-A to the Claims Tribunal. It reads as under :

> **"125. Application for compensation.** -
>
> (1) An application for compensation under section 124 [or section 124-A] may be made to the Claims Tribunal -
>
> (a) by the person who has sustained the injury or suffered any loss, or
>
> (b) by any agent duly authorized by such person in this behalf, or
>
> (c) where such person is a minor, by his guardian, or
>
> (d) where death has resulted from the accident, [or the untoward incident], by any dependent of the deceased or where such a dependent is a minor, by his guardian.
>
> (2) Every application by a dependent for compensation under this section shall be for the benefit of every other dependent."

30. Section 123(b) defines a "dependent", as under :

> **"123. Definitions.** - In this Chapter, unless the context otherwise requires, -
>
> (a).....

(b) "dependent" means any of the following relatives of a deceased passenger, namely : -

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a predeceased son, if dependent wholly or partly on the deceased passenger;

(iii) a minor child of a predeceased daughter, if wholly dependent on the deceased passenger;

(iv) the paternal grandparent wholly dependent on the deceased passenger;"

31. Under sub-clause (i), the wife, husband, son or daughter of the deceased are declared dependents, irrespective of the situation in life of the deceased. However, where the deceased passenger was unmarried or a minor, his parents are also designated as dependent.

32. It is imperative to note, the dependency under sub-clause (i) stems out of the relationship between the deceased and the claimant and not on account of the factum of "dependency". Sub-clause (ii) indicates the relatives of the deceased who can be termed as dependent, if they were dependent wholly or partly on the deceased passenger. Under sub-clause (ii), the issue of dependency assumes importance. Under sub-clauses (iii) and (iv), a minor child of a predeceased daughter and the paternal

grand parents also become dependents, provided they were wholly dependent on the deceased passenger.

33. Upon a careful perusal of the various sub-clauses of clause (b) of Section 123 of the Railways Act, it becomes evident that the Parliament has employed the concept of degree of remoteness of the kinship in determining who would be dependent. If the claimant happens to be the wife, husband, son and daughter of the deceased, he is presumed to be a dependent, irrespective of the factum of actual dependency. Likewise, where the deceased passenger was unmarried or a minor, his parent becomes dependent *de hors* the proof of dependency. Whereas, the relatives who stand relatively remote the degree of kinship become dependents, provided they were actually dependent on the deceased passenger.

34. In the case at hand, the deceased was a bachelor. Mahadev (A1), being the father of the deceased, was undoubtedly a dependent. Mahadev (A1) was not at all required to establish that he was wholly or partly dependent on the deceased passenger. This character of Mahadev (A1) qua the deceased passenger deserves to be kept in view while determining the question as to whether the legal representatives of Mahadev (A1) can prosecute the claim after his demise.

35. Before adverting to the question as to whether the right of action survives in the light of the statutory provisions, it must be noted that the nature of the liability of the railway administration under Section 124-A of the Railways Act, is statutory and, in a sense, absolute. Once the primary facts of death of a passenger in an untoward incident and that such passenger was a *bona fide* passenger are established, the liability of the railway administration becomes absolute.

36. To add to this, if the claimant falls within the ambit of sub-clause (i) of the definition of dependent under clause (b) of Section 123, by the sheer relationship with the deceased, nothing more is required to be proved. In such a situation, the right to receive the compensation, to the extent prescribed, crystalizes on the date of death of the passenger in an untoward incident.

37. It is necessary to emphasise that the liability to pay compensation under Section 124-A is absolute, in contradistinction to tortuous fault liability and notwithstanding anything contained in any other law. It is in this context, the question as to whether the death of the dependent, after filing of the claim application before the Claims Tribunal, abates the action, is required to be determined.

38. The position in general law is that all causes of action vested in a person survive for the benefit of his estate, except causes of action for defamation, assault or personal injury. The principle generally draws support from the maxim "actio personalis moritur cum persona" which means a personal action dies with the parties to the cause of action. In the case of ***Girija Nandini Devi vs. Bijendra Narain***[4]**,** the Supreme Court postulated that the aforesaid maxim has a limited application. It operates in a limited class of actions *ex delicto* - such as actions for damages, assault or other personal injries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory.

