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Court : Andhra Pradesh

Decided On : Nov-28-1995

Reported in : 1996(1)ALT568

Judge : B.S. Raikote, J.

Acts : General Rules for Indian Railways (Open Lines) Rules, 1976 - Rule 4.35 and 4.50; Open Lines (Indian Railways) General Rules, 1929 - Rules 115 and 131

Appeal No. : Appeal Against Order No. 872 of 1994

Appellant : Lalitha Bai

Respondent : The Union of India (Uoi), Rep. by General Manager, S.C. Railway

Advocate for Def. : C. Venkata Malla Reddy, Standing Counsel

Advocate for Pet/Ap. : M.C. Pillai, Adv.

Judgement :

B.S. Raikote, J.

1. This appeal is preferred by the appellant Lalitha Bai being aggrieved by the judgment and award passed by the Railway Claims Tribunal, Secunderabad,

dated 17-6-1994 passed on O.A.A.No. 48 of 1991. By that order, the Railway Claims Tribunal, Secunderabad dismissed the claim petition filed by the appellant on the ground that the appellant has not proved negligence on the part of the respondent Railway Department.

2. The learned counsel for the appellant strenuously contended that the impugned award of the Railway Claims Tribunal is illegal and contrary to the evidence on record. He further submitted that on the basis of evidence on record, it is dear that the appellant has proved that there was negligence on the part of the Railway Department, as the result, the appellant met with the accident. Therefore, the finding of the Railway Claims Tribunal that the appellant has not proved the negligence on the part of the Railway Department is not correct and the same is liable to be set aside. However, the learned counsel for the Railway Department has strongly supported the impugned award maintaining that there is neither any irregularity nor illegality in passing the award. He submitted that the Railway Claims Tribunal rightly dismissed the claim petition filed by the appellant on the ground that the appellant has not proved the negligence on the part of the Railway Department. Therefore, the impugned award does not call for interference by this Court.

3. In order to appreciate the rival contentions on both sides, it is necessary for me to note few facts of the case.

4. The appellant is the resident of Kerala. The appellant, her husband and their two children wanted to go to Tirupathi. Therefore they boarded the passenger train from Ernakulam and by that train they came to Renigunta at about 3-00 A.M. on 29-5-1989. At Renigunta, they had to change to the other train in order to go to Tirupathi. The passenger train by which the appellant and her family members travelled arrived at Platform No. 1 of Renigunta Railway Station and they were informed that the on-going train was ready to go to Tirupathi on platform No. 4 and accordingly, they came to platform No. 4. The appellant put her two children in the train first and her husband was taking tea. At that time, the train started moving. Immediately she attempted to get into the train and her husband got into the train by other door hurriedly. At that point of time, because the train was moving, she

slipped and fell down and caught between the train and the platform. Her children and husband made hue and cries. As a result, the train was stopped after 4 or 5 minutes. She was so caught up between the train and the platform, that she could not be extricated out. As a result, the employees of the Railway Department demolished a part of the platform and she was taken out. It is because of negligence on the part of the Guard and Driver of the train, she met with an accident. Therefore, she was entitled to compensation.

5. By filing counter, the respondent denied her allegations contending that she herself attempted to board a moving train and as result, she has fallen down, and the accident in question has occurred due to her negligence, but not due to any negligence on the part of the Railway Department.

6. On the basis of the pleading, the Railway Claims Tribunal has framed the following issues:

(i)Was the applicant a bona fide passenger in the train in question?

(ii) What is the nature and extent of injuries sustained by the applicant in the accident?

(iii) Was the accident on account of negligence or carelessness on the partof the Railways and/or their servants and employees?

(iv) Is the respondent liable to pay compensation to the applicant and if so,what should be the quantum?

(v) Is the application barred by limitation?

(vi) Is the application barred for non-issue of a notice under Section 80 CPC?

(vii) What relief?

7. On issue No. 1, it held that the appellant was a bona fide passenger in the train in question. On issue No. 2, it held that the appellant sustained a fracture on the pelvis and some bleeding injuries on the thighs answering issue No. 2 in her favour, Likewise, on issue No. 3 it held that the accident occurred on account of

the negligence or carelessness on the part of the appellant herself and not on the part of the Railway Department. Thus, the issue No. 3 was answered against the appellant-claimant. It did not answer issue No. 4 in view of the finding given on issue No. 3. On issue No. 5, it held that the claim petition was not barred by time. On issue No. 6, it held that the application was not barred for not issuing notice as contemplated under Section 80 C.P.C On issue No. 7, accordingly, it held that the claim petition was liable to be dismissed in view of the finding given on issue No. 3.

