Andhra High Court

Union Of India (Uoi), South ... vs Kurukundu Balakrishnaiah And ... on 8 December, 2003

Equivalent citations: II (2004) ACC 591, 2004 ACJ 529, 2004 (1) ALD 449, 2004 (1) ALT 100

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Bench: B S Reddy, G Raghuram, P Narayana

JUDGMENT G. Raghuram, J.

1. A Division Bench of this Court by an order dated 22-10-2002 recorded a dissent with decisions of the two earlier Division Benches of this Court in Union of India v. Uggina Srinivasa Rao, andUnion of India v. B. Koddekar and Ors., (DB), and made a reference in respect of Civil Miscellaneous Appeals preferred to this Court, by the Railways under Section 23 of the Railway Claims Tribunal Act, 1989 against the respective orders of Railway Claims Tribunals.

2. Whether a passenger trying to board or alight from a running train or standing near the door, jumped from the compartment, crossing the Railway track or leaning out of the carriage; and during the course of such circumstance had fallen down and was either injured or had died, was entitled to compensation from the Railways under Section 124-A of the Railways Act, 1989, (the Act) is the question that in substance arises for consideration in this reference. Incidentally whether wrongful, careless, imprudent or negligent conduct of a person in any of the places within the precincts of a Railway station (as enumerated and defined in Section 123 (c) of the Act) would entitle him to compensation, also falls for consideration.

3. In Srinivasarao's case, (DB), on facts the claimant while travelling on the Visakha Express fell down from the coach at Anakapalli Station and received injuries. He thereupon raised a claim for compensation. The Railways resisted the claim contending that the injury received was a self-inflicted injury since the claimant was trying to board a running train and the occurrence was therefore not comprehended within the expression "untoward incident". The Railways also contended that the claimant was not a bona fide passenger. The Tribunal recorded a finding that the claimant was a bona fide passenger and that the rashness or negligence of the victim was not relevant in view of the provisions of Section 124-A of the Act, he must be held to have sustained the injury in an untoward incident and was therefore entitled to compensation. Aggrieved by the decision of the Tribunal the Railways preferred an appeal to this Court. The

Railways contended that as the injury was received while the claimant was attempting to enter a running train, the injury is a self-inflicted injury and therefore the Railways were exempted from the liability to pay compensation, the incident in which injury was received is not an untoward incident and that carelessness and negligence on the part of the claimant in attempting to enter moving train is comprehended with the meaning of self-inflicted injury under the proviso (b) to Section 124-A of the Act, disentitling him compensation. This Court while rejecting the said contention and therefore the appeal held that the claimant was a bona fide passenger and a fall from the steps leading to the compartment is a fall from the train, that as the claimant met with an accident and suffered injury, he was entitled to compensation.

4. Koddekar's case (supra) is another decision of a Division Bench of this Court recorded as a common order in five appeals of the Railways. In one of the appeals death occurred while boarding a passenger train. The victim fell and run over by the train. The death in another case occurred while getting down from a train, the passenger slipped and sustained injuries followed by death. In another case a season ticket holder while standing at the door of the train slipped, fell down, went under the wheels of the train and died on the spot. In the 4th case the death occurred also when the victim slipped and fell down from the train and in the last case while getting down from the train the victim fell down and later died as a result of the injuries sustained in the said incident. In all the cases the Railways claimed exemption from liability on the ground that the respective victims were attempting to get into a moving train, were not bona fide passengers, there was a prohibited conduct on the part of a passenger who was standing at the door steps of the train along with a milk can, the body was found on the track and death appears to have been caused due to the careless and negligent act on the part of the deceased and therefore none of the incidents fell within the ambit of Section 124-A of the Act. The Railway Claims Tribunal having found in favour of the claimants, appeals were preferred and this Court held that the provisions under Section 124-A of the Act are somewhat similar to Section 140 of the Motor Vehicles Act, 1988 whereunder there is a 'no fault liability' for payment of a fixed compensation in case of death of a person without regard to the proof of the accident. This Court held that the only factor relevant to consider in a case arising out of Section 124-A of the Act is whether the passenger is a bona fide passenger having a valid journey ticket. This Court on an analysis of the precedents cited before it held in the above case that the accidental fall of a passenger shall include a passenger trying to board a train as also trying to alight from a train and in that process loses control and falls down and sustains injuries which results, in his death. It was also held that the accidental falling of a passenger defined under Section 123(c)(2) of the Act takes within its fold such accidents of falling as arise in the

appeals before it and the death or disability caused thereby would fall within the ambit "untoward incident" within the meaning ofSection 123 (c)(2) of the Act.

5. Neither of the earlier two Division Benches of this Court referred to above did discernibly analyse and conclude that injuries or death resulting from a rash and negligent act of the passenger would nevertheless entitle such passenger or his claimants to compensation underSection 124-A of the Act. However, the implication arising on the conclusions arrived at in the decisions, read in the context of the facts analysed therein would suggest the possible enunciation of a ratio that injuries or death resulting as a consequence of even a rash and negligent conduct of a passenger would not exempt the liability of the Railway Administration to pay compensation for the injuries or death of the passenger, under Section 124-A.

6. It also requires to be noticed that Koddekar's (supra) decision was considered by a Division Bench of this Court in Godisala Rajamma and Ors. v. Union of India, (DB). One Rajaiah while travelling in D.N. Mangala Express on 8-3-1998 in a general compartment fell from the train and died on the spot. His dependents claimed compensation. The Railway Claims Tribunal found for a fact that the claimants were dependents of the deceased and the deceased was a bona fide passenger. However, the Tribunal found no material to conclude that the deceased died on account of an accidental fall and rejected the claim for compensation. The claimants appealed to this Court. This Court found, on an analysis of the judgment of the Tribunal, that it had rejected the claim of the appellants on the ground that there was no accidental fall and an accidental fall must necessarily be preceded by an accident. The High Court on appreciation of the final report Ex.A6 concluded that the deceased had fallen from the running train, received injuries and had died on the spot. Ex.A-6 also recorded that it was a clear case of accident without any foul play or other suspicion about the death. Rejecting the conclusions of the Tribunal, which had placed reliance on the judgments of the Supreme Court in Union of India and Ors. v. Sunil Kumar Ghosh, , the Division Bench held that Sunilkumar's case has arisen under the Railways Act, 1890, prior to the Act and to the introduction of Section 124-A and the introduction of Clause (c) toSection 123 of the Act under which "untoward incident" was defined as meaning, inter alia, the accidental falling of any passenger from a train carrying passengers. While allowing the appeal of the claimants, this Court observed (in Para 17 of the judgment as reported in ALD and ALT) that in CMA No. 2374/98 (Koddekar's decision) a Bench of this Court had considered the provisions of Sections 123, 124 and 124-A of the Act ".....in detail and held that even if there is any default on the part of a passenger, the Railways are liable to pay compensation regardless of such default." In the light of the observations in Rajamma's case

(supra), it is clear that a Division Bench of this Court was of the expressed view that even a default on the part of a passenger resulting in injuries or death to such passenger, would nevertheless fasten liability on the Railway Administration, to pay compensation under Section 124-A of the Act.

7. Before proceeding to answer the reference there is an issue which requires to be considered.

8. There was a faint plea urged before this Bench on behalf of the claimants that as against the judgment of the Division Bench of this Court in Srinivasarao's case (supra), the Railway Administration had preferred a Special Leave Application to the Supreme Court, which was dismissed by the order dated 24-8-2001. Therefore the decision in Srinivasarao's case (supra) should be considered as having been affirmed by the Supreme Court, implying that the said decision binds this Court in view of its confirmation by the Supreme Court. The order of the Supreme Court rejecting the SLP reads as under:

"These are not fit cases for interference. The Special Leave Petitions are dismissed leaving question of law open to be decided in an appropriate case."

9. The above order of the Supreme Court does not posit any principle for recording the dismissal of the SLPs and the Supreme Court has expressly left the question of law open for decision in an appropriate case. In this view of the matter it could not be presumed that the ratio, such as it is, enunciated in Srinivasarao's case (supra) has received approbation and confirmation by the Supreme Court so as to constitute a law declared within the meaning of Article 141 of the Constitution.

10. In another case the Railway Claims Tribunal, Secunderabad, in OAA No. 137/96 allowed the claim of the wife of a deceased passenger by its order dated 5-5-1997. The Tribunal recorded that the deceased was travelling by Kerala Express on 6-9-1995 and when the train was passing through Peddapalli Railway Station, which is not a scheduled halt, he attempted to get down while the train was passing through at slow speed and in the process slipped from train, was run over and died on the spot. The wife of the deceased passenger claimed compensation urging that the fall of her husband amounts to an 'untoward incident' entitling her to compensation. Despite recording the defence of the Railway Administration that the death of the passenger was the consequence of a self-inflicted injury viz., trying to get down from a moving train at a Railway station not having a scheduled halt, the Tribunal recorded an ipsi dixit finding that the fall amounts to an 'untoward incident' as defined in Section 123 of the Act. As against this

judgment the Railway Administration preferred an appeal AAO No. 1378/97 to this Court. The appeal was rejected by a learned Single Judge by the order dated 22-7-2002. The reasons recorded by this Court for dismissing the appeal are as under:

"9. After perusing the impugned orders of the said Tribunal, vis-a-vis, the arguments of the learned Counsel, I am satisfied with the same, as correct, and are according to law, and do not suffer from any factual infirmity, inconsistency, or legal infirmity, so as to warrant the Appellate Court, to interfere therewith, on any question of fact, or, finding, or law. I am satisfied with the findings recorded by the said Tribunal, on all the three issues, framed by it, as correct and sustainable, both, at fact and law.

10. Hence, the impugned orders are liable to be confirmed, in toto. Hence, the C.M.A. is devoid of factual and legal merits."

11. The Railways carried the matter further to the Supreme Court by way of Special Leave to Appeal, it was rejected without recording any reasons on the ground that the Supreme Court saw no reason to interfere. As no principle has been enunciated, the decision of the Supreme Court in C.C. No. 4123 of 2003 dated 5-5-2003 could not be considered as a law declared within the meaning of Article 141 of the Constitution. See in this connection Baitarani Gramiya Bank v. Pallab Kumar and Ors., AIR 2003 SCW 4884, Kunhayammad and Ors. v. State of Kerala andAnr., and Shanmughavel Nadar v. State of Tamil Nadu, .

12. Before proceeding on an analysis of the provisions of Sections 123 and 124-A of the Act, an analysis of the other judgments cited at the Bar is apposite to ascertain whether there is any persuasive or binding authority on the interpretation of these provisions.

13. On behalf of the Railway Administration reliance is placed on the decision of the Supreme Court in Sunil Kumar's case (supra). The facts were that the respondent was a bona fide passenger travelling on a train. While the bogie in which he was travelling was being shunted at a station, the respondent accidentally fell from the train near a water column at the end of the platform and his right hand was crushed by that part of the train, which was being shunted. The passenger claimed compensation under Section 82-A of the Railways Act, 1890, the provisions of which Section were substantially similar to the provisions of Section 124 of the Act. The District Court did not accept the version of the claimant that the bogie in which he was travelling received a sudden jerk and he fell down thereby. In appeal by the claimant the High Court interfered and held--

"Any incident treated as Railway accident involving a passenger train by the public at large and the Railway staff should be treated to be such an accident, falling within the ambit of Section 82-A. Any mishap or misfortune in the working of a Railway involving a passenger train or a part thereof resulting in the death of or personal injury to a passenger travelling therein, during his rail journey is an accident within the ambit of Section 82-A. This will, of course exclude any incident voluntarily and consciously invited by the passenger, i.e., suicide by jumping in front of the moving train."

14. The Supreme Court in the Civil Appeal preferred by the Railway Administration had thus an occasion to consider the scope of Section 82-A of the Railways Act, 1890. The Supreme Court held that the philosophy underlying Section 82-A appears to be to turn an existing 'fault' liability into a 'fault or no fault' liability because a carrier who transports passengers as part of his business, when he charges fare, impliedly guarantees to carry him in safety insofar as such safety is within its power. It is within his power to transport the passenger without an accident to the train, for such an accident is not something which is ordinarily or in the normal course of events inherent in the running of a train. The Legislature with an eye on social welfare and to be fair to the passenger who pays the fare for a safe (safe from accident to the train) journey, has provided for compensation by a summary proceeding and has made the liability fault-free. The Supreme Court further held that ".....to ensure safe travel is not to 'insure' the passenger against accident to himself whilst travelling. The distinction deserves to be spot-lighted. What is provided is compensation for death or injury caused or loss sustained on account of accident to the train. What is not provided is compensation for death of the passenger whilst travelling or injury sustained by a passenger whilst travelling on the train, say, by reason of his own act, default, or misfortune, which has no nexus with the accident to the train." The Supreme Court emphasised that Section 82-A does not turn a liability which was contingent on fault into an absolute liability. What it does not do, is to provide a free insurance cover to the person and property of a passenger so that compensation can be claimed for an accidental death of or injury to the passenger and/or loss to his property even when there has been no accident to the train carrying such a passenger. On an analysis of the facts, the Supreme Court held that a passenger felling from a train while the bogie in which he is travelling is being shunted is qualitatively different from a collision of two trains or derailment of a train or blowing up of a train which are events which one does not ordinarily expect in the course of a journey. Such events fall within the parameters of the definition of accident. A jolt to the bogie which is detached from one train and attached to another cannot be termed as an accident as no shunting can take place without such a jerk or an impact at least when it is attached or annexed to a train by a shunting engine.

If a passenger tumbles inside the compartment or tumbles out of the compartment when he is getting inside the compartment, or stepping out of the compartment, it cannot be said that an accident has occurred to the train or a part of the train. While it is an accident to the passenger, it is not an accident to the train.

15. On the above reasoning the Supreme Court rejected the interpretation put by the High Court characterising it as an strange interpretation and inconsistent with the true position of law as unfolded by it, allowed the appeal and declared that Section 82-A is not attracted to circumstances where there has been no accident to the train.

16. It requires to be noticed that this decision was rendered on an interpretation of Section 82-Aof the 1890 Act, which is in pari materia to the provisions of Section 124 of the Act.

17. Smt. Sundri and Ors. v. Union of India and Anr., (F.B.) is a Full Bench decision of the Allahabad High Court where the question that arose for consideration was whether the deceased person in respect of whose death a claim for compensation was laid against the Railway Administration, under Section 82-A of the Railways Act, 1890, was a bona fide passenger. The Claims Commissioner held that the deceased person was travelling on a pass issued on the basis of the misrepresentation as to entitlement for such a pass by his father and as such he was not a bona fide passenger and rejected the claim for compensation. On appeal the High Court confirmed the decision of the Claims Commissioner. No part of this decision is relevant to the issues arising in this reference.

18. Ullahannan Rajan v. Union of India, , is a decision of a learned Single Judge of the High Court of Kerala. The claimants were dependants of the deceased passenger who sued the Railway Administration for causing death of the passenger by negligence. The trial Court decreed the suit concluding that the incident had taken place due to negligence of the deceased, but nevertheless directed the Railway Administration to make ex gratia payment of Rs. 10,000/. On the claimant's appeal the High Court reversed the conclusions of the Trial Court and held that the accident occurred on account of the negligence of Railway servants, there was no negligence on the part of the deceased and allowed the appeal granting compensation. This decision did not require examination of the provisions of Section 124-A of the Act. Even otherwise, the occurrence was considered under the provisions of the Railways Act, 1890.

