



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/FIRST APPEAL NO. 507 of 2024**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE J. C. DOSHI sd/-**

=====

Approved for Reporting	Yes	No
	yes	

=====

UNION OF INDIA

Versus

MEENADEVI W/O HARIPRASAD GUPTA & ORS.

=====

Appearance:

MRS KRISHNA G RAWAL(1315) for the Appellant(s) No. 1

MR KUNAL M SHAH(5588) for the Defendant(s) No. 1,2,3,4,5

MR PJ MEHTA(467) for the Defendant(s) No. 1,2,3,4,5

RULE UNSERVED for the Defendant(s) No. 6

=====

**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**

**Date : 16/06/2026**

**JUDGMENT**

1. Heard learned Advocate Mrs. Krishna G Rawal appearing for the Union of India and learned Advocate Mr. Paresh Mehta appearing for the original claimant. The appeal under Section 23 of the Indian Railway Claim Tribunal Act, 1987 (for short, 'the Act') questions the legality in propriety of the judgment in case no. OA (Iiu)/ADI/2018/0139 decision dated 14.08.2023 by which the Railway Tribunal, Ahmedabad Branch granted a compensation of Rs.8,00,000/- with 9% interest from the date of



incident i.e.29.06.2018 till the amount of compensation actually received, for death of Mr. Hariprasad Gupta (for short, “deceased”), to his dependent.

2. The brief facts of the case which were placed in claim petition filed under Section 16 of the Act read with Section 125 of the Railways Act, 1989 seeking compensation of Rs.8,00,000/- together with interest are that the deceased was a bonafide passenger as an authorized hawker/waiter of M/s Boon Catering Pvt. Ltd – respondent no.2. On 28-29.06.2018, deceased was traveling from Porbandar as authorized hawker/waiter in pantry car servicing by M/s Boon Catering Pvt. Ltd in train bearing no.19269 from Porbandar to Muzaffarpur - Motihari Express.

2.1 When the train was running near KM No.632/8, near Chamaraj Railway Station, deceased was crossing from one compartment to another compartment, due to sudden jerk and jolt, he fell on due to losing his balance, from the running train and due to this untoward incident, deceased sustained multiple grievous crushed injuries on multiple parts of his body, resulting into the instantaneous death.

2.2 Upon these facts, the claim petition was filed. Learned Railway Claim Tribunal recorded the evidence and ultimately, pleased to grant the compensation in aforesaid terms.

2.3 Railway administration being aggrieved filed this appeal under Section 23 of the Act.



3. Assailing the impugned judgment, learned Advocate Mrs. Krishna Rawal referred to the judgment of Bombay High Court in *First Appeal No.147 of 2017 between Pushpa wd/o. Gautam Kamble and others vs. Union of India* to submit that the running from one compartment to another compartment by the deceased, even as a hawker or a waiter of the authorized service contractor and receiving injuries are forms of self-inflicting injury and thus under provision of the Act, for self-inflicting injury of deceased, his dependents cannot be compensated.

3.1 Learned Advocate Mrs. Krishna Rawal further submits that though it is not a case of the claimant that the deceased was a railway employee and yet the learned Railway Claim Tribunal jumped to the conclusion that the deceased since was a railway employee and fell from a running train, is required to be compensated, is an erroneous finding. Apart from these two submissions, learned Advocate Mrs. Krishna Rawal refers to the ID card issued by catering agency M/s Boon Catering Pvt Ltd in favour of the deceased, and submitted that this ID card was effective only for the time period from 20.12.2016 to 18.12.2017, where as incident took place on intervened night on 28-29.06.2018, sufficiently established that deceased was not authorized hawker/waiter of M/s Boon Catering Pvt Ltd on fateful day.

3.2 Learned Advocate Mrs. Krishna Rawal would further submit that on this fateful day, since deceased was not even an employee of M/s Boon Catering Pvt Ltd and was not authorized to travel in train as hawker/waiter of the M/s Boon Catering Pvt Ltd, which took away the deceased from the definition of



'bonafide passenger'. Therefore, submit that the learned Railway Tribunal has committed serious, manifest and grave error to conclude that deceased was a "bonafide passenger" and his death requires to be compensated.

