(14) In view of the above discussion, the present appeal is without any merit and the same stands dismissed.

M.Jain

Before Kuldip Singh, J

UNION OF INDIA — *Appellant*

versus

KRISHNA DEVI AND OTHERS —*Respondents*

FAO No. 4444 of 2014

March 30, 2015

Railways Act, 1989 — Ss.123 & 124-A — Train accident — Compensation — Strict liability — Deceased tried to board a train — Since there was lot of rush in train, he slipped from train and fell between platform and train and died — Railway Claims Tribunal awarded compensation — Railways argued that act of deceased would not fall within definition of 'untoward incident' and receiving injury while trying to board a train, which was at slow speed amounted to 'self inflicted injury' — Held, that, though injury in present case was out of rash act of deceased as he was trying to board a train which had started moving, Section 124A lays down strict liability or no fault liability in case of railway accidents — Hence, if a case comes within purview of Section 124A, it is wholly irrelevant as to who was at fault — Deceased was a bona fide passenger and act of slipping from train and falling between platform and train would fall within definition of 'untoward incident' — Compensation was correctly awarded to claimants.

Held, that section 124-A of the Railway Act contained a *non obstante* clause laying down that 'notwithstanding' anything contained in any other law, the railway is liable to pay compensation to such an extent as may be prescribed and to that extent only for loss occasioned by death or injury to a passenger as a result such 'untoward incident'.

(Para 8)

Further held, that The Hon'ble Apex Court examined the case law on the point and after perusal of Sections 129 and 124-A of the Railway Act, observed as under:

> *"16. The accident in which Smt. Abja died is clearly not covered by the proviso to section124A. The accident did occur*

because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124A of the Railways Act, and not its proviso.

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

It was held that Section 124A of the Railway Act incorporates principal of strict liability, which originated in the judgment of British High Court in case of "Rylands v. Fletcher, 1866 LRI Ex 265, which was later on laid down by the Constitution Bench of Hon'ble the Supreme Court of India in case of "M.C. Mehta v. Union of India, AIR 1987 Supreme Court 1086, which was observed as under:

"39. *In India the landmark Constitution Bench decision of the Supreme Court in M.C. Mehta v. Union of India, AIR 1987 Supreme Court 1086 has gone much further than Rylands v. Fletcher (supra) in imposing strict liability. The Court observed "if the enterprise is permitted to carry on any hazardous or inherently dangerous activity for its profit the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads." The Court also observed that this strict liability is not subject to any of the exceptions to the rule in Rylands v. Fletcher (supra).*

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

(Para 11)

Further held, that the deceased was *bona fide* a passenger and that the act of slipping from the train and falling between platform and the train falls within the definition of 'untoward incident'. Therefore, there is no error in the impugned judgment.

(Para 12)

Nitin Kumar, Advocate for the *appellants.*

KULDIP SINGH, J.

(1) Union of India has filed this appeal against the judgment dated 19.12.2013 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (in short 'the Tribunal') vide which a compensation of ₹4,00,000/- (Rupees four lac only) was awarded to the claimants (respondents herein).

(2) The brief facts, which need to be noticed for the purpose of disposal of the present appeal, are that deceased Babulal, a retired teacher, after buying a computerized ticked from Chandigarh Railway Station was to go from Chandigarh to Khagriya. He tried to board a train on 24.11.2011. There was lot of rush in the train. As a result of which, he slipped from the train and fell between platform and the train and died.

(3) I have heard learned counsel for the appellant and have also carefully gone through the case file.

(4) Learned counsel for the appellant has argued that the act of the deceased in trying to board a moving train at the platform does not fall within the definition of 'untoward incident' and is 'self inflicted' injury within Section 124-A proviso B of the Railways Act, 1989 (in short 'the Act').

(5) Admittedly, the accident took place at the railway platform, Chandigarh itself, where the speed of train is not high. Even when the speed of the moving train at the platform is between 10-15 kmph, one can easily board the train.

Section 123(c) defines the untoward incident is as under:

"[(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; or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the including in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any

platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train/ carrying passengers.] (emphasis supplied).

(6) Therefore, falling of any passenger from the train carrying passenger is 'untoward incident' within the definition of Section 123 (c)(2) of the Railway Act. Sub Sections of Section 124 of the Railway Act provides as under:

"[124A. Compensation on account of untoward incident. – When in the course of working a railway an untoward incident occur, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

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

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

(7) A perusal of Section 124 of the Railway Act shows that it is not necessary that fall on account of wrongful/negligent act of the railway administration should be proved.

(8) Section 124-A of the Railway Act contained a non obstante clause laying down that 'notwithstanding' anything contained in any other law, the railway is liable to pay compensation to such an extent as may be prescribed and to that extent only for loss occasioned by death or injury to a passenger as a result such 'untoward incident'.