19. Raj Kumari and Anr. v. Union of India, 1993 ACJ 846 (MP), is a decision of a Division Bench of the High Court of Madhya Pradesh arising under Section 82-A of the Railways Act, 1890. The

only question that arose for consideration of the High Court was whether the burden of proof as to whether the deceased was a bona fide passenger or a trespasser or a ticketless traveller lay on the claimant or the Railway Administration. The Division Bench held that as such a burden is impossible to be discharged by the dependent, the burden lies on the Railway Administration. This decision is of no assistance.

20. In Director, Combat Vehicles and Research Establishment, Avadi v. Deputy Commissioner of Labour, Madras, 1995 LLR 460, it was held that an employee jumping from a running train to catch another train would not be entitled to compensation as such conduct is not be comprehended within the expression "accident" which means some unexpected happening without design.

21. In P.A. Narayanan v. Union of India and Ors., , the husband of the passenger was the claimant. The deceased was robbed and assaulted while travelling by the Western Railway local train from Bandra to Andheri. While travelling on a first class Railway pass in the first class ladies compartment, before reaching her destination at Andheri, she was criminally assaulted and robbed of her gold ornaments etc., while the train was in motion. She pulled the alarm chain, but neither did the train stop nor was she attended upon. She eventually succumbed to the injuries, in the compartment. The writ petition filed by the husband of the deceased passenger was dismissed by the High Court and thus the Civil Appeal filed by the claimant. The Supreme Court held that there was a common law duty reasonable care attached to all carriers including Railways. In the case on hand there was a breach of such duty and the negligence of the Railway staff was amply established. If the train had been stopped and immediate aid provided when the alarm chain was pulled, death could possibly have been avoided. The Guard and Motorman acted negligently in performing their duties and therefore in view of the evidence and with a view to do complete justice between the parties, the Supreme Court awarded compensation to the husband. It requires to be noticed that while the provisions of the Act including the definition of 'untoward accident' in Section 123(c) thereof were noticed by the Supreme Court, the compensation was granted more on the foundation of a tortuous liability i.e., the failure of the Railway Administration and its staff in taking reasonable care as is fastened on it in common law. In any event it was not a case where there was any voluntary act of default, carelessness or negligence of the passenger involved which resulted in her injuries and eventual death.

22. In Director, Combat Vehicles and Research Establishment, Madras v. Deputy Commissioner of Labour-II, Madras, 1999 (3) LLJ (Supp.) 862 (Mad.), the High Court of Madras, in a case

arising out of Workmen's Compensation Act, 1923, concluded that when a person jumps from a running train, it cannot be held that sustaining injury by falling down is an unexpected result of such jumping. The order of the Commissioner was set aside.

23. In General Manager, SC Railway v. K. Narayana Rao, , a learned Single Judge of this Court rejected the appeal of the Railway Administration and confirmed the award of the Railway Claims Tribunal granting compensation. The Tribunal, on an analysis of the evidence led before it, came to the conclusion that death occurred on account of an accidental fall from the train. The correctness of this finding was canvassed in appeal. This Court noticed that contrary to the version of the claimant that death occurred as a result of a fall consequent on a jerk to the train and the fall occurred while the victim was coming out of the bathroom, the FIR as well as the inquest report recorded that the deceased while getting down from the train fell down and jammed between the platform and train. This Court, however, rejected the claim of the Railways that the fall was a result of the negligence of the passenger in getting down from a train in motion. It was not a case of self-inflicted injury within the meaning of Section 124-A of the Act, ruled this Court. The distinction urged by the Railways as between an accidental fall and a fall resulting from the negligence or carelessness of the passenger, did not commend itself to this Court. There is no ratio decidendi posited.

24. In Union of India v. Smt. Jameela and Ors., FAO No. 277/99 by a judgment dated 6-7-2001 a Division Bench of the Lucknow Bench of U.P. High Court, on an analysis of the facts, came to the conclusion that as the deceased was travelling standing at the door of the train from where he fell down resulting in death, the incident is covered by the proviso to Section 124-A of the Act, the death occurred on account of the negligence of the passenger. On the above conclusions the compensation granted by the Tribunal was set aside and the appeal of the Railway Administration allowed.

25. In D. Srinivas v. Union of India, , the facts considered were that while the claimant was about to board the Bangalore-Hyderabad Express on 17-2-1992 a heavy iron girder which was loosely and carelessly fixed for electrification work fell on the train and upon the claimant causing him and another co-passenger grievous injuries. The Railway Administration resisted the claim on the ground that he was a ticketless passenger. The Railway Claims Tribunal held that the claimant's application was not maintainable on the ground that there was no accident and as such he was not entitled to compensation. The High Court of Karnataka found that the burden of establishing that the claimant was a ticketless traveller was on the Railways and that burden had not been discharged. Therefore the finding of the Tribunal that he was a ticketless

traveller was an error. On an analysis of the evidence the version of the Railways that there was negligence on the part of the claimant as he was travelling sitting at the door was rejected. This case posits a conclusion on facts and has not decided any principle, having relevance to the issues involved in this reference.

26. Shanmughan v. Union of India, 2000 (2) ACC 224 (Ker.) (D.B), is a decision of the Division Bench of Kerala High Court where the question involved was as to the extent of discretion available to the Railway Claims Tribunal to determine the quantum of compensation. This decision is also of no relevance to the issue on hand.

27. In CMA No. 3195/01 by the order dated 4-2-2002 a Division Bench of this Court allowed the appeal of the Railways against the award of the Railways Claims Tribunal granting compensation. This Court relying on the evidence of the Railway Guard R.W.1 that the train was in slow motion, he had shouted at the deceased not to enter into running train and the deceased nevertheless tried to enter into the running train, hit, fell and died on the spot, came to the conclusion that the death of the passenger was on account of a self-inflicted injury. However, the Court merely reduced the compensation of Rs. 4 lakhs awarded by the Tribunal to Rs. 2 lakhs. The question as to whether as the death was on account of a self-inflicted injury the Railway Administration was exempted from liability in view of the provisions of Section 124-A of the Act, was neither considered nor dealt with in this judgment.

28. In Rathi Menon v. Union of India, 2001 SCC (Crl.) 1311, the claimant was thrown out of a running train. She was travelling to Bangalore on 3-9-1996 by Island Express. After the train started moving, she moved to the wash basin situate near the door, for a face wash. While so the train jerked violently at a turning and in that impact she was thrown out. Her spinal cord was ruptured and in a trice she turned a paraplegic. After she fell down, the wheels of the train ran over her right arm severing it from the shoulder point. While she was so lying on the track with her right leg on it and nobody noticing such state of the claimant, another train came along the same track and ran over her right leg amputating the leg in the process. She however survived but a paraplegic without one leg and one hand. The quantum of compensation was stipulated in the Railways Accidents (Compensation) Rules, 1990 in the schedule thereof. The Rules and the Schedule were amended with effect from 1-11-1997 providing for specific and more generous compensation than prior to the amendment. The question before the Supreme Court was whether the claimant was entitled for the quantum of compensation as specified prior to the amendment with effect from 1-11-1997, as the accident had occurred prior to the amendment nor to the quantum of compensation under the amended provisions. The Railway Claims

Tribunal had awarded a compensation of Rs. 6 lakhs. The High Court, to which the Railway Administration appealed, reduced the compensation to the amount payable as per the schedule prior to the amendment w.e.f. 1-11-1997, for the reason that the accident occurred prior to the amendment. The Supreme Court reversed the judgment of the High Court and held that the provisions of Sections 124 and 124-A of the Act merely provide a speedier remedy to claim compensation before the Tribunal without affecting the right of the claimant to recover compensation under the general law in force viz., the civil remedy to claim compensation. The provisions of the Act are not intended to provide a gain to the Railway Administration but are meant to afford just and reasonable compensation to the victim as a speedier measure. If a person files a suit the amount of compensation would depend upon what the Court considers just and reasonable on the date of determination. Therefore, even when he conies before the Tribunal claiming compensation, the determination of the amount should be as on the date of such determination. Adopting a purposive construction, the Supreme Court after an analysis of the precedents including those arising under the Workmen's Compensation Act, 1923, allowed the appeal and directed compensation as awarded by the Railway Claims Tribunal. The question whether the liability of the Railway Administration to pay compensation under Section 124-A is excluded on account of voluntary, conscious, careless or negligent act or conduct of a passenger, did not arise for consideration nor was determined in this judgment.

29. In Union of India v. Jashna Kanhar, 2001 ACT 871 (Bihar), a Member of the Bihar Regiment, a defence personnel, while travelling on 1-4-1995 by the Jammu-Tawi Sealdah Express fell from the train and died. The wife claimed compensation under Section 124-A of the Act. The Railway Administration made a bald assertion in its written statement that the deceased was not a bona fide passenger and also called upon the claimant to prove that she is a widow of the deceased. The Railway Claims Tribunal found that the deceased was a bona fide passenger, had lost his life in an untoward incident and that compensation was payable to the claimant, who was found to be the widow. The High Court confirmed the award of the Tribunal. This judgment is of no relevance to the issues involved in this reference.

30. In Union of India v. Urmila Gupta and Ors., , the issue arose under Section 124-A of the Act. The deceased met with an accident while travelling on the Inter City Train on 22-9-1996. He was hit by a signal pole adjacent to the Railway line. The Railway Administration in its written statement before the Railway Claims Tribunal contended inter alia, that the accident was a self-invited one and the deceased had died due to his own criminal act and denied the liability to pay compensation. Other objections as to the deceased not being a bona fide passenger were also

urged. The Tribunal held that the deceased was a bona fide passenger, the accident fell within the purview of Section 124-A of the Act and the dependants were entitled to compensation. On appeal the High Court found that despite the plea in the written statement filed by the Railway Administration that the deceased died on account of his own criminal act, there was no issue framed by the Tribunal, and therefore allowed the appeal. The High Court while upholding the finding that the deceased was a bona fide passenger remanded the matter to the Tribunal for taking a decision as to whether the incident occurred on account of any criminal act of the deceased. This decision is of no assistance to the issues involved in this reference.

31. In Union of India v. Kaushalya Devi and Ors., 2002 ACJ 823 (AP), the passenger fell from the train on the intervening night of 4/5-7-1996 on account of the rush, resulting in injuries, which resulted eventually in his death. The Railway Administration contended that the deceased was not a bona fide passenger. The Railway Claims Tribunal rejected the contention and awarded compensation. The Railway Administration appealed also on the finding of the Tribunal that the death was occasioned in an 'untoward incident'. The High Court on appreciation of the evidence disbelieved the witness on whose testimony the Tribunal allowed the claim and held that the deceased was not a bona fide passenger and accordingly allowed the appeal. This decision offers no assistance to the issues involved herein.

32. W.P. No. 1894 of 2002 was filed by the Dalit Human Rights Trust as a PIL seeking compensation to the parents of one Harinatha Rao s/o Sambasiva Rao, who was found to have died on 23-8-2001 as a consequence of jumping out of a running train while it was moving from Motamarri RS towards Khammam. A Division Bench of this Court by the judgment dated 26-6-2003 dismissed the writ petition holding that the liability of the Railway Administration, if any, is in accordance with the provisions of Sections 124A to 127 of the Act read with the definition "untoward incident" as defined in Section 123(c) of the Act. "Death of a person occurring as a result of his jump out of a train is not liable to be compensated by the Railways and as such there is no question of compensating the family of the deceased as prayed for in this writ petition" ruled the Division Bench of this Court. Though pithy reasons in brief recorded by this Court posit a ratio that the negligent act of a passenger resulting in his injury or death, as the case may be, does not posit a liability on the Railways to pay compensation under Section 124 of the Act.

33. On behalf of the claimant, authorities were cited including the judgment of the Supreme Court in Essen Deniki v. Rajiv Kumar, , to contend that Section 124A of the Act should be considered to be a species of welfare legislation and accordingly this Court should give it a broad

interpretation to effectuate the legislative purpose and that such construction must be put upon the provision as would obligate the Railways to pay compensation for death or injury suffered by a passenger even if such death or injury was a result of the negligence or carelessness of the passenger. The principle urged by the claimants that welfare legislation must receive a broad and purposive construction to effectuate the legislative purposes, is a well established principle. This interpretive principle, however, does not liberate the judicial branch from all appropriate and binding interpretive principles as to the construction of statutes principally by construing the language employed. A purposive construction principle is not a rubric for judicial legislation. Where the language of a legislation taken in its textual setting, enacting history, amendatory dynamics and other such permissible aids to construction, permits a liberal construction to be put upon the words then and then alone is the Court permitted to adopt that meaning among the legitimately available meanings, which better effectuates the identified legislative purpose. Benefits not intended by legislative policy and context cannot be introduced by curial dicta.

34. In Jogi C. John v. Union of India, (DB), a Division Bench of the High Court of Kerala held that when a passenger fell on the rail track and sustained injuries while boarding the train, on account of a jolt to the train, it was a case of 'untoward incident' entitling her to compensation and confirmed the compensation awarded by the Railway Claims Tribunal. The Supreme Court held that there was no evidence to conclude that the appellant had attempted to commit suicide or that she had fallen in a state of intoxication or insanity or that the injuries suffered by her were self-inflicted injuries, the Court categorically found that there was no evidence and the Railways had failed to prove negligence on the part of the appellant. It held that merely since there was no negligence on the part of the Railway employees, it cannot be presumed that the injuries caused to the victim of an accident are self-inflicted injuries so as to deny compensation. This is a fact based decision enunciating no principle of relevance to this case.

35. In Union of India and Anr. v. Gayatri Srivastava and Ors., , a Fitter Gr. I in NE Railways, travelling from Gorakhapur to Ballia, while alighting from the train slipped and fell. His leg was amputated as the train ran over him. He was declared dead when brought to the hospital. The Railways resisted the claim before the Tribunal contending that the deceased had committed suicide. The Railways also contended that the accident occurred on 7-2-1994 whereas Section 124-A and the definition 'untoward incident' in Section 123(c)(2) of the Act were brought on to the statute book on 28-4-1994 and therefore no compensation could be granted. The Tribunal awarded compensation. The Railway Administration appealed. The appeal was dismissed by the

High Court. The High Court rejected the contention of the Railway Administration that the deceased had committed suicide. With regard to the contention of the Railways that the amended provisions of the Act are inapplicable to a accident which occurred prior to the amendment, the High Court concluded that the amendment was in the nature of a beneficent legislation which should receive a liberal construction so as not to curtail the benefit conferred by the amendment and to restrict the area of its operation and accordingly held that the claimants were entitled to compensation and dismissed the appeal. This decision is equally of no relevance to this case.

36. The claimants also urge, by reference to the provisions of the Workmen's Compensation Act, 1923 and the Motor Vehicles Act, 1988 that negligent conduct of a workman or a person in those statutes not having been excluded for entitlement to compensation, the provisions of the Act should receive a similar construction.