4. Upon above submissions, learned Advocate Mrs. Krishna Rawal submitted to allow this appeal and to reverse the finding and conclusion of the Railway Claim Tribunal and to dismiss the claim petition.

5. As against the aforesaid submissions, learned Advocate Mr. Paresh Mehta refers to the judgment of the Hon'ble Supreme Court in the case of *Union of India vs. Rina Devi reported in 2019 (3) SCC 572* to submit that the Hon'ble Supreme Court did not approve the finding of the Hon'ble Bombay High Court in case of *Pushpa wd/o. Gautam Kamble and others* (supra) and also did not approve the application of concept of self-inflicting injury. Learned Advocate Mr. Paresh Mehta submitted that therefore, it is impermissible to place reliance upon the judgment of *Pushpa wd/o. Gautam Kamble and others* (supra).

5.1 Learned Advocate Mr. Paresh Mehta further submits that the learned Railway Claim Tribunal has vividly and comprehensively discussed the evidence on record where it proves that the catering contract between Indian Railway and M/s Boon Catering Pvt Ltd was running at the time of accident. He further submitted that though ID card was issued by M/s Boon Catering Pvt Ltd in favour of deceased – Mr. Hariprasad Gupta, which expired on 18.12.2017, ipso-facto would not disapprove that deceased was permitted to travel as an employee



of M/s Boon Catering Pvt Ltd in Porbandar to Muzaffarpur-Motihari Express. He would further submit that M/s Boon Catering Pvt Ltd did not deny that deceased was not its employee. In this submission, learned Advocate Mr. Paresh Mehta supporting the impugned judgment submitted to dismiss the present appeal.

6. Having heard learned Advocates from both the sides, at the onset, let me refer and reproduce the finding of the learned Railway Tribunal which runs in favour of the applicant. Para 11 reads as under:

*...“11. On-going through the contents of investigation report annexed along With DRM's Report relating to alleged incident filed on behalf of Respondent Railway Administration, we find that in the conclusion it has mentioned that "हरि प्रसाद गुप्ता (मृतक) रेल प्रशासन के लिए एक अधिकृत वेंडर था .....।*

*As per Inquest Panchnama "The said deceased person was servicing as a Vendor (Waiter) in Porbandar-Motihari train and during course of his business of Vendor (Waiter), accidentally died due to train accident as his neck cut off due to fallen down from the running train.”*

*As per para-5 of the written statement "It is further submitted and the Respondent specifically denies the fact narrated by the Applicant in Pura 6 of the Application that, the deceased was bonafide passenger travelling in the train as an authorised Vendor (Waiter) in Pantry Car Servicing of M/s. Boon Catering Pvt. Ltd., however, it corroboration with this denial, the Respondent submits that, as the impugned*



*incidence seems to be occurred on dated 29.06.2018 at midnight, whereas, the ID card issued by M/s. Boon Catering Pvt. Ltd., in favour of the deceased which are recovered from the possession of the deceased, was remained valid from 20.12.2016 to 18.12.2017. However, on the other hand, an another ID card issued by IRCTC rendering licence to the deceased was also not got any validity to board into any train, as the same was also got expired on dated 01.09.2016."*

*The deceased in the instant case was working as a waiter under the administrative control of catering agency M/s Boon Catering Pvt. Ltd. From the records of this case, it is evident that catering agency M/s Boon Catering Pvt. Ltd. was carrying out on board catering work under a contract with commercial department of Western Railway. As per explanation given under section 124 and 124 A of Railways Act, 1989 "Explanation- For the purposes of this section, "passenger" includes- (i) a railway servant on duty and (ii) e person who has purchased a valid ticket for travelling by a train carrying passenger, on any date or a valid platform ticket and becomes a victim of an untoward incident."*

*The pertinent question is whether on the relevant time the deceased (catering waiter) was a bonafide passenger while being on board under outsourced contractual agreement between catering agency M/s Boon Catering Pvt. Ltd. and Indian Railways. From the facts of this case it can be appreciated that the waiter and other catering staff are doing catering work on behalf of the Railways under proper authorisation. Further they are discharging*



*their on board duties in the interest and benefit of the Indian Railways. Practically they are performing same functional duties which previously departmental staff of Railways used to perform.*