(9) Learned counsel for Union of India has argued that the present case falls within the explanation (b) and (c) of the proviso. It has been argued that trying to board a running train falls within the definition of 'self inflicted injury' and also 'his own criminal act'. Therefore, no compensation is to be awarded. This Court is to examine whether receiving injury while trying to board a train, which is at slow speed amounts to self inflicted injury. Self inflicted injury has not been defined anywhere in the act. Therefore, its literal meaning is to be taken, which means that injury caused by the injured himself, which is not there in the present case. The present injury is out of rash act of the deceased while trying to board a train, which had started moving. The criminal act is also not defined in the Railway Act. However, the use of word 'criminal act' goes to show that there must be an element of criminal knowledge or intention. Similarly, it is also not a criminal act. In the present case, the deceased was not going to commit any crime against the railway or any other person. The act of trying to board a moving train, which is a common scene at the railway station, at the best can be called a rash or negligent act. But certainly not criminal act. The matter was examined by Hob'ble the Supreme Court in case of ***Union of India*** *versus* ***Prabhakaran Vijaya Kumar and others***[1]**.**

(10) In the above-noted case also, the following facts were noticed by the Hon'ble Apex Court:

> "8.However, the evidence of DW-1, D. Sajjan, who was the Station Master at the railway station corroborates the evidence of PW-2. DW-1 had deposed that he saw one girl running towards the train and trying to enter the train and she fell down. He has further stated that the deceased Abja had attempted to board the train and fell down from the running train. For this reason, the Tribunal held that this was not an 'untoward incident' within the meaning of the expression in Section 123(c) of the Railways Act, 1989 as it was not accidental falling of a passenger from a train carrying passengers."

(11) Therefore, the facts of both the cases are similar. The Hon'ble Apex Court examined the case law on the point and after perusal of Sections 129 and 124-A of the Railway Act, observed as under:

> "16. The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of

[1] 2008 (3) R.C.R.(Civil) 577

any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124A of the Railways Act, and not its proviso.

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

It was held that Section 124A of the Railway Act incorporates principal of strict liability, which originated in the judgment of British High Court in case of ***"Rylands*** *versus* ***Fletcher, 1866 LRI Ex 265,*** which was later on laid down by the Constitution Bench of Hon'ble the Supreme Court of India in case of ***"M.C. Mehta*** *versus* ***Union of Inida, AIR 1987 Supreme Court 1086,*** which was observed as under:

"39. In India the landmark Constitution Bench decision of the Supreme Court in ***M.C. Mehta*** *versus* ***Union of India, AIR 1987 Supreme Court 1086*** has gone much further than ***Rylands*** *versus* ***Fletcher*** *(supra)* in imposing strict liability. The Court observed "if the enterprise is permitted to carry on any hazardous or inherently dangerous activity for its profit the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads." The Court also observed that this strict liability is not subject to any of the exceptions to the rule in ***Rylands*** *versu* ***Fletcher*** *(supra).*

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

(12) It being so, it is held that the deceased was bonafide a passenger and that the act of slipping from the train and falling between platform and the train falls within the definition of 'untoward incident'. Therefore, there is no error in the impugned judgment.

(13) As such, the present appeal is dismissed.

M.Jain

Before Amit Rawal, J

SIMRAN SINGH — *Petitioner*

versus

STATE OF HARYANA AND OTHERS — *Respondents*

CWP No. 23010 of 2012

March 30, 2015

Constitution of India, 1950 — Art.226 — University Grants Commission Act, 1956 — Ss. 3, 12, 13, 14, 20 & 22 — Haryana State Board of Technical Education, 2008 — S.27 — Deemed university — Recognition of diploma — Petitioner obtained a diploma in Civil Engineering from Maharishi Markandeshwar Engineering College — Petitioner applied for post of Junior Engineer(Civil) — Petitioner acquired knowledge that candidates lower in merit to petitioner had already joined service — Petitioner was informed that Maharishi Markandeshwar University is not recognised by Haryana State Board of Technical Education (HSBTE) and, therefore, diploma awarded by said University is not recognised — HSBTE has power and duty, to only, advise Government on matters of policy relating to diploma level technical education — It is not emboldened with any power to seek or ask for affiliation or recognition of any diploma obtained by any person from " Deemed University" — Maharishi Markandeshwar University, being a deemed university, declared under Section 3 of UGC Act, had approval of AICTE — University Act is a code in itself — Haryana Government by promulgation of 2008 Act cannot transgress powers, limits of Central Government— Diploma obtained by petitioner is a recognized diploma — It does not require any approval from Technical Education Department, Government of Haryana and as well as affiliation with Board — Petitioner would be entitled to appointment as Junior Engineer (Civil).

Held, that as per Section 27 of the Haryana Act No. 19 of 2008, HSBTE has the power and duty, to only, advise the Government on matters of policy relating to diploma level technical education and also lay down guiding principles for determining curricula and syllabi, but in the entire Act, it is not emboldened with any power to seek or ask for affiliation or recognition of any diploma obtained by any person from the 'Deemed University'. Even section 40, under Chapter V, empowers the Board to make regularization with the approval of Governing