39. Section 306 of the Indian Succession Act, 1925 reads as under :

> **"306. Demands and rights of action of or against deceased survive to and against executor or administrator.-**
>
> All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code (45 of 1860) or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory."

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4 AIR 1967 SC 1124.

40. It has been held that though Section 306 speaks only of executors and administrators yet on principle the same position must necessarily prevail in the case of other legal representatives for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also. (***Melepurath Sankunni Ezhuthassan V/s. Thekittil Geopalankutty Nair***[5].)

41. In the case of ***Melepurath Sankunni Ezhuthassan*** (supra), the Supreme Court was confronted with the question, whether a right to prosecute an appeal survives where the Plaintiff – Appellant passes away after filing of an appeal assailing the decree of dismissal of the suit for defamation. In that context, the Supreme Court held that Section 306 of the Indian Succession Act, 1925, speaks of an action and not of an appeal. Where a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking to enforce in the appeal is his right to sue for damages for defamation and as this right does not survive his death, his legal representative has no right to be brought on the record of the appeal in his place and stead if the appellant dies during the pendency of the

5 AIR 1986 SC 411

appeal. The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged in the decree and the decreetal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff – respondent which his legal representative is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent-plaintiff.

42. The Supreme Court has, thus, drawn a distinction between the causes where the claim has been dismissed by the Court of first instance and the cases where the claim results in a decreetal debt. Drawing analogy, it could be urged that, in the case at hand, since the claim was dismissed by the Claims Tribunal, the appeal does not survive as the dependent who could file the claim has passed away. However, in the considered view of this Court, such an approach would not be in consonance with the object of the Railways Act and may fall fowl of the provisions of the Railways Act, the Railway Claims Tribunal Act and the Rules framed thereunder.

43. At this juncture, the absolute nature of the liability which, in a sence, results in crystalizing the right of the dependent to

receive compensation under sub-clause (i) of clause (b) of Section 123 assumes critical salience.

44. A profitable reference can be made to a judgment of the Supreme Court in the case of ***Shri Rameshwar Manjhi (deceased) through his son Shri Lakhiram Manjhi V/s. Management of Sangramgarh Colliery and Ors.,***[6] wherein the question as to whether the claim of an employee which was pending before the Tribunal under the Industrial Disputes Act, would abate on his death, arose for consideration. The Supreme Court held that the applicability of the maxim '*actio personalis moritur cum persona',* depends upon the reliefs claimed and the facts of each case. The death of the workman during the pendency of the proceeding cannot deprive the heirs or legal representatives of their right to continue the proceeding and claim the benefits as successors to the deceased workman. The observations of the Supreme Court in paragraph No.13 read as under :

> "13. It is thus obvious that the applicability of the maxim '*actio personalis moritur cum persona*' depends upon the 'relief claimed' and the facts of each case. By and large the industrial disputes under Section 2-A of the Act relate to the termination of services of the concerned workman. In the event of the death of the workman during pendency of the proceedings, the relief of reinstatement, obviously, cannot be granted. But the final determination of the issues involved in the reference may be relevant for regulating the conditions of service of the other

6 (1994) 1 SCC 292

> workmen in the industry. Primary object of the Act is to bring industrial peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. It is, therefore, in conformity with the scheme of the Act that the proceedings in such cases should continue at the instance of the legal heirs/representatives of the deceased workman. Even otherwise there may be a claim for back wages or for monetary relief in any other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman."
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> (emphasis supplied)

45. It is also necessary to note that under the provisions of Chapter XIII of the Railways Act, 1989, there is no indication that the claim application filed by the dependent under Section 125 of the said Act, would abate upon the death of the claimant. In contrast, under the Rules framed by the Central Government in exercise of the power conferred under Section 30 of the Railways Claims Tribunal Act, 1987, there are explicit provisions for substitution of the legal representative of a deceased party.