*Thus the catering work though ancillary in nature is very vital for business of transporting of passengers by Railways. It is known fact that previously catering work on behalf of Railways used to done by the departmental staff. Thus, in ultimate analysis factum of the matter is that outsourced catering work being done by the contractual staff is no different from the work done previously by Railway staff. This work is same and similar to current work now done on out sourced basis under a proper authorisation from Indian Railways. The work nature, content and work environment being same and there being clear authorisation from Indian Railways for such work under contractual arrangement. Accordingly the outsourced catering contractual staff stand on the same footings as a Railways servant on duty. Thus, it is just and fair to hold that deceased (Hariprasad s/o Gulabchand Gupta) catering waiter was at the relevant time was a deemed Railway servant to whom a clear travelling authority has been given by Railways through our sourced contractual agency for doing on board catering work in Railway trains. In this regard it is relevant to refer to section 197 (2) of Railways Act, 1989 "For the purpose of Sections 7, 24, 113, 146, 172 to 176 and 188 to 190, the expression "railway servant" includes a person employed under a railway in connection with the service thereof by a person fulfilling a contract with the railway administration."*



*Further from the perusal of record it is clear that deceased waiter was issued Identity Card by catering agency M/s Boon Catering Pvt. Ltd which was valid from 20.12.2016 to 18.12.2017. From the statement of Mohansingh. Pantry Car Manager it is abundantly clear that deceased was working as a catering waiter as authorized by catering agency M/s Boon Catering Pvt. Ltd. under contractual arrangement with Railways. It is relevant to note that under the contractual arrangement with commercial department of Railways, the periodic supervisory checks have to be done on the staff of catering agency M/s Boon Catering Pvt. Ltd. and take appropriate penal action in case of violation of laid down terms and conditions of catering contract is detected by Railway Officials.*

*The fact that Identity Card of the deceased waiter had expired will not in any way unsettle the status of a deemed Railway servant on duty for deceased simply because his Identity Card had not been renewed by the catering agency M/s Boon Catering Pvt. Ltd, due to an act of omission.*

*Further in the instant case no officials of Railway on supervisory check have detected deceased being on catering duty on board without a duly renewed identity Card. Thus, due to not renewing Identity Card by catering agency M/s Boon Catering Pvt. Ltd. it is not just and fair to treat the poor waiter who in effect was working under contractual arrangement with the Railway as a deemed Railway servant, as unauthorised person on board.”...*



7. Before I advert to the arguments canvassed by learned Advocate Mrs. Krishna Rawal, let me also refer to para nos.13, 14, 15, 16, 17, 18, 19, 20 and 21 of the impugned judgment which reads as under:

*...“13. It has been averred by applicant in claim application that the deceased was an authorized vendor/waiter in M/s. Boon Catering Co. Pvt. Ltd., Mumbai. On 28-29/06/2018, the deceased was travelling, from Porbandar as a bonafide passenger as an authorized Vendor (Waiter) in Pantry Car Servicing of M/s. Boon Catering Pvt. Ltd. of the train bearing No.19269 Porbandar-Muza Tarpur Motihari Express. On 28-29/06/2018, during the course of journey, when the said train was running near KM. No.632/8, near Chamaraj Railway Station, at that time, due to sudden jerk and jolt, the deceased lost his balance and he accidentally fallen down from the said running train. Due to this untoward incident the deceased sustained multiple grievous crushed injuries on different parts of his body and died on the spot. To substantiate, this averment the applicants have placed on record certain documents relating to the alleged incident which are exhibited as A/1 to A/28.*

*14. Although, it has been argued on behalf of the respondent that the deceased fall from running train while he was changing the coach during the travelling negligently. Therefore, the present case is covered under clause (b) to proviso to section 124-A as such the respondent railway administration is absolved from its liability to pay compensation.*



15. As per Inward Vardhi (Exhibit A/1), as per Extract of Accident. Death Register (Exhibit A/2) and Accident Death Entry (Exhibit A/3) "one unknown person, aged about 40 to 45 years, died due to fallen down from any train".

16. As per the Inquest Panchnama (Exhibit A/4) "The said deceased person was servicing as a Vendor (Waiter) in Porbandar-Motihari train and during course of his business of Vendor (Waiter), accidentally died due to train accident as his neck cut off due to fallen down from the running train".