37. Chapter II of the Workmen's Compensation Act, 1923 deals with workmen's compensation.Section 3 therein enacts that if a personal injury is caused to a workman by accident arising out of and in the course of employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II. There is a proviso to Section 3 which exempts such statutory liability of the employer. Clauses (ii) and (iii) of Sub-clause (b) of this proviso set out the circumstances in which the liability of the employer is exempt. This includes the wilful disobedience of the workman of an order expressly given or a rule expressly made for the purpose of securing the safety of workmen or the wilful removal or disregard by the workman of any safeguard or other devise which he knew to have been provided for the purpose of securing the safety of workman. Specified species of negligent or unauthorised conduct of workman are thus, expressly enumerated in the Statute exempting the statutory liability of the employer. There is thus no absolute liability cast by the statute on an employer compensate a workman including for every negligent or unauthorised conduct of his resulting in his injury in an accident during the course of employment.

38. The Motor Vehicles Act, 1988 in Chapter X deals with liability without fault in certain cases.Section 140 therein sets out the liability for payment of compensation in enumerated cases on the principle of no fault. Sub-section (4) of Section 140 ordains that a claim for compensation under the section shall not be defeated by any wrongful act, neglect, or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such

death or permanent disablement. As is apparent from the statutory context enumerated above the Legislature has consciously expressed its intent to enable a claim for compensation irrespective of any wrongful act, neglect or default of the person whose death or permanent disablement has resulted from an accident arising out of the use of a motor vehicle or motor vehicles. It is on account of such expressed legislative prescription that even a wrongful act, neglect or default of a person nevertheless entitles him to compensation.

39. In Section 124-A of the Act there is neither an expressed nor implied legislative instruction even approximating the legislative purpose expressed in Section 140(4) of the Motor Vehicles Act, 1988. It is therefore impermissible to import the spectrum of no absolute liability expressed in the specific language of Section 140 of the M.V. Act, 1988 into Section 124-A of the Act.

A brief overview of the relevant provisions of the Railways Act, 1989:

40. The Act is a consolidating and amending legislation relating to Railways which replaced theIndian Railways Act, 1890 which was repealed by Section 200 of the Act. The Act received the assent of the President on 3-6-1989. It is divided into 16 Chapters. Chapter-XIII sets out provisions (in Section 123 to 129) relating to the liability of the Railways Administration for the death and injury of a passenger due to accidents.

41. Section 124 enacts the liability of the Railway Administration to pay compensation in the event of an accident occurring, when in the course of working a Railway, there occurs a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers. This is a strict liability provision whereunder the liability to pay compensation is de hors any wrongful act, neglect or default on the part of the Railway Administration with regard to the accident that has occurred. None of the appeals out of which the present reference arises relate to claims presented for injuries or loss suffered on account of collision between trains. Section 124 of the Act has therefore no bearing on the issues arising herein.

42. Section 123 sets out the definition of certain expressions employed in the provisions under Chapter-XIII of the Act. Clauses (a) and (b) of Section 123, which formed part of the Act as initially enacted define the expressions "accident" and "dependent". Clause (c) of Section 123defines "untoward incident". This clause was introduced by an amendment by Central Act No. 28/94 with effect from 1-8-1994. Clause (c) of Section 123 reads as under:

"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 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, cloakroom 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."

43. Section 124-A of the Act is also an introduction into it by Central Act 28/94 w.e.f. 1-8-1994. 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 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 intoxation or insanity;

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

Explanation .--For the purposes of this section, "passenger" includes--

(i) a Railway servant on duty; and

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

44. The learned Division Bench which made the reference by its order dated 22-10-2002 recorded the view that the act of a passenger boarding or alighting from a train in motion presumes a knowledge by the passenger that if his judgment goes wrong he is liable to fall and sustain injuries or death. In such an event he ought to have taken care not to board or alight from a train in motion. The positive act of a passenger with such a knowledge, risking his own life, is not comprehended within the definition of "untoward incident" and consequently the injury or death as a result of such conduct of a passenger would not entitle him or his dependents as the case may be, to any compensation.

45. The resolution of the issue referred for the consideration of this Bench involves analysis and interpretation of the expressions "untoward incident" as employed in Section 124-A and defined in Section 123(c) and "self-inflicted injury" occurring in Clause (b) of the proviso to Section 124-A, of the Act.

46. The statement of objects and reasons accompanying the Bill introduced to amend the provisions of the Act, reads as under:

"STATEMENT OF OBJECTS AND REASONS At present Section 124 of the Railways Act, 1989, provides for payment of compensation to bona fide passengers who get injured or to the dependents of those who die on account of passenger train accident. However, incidents like terrorists' acts, robberies, dacoits, violent attacks, rioting, shoot-outs, arson, etc., in trains or in waiting halls, cloak rooms, booking offices or on platforms or other places within the precincts of any Railway station are not covered by that section for the purpose of payment of compensation.

2. There have been pressing demands, in both the Houses of Parliament and from the public that the bona fide Railway passengers who become victims of the aforesaid incidents should

also be compensated for injuries or loss of life. It is, therefore, proposed to introduce the Railway Passenger Insurance Scheme for valid ticket and pass holders so as to compensate them for injuries or death caused by the aforesaid incidents in trains or the aforesaid places. No compensation will, however, be payable by the Railway Administration in cases of death or injury due to suicide or attempted suicide, self-inflicted injuries, criminal acts of the passenger, acts committed by the passenger in a state of intoxication or insanity, natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by any of the aforesaid incidents.

3. Accordingly it is proposed to amend the Railways Act, 1989 and to make certain consequential amendments in the Railway Claims Tribunal Act, 1987.

4. The Bill seeks to achieve the above objects."

47. Having regard to the phraseology employed in Clause (c) of Section 123 it is apparent that the Legislature has employed a restrictive definition of the expression "untoward incident". Neither the expression "include", "means and includes" or "to apply to and include" has been employed. Untoward incidents might include a broad spectrum of occurrences apart from those illustrated/enumerated in the definition in Clause (c). The Legislature has however by employing the restrictive phraseology "means" has circumscribed the meaning of an untoward incident to commission of a terrorist act, making of a violent attack or commission of a robbery, a dacoity or indulging in rioting, shoot-out or arson by any person in or on any train carrying passengers, or in the specified areas as also the accidental falling of any passenger from a train carrying passengers. In this reference we are concerned with the purport of the expression "accidental falling of any passenger from a train carrying passengers".

48. The New Oxford Dictionary of English (4th impression 2002) defines 'accident' as "an unfortunate incident that happens unexpectedly and unintentionally typically resulting in damage or injury; an event that happens by chance or that is without apparent or deliberate cause". "Accidentally" is defined as "happening by chance, unintentionally or unexpectedly."

49. Stroud's "Judicial Dictionary" (5th Edition 1986) defines 'accident' as : "(a) An effect is stated to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precaution against it. (b) Accident includes an unlocked for mishap, or an untoward event

which is not expected or designed. (c) Suppose a man was to go blindfold along the street and to run against something - could any one say, he met with an accident? He would do an act that would be very likely to lead to a mischief. It is different with the person who might suffer by such act; he might fairly say that he met with an accident - a peril which is liable to every man who goes out in the road and meets with negligent people, (per Bramwell B., Lloyd v. General Iron Screw Collier Co., 33 LJ ex 269). (d) "Injury caused by accidental" in an insurance policy means an injury caused by some acts of the insured, which he had not intended and was an involuntary act on his part (Steinke v. Australian Provincial Assurance Association Ltd., (1940 St.R. Qd. 7)".

50. The Law lexicon by Ramanatha Aiyar (2nd Edn. 1977) defines an accident, inter alia, as (a) An undesigned, sudden or unexpected event; mishap; misfortune; disaster. (b) An occurrence which is due neither to design nor to negligence. An act that is intentional is clearly not accident. If it be the result of culpable negligence then by due care it could have been avoided and the negligent person cannot be allowed to excuse himself by declaring it an accident. (c) Accident generally denotes an event that takes place without ones foresight or expectation; an event which proceeds from an unknown cause, or is an unusual effect of a known cause and therefore not expected; chance, casualty, contingent; an event happening without the occurrence of the will of the person by whose agency it was caused.

51. The permanent Edition of "Words and Phrases" has included a host material defining the expression "accident" and "accidental" by illustrations through cases. Accordingly--

(a) An accident is an event that takes place without ones foresight or expectation; an undersigned, sudden and unexpected event.

(b) Accident denotes an event that proceeds from an unknown cause or is a unusual effect of a known cause and is therefore unexpected. [Choctaw County v. Bateman 252 p. 2d 465].

(c) An accident is an occurrence that could not have been foreseen by a prudent person. [Smith v. Roane Anderson Co., 207 S.W. 2d 353].

(d) Accident means an unusual fortuitous, unexpected, unforeseen or unlocked for event, happening or occurrence, attending operation or performance of usual or necessary act or event [Wright v. Wyoming State Training School 255 p.2d211J.

(e) Accident is the result of an unknown cause or of an unusual and unexpected event happening in such an unusual manner from a known cause that it could be reasonably expected or foreseen and that it was not the result of any negligence [Allied Mills v. Miller 132 N.E.2nd 425].

(f) Accident is an event which occurs without the fault, carelessness or want of proper circumspection of the person effected, or which could not have been avoided by use of that kind and degree of care necessary to the exigencies and in the circumstances in which one was placed [Massey v. Georgia Power Co., 69 S.E. 2d 824].

(g) An accident in its strict sense implies the absence of negligence [Everett v. Clegg 96 S.E. 2d 382].

(h) An accident is an occurrence which human prescience and prudence cannot foresee or forestall [St. Louis I.M.& S. Railway Co. v. Barnett 45 S.W. 550].

52. It also requires to be noticed that the Permanent Edition of Words and Phrases illustrates the expression "accident" where it has been interpreted in its expansive sense: "Since the Compensation Act is a remedial statute which must be construed liberally in order to carry out its beneficent purpose, the popular and ordinary definition of the word 'accident' and not the stricter definition used in considering health and accidental policy is to be used in compensation cases" [Hertzberg v. Kapo Dyeing and Printing Co., 18A 2d 736].

"Accidental" has also been defined by illustrations in "Words and Phrases":

"(a) Accidental means involuntary as distinguished from wilful or intentional [Murill v. State Board of Accountancy of Department of Professional and Vocational Standards 218 p.2d 569].

(b) Neither the word "accident" nor "accidental" has a technical, legal meaning but must be considered in the light of the common and accepted meaning and construed according to common speech and usage, which contemplates something unanticipated, unforeseen and unusual, without design, intention or premeditation [Wills v. Midland nat LIC 91 p.2d 695].

53. It is a well established principle of interpretation that in the construction of legislative expressions the interpreter must avoid the error of adopting a strictly lexicographic approach and constructing a fortress out of a dictionary. Lexicographic illuminations of an expression are but among the guides to legislative intention and as all guides are often fallible more so as every

expression is defined in a dictionary to include a host of meanings. It has been tritely stated by Julius Stone in "Precedents and Law" that all language is often plurisignative and English language is chronically plurisignative. Dictionaries exemplify this truism.

54. The expression "untoward incident" as defined in Section 123(c) of the Act enumerates categories of meanings and in a restrictive and exclusionary sense as already noticed. Each of the enumerated meanings clearly exclude the volition and participation of the victim in the act which denotes an "untoward incident". From the structure of Clause (c) an "untoward incident" has been defined also to mean the accidental falling of any passenger from a train carrying passengers. Three classes of occurrences viz., commission of a terrorist act, the making of a violent attack or the commission, of robbery or dacoity, or the indulging in rioting, shoot-out or arson, have been included in Sub-clause (1) and exemplified as events consequent on the act by any person in or on any train carrying passengers or in the enumerated premises.

55. In the structure of Sub-clause (1) of Clause (c) of Section 123 of the Act "the accidental falling of any passenger from a train carrying passengers, does not fit in for an appropriate construction of the clause". "Accidental falling of a passenger" has been incorporated in a distinct Sub-clause (2) only as a structural arrangement. Both the Sub-clauses (1) and (2) of Clause (c) of Section 123are designed to express a substantially similar legislative measure i.e., to define an untoward incident as an event or occurrence that is caused by factors external to the passenger or unrelated to his normal prudent conduct. In the light of the circumstances set out in Sub-clause (1) of Clause (c) it would be a strained interpretation to give the expression 'accidental falling of any passenger" [in Sub-clause (2)] an expansive import to embrace an accidental fall occurring as a consequence of an imprudent, negligent, foolhardy or careless act of the victim.

56. That an expansive meaning is excluded by the legislation is also inferable from the provisions of Section 124-A of the Act. A true and fair construction of Clause (c) of Section 123 should avoid importing a meaning to the expression "untoward incident" by which the perpetrator or an abettor in the commission of, a terrorist act, a violent attack, robbery, dacoity, rioting, shoot-out, arson or fall of any passenger from a train is able to obtain compensation for himself, if he has been injured or has died as a result of such conduct of his. To ensure the exclusion of a contrary interpretation the Legislature appears to have taken care to enact ex abundenti cautela, a proviso to Section 124-A. By the proviso it is enacted that no compensation shall be payable by the Railway Administration if the passenger dies or suffers injury due to any of the 5 categories of circumstances enumerated in Clauses (a) to (e). The commission by a

person or passenger, of a terrorist act, the making of a violent attack, the commission of robbery, dacoity, the indulging in rioting, shoot-out or arson, would disentitle a person, who has been injured or has died as a consequence of the commission or indulging, of or in, any of the above acts, as his injury or death, as the case may be, would be the result of his own criminal act. That is the purpose of Clause (c) of the proviso to Section 124-A.

57. The 'proviso' is an ancient and well established verbal formula. It enables a general statement to be made as a clear proposition, any necessary qualification being kept out of it and relegated to a proviso at the end. In the case of precision drafting the proviso is to be taken as limited in its operation to the Section or other provision it qualifies - vide Lloyds and Scottish Finance Ltd. v. Modern Cars and Carbons (Kingston) Ltd., 1996(1) Q.B. 764 at 780.

58. Lush, J in Mulins v. Treasury of Surrey, (1880) 5 QBD 170, stated - "when one finds a proviso to a section, the natural presumption is that, but for the proviso the enacting part of the section would have included the subject-matter of the proviso".

59. In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha, , Hidayatulla I, (as His Lordship then was) exemplified the general rule as to the purposes of a proviso - "as a general rule a proviso is added to an enactment to clarify or create an exception to what is in the enactment and ordinarily a proviso is not interpreted as stating a general rule". The proviso is also a drafting devise intended to be a guide to the construction of the enactment. If the enacting portion of a section is not clear or plurisignative, a proviso is appended to it to illustrate the true meaning. As stated by Lord Herschell in West Derby Union v. Metropolitan Life Assurance Society, (1897) AC 647." Of course, a proviso may be used to guide you in the selection of one or the other of two possible constructions of the words to be found in the enactment, and show when there is doubt about its scope, when it may reasonably admit of doubt as to having this scope or that, which is the proper view to take of it"

60. In Hindustan Ideal Insurance Co., Ltd. v. LIC, , Mudholkar, J., stated the principle thus: "There is no doubt that where the main provision is clear its effect cannot be cut down by the proviso. But where it is not clear, the proviso, which cannot be presumed to be a surplusage can properly be looked into to ascertain the meaning and scope of the main provision ".