46. Under Rule 2(f) of the Railway Claims Tribunal (Procedure) Rules 1989, 'legal representative' means a person who in law represents the estate of deceased. Rule 26 which provides for substitution of legal representative, reads as under :

> "**26. Substitution of legal representative.** - (1) In the case of death of a party during the pendency of the proceedings before Tribunal, the legal representatives of the deceased party may apply within ninety days of the date of such death for being brought on record.

> (2) Where no application is received from the legal representatives within the period specified in sub-rule (1), the proceedings shall abate.
>
> Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased."

47. A conjoint reading of the provisions contained in Chapter XIII of the Railways Act, 1989, Railway Claims Tribunal Act, 1987 and the Rules framed thereunder, would indicate that it was in the contemplation of the legislature that a situation may arise where the claimant may pass away during the pendency of the claim Petition necessitating the substitution of a party to prosecute the claim. This inference becomes inexorable if considered through the prism of the nature of the liability of the railway administration to pay compensation, especially where the death of the passenger occurs in an untoward incident. The liability to pay compensation to the dependent is incurred on the date of death in an untoward incident.

48. In the case of ***Krishnakumar G. V/s. Union of India***[7], the Division Bench of the Kerala High Court, inter alia, considered the following question :

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7 2011 SCC Online Ker 4231

> Is the right under S.124-A of the Railways Act one that is personal to the one on whom the right vests and consequently not heritable ?

49. Answering the question in the negative, the Kerala High Court held that the amount due under Section 124-A can be claimed only by a dependent and not by a mere legal heir and legal representative, but the legal heir of such dependent / claimant in the event of death of dependent / claimant can certainly initiate or continue the proceedings for recovery of the amount. There is absolutely nothing in Chapter XIII which can suggest that it is a self contained Code which deals with inheritance/succession etc. The general law of the land will certainly apply, in the absence of an express provision or necessary implication that can be drawn, to such claims of deceased dependent. The claim can be continued by the legal representatives of such dependent / claimant.

50. The observations in paragraph Nos.23 to 29 of the judgment are material and deserve to be extracted in extenso. They read as under :

> "23. The expression 'dependent' is to be understood as defined under Section 123(b) "unless the context otherwise requires" as can be seen from S.123 which starts with the words "In this chapter

unless the context otherwise requires". We shall initially refer to Section 125(1)(a). An application under Section 125(1)(a) can be made by the person who has sustained the injury or suffered any loss. We have also got to refer to the fact that Section 124 deals with injury suffered or loss of property. In respect of loss of property, we find no reason to assume that the legal heirs/representatives of a deceased passenger will not be entitled to claim compensation. If we were to read Section 125(1)(a) in any constricted or narrow sense, that would mean that even if a deceased person has suffered loss of property, his legal heirs cannot stake a claim under Section 125(1)(a). That would certainly be an unjust and absurd constriction. In Section 124, there is no insistence on proof of negligence evidently, because the claim under Section 124 can arise only on account of an accident of collision between the trains and derailment or other accidents. Negligence of the railways is implicit in Section 124 though proof is dispensed. If two trains collide or one gets derailed or other similar accidents take place, negligence is transparently there on the part of the railways and the dispensation of the obligation to prove negligence does not alter the nature of liability. In such a case to say that only the owner of the goods and not his legal heirs/legal representatives will be entitled to claim compensation, would be patently unjust. Therefore, the expression "person who has suffered a loss appearing" in clause-a of S.125(1) will certainly have to include the legal heirs/legal representatives of such deceased person who has suffered loss.

24. Coming to Section 125(1)(d) also, when the dependent of the deceased is given right to claim compensation by filing an application, the expression 'dependent' in the context must certainly be held to

refer to those who represent the estate of a deceased dependent where death has occurred subsequent to the vesting of the right. To construe otherwise will, according to us, render the provision unjust.