17. As per the Identification Panchnama (Exhibit A/6) "...the deceased named Hari Gupta Gulab Gupta, aged 47 years, Occupation-Service as a Waiter in Pantry Car of Railway Train died in train accident on 28/06/2018 due to sustained injuries as accidentally fallen down from the running train...".

18. As per Post Mortem Report (Exhibit A/8) "The cause of death in my opinion is shock due to sustained injuries"

19. We are of the considered view that falling down from the train while he was trying to alight from the running train is very common on Indian trains. It is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. In the present case, respondents have failed to prove any malicious intent or mens rea of deceased. Moreover, falling down from train has been admitted on behalf of Railway respondent by way of DRM report relating to the alleged incident. The Respondent mentioned in the conclusion of the DRM Report that "घटना को स्वयं हरी प्रसाद गुप्ता



*(मृतक) ने ही स्वयं की लापरवाही से गतिमान ट्रेन में कोच अदला-बदली करने का अनुचित प्रयास करने के दौरान एकमात्र गिर जाने के कारण मृत्यु होना पाया गया है, इस बात पुष्टि जांच के दौरान हुई है"। In view of the above, we are of the considered view that the falling down of the deceased was accidental*

*Accordingly, this care is coming within ambit of untoward incident for which Respondent No.1 i.e. Western Railway shall be liable to payment of compensation to be awarded to applicants. Consequently Respondent:-2 i.e. M/s. Boon Catering Pvt. Ltd. stand discharged from its liability to pay compensation to the applicants. However, as per provision/content in Para-15.2 of Master License Agreement, Respondent No.1 will be at liberty to get the → awarded amount from Respondent-2 i.e. M/s. Boon Catering Pvt. Ltd.*

*20. As regards act of negligence as brought out in written statement and conclusion of statutory investigation report it is pertinent to refer to rulings of Apex Court: The Hon'ble Apex Court in the case of Union of India V/S Prabhakaran Vijaya Kumar & others reported in 2008 ACJ 1895, has held that:*

*"Section 124 A of the Railways Act, 1989 casts strict liability on the Railway even the deceased died due to his own fault. Then also, Railway is liable to pay amount of compensation."*

*21. It is also worthwhile to mention his for de-boarding the running train, in case of Union of India V/S Rina Devi reported in 2018 AIR (SC) 2362, the*

*Hon'ble Apex Court has held that:*



*"Death or injury in course of boarding or de-boarding train will be untoward incident. Victim will be entitled to compensation and will not fall under proviso to Section 1244 merely on plea of negligence of victim as contributing factor."...*

8. Learned Advocate Mrs. Krishna Rawal has argued that the deceased was expired due to self-inflicting injury as he was going from one compartment to another compartment at the time of the incident and fell from the running train. A strong reliance was placed upon the judgment of the Bombay High Court in the case of ***Pushpa wd/o. Gautam Kamble and others*** (supra).

9. *In Union of India vs. Rina Devi, reported in 2019 (3) SCC 572*, the judgment of ***Pushpa wd/o. Gautam Kamble and others*** (supra) was discussed. In case of ***Pushpa wd/o. Gautam Kamble*** (supra), a hawker died in course of boarding a train. The Bombay High Court applied the concept of self-inflicting injury to deny the compensation. The Hon'ble Supreme Court in the case of ***Union of India vs. Rina Devi*** (supra), disproved the theory of applying concept of self-inflicting injury in para nos.23, 24, 25, 26, 27, 28 and 29 of the judgment, which reads as under:

*...“23. In Pushpa v. Union of India, 2017 SCC Online Bom 8117, 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: (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 v. Union of India, 2017 SCC Online Del 8734, 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.*

*Re: (iii) Burden of proof when body found on railway premises - Definition of passenger*

*26. 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, referring to the scheme of the 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 bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. The 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, the Delhi High Court in Gurcharan Singh<sup>25</sup> 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 the 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: (Gurcharan Singh case, SCC OnLine Del para 4)*

*"4.... (ii) In my opinion, the contention of the learned counsel for the appellant claimants is totally misconceived. The initial onus in my opinion always lies with the appellant 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 bona fide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act and the 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 the 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 learned Single Judge of this Court in Pyar Singh v. Union of India 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."*