61. This purpose of the proviso as an illuminating device was also enunciated by Lord Russel in Jennings v. Kelli, 1939 (4) All WR 464, thus: Although a proviso may well be incapable of putting upon preceding words a construction which they cannot possibly bear, it may, without

doubt operate to explain which of the two or more possible meanings is the right one to attribute to them".

62. Lord Thankerton in Government of the Province of Bombay v. Hormusji Menekji, AIR 1947 PC 200, rendering the opinion for the Privy Council reiterated the principle:

"It is a familiar principle of statutory construction that where you find in the same section express exceptions from the operating part of the section, it may be assumed, unless it otherwise appears from the language employed, that these exceptions were necessary, as otherwise the subject-matter of the exceptions would have come within the operative provisions of the Section ".

63. The principle expressed by Thankerton, J., in the above case, was relied upon and followed inKush Saigat and Ors. v. M.C. Mitter and Ors., . Saghir Ahmad, J., re-stated the principle thus: ".....the normal function of a proviso to expect something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. .....Since the natural presumption is that but for the proviso the enacting part of the Section would have included the subject-matter of the proviso the enacting part has to be given such a construction which would make the exception carved out by the proviso necessary and a construction which would make the exception unnecessary and redundant should be avoided".

64. In the light of the circumstances enumerated in the proviso to Section 124-A that exempt the liability of the Railway Administration to compensate the death or injury suffered by a passenger, it is clear that the legislative intent underlying Chapter XIII of the Act as amended by Act 28/94, in particular Clause (c) of Section 123 and Section 124-A is not to provide compensation to an injury or death suffered by a passenger regardless of the causative factors. In a measure a "no fault liability" is imposed on the Railways, viz., death or injury caused to a passenger on the occurrence of an untoward incident even absent any wrongful act, neglect or default on the part of the Railway Administration would fasten the Railway Administration with liability to pay compensation. Such no fault liability imposed on the Railways to pay compensation does not appear however to be so wide as to constitute an absolute liability and to render the Railways liable to pay compensation to a passenger who is injured or has died as a consequence of his own imprudent conduct, lack of reasonable care warranted in the circumstance of the train travel, acts of bravado, foolhardiness, carelessness or other such conduct.

65. The categories of situations enumerated in the proviso to Section 124-A which exempt the Railway Administration from liability include suicide or attempt to suicide by the passenger concerned; his own criminal act; an act committed in a state of intoxication or insanity and even injury or death on account of a natural cause, disease or medical or surgical treatment unless such medical or surgical treatment is necessitated on account of an injury caused by an untoward incident. Self-inflicted injury is one of the enumerated circumstances that exempt the Railways from paying compensation for death or injury of a passenger.

66. On a true and fair construction of the proviso to Section 124-A including the five enumerated circumstances therein, the conclusion is compelling that death or injury resulting from the volitional and conscious conduct of the passenger reasonably expected to result in an injury or death to himself, injury or death as a result of his criminal act or while in a state of intoxication or while suffering from insanity or on account of a natural cause or on account of a disease or a medical or surgical intervention, where such medical or surgical intervention is unrelated to in injury caused by an untoward incident, exclude the liability of the Railways to pay compensation.

67. The categories of circumstances enumerated in the proviso to Section 124-A constitute a guide to the legislative intent underlying enactment of Section 124-A. Prior to the amendment incorporated in Section 124-A there was a limited fault or on fault liability' implicated on the Railways for an injury or loss suffered by a passenger when an accident occurs either on account of a collision between the trains of which one is a passenger train or the derailment of or other accident to a train or any part of the train carrying passengers. Such liability was de hors the existence of any wrongful act, neglect or default on the part of the Railway Administration in the occurrence of such accident or collision. This provision came to be considered in Sunil Kumar's case (supra) wherein the law was declared that an accident to a passenger resulting in loss or injury suffered to him, which is not on account of an accident to a train, would not justify a claim for compensation under Section 124. Sunil Kumar's case (supra) also clarified that what was denied to a passenger in such circumstances was not a right to claim compensation in the generic sense but the right to claim compensation under the speedier process by pursuing such a claim before the Railway Claims Tribunal. This exclusion constitutes no exception for the common law liability for breach of the duty of care of the carrier or a tortuous liability under common law and before the jurisdictional Civil Court.

68. The above decision of the Supreme Court appears to have triggered the legislative concern and with a view to providing a speedier remedy to passengers who suffer injury or death on

account of an untoward incident, caused otherwise than by an accident to a passenger train or collision between trains and regardless of any wrongful act, neglect or default on the part of the Railway Administration, the Legislature intervened. This legislative concern found utterance in Act 28/94 by which Section 124-A was introduced into the Act along with a definition of "untoward incident" in Section 123(c).

69. What is provided in Section 124-A is compensation to a passenger for having suffered an injury or death 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. There appears nothing in the phraseology of Section 124-A, which implicate the liability of the Railways to compensate a passenger who suffered injury or death, a the case may be, on account of his own imprudent act or a departure from the standard of care required of the passenger while travelling on a train. If the legislation has clearly pronounced qua the proviso to Section 124-A of the Act that the Railway Administration is immunised from the liability to pay compensation for death or injury suffered on account of suicide or attempt to suicide by the passenger, on account of his criminal act or while in a state of intoxication or insanity of self-inflicted injury or on account of natural causes or disease, there is no justification to infer that the Legislature intended to mulct the Railway Administration with a liability to pay compensation to the passenger who had carelessly or negligently invited disaster to himself.

70. On the above analysis it appears reasonable to conclude that the circumstances enumerated in the proviso to Section 124-A are in the nature of ex abundenti cautella provisions to emphasise the legislative intent already implicated in Sub-clause (2) of Clause (c) of Section 123 of the Act and the proviso is intended to make explicit that the expression "accidental falling" in the above sub-clause excludes fall of the passenger as a consequence of his fault, carelessness, lack of circumspection or absence of such kind and degree of care warranted in the exigencies and circumstances of travel by a train, or on account of absence of prudence and prescience on his part.

71. On behalf of the claimants it is strenuously contended that an injury or death caused to a passenger even on account of his own gross negligence or carelessness would not exclude the liability of the Railway Administration to pay compensation and that the expression 'untoward incident' occurring in Section 124-A and defined as the "accidental falling" of a passenger inSection 123(c)(2) should receive a beneficent construction by this Court to facilitate payment of compensation even in such cases. This contention on behalf of the claimant does not commend acceptance by this Court. Neither the text and tenor of Sections 123 and 124-A of the

Act as analysed by us above, nor even the statement of objects and reasons accompanying the bill that was enacted as Act 28/94 provided any support to justify acceptance of the interpretation that the claimants urge.

72. On the above analysis we hold that the expression self-inflicted injury in Clause (b) of the proviso to Section 124-A of the Act denotes and includes an injury suffered as a direct, proximal and reasonably expected consequence of a victim's wrongful act, default, negligence or the absence of the requisite degree of care and prudence on his part.

73. There is yet another reason for rejection of the construction urged on behalf of the claimants. It is a basic principle of legal policy that law should serve the public interest. Hence the Latin maxim interest reipublicae (it concerns the State) which points out that every legal system must concern itself with the public interest. In pursuance of the principle that law should serve the public interest, Courts have evolved the important technique known as "construction in bonam partem (in good faith)". If a statutory benefit is given on a specified condition being satisfied, it is presumed that the Legislature intended the benefit to operate only when the required act is performed in a lawful manner. Another principle of legal policy is exemplified in the maxim nullus commodum capere potest de injuria sua propria (no one should be allowed profit from his own wrong). Unless the contrary intention appears, an enactment by implication imports the above principle as a governing principle of interpretive policy.

74. Now to an overview of the lexicographic explication of the expression "self-inflicted injury".

75. P. Ramanatha Aiyer in Law Lexicon, 2nd Edn. 1977, sets out the meaning of self-inflicted injury as under:

"Self-inflicted injury as used in an accident policy providing that the insurer shall not be liable to the insured for self-inflicted injury means injuries which are self-inflicted by the insured when he is capable of a rational voluntary action and not when he is insane."

76. In the Words and Phrases Permanent Edition, the following meanings of the expression "self-inflicted injury" are set out:

"(a) The intentional drinking of intoxicating liquor which had unintended effect of creating chronic alcoholism creating total and permanent disability did not make disability "result of self-inflicted injury" within provision of life policies denying income payments if disability

resulted from self-inflicted injury, New England Mut. Life Ins. Co. of Boston, Mass, v. Hurst, 199-A.822, 831, 174 Md.596.

(b) Under disability clause of life policies providing that disability benefits should not be granted if disability was the result of self-inflicted injury, an injury is "self-inflicted" only when the insured wills or intends it, and an accidental injury producing total and permanent disability, although self-inflicted, would not bar recovery. Lynch v. Mutual Life Ins. Co. of N.Y., 48 A. 2d 877, 878, 159 Pa. Super. 488.

(c) "Self-inflicted injuries," as used in an accident policy providing that the insurer shall not be liable to the insured for self-inflicted injuries means injuries which are self-inflicted by the insured when he is capable of rational voluntary action, and not when he is insane. Crandal v. Accident Ins. Co. of North America, 27 F. 40, 44 Accident Ins. Co. v. Crandal, 7 S.Ct. 685, 687, 120 U.S. 527, 30 L.Ed. 740; Bacon v. U.S. Mut. Ac. Ass'n, N.Y. 44 Hun, 599,604."

77. It requires to be noticed that Courts had identified the meaning of the expression "self-inflicted injury" broadly as an injury willed or intended by the insured, in the context of accident and life insurance policies. As pointed out in Sunil Kumar's case (supra) the Railways are not to be considered as having insured all the passengers or persons coming on to their precincts.Section 124-A of the Act does not implicate a liability on the Railway Administration to compensate persons who suffer injury or death as a reasonably expected consequence of their culpable negligence, absence of foresight, expectation, prudence and circumspection. A reasonably expected result of the wrongful or abnormal conduct of a passenger or person using Railway facilities would not amount to a fortuitous or unexpected event and therefore would not amount to accidental falling within the meaning of Section 123(c)(2) and would amount to a self-inflicted injury within the meaning of Clause (b) of the proviso to Section 124-A of the Act.

78. The purpose of Section 124-A is to provide a speedier forum for adjudicating upon the claim presented by a passenger or his dependents when the passenger sustains an injury or has died as a consequence of an untoward incident, which has occurred irrespective of any wrongful act, neglect or default on the part of the Railway Administration. The provision is not in the nature of a risk insurance policy covering also a self-invited disaster.

79. Before recording our conclusions it must be placed on record that Sri S.R. Ashok, learned Senior Counsel instructed by Mr. B.H.R. Chowdary, Advocate, Sri T. Ramakrishna Rao, learned Standing Counsel for the Railways and Sri N. Subba Reddy, learned Senior Advocate and Sri

Rajamalla Reddy, Advocate, on behalf of the claimants, have presented their respective view points with considerable acuity, painstaking analysis of the legal aspects and amply embellished with factual illustrations. We record our gratitude to the Counsel for the assistance rendered.

80. On the analysis above we conclude that the expression "untoward incident" in Section 124-Aof the Act, which has been defined inter alia, to mean the accidental falling of any passenger from a train carrying passengers (in Sub-clause (2) of Clause (c) of Section 123 of the Act) does not comprehend injury or death occasioned by his negligence, carelessness, wrongful act or prohibited conduct, disregard of the requisite standard of care obligated by a person travelling on a train or any such conduct of a passenger which might reasonably be expected to result in his injury or death, as a resultant injury or death would, in such circumstances, be the consequence of a self-inflicted injury.

81. We have perused the principles and conclusions recorded by. our learned Brother P.S. Narayana, J. in his detailed and erudite judgment. We regret our inability to wholly agree with the conclusions. What degree of proof is required to establish a claim for compensation or the defence to such a claim and by whom, at what stage and when such burden of proof shifts, if at all, to the Railway Administration, are issues which have not been presented to this Bench for its resolution, in this reference.We are in agreement with the conclusions 1, 2 and 4, characterised as the specified principles, in the concluding portion of the judgment of our learned Brother. As we have concluded supra that "injury or death occasioned by the negligence, carelessness, wrongful act or prohibited conduct, disregard of the requisite standard of care obligated by a person travelling on a train or any such conduct of a passenger which might reasonably be expected to result in his injury or death", would exempt the Railway Administration from the liability to pay compensation under Section 124-A of the Act and for the reasons recorded in our judgment, the conclusion No. 5 recorded by our learned Brother to the effect that the general principles of negligence may be considered as guiding principles but would not be binding in the case of an "untoward incident as contemplated by the specific provisions of the Act, which would prevail over the general principle", is a conclusion with which we respectfully disagree. As conclusion No. 7 our learned Brother has recorded that the underlying principle of the provisions of the Motor Vehicles Act, though not similar to the provisions of the Act, may be applied" in the background of the language of the provisions referred to supra." We have concluded that the principle of absolute liability posited in Section 140 of the Motor Vehicles Act, 1988, cannot be imported into the provisions of Section 124-A of the Act on account of substantial difference in the phraseology employed in the two provisions.

We are therefore unable to record our agreement with conclusion No. 7. Conclusions 3,6 and 8 deal substantially with the burden of proof, on whom such burden inheres and cognate areas. As these issues do not fall for consideration in this appeal, we express no opinion on these aspects.

82. The reference is accordingly answered in terms of the judgment of the majority.

83. All the appeals, not having been determined on their merits in this reference, shall stand relegated to be decided by the appropriate Division Bench.

P.S. Narayana, J.

ORDER

1. A Division Bench, by the order dated 22-10-2002 in CMA No. 2273/2002 while disagreeing with the decisions of the Division Benches in Union of India v. Baburao Koddekar, (DB) and Union of India v. Uggina Srinivasa Rao, (DB), had referred these matters on the ground that the issue involved in these cases requires to be resolved by a Full Bench or a Larger Bench. In view of the reference made by the Division Bench aforesaid, the learned Single Judges also had referred certain matters of similar nature to be decided by a Full Bench or Larger Bench.

2. That's how all these Appeals came up for hearing before this Full Bench without the formulation of the questions of reference specifically. Except the common questions - What is an untoward incident and on whom the burden lies and if so to what extent and what is the extent of liability of Railways, nothing else appears to be common in these matters, and hence, on facts, these matters may have to be decided by the concerned Division Bench or the Single Judge as the case may be.