25. In this context, we again note that there is no specific stipulations in chapter-XIII of the Railways Act as to what is to happen when the dependent of a victim of an accident expires. The law is silent on that aspect. Perhaps, more importantly, we must note that there is no specific provision in Chapter-XIII which can lead us to the inference that there would be abatement or extinction of the claims of a dependent on his death. While considering whether the right to claim compensation under Section 124A read with Section 123(b) and 125(d) can lead to the conclusion that only the dependent and not the legal heirs of the deceased dependent would be entitled to claim compensation, it is important that we note that there is no specific statutory stipulation suggesting abatement or extinction of the claim in the event of death of a dependent/claimant. The vested rights of a dependent obviously cannot vanish into thin air or disappear merely because death of the dependent takes place. This is all the more so because we do not find any provisions in Chapter- XIII which can suggest that a dependent where the context so requires cannot include the legal heirs of a deceased dependent.

26. We must in this context refer to Section 146 of the Code of Civil Procedure also. Section 146 incorporates a general principle of law and declares as follows:

"146: Proceedings by or against representatives - Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be

> taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him."
>
> 27. Under the general law, a legal heir claiming under a dependent is certainly entitled to continue the claim or stake his own claim as a legal representative/person claiming under the dependent. In that view of the matter also, a claim which the dependent can make can be staked or continued by the legal heir/legal representative of a deceased, i.e. one claiming under the deceased dependent.
>
> 28. We may note that while under the general law all legal heirs/legal representatives may be entitled to make an application or continue the application in the light of the declaration under Section 146, so far as a claim under Section 124A is concerned, not all the legal heirs of the deceased victim, but only the dependents can stake the claim. Section 146 CPC incorporates the principle that where a dependent can make an application, his legal heirs can also make the application."

51. The aforesaid pronouncement was followed by a learned Single Judge of this Court in the case of ***Kiran Damodar Paygode (supra)***, though in the context of execution proceedings.

52. A learned Single Judge of the Rajasthan High Court in the case of ***Ranjeet Singh (deceased) through LRs V/s. Union of India***[8] also followed the aforesaid pronouncement and held that if the legal heirs under Rule 26 can get impleaded and

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substituted to continue the claim, there can be no justification for the theory that the claim ends or dies with the dependent/claimant. If during the pendency of claim petition, the injured passenger dies, then his parents are entitled to prosecute the application.

53. Keeping in view the object of the provisions contained in Section 124 and 124-A of the Railways Act, and, more importantly, the nature of the liability of the railway administration, once the primary facts are established, this Court is persuaded to take a view that the distinction dependent upon the outcome of the proceeding before the Tribunal, pales in significance. If the claimant was of the class where he becomes dependent on account of the relationship, and was not required to further prove the actual dependency, and the primary facts to enforce the strict liability of the railway administration are established, then the right to receive compensation crystalizes as of the date of death of the deceased passenger and the fact that the Tribunal unjustifiably rejected the claim, does not defeat such crystalized or vested right in the event the dependent / claimant dies after preferring an appeal. The case in hand falls in this category.

54. I am, therefore, inclined to hold that Sonam (A2), in her capacity as the legal representative of Mahadev (A1), the deceased appellant, is entitled to prosecute the appeal and receive compensation which would have been paid to Mahadev (A1) as it partakes the character of the estate of Mahadev (A1). However, Sonal (A2) would receive the said compensation for and on behalf of all the legal representatives of Mahadev (A1), in a representative capacity.

55. The conspectus of aforesaid consideration is that the appeal deserves to be allowed.

56. Hence, the following order:

: O R D E R :

(i) The appeal stands allowed with costs.

(ii) The impugned judgment and award stand quashed and set aside.

(iii) OA No.(IIU)/MCC/2011/0891 stands allowed.

(iv) The respondent do pay compensation of Rs.8,00,000/- to Smt. Sonal Vaibhav Sawant (A2), in her capacity as the legal representative of Mahadev Krishna Tambe (A1), within a period of one month from today. In default, the

amount would carry interest at the rate of 9% p.a. till payment or realization.

[N. J. JAMADAR, J.]