*27. In Jetty Naga Lakshmi Parvathi v. Union of India, 2011 SCC Online AP 828, the same view was taken by a Single Judge of Andhra Pradesh after referring to the provisions of the Evidence Act as follows: (SCC OnLine AP para 24)*

*"24. So, from Section 101 of the 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 AW 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 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."*

*28. In Kamrunnissa v. Union of India, (2019) 12 SCC 391, 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 aforesaid 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 Paras VII and VIII 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."*

*29. 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."...*

10. In the context of 'no fault' liability, the concept of self-inflicted injury generally does not apply. It is hard to believe that deceased has deliberately caused injury to cause harm. In the case on hand, Railway administration failed to prove that deceased has attempted suicide or attempted no cause injury despite knowing damage. In a nutshell, the principle of 'no fault' liability fundamentally displaces traditional causation requirements, establishing that compensation is available irrespective of fault attribution. Thus, most jurisdiction sensibly exclude intentional self injury from coverage, reserving no-fault prosecution for involuntary incidents.



11. Therefore, the highlighted contention of learned Advocate Mrs. Krishna Rawal that deceased being hawker/waiter died due to self inflicting injury failed to survive. The theory that the deceased as hawker or waiter serving under the catering agency inflicted self-injury, as without taking sufficient care and caution, tried to jump or cross from one compartment to another compartment in running railway, cannot be accepted on the ground that raising of such plea amount to contributory negligence, is not permissible under the concept of “no fault” liability.

12. The another contention that the learned Railway Claim Tribunal has erred in holding that the deceased was a railway employee. According to this Court, learned Advocate Mrs. Krishna Rawal failed to read that the learned Railway Tribunal has considered the deceased as “railway servant” on the ground that he was employed for railway in connection with the service thereof. Learned Railway Tribunal in impugned judgment in para 5 refers to Section 197(2) of the Railway Act and held that for the purpose of Section 7, 24, 113, 146, 172 to 176 and 188 to 190, the expression “railway servant” mainly into the person employed under the Railway in connection with the service thereof by a person fulfilling a contract with the railway administration. Apt to note that M/s Boon Catering Pvt Ltd was serving as catering agency. Page no.203 of paper-book indicates that the catering contract was executed between the Manager of the Western Railway with M/s Boon Catering Pvt Ltd from 2nd March, 2015 for five years, meaning thereby, the contract was executed for the time period commencing from 2nd March, 2015 to 3rd March, 2020. It is not the case of the Western Railway



that this agreement was discontinued in middle of the contract. Thus, when deceased died, he was serving as hawker/waiter of catering company where contract was subsisting on that day.

10.1 Another contention was that the ID card of deceased Haridas Gupta placed on paper on page no.168 of the paperbook was expired on 18.12.2017 and incident took place on 19.06.2018 which makes it that the deceased was not an employee of M/s Boon Catering Pvt Ltd on the date of the incident.

10.2 In that regard, it has to be observed that the M/s Boon Catering Pvt Ltd, who is party-defendant in the matter, did not come forward to raise such contention. In-absentia thereof, railway administration is incorrect to press such contention. Secondly, railway administration did not plead any evidence to counter the facts that deceased was not the employee of the M/s Boon Catering Pvt Ltd.

10.3 With profit, at this juncture, let me refer to the judgment of the Hon'ble Apex Court. In case of *Union of India vs. Prabhakaran Vijaya Kumar and Othrs., reported in (2008) 9 SCC 527*, to visit scope and ambit of Railway Act, the Apex Court held that Railway Act is beneficial piece of legislation and requires purposive interpretation. Further the Hon'ble Supreme Court held that Section 124-A of Railway Act indicates nature of liability of railway under the Railway Act and it is in nature of strict liability or no fault liability, relevant paras 11 to 18 of the judgment in the case of *Prabhakaran Vijaya Kumar and Othrs.* (supra), reads as under:



...“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.