3. These are all cases relating to the claims of compensation in relation to persons trying to board the train but falling down and meeting the death or sustaining injuries, passengers standing near the doors and falling down and sustaining injuries or such incident resulting in the death, passengers jumping from compartments resulting in death or sustaining injuries, passengers trying to alight a running train, passengers going to the train by crossing the Railway track, claims relating to the leaning out of the carriage and claims pertaining to persons found lying on the track and claims arising out of the accidents occurring to passengers hurriedly boarding the train and claims made in similar or like cases. The Division Bench after hearing Sri B.H.R. Chowdhry, the Standing Counsel representing the Railways/appellant and Sri D.V. Ramana Murthy, Sri Chandra Sekhar and Sri Prasad Goud, representing the

claimants/respondents had dealt with the respective contentions of the parties in detail and made the reference disagreeing with the views expressed by the respective Division Benches in the decisions referred in Union of India v. Baburao Koddekar and Union of India v. Uggina Srinivasa Rao cases (supra). As can be seen from the findings recorded in the decision referred in Union of India v. Uggina Srinivasa Rao case (supra), the matter was decided on facts and no doubt yet another Division Bench in the decision referred in Union of India v. Baburao Koddekar case (supra) made an attempt to lay down the law in this regard and in view of the reference made by the learned Judges, the question relating to the scope, ambit and interpretation of untoward incident under the present Railways Act, Railways Act, 1989 (Act 24 of 1989), hereinafter referred to as "Act" in short, had been taken up for hearing.

4. Sri S.R. Ashok, the learned Senior Counsel representing Railways submitted that the decision referred in Union of India v. Uggina Srinivasa Rao cases (supra) did not consider the meaning of untoward incident and the facts of the said case are that the deceased while entering into the train had fallen from the steps and the ratio is that steps leading to compartment would be integral part of the compartment and hence such fall from the steps would fall within the scope of untoward incident. The learned Counsel in a carefully built up argument made a serious attempt to convince the Court that throwing burden of proof always on the Railways, whatever may be the facts and circumstances of a particular given case, definitely cannot be sustained. The learned Counsel began giving several examples and several illustrations under what circumstances such burden cannot be thrown on the Railways and casting burden in such a fashion would definitely result in serious monetary loss to the Railways by way of payment of compensation in undeserving cases and in this view of the matter, inasmuch as the impact on the public exchequer also is involved it being a matter of public interest, though individual cases are to be dealt with on the basis of the respective facts, it is desirable that an authoritative pronouncement is required in this regard, and hence appealed to the Court to decide the matter. The learned Senior Counsel while elaborating his submissions had explained Section 123(c) and Section 124-A of the Act and had explained the meaning of the expression "accident" and also the expression "accidental falling". The learned Counsel would maintain that "accident" means an unanticipated thing and it would not cover a thing which can be anticipated, which can be foreseen, which can be expected especially due to the commission of the acts of a particular passenger or a person in a given case. The learned Counsel also had explained in detail the exceptions specified in Section 124-A and also several provisions of the Act and Rules in Coaching Tariff. The learned Counsel would maintain that there are several provisions in the Act which would make several acts punishable being treated as offences and

hence should be taken as prohibited by law and falling under "criminal acts". The Counsel had made an attempt to explain the meaning of "self-inflicted injury". Elaborate submissions were made on the expression "accidental falling" and reliance was placed relating to the expression "accident" and the definition thereof under Wharton's Law Lexicon. The learned Counsel would maintain that a person or passenger who had violated the provisions of the Act, especially such provisions which are of penal nature, would not be entitled to any compensation. For the purpose of falling under "accidental falling" own negligence and misconduct on the part of the claimant may have to be excluded. The learned Senior Counsel had drawn the attention of the Court to Sections 153 and 156 and several other provisions of the Act and certain Rules under Coaching Tariff. The Counsel would maintain that anything contrary to law should be taken as opposed to public policy, both in the realm of penal law and civil law as well, and a person committing negligent act cannot claim compensation. The Counsel also in detail had explained the provisions prior to the Amending Act, Act 28 of 1994 and subsequent thereto. The learned Senior Counsel also had elaborately explained the concept of negligence and the tortuous liability and the Counsel also maintained that the provisions of the Act may have to be interpreted as such and unless the other provision in a different Enactment is in pari materia, there is no question of importing the interpretation or decisions relating to the interpretation of such a provision in a different Enactment for the purpose of deciding these cases under the Act. Hence, the learned Counsel contended that comparing with the provisions of Motor Vehicles Act, 1988 and the decisions delivered thereunder, may not be of much consequence. The Counsel also had placed reliance on certain decisions to substantiate his contentions.

5. Sri. T. Rama Krishna Rao, Counsel representing Railways, while adopting the arguments of the learned Senior Counsel also had explained in detail the meaning of "self-inflicted injury" and had further explained in detail by illustrations, under what circumstances a passenger or a person, as the case may be, may not be entitled to any compensation at all. The learned Counsel also had drawn the attention of this Court to several Rules in the Tariff. The learned Counsel also made elaborate submissions comparing the liability relating to negligence in relation to Railways with that of law relating to Motor Vehicles and the law relating to Insurance as well. The learned Counsel would maintain that if a person knowing and foreseeing the consequences invites a risk, the resultant of which may be either an injury or death, such person definitely would not be entitled to any compensation. The learned Counsel also and explained in detail under what circumstances and in the light of which background the decisions of the respective Division Benches had been rendered in relation to which the reference had been made. The learned Counsel had relied upon several decisions in this regard. The learned Counsel also had

drawn the attention of this Court to the provisions of the Commercial Documents Evidence Act, 1939.

6. Sri Subba Reddy, the learned Senior Counsel representing the claimants submitted that for "self-inflicted injury", ordinary dictionary meaning may have to be taken -which is intentional or accidental. The learned Counsel had drawn the attention of the Court to the realities of the Indian social conditions which cannot be ignored and which may have to be taken judicial notice. The test, at the best, may be consequences of once own action and no abstract proposition can be laid down. The learned Counsel also had maintained that the provision does not speak of a 'moving train' at all. The Counsel made elaborate submissions relating to standard of proof, vis-a-vis the concept of negligence in the case of Railway accidents. Strong reliance was placed on several passages from the decision of the Apex Court in Union of India v. United India Insurance Co. Ltd., . The learned Senior Counsel also had further maintained that there is always tortious liability de hors the statutory duty. The Counsel also while further elaborating his submissions explained the concept of burden of proof and also maintained that publicity given by the Railways relating to the precautions and the other measures definitely is highly inadequate. The Counsel further maintained that liability of Railways is absolute unless the same can be negatived under the exceptions. The learned Counsel further submitted that "self-inflicted injury" may be decided in relevance to a given case and no general propositions can be laid down in this regard. The learned Senior Counsel also further commented about the over-crowding of Railways of non-providing of the amenities by Railways and in taking all requisite steps to be taken regarding these precautions or other measures to be taken by the passenger/public. The Counsel farther maintained that to give illustrations in this regard would be an impossibility since reasons may be too numerous why and under what circumstances "accidental falling" may occur. The Counsel also had explained the language employed in Section 156 of the Act and had commented that all the prohibitions imposed by the statutory provisions may not fall under exceptions and hence no broad proposition can be laid down in this regard. The learned Senior Counsel also had placed reliance on certain decisions to substantiate his contentions.

7. Sri D.V. Ramana Murthy, while making elaborate submissions had taken the Court throughSections 123, 124 and 124-A of the Act and maintained that wider interpretation as contended by the Railways cannot be given to the expression "untoward incident". The learned Counsel also had taken this Court through the statement of objects and reasons and also contended that the principle is one of no fault liability just like the one under the Motor Vehicles

Act, 1988, and the Parliament being conscious of the same had defined "untoward incident" which may have to be interpreted as defined and its scope cannot be enlarged something to be read into which is not specified in the provision. The Counsel also maintained that this is a beneficial legislation and should be interpreted in favour of the claimants. Elaborate submissions were made on the general principles relating to the concept of negligence, error of judgment, foreseeability and prudent man, principle of tortious liability vis-a-vis negligence. The Counsel also submitted that in case of dead bodies in many cases only circumstantial evidence would be available. Self-infliction already is a defence and the liability is strict liability. The learned Counsel also made a serious attempt to convince the Court that virtually Section 124-A of the Act is just akin to no fault liability concept under the Motor Vehicles Act.

8. Sri Chandra Sekhar, the learned Counsel had explained the earlier Law and the Amending Act, the scope and the ambit thereof. Elaborate submissions were made relating to different provisions of legislations relating to compensation claims. The Counsel also had explained the expression "untoward incident" and "accidental falling" elaborately and had contended that the decided cases go to show that all the matters in fact were decided on the factual basis only and hence a broad proposition as required by the Railways cannot be laid down. The learned Counsel also had drawn the attention of the Court to the Railway Passengers Insurance Scheme, 1994 and explained in detail the concept of bona fide passenger. The Counsel also had placed reliance on certain decisions.

9. Sri Rajamalla Reddy, the learned Counsel while adding to what had been submitted by the other Counsel representing the claimants had placed strong reliance on certain decisions and explained the nature of the remedy available to the claimants under the provisions of the Act. The Counsel would maintain that by a careful reading of the relevant provisions, the scheme makes it clear that fault or no fault is not at all relevant. The Counsel also had explained the social conditions and the lapses on part of the Railway Administration and the concept of public policy and the impact thereof while interpreting the expressions "untoward incident", "accidental falling" etc.

10. Heard the Counsel representing the Railways and also the claimants as well.

11. The Railways Act, 1989 - Act 24 of 1989, is an Act to consolidate and amend the law relating to Railways. Section 200 of the Act deals with Repeal and Saving and Sub-section (1) specifies that the Indian Railways Act, 1890 (9 of 1890) is hereby repealed. The Indian Railways Act, 1890 had been enacted at a time when Railways in this country were being managed by Private

Companies and the Government of India had just played the role of a coordinator and functioning as a regulatory authority in various matters. The statement of objects and reasons for enacting Act No. 24 of 1989, had specified in detail the reasons why the said Bill had been introduced. Section 2(3)of the Act defines "Claims Tribunal" as "In this Act, unless the context otherwise requires Claims Tribunal means the Railway Claims Tribunal established under Section 3 of the Railway Claims Tribunal Act, 1987 (54 of 1987). Section 3 of the Railway Claims Tribunal Act, 1987 dealing with Establishment of Railway Claims Tribunal specifies that the Central Government shall, by notification, establish a Claims Tribunal, to be known as the Railway Claims Tribunal, to exercise the jurisdiction, powers and authority conferred on it by or under this Act. Section 2(29) of the Act defines "passenger" as "In this Act, unless the context otherwise requires passenger means a person travelling with a valid pass or ticket. Section 2(31) of the Act defines "Railway" as:

"In this Act, unless the context otherwise requires "Railway" means a Railway, or any portion of a Railway, for the public carriage of passengers or goods, and includes--

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a Railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a Railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a Railways;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, Railway;

(e) all vehicles which are used on any road for the purposes of traffic of a Railway and owned, hired and worked by a Railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purpose of the traffic of a Railway and owned, hired or worked by a Railway Administration, but does not include--

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;

Section 2(32) of the Act defines "Railway Administration" as:

"In this Act, unless the context otherwise requires Railway Administration, in relation to--

(a) a Government Railway, means the General Manager of a Zonal Railway; and

(b) a non-Government Railway, means the person without is the owner of lessee of the Railway or the person working the Railway under an agreement;

Section 123 deals with Definitions under Chapter XIII of the Act and Section 123(c) defines "untoward incident" as:

"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 any waiting hall, cloakroom or reservation or booking office or on any platform or in any other place within the precincts of Railway station; or (2) the accidental falling of any passenger from a train carrying passengers.

Section 124-A of the Act dealing with Compensation on account of untoward incident reads:

"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 for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

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

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

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

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

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

(i) a Railway servant on duty; and

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

Section 124 of the Act dealing with Extent of liability is simple and plain which needs no further elucidation in view of the remote relevancy of the same to the question in controversy. Section 125 of the Act dealing with Application for compensation reads as hereunder:

"(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."

In the decision referred in Union of India v. Uggina Srinivasa Rao, case (supra), the Division Bench held at para 17:

"The deceased is a bona fide passenger and while travelling on a train accidentally fallen down from the running train and received grievous injuries resulting in his death. Hence this is an "untoward incident" as defined under Section 123(c)(2) of the Act and as such the dependants of the deceased are entitled to compensation in pursuance of Section 124-A of the Act. It has to be held that accidental fall from any part of the compartment is covered by untoward incident. If there is a fall from the steps leading to the compartment, it is a fall from the train. The steps of the compartment cannot be disassociated from the compartment. They are integral part of the compartment. Therefore the contention that the deceased met with an accident while boarding on a running train is not an untoward incident, cannot be accepted. Also the contention that the person who is trying to board a train is not a passenger, cannot be accepted."

In the decision referred in Union of India v. Baburao Koddekar case (supra), another Division Bench of this Court held at Paras 41 and 50 as hereunder:

"As extracted above, Section 124-A of the Railways Act, 1989 provides that when in the course of working a Railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect of default on the part of the Railway Administration, a passenger who was injured or killed is entitled for compensation. Therefore, in our considered view, as provided in this section, there is no obligation on the part of the injured/claimants of the deceased to prove whether there was a wrongful act, neglect or default on the part of the Railway Administration. Suffice it to say, if any bona fide passenger having a ticket, as defined under Clause (29) of Section 2 of the Act dies in an untoward incident, it is incumbent upon the Railways to pay the compensation to the victim/claimants of the deceased without putting up any dispute, provided the death of the deceased does not fall within any of the five exceptions (a) to (e), as indicated above, of the saidSection 124-A of the Act. Under Explanation (ii) to Section 124-A of the Act, a valid platform ticket-holder is also brought within the fold of the term 'passenger' and if such a platform ticket holder dies in any untoward incident, his legal heirs are entitled to seek compensation.

.....

.....

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

A Division Bench of this Court in W.P.NO. 1894/2002, dated 26-6-2003 while dealing with a Public Interest Litigation praying for awarding of compensation to the parents of one who had jumped out of the running train, dismissing the Writ Petition had observed:

"We have perused the averments made in the writ petition as also the counter affidavits filed by respondents 1 to 4. The death of Harinadharao took place as a result of his jumping out of running train on 23-8-2001 at about 7.55 p.m., while the train was moving from Motamarri Railway Station towards Khammam. Liability of Railways, if any, is in accordance with provisions of Sections 124(A), 125,126 and 127 of the Railways Act, 1989 read with definition of 'untoward incident' as defined in Section 123(c) of the said Act. Death of a person occurring as a result of his jumping out of a train is not liable to be compensated by Railways and as such there is no question of compensating the family of the deceased as prayed for in this writ petition.

The writ petition is dismissed. No costs."

In Raj Kumari and Anr. v. Union of India, 1993 ACJ 846 (MP), while dealing with Sections 82-Aand 68 of the Railways Act, 1890, it was held:

"Normally, under Sections 101 and 102 of the Evidence Act, the burden to prove such facts, on which the legal right or liability depends, is on such person who asserts existence of these facts. But the question before us is whether the burden of proof that the deceased held a valid ticket, pass or permission during his journey, in which he died in accident, can be placed on his dependents. Obviously, such burden of proof is impossible to be discharged by the dependents,

who can have no means of knowledge, which the deceased, before boarding the train had purchased a valid ticket, pass or permission from the Railway authority. It is likely that such a deceased passenger held a valid ticket, pass or permission, but the same is lost in the accident with the death of person and loss of his belongings if any."

12. The concise Oxford Dictionary defines 'untoward incident' in 9th Edition at page 1539 as "inconvenient, unlucky, awkward, perverse, refractory, unseemly". Clause 238 of the Indian Railway Conference Association Coaching Tariff No. 25, Part I (Volume I) dealing with Prevention of Accidents reads as hereunder:

(1) To prevent accident, it is requested that no passenger will lean upon or upon a carriage door or step from or into any carriage when the train is in motion, any person doing the latter is liable to be prosecuted under the Railways Act. Passengers are also warned against touching door handles, leaning out of carriage windows or throwing lighted matches, empty bottles or other articles from the carriages at any time. These practices, are dangerous both to the passengers themselves and to the men working on the line.

(2) If a passenger travels on the roof of a train or other parts of a train not intended for the use of passengers or projects any part of his body out of the train, he shall be liable for punishment under Section 12 of the Metro Railway (Operation and Maintenance) (Temporary Provision) Ordinance, 1984 and may also be removed from the Metro Railway train by a Metro Railway Official.

Clause 237-A specifies:

"Drunkenness or Nuisance in the Metro Railway :--If any person is found in Metro Railway (a) in a state of intoxication, (b) committing any nuisance or act of indecency, (c) using obscene or abusive language or (d) interfering with comfort of other passenger wilfully or without excuse, he will render himself liable for punishment under Section 10 of the Metro Railway (Operation and Maintenance) (Temporary Provision) Ordinance, 1984 and may also be removed from carriage of Metro Railway premises by a Metro Railway Official."

Section 3 of the Commercial Documents Evidence Act, 1939 presumes certain documents which are admissible and. hence there cannot be any controversy that the resolution by the Indian Railway Association can be said to be having the statutory force.

13. The term or expression "self-inflicted injuries" had been defined by The Law Lexicon as hereunder:

"Self-inflicted injuries, as used in an accident policy providing that the insurer shall not be liable to the insured for self-inflicted injuries means injuries which are self-inflicted by the insured when he is capable of rational voluntary action, and not when he is insane."

The term or expression "accident" is defined by Wharton's Law Lexicon as hereunder:

"Accident, an extraordinary incident; something not expected. It is also a head of equitable jurisdiction, which was concurrent with that of the Courts of Law.

The meaning to be attached to the word accident, in relation to equitable relief, is some unforeseen and undersigned event, productive of disadvantage and not due to negligence or misconduct on the part of the person seeking relief. The cases in which equity may give relief under certain conditions are (1) lost or destroyed documents. (2) Imperfect execution of powers. (3) Erroneous payments e.g., by personal representatives.

In logic, something, in any subject, person, or thing not belonging to the essence."

Black's Dictionary defines "accidents" as:

"The word "accident' is derived from the Latin verb "accidere" signifying "fall upon, befall, happen, chance." In an etymological sense anything that happens may be said to be an accident and in this sense, the word had been defined as befalling a change; a happening; an incident; an occurrence or event. In its most commonly accepted meaning, or in its ordinary or fortuitous circumstance, event or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an unusual, fortuitous, unexpected, unforeseen or unlocked for event, happening or occurrence; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; chance or contingency; fortune; mishap; some sudden and unexpected event taking place without expectation, upon the instant, rather than something which continues, progresses or develops; something happening by chance; something unforeseen, unexpected, unusual, extraordinary or phenomenal, taking place not according to the usual course of things or events, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence. The word may be employed as denoting an unfortunate happening; any unexpected personal

injury resulting from any unlocked mishap or occurrence, any unpleasant or unfortunate occurrence that causes injury, loss, suffering or death, some untoward occurrence aside from the usual course of events, An event that takes place without one's foresight or expectation; an undersigned, sudden and unexpected event."

The Concise Oxford Dictionary defines "accident" as hereunder:

"1. an event that is withouts apparent cause, or is unexpected (their early arrival was just an accident). 2. an unfortunate event, esp. one causing physical harm or damage, brought about unintentionally. 3. occurrence of things by chance; the working of fortune (accident amounts for much in life). 4. colloq. An occurrence of involuntary urination or defecation. 5. an irregularity in structure - by accident unintentionally. [Middle English via Old French and Late Latin accidents from Latin accidere (as AC., cadere 'fall'].

The Chambers Dictionary defines "accident" as;

"anything that happens; and unforeseen or unexpected event; a chance; a mishap; an unessential quality or property; unevenness or surface.

The New Oxford Dictionary defines "accident" as:

"an unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury; an event that happens by chance or that is without apparent or deliberate cause."

Law Dictionary, by S.K. Mitra defines "accident" as:

"An unforeseen event or one without an apparent cause. Anything that occurs unintentionally or by chance. Misfortune or mishap, especially one causing injury or death. The Collins Paper back English Dictionary, Accident means an explosion of a boiler or steam-pipe or any damage to a boiler or steam-pipe which is calculated to weaken the strength thereof so as to render it liable to explode. The Indian Boilers Act, 1932 -Section 2(a).

In this connection, Sections 88 and 90 of the Factories Act, 1948, Section 45-A of the Negotiable Instruments Act, 1881 and Employees State Insurance Act, 1948....."

Dictionary of Law, by Gade Veera Reddy, defines accident as:

"an unexpected event".

Reliance was placed on a passage in Law of Torts by Ratan Lal dealing with "Fault" wherein it was stated :

"It has been seen that damage caused to a person when no legal right is violated does not give rise to any tortious liability even if the act causing the damage is done intentionally with an improper motive. It has also been noticed that mental element such as intention, negligence, malice or motive in association with an act or omission which is violative of a right recognized by law plays an important role in creating liability. Tortious liability here has an element of fault of support it. There is, however, a sphere of tortious liability which is known as absolute or more properly strict where the element of fault is conspicuously absent. One of the important examples of strict liability is the rule in Rylands v. Fletcher (1868) LR 3 HL 330) that the occupier of land who brings and keeps upon it anything likely to do damage if it escapes is bound at his peril to prevent its escape and is liable for the direct consequences of its escape even if he has not been guilty of any negligence..

Attention also was drawn to the Railway (Notices of and Inquiries into Accidents) Rules, 1984 and also the Statutory Investigation into Railway Accidents Rules, 1998. Though it may not be relevant to have a look at all the provisions of the Act and dealing with provisions exhaustively, it is better to have a glance at certain of the provisions of the Act so as to understand the respective rival submissions made by the Counsel representing the parties. Sections 55, 67, 144, 145, 147,153 and 156 reads as hereunder:

Section 55: Prohibition against travelling without pass or ticket:--(1) No person shall enter or remain in any carriage on a Railway for the purpose of travelling therein as a passenger unless he has with him a proper pass of ticket or obtained permission of a Railway servant authorised in this behalf for such travel.

(2) A person obtaining permission under Sub-section (1) shall ordinarily get a certificate from the Railway servant referred to in that sub-section that he has been permitted to travel in such carriage on condition that he subsequently pays the fare payable for the distance to be travelled.

Section 67: Carriage of dangerous or offensive goods :--(1) No person shall take with him on a Railway, or require a Railway Administration to carry such dangerous or offensive goods, as may be prescribed, except in accordance with the provisions of this section.

(2) No person shall take with him on a Railway the goods referred to in Sub-section (1) unless he gives a notice in writing of their dangerous or offensive nature of the Railway servant authorised in this behalf.

(3) No person shall entrust the goods referred to in Sub-section (1) to a Railway servant authorised in this behalf of carriage unless he distinctly marks on the outside of the package containing such goods their dangerous or offensive nature and gives a notice in writing of their dangerous or offensive nature to such Railway servant.

(4) If any Railway servant had reason to believe that goods contained in a package are dangerous or offensive and notice as required under Sub-section (2) or Sub-section (3), as the case may be, in respect of such goods is not given, he may cause such package to be opened for the purpose of ascertaining its contents.

(5) Notwithstanding anything contained in this section, any Railway servant may refuse to accept any dangerous or offensive goods for carriage or stop, in transit, such goods or cause the same to be removed, as the case may be, if he has reason to believe that the provisions of this section for such carriage are not complied with.

(6) Nothing in this section shall be construed to derogate from the provisions of the Indian Explosives Act, 1884 (4 of 1884), or any rule or order made under that Act, and nothing in Sub-sections (4) and (5) shall be construed to apply to any goods entrusted for carriage by order or on behalf of the Government or to any goods which a soldier, sailor, airman or any other officer of the armed forces of the Union or a police officer or a member of the Territorial Army or of the National Cadet Corps may take with him on a Railway in the course of his employment or duty as such.

Section 144: Prohibition on hawking, etc., and begging :--(1) If any person canvasses for any custom or hawks or exposes for sale any article whatsoever in any Railway carriage or upon any part of a Railway, except under and in accordance with the terms and conditions of a licence granted by the Railway Administration in this behalf, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than a fine of one thousand rupees.

(2) If any person begs in any Railway carriage or upon a Railway station, he shall be liable for punishment as provided under Sub-section (1).

(3) Any person referred to in Sub-section (1) or Sub-section (2) may be removed from the Railway carriage or any part of the Railway or Railway station, as the case may be, by any Railway servant authorised in this behalf or by any other person whom such Railway servant may call to his aidSection 145: Drunkenness or nuisance :--If any person in any Railway carriage or upon any part of a Railway--

(a) is in a state of intoxication; or

(b) commits any nuisance or act of indecency or uses abusive or obscene language; or

(c) wilfully or without excuse interferes with any amenity provided by the Railway Administration so as to affect the comfortable travel of any passenger, he may be removed from the Railway by any Railway servant and shall, in addition to the forfeiture of his pass or ticket, be punishable with imprisonment which may extend to six months and with fine which may extend to five hundred rupees: Provided that in the absence of special and adequate reason to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than--

(a) a fine of one hundred rupees in the case of conviction for the first offence; and

(b) imprisonment of one month and a fine of two hundred and fifty rupees, in the case of conviction for second or subsequent offence.

Section 147: Trespass and refusal to desist from trespass :--(1) If any person enters upon or into any part of a Railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than a fine of five hundred rupees.

(2) Any person referred to in Sub-section (1) may be removed from the Railway by any Railway servant or by any other person whom such Railway servant may call to his aid.

Section 153: Endangering safety of persons travelling by Railway by wilful act or omission :--If any person by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling on or being upon any Railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any Railway, he shall be punishable with imprisonment for a term which may extend to five years.

Section 156: Travelling on roof, step or engine of a train :--If any passenger or any other person, after being warned by a Railway servant to desist, persists in travelling on the roof, step or foot-board of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both and may by removed from the Railway be any Railway servant.

In Section 156, the words "..... after being warned by a Railway servant to desist....." assume some importance while dealing with the relevant question in controversy. The stand taken by the Railways is to the effect that whatever is prohibited by law, by virtue of such act falling under any of the statutory provisions, the Rules, Regulations and Clauses of Tariff would be taken to be disentitling the claims to claim compensation. In Union of India v. Sunil Kumar Ghosh, , a decision of the Apex Court prior to the Amending Act, it was held at Paras 8, 11 and 12 as hereunder:

"A 'body-scan' of the aforesaid provision (Section 82-A) reveals that:

(1) The machinery of the Section is set in motion only provided there is an 'accident'.

(2) The accident must be 'to' the 'train' or 'part of the train' carrying passengers.

(3) The accident to the train carrying passengers may be due to:

(a) Collusion of two trains one of which is the train carrying passengers; or

(b) derailment of such train; or

(c) other accident 'to' such a train.

(4) In case any passenger travelling by such train dies, or sustains any injury to his person or property, as a result of or on account of such accident to the train or a part of the train carrying passengers, compensation to the extent provided in the section will become payable.

(5) Such compensation will be payable regardless of whether or not the accident to the train carrying passengers is due to negligence or fault on the part of the Railway Administration.

But to ensure safe travel is not to "insure" the passenger against accident to himself 'whilst' travelling. The distinction deserves to be spot-lighted. What 'is' provided is compensation for death or injury caused or loss sustained on account of accident 'to' the train. What is 'not' provided is compensation for death of the passenger 'whilst' travelling or injury sustained by a passenger 'whilst' travelling on the train, say, by reason of his own act, default, or misfortune, which as no nexus with the 'accident to the train'. In other words, what the Section does is to turn a liability which was 'contingent on fault' into an 'absolute' liability. What, however, it does not do, is to provide a free 'insurance cover' to the person and property of a passenger so that compensation can be claimed for the accidental death of or injury to the passenger and/or loss or damage to his property even when there has been no 'accident' to the train carrying such a passenger.

What is the position when a passenger falls down from the train while the bogie, in which he is travelling, is being shunted ? Say, when he is standing in the door frame or is trying to get in or get out of the train, on account of the jolt to the bogie at the time of impact with the rest of the train? Is it an accident 'to the train' so as to attract the liability under Section 82-A? The answer substantially depends on the answer to the question: what is an 'accident'? An accident is an occurrence or an event which is unforeseen and startle one when it takes place but does not startle one when it does not take place. It is the happening of the unexpected, not the happening of the expected, which is called an accident. In other words an event or occurrence the happening of which is ordinarily expected in the normal course by almost every one undertaking a rail journey cannot be called an 'accident'. But the happening of something which is not inherent in the normal course of events, and which is not ordinarily expected to happen or occur, is called a mishap or an accident. Now a collision of two trains or derailment of a train

or blowing up of a train is something which no one ordinarily expects in the course of a journey. That is why it falls within the parameters of the definition of accident.

But a jolt to the bogie which is detached from one train and attached to another cannot be termed as an accident. No shunting can take place without such a jerk or an impact at least when it is attached or annexed to a train by a shunting engine. If a passenger tumbles inside the compartment or tumbles out of the compartment when he is getting inside the compartment, or stepping out of the compartment, it cannot be said that an accident has occurred to the train or a part of the train. It is doubtless an accident to the passenger'. But not to the train. Otherwise it will have to be held that every time a bogie is detached in the course of shunting operation and attached or annexed to a train in the course of the said operation the train meets with an accident. And if such an event or occurrence is to be ordinarily expected as a part of every day life, it cannot be termed as an accident-accident to the train (or a part of it)."

Reliance also was placed on Commissioner of Income-Tax v. Friends and Co., 256 ITR 177,Motilal Chunnilal v. Commissioner of Income-Tax, 234 ITR 472, and Biharilal Jaiswal v. Commissioner of Income Tax, 217 ITR 746. It is needless to say that the definition of 'untoward incident' in Section 123 of the Act was introduced by Act 28 of 1994, and likewise Section 124-A of the Act also was introduced by the said Amending Act. Section 106 of the Indian Evidence Act reads as hereunder:

"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

Illustration (b) of Section 106 of the Indian Evidence Act, 1872 specifies "A is charged with travelling on a Railway without a ticket.

The burden of proving that he had a ticket is on him."

Strong reliance was placed on Shambhu Nath v. State of Ajmer, , wherein the Apex Court while dealing with "Facts especially within knowledge" had observed:

"This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.