13. *In Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others 1995(6) SCC 326 (vide para 42) this Court observed:*

*"In this connection, we may usefully turn to the decision of this Court in Workmen vs. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:*

*The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court* we had occasion to say:*



*"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."*

*Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:*

*"A purposive construction of an enactment is one which gives effect to the legislative purpose by-*

*(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or*

*(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."*

*At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:*

*"Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal*



*construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -*

*...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."*

*(emphasis supplied)*

*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.*

*15. Section 2 (29) of the Railways Act defines 'passenger' to mean a person traveling with a valid pass or ticket. Section 123(c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways Act with which we are concerned states :*

*"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 traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident".*

*(emphasis supplied)*

*16. The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124A of the Railways Act, and not its proviso.*

*17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault.*

*18. The theory of strict liability for*



*hazardous activities can be said to have originated from the historic judgment of Blackburn, J. of the British High Court in Rylands v. Fletcher 1866 LRI Ex 265. Before this decision the accepted legal position in England was that fault, whether by an intentional act or negligence, was the basis of all liability (see Salmond on 'Tort', 6th Edn p.12) and this principle was in consonance with the then prevailing Laissez Faire Theory.”...*

10.4 After surveying catena of decision, both Indian and English, on law of tort in ***Prabhakaran Vijaya Kumar and Othrs.*** (supra), on nature of liability, the Hon’ble Apex Court observed as under in paras 38, 39, 40 and 47:

*...“38. The Court also observed that this strict liability is not subject to any of the exceptions to the rule in Rylands vs. Fletcher (supra).*

*39. The decision in M.C. Mehta's case (supra) related to a concern working for private profit. However, in our opinion the same principle will also apply to statutory authorities (like the railways), public corporations or local bodies which may be social utility undertakings not working for private profit.*

*40. It is true that attempts to apply the principle of Rylands vs. Fletcher (supra) against public bodies have not on the whole succeeded vide Administrative Law by P.P. Craig, 2nd Edn. p. 446, mainly because of the idea that a body which acts not for its own profit but for the benefit of the*



*community should not be liable. However, in our opinion, this idea is based on a misconception. Strict liability has no element of moral censure. It is because such public bodies benefit the community that it is unfair to leave the result of a non-negligent accident to lie fortuitously on a particular individual rather than to spread it among the community generally.*

41... xxx

42... xxx

43... xxx

44... xxx

45... xxx

46... xxx

*47. However, apart from the principle of strict liability in Section 124A of the Railways Act and other statutes, we can and should develop the law of strict liability de hors statutory provisions in view of the Constitution Bench decision of this Court in M.C. Mehta's case (supra). In our opinion, we have to develop new principles for fixing liability in cases like the present one.”...*

11. The widow of the deceased filed the deposition in form of affidavit on 1st July, 2019. She was cross-examined by the learned Advocate appearing for the railway administration. In the chief-examination, in para nos.2, 4 and 5, she has deposed as



under:

*...“2. My deceased husband Hariprasad Gulabchand Gupta, aged about 50 years was an authorized Vendor / Waiter in M/s. Boon Catering Co. Pvt. Ltd., Mumbai and residing at the aforesaid address of Mumbai, Maharashtra.*

*3.... xxx*

*4. On 28-29.06.2018, my husband was traveling from Porbandar as a bonafide passenger as an authorized Vendor (Waiter) in Pantry Car Servicing of M/s. Boon Catering Pvt. Ltd. of the train bearing no.19269 named Porbandar – Muzaffarpur Motihari Express.*

*5. On 28-29.06.2018, during the course of journey, when the said train was running near K.M No.632/8 near Chamaraj Railway Station, at that time, due all of a sudden jerk and jolt of the said train and with the result of this sudden jerk and jolt, my husband lost his balance and he accidentally fallen down from the said running train.”...*

12. This deposition on oath has not been challenged in cross-examination except asking that she did not know for how many years her husband was working with the M/s Boon Catering Pvt Ltd. Beside, no other questions were asked to traverse the facts stated in the chief-examination. It is in this factual background, according to this Court, the learned Railway administration has failed to bring the case within the four corners that the deceased was not a “bonafide passenger”. Learned Advocate Mrs. Krishna Rawal, apart from above contention, did not argue any other



point, as such she failed to set up merit to interfere with impugned judgment passed by the learned Railway Claim Tribunal.

13. In wake of above reasons, the appeal fails and accordingly, it is rejected. Interim relief, if any, stand discontinued. Impugned judgment is confirmed. Record and proceedings is sent back. Railway Claim Tribunal is directed to disburse the amount of compensation in favour of the claimant, if already not disbursed.

PARMAR KRISH

sd/-  
**(J. C. DOSHI,J)**