It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. The King, 1936 PC 169 (AIR V 23) (A) and Seneviratne v. R., 1936 (3) ER 36 at p.49 (B).

Illustration (b) to Section 106 has obvious reference to a very special type of case namely to offences under Sections 112 and 113, Indian Railways Act for travelling or attempting to travel without a pass or ticket or with an insufficient pass, etc. Now if a passenger is seen in a Railway carriage, or at the ticket barrier, and is unable to produce a ticket or explain his presence, it would obviously be impossible in most cases for the Railway to prove or even with due diligence to find out, where he came from and where he is going and whether or not he purchased a ticket.

On the other hand, it would comparatively simple for the passenger either to produce his pass or ticket or, in the case or loss or of some other valid explanation, to set it out, and so as proof is concerned, it would be easier for him to prove the substance of his explanation than for the State to establish his falsity.

We recognise that an illustration does not exhaust the full content of the section which it illustrate but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose exercise due diligence, as to the accused, the facts cannot be said to be especially" within the knowledge of the accused.

This is a section which must be considered in a common sense way; and the balance of convenience and the disproportion of labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well established rule of law that save in a very exceptional class of case, the burden is on the prosecution and never shifts."

In A.S. No. 2624/87, decided on 19-12-2001, one of us (P.S. Narayana, J.) while dealing with the claim of compensation by the legal heirs of a double bullock cart owner who died while returning back to the village with his cart while crossing the Railway track at the unmanned Railway level crossing, on the allegation that the driver of the Madras Circar Express was driving the train in a negligent manner without giving any vigil and caution and hit the cart as a result of which both the bulls died on the spot and the cart was badly damaged beyond repair and he himself sustained grievous injuries and ultimately died, held at page 18 as hereunder:

"In the case of death of a party due to an accident, it is no doubt true that always humanitarian and also sympathetic considerations may be in favour of the ultimate victims of such an accident. But at the same time, in a case of this nature where the evidence is very clear and overwhelming on the part of the Railways, which clearly negatives any kind of negligence on the part of the Railways and especially in the light of the evidence of D.W.2, D.W.4 and D.W.5 and also Exs.B-1 and B-2 in particular and even the evidence of P.W.2, it cannot be said that in the facts and circumstances of the case, the unfortunate deceased had taken atleast the necessary normal measures and care while crossing the unmanned gate and in the absence of any evidence in this regard and when there is clear evidence on the part of the Railways, in my considered opinion, the Railways cannot be fastened with any liability."

While deciding the Appeal referred supra, this Court relied on the decisions in S.N. Hussain v. State of Andhra Pradesh, , Union of India v. United India Insurance Co. Ltd., AIR 1998 SC 640,Swarnalata Dutta Barua and Anr. v. National Transport India Private Ltd. and Anr., AIR 1974 Gau. 31, Ahmedabad Municipal Transport Service and Anr. v. Manekaben and Ors., , Mohan Malik v. Emperor, 1914 Crl.LJ 468, Chandai v. Emperor, AIR 1933 All. 891, and Works Manager, C&W Shop v. Mahabir, .

14. Sections 101 to 104 of the Indian Evidence Act, 1872, Act 1 of 1872, read:

Section 101 : Burden of proof :--Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. A must prove the existence of those facts.

Section 102: On whom burden of proof lies :--The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 103: Burden of proof, as to particular fact :--The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

Section 104: Burden of proving fact to be proved to make evidence admissible :--The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

In the claims, the claimants may be the legal representatives of the deceased or the injured themselves. Certain aspects may be within the exclusive knowledge of the party concerned in such a case. Railways cannot be expected to discharge such burden and the concerned party alone should prove such facts within its exclusive knowledge. Often than not, the burden of proof, after both parties letting in evidence looses its importance and becomes more an academic question in several matters. In Robins v. National Trust Co., 1927 AC 505 at 510 (PC), the scope of onus of proof was explained, thus:

"The onus is always on a person who asserts a proposition or a fact which is not self-evident. To assert that a man who is alive was born requires no proof. The onus is not on the person making the assertion because it is self-evident that he had been bora. But to assert that he was born on a certain date, if the date is material and require proof, the onus is on the person making the assertion. Now in conducting any enquiry the determining Tribunal will often find that onus is sometimes on the side one contending parry; sometimes on the side of the other, or as it is often expressed, that in certain circumstances the onus shifts."

The principle relating to the burden of proof enunciated under the different provisions of theEvidence Act cannot be totally ignored, but at the same time they cannot be stretched too wide throwing burden on all the aspects on the claimants. Railways are bound to prove the specific pleas taken by way of defences in the background of the language of Section 123(c) and Section 124-A of the Act. The object of the provisions of Section 123 (c) and Section 124-A of the Act as reflected from the statement of objects and reasons and also the legislative intent, being beneficial provisions, cannot be lost sight of while deciding the matters. These provisions are to be interpreted as such and a comparative study with certain provisions which may be akin to these provisions under other legislations may not be of much help, except that they may be the guiding principles, unless the language employed in a particular statutory provision is exactly in pari materia and in the absence of the same, such principles cannot be imported or cannot be read into while interpreting Section 123(c) and Section 124-A of the Act.

15. In Syed Akbar v. State of Karnataka, , the Apex Court while dealing with the proof of negligence and res ipsa loquitur and tort held at Paras 19, 20 and 21:

"As a rule, mere proof that an event has happened or an accident has occurred, the cause of which is unknown, is not evidence of negligence. But the peculiar circumstances constituting the event or accident, in a particular case may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. It is to such cases that the maxim res ipsa loquitur may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. To emphasise the point, it may be reiterated that in such cases, the event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. But, according to some decisions, satisfaction of this condition alone is not sufficient for res ipsa to come into play and it has to be further satisfied that the event which caused the accident was within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred. Instances of such special kind of accidents which "tell their own story" of being off-springs of negligence, are furnished by cases, such as where a motor vehicle mounts or projects over a pavement and hurts somebody there or travelling in the vehicle; one car ramming another from behind, or even a head-on-collision on the wrong side of the road.

Thus, for the application of the maxim res ipsa loquitur no less important a requirement is that the res must not only bespeak negligence, but pin it on the defendant."

It is now to be seen, how does res ipsa loquitur fit in with the conceptual pattern of the Indian Evidence Act. Under the Act, the general rule is that the burden of proving negligence as cause of the accident, lies on the party who alleges it. But that party can take advantage of presumptions which may be available to him, to lighten that burden. Presumptions are of three types:--

(i) Permissive presumptions or presumptions of fact.

(ii) Compelling presumptions or presumptions of law (rebuttable).

(iii) Irrebuttable presumption of law or 'conclusive proof.' Classes (i), (ii) and (iii) are indicated in Clauses (1), (2) and (3) respectively, of Section 4, Evidence Act. 'Presumption of facts' are

inferences of certain fact patterns drawn from the experience and observation of the common course of nature, the constitution of the human mind, the springs of human action, the usages and habits of society and ordinary course of human affairs. Section 114 is a general Section dealing with presumptions of this kind. It is not obligatory for the Court to draw a presumption of facts. In respect of such presumptions, the Act allows the Judge a discretion in each case to decide whether the fact which under Section 114 may be presumed has been proved by virtue of that presumption."

In the decision referred in Union of India v. United Insurance Company Limited case (supra), the question of negligence in relation to unmanned level crossing came up for consideration and the Apex Court held at Paras 16, 17, 18, 37 and 41 of the judgment as hereunder:

In Danoghue v. Stevenson, (1932) AC 562, a manufacturer was held liable to the ultimate consumer at common law on the principle of duty to care. Lord Atkin said: "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. He asked: "who, then in law is my neighbour? The answer seems to be, persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question". The test of breach of common law duty is again the test of a reasonable or prudent person in the particular fact situation. Of course the amount of care, skill, diligence or the like, varying according to the circumstances of the particular case. The standard of foresight is again that of a reasonable person. Such a person is also expected to take into account common negligence in human behaviour. Of course, he need not anticipate folly in all its forms (London Passenger Transport Board v. Upson, (1949) AC 155 (HL). That if there is omission to exercise such a common law duty of care, an action at common law can be filed for non-feasance is also clear from a judgment of this Court in Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat, . In our view, therefore, because the Railways are involved in what is recognised as dangerous or perilous operations, they are at common law, to take reasonable and necessary care, on the 'neighbourhood' principle - even if the provisions in Section 13(c) and (d)of the Railways Act, 1890 are not attracted for want of requisition by the Central Government.

The next important question is whether there can be any breach of a common law duty on the part of the Railway if it does not take notice of the increase in the volume of rail and motor traffic at the unmanned level crossing and if it does not take adequate steps such as putting up

gates with a Watchman so as to prevent accidents at such a point? What is the extent of care required at common law has also been decided.

In several cases the need to have a constant appraisal of increase in volume of rail and road traffic at level crossing has been treated as a requirement of the common law. In Smith v. London Midland and Scottish Railway Co., (1948 SC 125), Lord Cooper emphasised that the Railway should take all precautions which will reduce the danger to the minimum and should take into account the nature and volume of such traffic reasonably to be anticipated. In Lloyds Bank Ltd. v. Railway Executive, (1952) 1 All.E.R. 1248 (CA), Denning and Romer, L.JJ. had occasion to say that the Railway authorities were bound to take steps from time to time by considering the increase in the rail and road traffic at the level crossing. On facts in Lloyds Bank case it was found that 75 to 100 vehicles crossed the level crossing per day and it was held that the Railway company could not say, "this increased traffic on the road is no concern of ours. It was then concern."

The duties of the Railways treating the Railway line as an accommodation line at a private road and alternatively as one cutting across a public road where separately considered. It was held that treating it as a private road, the Railway authorities ought to have taken steps to have warning or whistles given. Alternatively, treating it as a public road the Railways ought to have put up dates as per the Railway Clauses Consolidation Act, 1845 and a "lodge" as per the Railway Clauses Act, 1863. Under both alternatives, the increased traffic required a re-appraisal of the measures previously taken by the Railway to prevent accidents.

We are of the view that the principle laid down by Mason, J., is clearly applicable here. This general expectation of the community so far as the Railways are concerned can be summarised from the following passage in Halsbury Laws of England (Vol.34, Negligence, 4th Ed. 1984, para 73). It is stated that "a plaintiff is entitled to rely on reasonable care and proper precautions being taken and, in places to which the public has access, he is entitled to assume the existence of such protection as the public has, through custom, become justified in expecting" Halsbury then refers to a large number of cases of Railway accidents. In view of this general expectation of the community that appropriate safeguards will be taken by the Railways at level crossing, the first pre-condition is, in our view, clearly satisfied.

Once the two pre-conditions laid in Stovin v. Wise (1996) 3 WLR 388) are satisfied both as to non-exercise of statutory powers which was irrational and as to the statutory intent of payment of compensation for injury or death due to running inherently dangerous services in respect of

which individuals cannot afford to protect themselves the conclusion is irresistible that the non-exercise of public law or statutory powers under Section 13(c) and (d) did create a private law cause of action for damages for breach of statutory duty. The case falls within the exception where a statutory 'may' give rise to a "common law' ought.

In Temulji Jamsetji Joshi v. The Bombay Electric Supply and Tramways Company Limited, ILR1911 Bom. 478, while dealing with the concept of negligence and suit against Tramway Company in the context of contributory negligence while the passenger was entering car while in motion, it was observed:

"T brought an action against the Tramway Company claiming damages for injuries sustained by him by reason of the Company's negligence. T alleged that while attempting to board a stationary tram car the car was suddenly started at a signal given by the conductor and the footboard lilted and slipped sideways from beneath T's foot, in consequence of which T lost his balance, was thrown to the ground and his right leg was injured, it was held, dismissing the suit, that the footboard was not loose and that T's fall was due to his attempting to enter a car while in motion and was not due to any fault or defect in the fixity of the board."

16. It is the stand taken by the Railways that to fall under the ambit of "accidental falling", there must be two accidents simultaneously, one to the train and the second to the passenger and the second one must and should happen as a result of the first one-the first one, primary accident and the second one, secondary accident, and the accident is the incident cause and the incident is a dependant effect, and these two accidents must have cause and effect relationship. If the general principles of burden of proof as specified under the provisions of the Indian Evidence Act are to be adopted, it is no doubt true that the person who approaches the Court for compensation may have to establish the same. Chapter XII of the Act shows the method of fixing the accident or an 'untoward incident'. Chapter XIII deals with accidents which may be either major or minor, and major accidents are dealt with by Section 113, while minor accidents are dealt with by Section 120of the Act. Elaborate submissions were made relating to the fixing of the responsibility in the event of an accident or an 'untoward incident'. In D. Srinivasa v. Union of India, AIR 1995 Kar. 233 (DB), wherein due to sudden falling of a heavy iron girder, loosely and carelessly fixed for electrification work, on train and then on claimant while he was boarding the train and the claimant received grievous injuries, the Division Bench of Karnataka High Court had relied upon the decision of the Apex Court referred in Union of India v. Sunil Kumar Ghosh (supra) and held that the incident is covered under "other accident to a train" and not a "mishap" to the passenger, and hence application under Section 13-A(n) for compensation

would be maintainable. In Union of India v. Kaushalya Devi and Ors., 2002 ACJ 833, it was held at page 837:

"It is thus manifest from a plain reading of Section 123(c)(2) of the Act that the accidental falling of any passenger from a train carrying passengers is an untoward incident entitling the passenger or their legal representatives to the compensation under the Act. In the scheme of the Act only bona fide passengers with valid tickets for journey would be covered by Section 123(c)(2) of the Act, and the rest are trespassers and unauthorized passengers not entitled to any compensation."

Reliance also was placed on S. Sundaram Pillai and Ors. v. V.R. Pattabhiraman and others, . In Union of India v. Sanjay Sampatrao Gaikwad Etc., it was held:

"Analysing the definition of untoward incident from any angle or in any manner I am not able to put in the said definition the act of an outsider or a stranger of throwing of a stone at the train running or standstill injuring any passenger. In my considered opinion such an event though a very unfortunate event cannot be put in the tight jacket of untoward incident which is lightly defined by the Legislature to include only four events in the luggage of the definition of untoward incident. According to me, therefore, the incident of throwing the stone at the passengers in the present Appeals does not amount to an untoward incident to attract Section 124-A of the Act for which the Appellant-Railways can be made liable to pay compensation. I fail to understand how the Railways can be held for a stone thrown by an outsider at the running train or a standstill train? If the miscreant can be ought he can be punished in accordance with the criminal law of this Country....."

In Bengal Immunity Company Ltd. v. State of Bihar and Ors., it was held:

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when - 'Heydon's case'. (1584) 3 Co Rep 7a (V) was decided that--

".....for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act?

2nd. What was the mischief and defect for which the common law did not provided?

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth? and 4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and 'pro private commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, 'pro bono publico'".

In In re, Mayfair Property Co., (1898) 2 Ch 28 at p. 35 (W) Lindley M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported 'Heydon's case (V)'. In - 'Eastman Photographic Material Co. v. Comptroller General of Patents. Designs and Trade Marks', 1898 AC 571 at p. 576 (X) Earl of Halsbury re-affirmed the rule as follows:

"My Lords, it appears to me that to construe the statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion"

It appears to us that this rule is equally applicable to the construction of Article 286 of our Constitution. In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief."

In Lalita Jalan v. Bombay Gas Co. Ltd., , the Apex Court at para 18 held:

"We would like to mention here that the principle that a statute enacting an offence or imposing a penalty is strictly construed is not of universal application which must necessarily be observed in every case. In Muralidhar Meghraj Loya v. State of Maharashtra, , Krishna Iyer, J., held that any narrow and pedantic, literal and lexical construction of Food Laws is likely to leave loopholes for the offender to sneak out of the meshes of law and should be discouraged and criminal jurisprudence must depart from old canons defeating criminal statutes calculated to protect the public health and the nation's wealth. The same view was taken in another case under thePrevention of Food Adulteration Act in Kisan Trimbak Kothula and Ors. v. State of Maharashtra, .In Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Maity, , the words "may" occurring in Section 64 of Bengal Excise Act were interpreted to mean "must" and it was held that the Magistrate was bound to order confiscation

of the conveyance used in commission of the offence. Similarly, in State of Maharashtra v. Natwarlal Damodardas Soni, , with reference to Section 135 of the Customs Act and Rule 126-H(2)(d) of Defence of India Rules, the narrow construction given by the High Court was rejected on the ground that they will emasculate these provisions and render them ineffective as a weapon for combating gold smuggling. It was further held that the provisions have to be specially construed in a manner which will suppress the mischief and advance the object which the Legislature had in view. The contention raised by the learned Counsel for the appellant on strict interpretation of the Section cannot therefore be accepted."

Emphasis was laid on the words "……..after being warned by a Railway servant to desist….." inSection 156 of the Act and in such cases it cannot be said that infraction thereof automatically would attract the exceptions under the proviso to Section 124-A of the Act. Sub-section (2) ofSection 123(c) specifies "the accidental falling of any passenger from a train carrying passengers". The words "…….whether or not there has been any wrongful act, neglect or default on the part of the Railway Administration….." assume lot of importance. The proviso of Section 124-A of the Act specifies that no compensation shall be payable under Section 124-A of the Act by Railway Administration if the passenger dies or suffers injury due to any one of the exceptions specified thereunder. Explanation to Section 124-A of the Act defines "passenger" for the purposes of that Section as:

"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.

Chapter XV of the Act deals with Penalties and Offences. Reliance also was placed on certain decisions under the Motor Vehicles Act to convince the Court that the propositions underlying thereto can be applied in the case of Railway accidents. Reliance was placed on Thoznilalar Transport Company v. Valliammal and Ors., 1990 ACJ 201 (Mad.), Prakash Anand Pednekar v. Sitabai R. Gawas, , and Purushothama Devadiga v. Thangamma, , for the definition of "passenger". For "self-inflicted injury", reliance was placed on Rajkot Municipal Corporation v. Manjuben Jayantilal Nakum, 1997 (2) Supreme 294, and Mohammed Aynuddin Miyam v. State of Andhra Pradesh, 2000 (2) ACC 360. For inquest report, post-mortem report or FIR as evidence, reliance was placed on Surjan v. State of Rajasthan, , and Kuldip Singh v. State of Punjab, , In Ulahannan Rajan v. Union of India, , where the accident had taken place at the time the deceased getting down from the compartment with a child in her hand and the

compartment stopped short of platform and when there was no warning or signal before the train started and the level of platform was not raised after converting rail to broad guage, it was held that the accident was due to the negligence on the part of Railway servants and there was no contributory negligence on the part of Railway servants and there was no contributory negligence on the part of the deceased. In Rathi Menon v. Union of India, 2001 (3) ALD 52 (SC) = 2001 (1) An.WR 162 (SC) = 2001 SCC (Crl.) 1311, the Apex Court held:

"The right of the injured to claim compensation as well as the liability of the Railway Administration are both reposed in Section 124-A of the Act. The right is to maintain an action and recover the damages. The liability is to 'pay compensation to such extent as may be prescribed'. The collocation of the words 'as may be prescribed' in Section 124-A of the Act is to be understood as to mean 'as may be prescribed from time to time'. The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of rules. Hence the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the claimant."

In the self same decision, the Apex Court further held:

"The provisions of Act XIII of the Act are intended to provide a speedier remedy to the victims of accident and untoward incident. If he were to choose the latter that does not mean that he should be prepared to get a lesser amount. He is given the assurance by the Legislature that Central Government is saddled with the task of prescribing fair and just compensation in the rules from time to time. The provisions are not intended to give a gain to the Railway Administration but they are meant to afford just and reasonable compensation to the victims in a speedier measure. If a person files a suit the amount of compensation will depend upon what the Court considers just and reasonable on the date of determination. Hence when he goes before the Claims Tribunal claiming compensation the determination of the amount should be as on the date of such determination."

In Union of India v. Hemlata Mudoi, II (2003) ACC 404 (Gau.) (DB), the Division Bench of Gauhati High Court while dealing with liability of Railways to pay compensation held that in case of a passenger falling down from train accidentally it amounts to untoward incident and it is the liability of the Railways to pay compensation under Section 124-A of the Act irrespective

of whether there has been any wrongful act, neglect or default on the part of the Railway Administration. Reliance also was placed on an order in A.A.O. No. 1378/1978, dated 22-7-2002.In General Manager, South Central Railway v. K. Narayana Rao, = , a Single Judge of this Court held:

"Even going by the first information report and the inquest report, it is clearly a case of accidental fall while getting down from the train and the case, therefore, clearly falls under "untoward incident" as defined in Section 123(c) which includes the accidental fall of any passenger from a train carrying passengers and the liability of the Railway is, therefore, clearly attracted. By no stretch of imagination it can be said to be a self-inflicted injury or death resulting from any criminal act on the part of the deceased attracting the proviso to Section 124-A of the Railways Act, 1989. No distinction can be drawn between the case of the accidental fall of any passenger from a train carrying passengers and the fall of a passenger who was alighting from the train after completion of her journey".

Reliance also was placed on Union of India v. A. Janardhananan and Anr., 1998 ACJ 791 (Mad.), for the ambit and powers and procedure of the Railway Claims Tribunal. In D. Srinivas v. Union of India, , where a passenger was about to board a train when a heavy girder which was loosely and carelessly fixed for electrification work suddenly fell on the train and thereafter on the passenger injuring him seriously, the contention was that injured was a ticketless passenger and not entitled for compensation and when the Railways had not initiated proceedings against the injured for ticketless travelling, it was held that the Railways failed to prove that the injured was a ticketless traveller. Reliance also was placed on Smt. Sundri and Ors. v. Union of India and Anr., AIR 1984 All. 227 (F.B.), a decision of the Full Bench of Allahabad High Court wherein the expression "passenger" had been dealt with which does not include trespasser or person travelling without ticket, pass or authority under the provisions of 1980 Act. In Ulahannan Rajan v. Union of India, , the concept of duty of care vis-a-vis Railway accident had been dealt with. Reliance also had been placed on the decision referred in Union of India v. United India Assurance Co. Limited case (supra) in this regard. In Union of India v. Jshna Kanhar, , the aspect of bona fide passenger under Section 124-A of the Act had been dealt with. In the decision referred in Raja Kumari and Anr. v. Union of India case (supra) it was held:

"The scheme and the Act seen as a whole makes it evident that the entry into a Railway carriage required of a person to obtain a ticket, pass or permission and in absence thereof, his action or omission is punishable with imprisonment or fine, including removal from the carriage. When a person is found dead as a result of accident in a Railway carriage, in which he was travelling, a

presumption may be drawn under Section 114 of the Evidence Act keeping in view of the prohibition under Section 68 of the Railways Act against boarding a train without ticket that the deceased was bona fide passenger. Since ticketless travel is an illegal act and exposes such traveller to penal action, the presumption is of innocence in favour of such one of the travellers or passengers in a train. It is for the Railway Administration to prove contrary and the burden in such circumstances that the deceased was a ticketless traveller or was not a bona fide passenger, should be on the Railway Administration which has special means of knowledge as to whether any ticket was issued to that deceased or whether at any point before or at the end of journey, he was checked and detected by staff of the Railway as an unauthorized person without ticket, pass or permission."

In Joji C. John v. Union of India, (DB), the Division Bench of Kerala High Court while dealing with the aspect of "untoward incident" and liability of Railways where a passenger was boarding the train and slipped and fell on the rail track and sustained injuries due to a sudden jolt, and the defence being that the claimant fell due to her own negligence, and when there is no case that the claimant attempted to commit suicide and she fell down in a state of intoxication or insanity and in the absence of evidence that the injuries are self inflicted, held that the Railways is liable to pay compensation as per the Schedule. In Union of India and Anr. v. Gayatri Srivastava and Ors., (DB), a Division Bench of Allahabad High Court while dealing with "untoward incident" and payment of compensation where a Railway employee having a valid duty pass slipped and fell down while boarding the train at the Railway station and succumbed to his injuries, and the defence being that the deceased committed suicide and in support thereof affidavit of legal assistant, who was not an eye-witness to the incident was filed, in the absence of evidence of any person who might have seen the deceased deliberately and consciously jumping before the train was produced, it was held that the deceased accidentally slipped and fell down from the train and that his legal representatives are entitled to compensation. Reliance also had been placed on P.A. Narayanan v. Union of India, .

17. Elaborate submissions were made on the concept of public policy and reliance also was placed on P. Rathinam v. Union of India, , wherein it was held that the concept of public policy is not capable of a precise definition and it is a varying and uncertain concept. In Essen Deinki v. Rajiv Kumar, , while dealing with welfare legislation, the Apex Court held that it is the duty of Courts to give broad interpretation keeping in view the purpose of such legislation of preventing arbitrary action, but however, without ignoring the statutory requirements. In Tarhchan Dev

Sharma v. State of Punjab and Ors., , while dealing with interpretation of statutes and application of 'subject and object rule' the Apex Court held:

To find the meaning of a word or expression not defined in an enactment the Courts apply the 'subject and object rule' which means ascertain carefully the subject of the enactment where the word or expression occurs and have regard to the object which the Legislature has in view. Forego the strict grammatical or etymological propriety of language, even its popular use; let the subject or the context in which they are used and the object which the Legislature seeks to attain by your lenses through which look for the meaning to be ascribed. In selecting one out of the various meanings of a word, regard must always be had to the content as it is fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Therefore, when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers."

18. Though the general principles relating to the burden of proof under the Indian Evidence Actcannot be totally ignored, the language employed in Section 123(c) and Section 124-A of the Act may have to be given the prime importance, and if necessary all the provisions may have to be harmoniously construed. Legislative wisdom and will are to be given prime importance while interpreting the statutory provisions. At the same time, Courts cannot totally ignore the social conditions where a provision may have to be interpreted in relevance to the social conditions of the society. Though ignorance of law is no excuse, in matters like Administration of Railways, warning poles, precautionary boards, bars, what to be done and what not to be done should be made more popular by having requisite publicity by practical modes so that ordinary people may know what to be done and what not to be done in relation to Railways, be that in the case of untoward incident, accidental falling or in any other like context too. It is rather difficult to lay down the law on illustrations which may be too numerous and consequently cannot be specified exhaustively. These are all matters to be decided on facts in every given case. Suffice to state that the language of Section 123(c) and Section 124-A of the Act would not admit of any other interpretation than the one made by the Division Bench of this Court in the decision referred inUnion of India v. Babu Rao Koddekar cases (supra). No ratio as such had been laid down by another Division Bench in the decision referred in Union of India v. Uggina Srinivasa Rao case (supra), which was just decided on facts. When law is crystallized in the form of a statutory provision, general principles relating to negligence cannot be imported so as to interpret the said provision though such principles may be taken into consideration as guiding principles, but

ultimately the legislative will or wisdom alone must prevail over the general principles, especially where the language of the statutory provision is clear and unambiguous and admits of only one possible interpretation. In the light of the same, it has to be decided whether the views expressed by the prior Division Benches referred in Union of India v. Babu Rao Koddekar and Union of India v. Uggina Srinivasa Rao cases (supra) can be sustained or to be declared as not good law.

19. As already referred to supra, in the decision referred in Union of India v. Babu Rao Koddekarcase (supra), an attempt was made to lay down the ratio relating to "untoward incident" and the "burden of proof", and in the decision referred in Union of India v. Uggina Srinivasa Rao case (supra), the Division Bench had disposed of the matter depending upon facts. Except clarifying the position further and laying down certain additional propositions, it cannot be held that the ratio as such is bad since when matters are decided on facts, normally it cannot be said that any ratio had been laid down. Though it is very difficult to exhaustively lay down legal propositions, certain principles which emerge may be, specified as hereunder:

(1) Where a bonafide passenger dies in an untoward incident or sustains injuries, as the case may be, Railways to pay compensation without dispute, unless the death of the deceased, or the injuries sustained by the injured, would fall within the exceptions (a) to (e) of proviso to Section 124-A of the Act.

(2) Accidental falling would include a passenger trying to alight a train, board a train, or any other like action, and hence they would be covered by untoward incident as specified in Section 123(c) of the Act.

(3) Railways can always take a specific plea inclusive of exceptions and show how the claimant is not entitled to compensation. Liability in such cases cannot be said to be strict or absolute liability, but liability which may be avoided by Railways by proving that the legal representatives of the deceased victim or the injured claimant, are not entitled to compensation on any one of the defences available to Railways under the Statute so as to disentitle the claimants to claim compensation.

(4) Where a penal provision in a Statute or Rules under Tariff would fall or attract any of the exceptions under Section 124-A proviso, may have to be decided in each and every case and general propositions cannot be laid down in this regard in view of the complexity and diversity of the illustrations and the provisions or the Rules,

(5) The general principles relating to negligence, though may be taken as guiding principles, they cannot be said to be binding in the case of an untoward incident as contemplated by the specific provisions of the Act. Specific provisions of the Act would prevail over such general principles.

(6) Though burden is on Railways, the Railways always has a right to show by specific plea and evidence that claimants are not entitled to compensation in the light of the defences available to the Railways, specified under Section 124-A and Section 123(c) of the Act.

(7) The provisions of the Railways Act and the scheme and the object of the said provisions cannot be said to be exactly the same when compared with the provisions of the Motor Vehicles Act, and the principle of no fault liability under the Motor Vehicles Act as such in its rigour cannot be extended though these provisions under the Act are akin to the provisions under theMotor Vehicles Act in certain respects. However, the underlying principles may be applied in the background of the language of the provisions referred to supra.

(8) Though the expressions "untoward incident" and "accidental falling" may have to be understood and interpreted in their literal sense as specified in the provisions as such, the general principles relating to the burden of proof under the Indian Evidence Act, 1872 also cannot be totally ignored, and such principles may be harmoniously construed and' read along with these provisions, depending upon the facts of a given case.

20. Except clarifying the decisions of Division Benches of this Court referred in Union of India v. Baburao Koddekar and Union of India v. Uggina Srinivasa Rao cases (supra), by adding some additional principles, nothing more need be laid down by this Court.