8. From this judgment, it is clear that the appellant has been non-suited on the basis of the finding on issue No,3 to the effect that the accident has not occurred due to the negligence or carelessness on the part of the Railway administration or their employees. Therefore, both the counsel focused their attention only on finding on issue No. 3 to drive home their respective points.

9. The learned counsel for the appellant invited my attention to the three witnesses examined on behalf of the appellant and one witness examined on behalf of the respondent. It is to be noticed at this stage itself that the witnesses were permitted to file their affidavits and with reference to the said affidavits, the witnesses have been cross-examined. This procedure has been adopted on the consent of both the parties.

10. The appellant Lalitha Bai in her affidavit stated that her husband Krishna Pai and her two children undertook journey from Ernakulam on 28-5-1989 by Train No. 125. They arrived at Renigunta Railway Station on 29-5-1989. They decided to travel by Train No. 532 passenger train to Tirupathi. Train No. 532 which originated from Renigunta Railway Station arrived at Renigunta Railway platform at about 4-00 A.M. She put her children into the compartment quickly. Thereafter, she also tried to get into it by putting her right leg on the steps of the train. The guard of the train rashly and negligently without looking, gave signal and the train started without any engine whistle. The further deposed that her leg was caught between the platform and the train and it was crushed in between. Immediately the train stopped. After demolition of some portion of the platform, she was taken out. After detaching the particular bogies, the train started after more than one hour

delay. After detaching bogies No. 5689 in which the appellant and her family members were travelling., the train started. The appellant also stated in her affidavit that because of the accident, she suffered with fractured pelvis and both thighs were injured. She got treatment as in-patient in various hospitals from 30-5-1989 to 28-10-1989. After discharge, she was advised complete rest initially upto 23-2-1990. She further stated that no medical assistance or any kind of help was given by the respondent-Railway department after the accident. With reference to this affidavit, she has been cross-examined. In the cross-examination, she stated that she fell down from the train when she attempted to board the train and it was after her children were put into the coach. By then, her son was aged about 11 years and daughter 5 years. She further deposed that after the put her right leg on the foot-board of the train, the train started moving. She further stated that her husband,after he saw her attempting to get into the coach, boarded the coach from the other door, as she was standing near that door, after paying the price of tea taken by them to the vendor. The state that the train was standing when they took tea and her husband alone had taken the tea. When her husband was taking tea, herself and her children did not board the train as they thought that they could all board the train together. She further stated that she could not know what was the scheduled departure of the train to Tirupathi. She denied the suggestion made on behalf of the Railway Department that she attempted to get into the train when it was already moving and that she slipped and fell down. She stated that she saw some people sitting in the coach. She further stated that no other person attempted to board the train at that time of the occurrence. The appellant's husband Krishna Pai also filed an affidavit. He stated in the affidavit that at the time of accident, he was getting into the same compartment through the next door watching the appellant and the children. He stated that Train No. 532 came late to the platform after 4-00 A.M. and when she tried to get into the compartment putting her right leg on the steps of the train, the Guard rashly and negligently without looking, gave signal and the train started without engine whistle. As a result, her leg was trapped in between the platform and the train and she was crushed in between. He deposed that he shouted for help and immediately the train was stopped. Re stated that on account of the accident, his wife suffered fractured pelvis and both the thighs were injured and his wife took treatment as in-

patient from 30-4-1989 to 28-10-1989 in various hospitals and she was advised complete rest upto 23-2-1990 and no medical assistance or any kind of help was given by the Railway Department. In the cross-exaimination, it is stated that after about a minue of their coming on platform No. 4, his children got into the coach first and his wife did not get into the coach and his wife was standing on the platform and he was standing nearby at a distance of about 10 to 15 feet. He further deposed that he could not say as to how long after they came on platform No. 4, the train moved out and now long he and his wife stood on platform No. 4. He took tea on the platform and soon after he completed taking tea, the train started moving and when his wife started getting into the coach, the train was stationary and only when she was getting into the coach, the train started. He further stated that he could not give the distance between himself and his wife when they were standing on the platform. His attention was invited to the statement made by him in the affidavit that the Guard rashly, negligently without looking gave signal and with reference to that statement he was asked as to what the signal the Guard gave. For that he stated that 'he does not know if the Guard gave any signal'. He stated that there was sufficient time for his wife and children to get into the coach after they came to Platform No. 4. He did not know what signals were given by the Guard for the train to starts. He stated that he had not seen the starter signal lights on the platform and he could not say what colours were on the signal. He further stated that when his wife put her leg on the foot-board to get into the coach, he was still taking tea on the platform. The appellant also filed the affidavit of one more witness by name C.K. Thomas. In the affidavit, the said Thomas stated that he had come to Renigunta Railway Station to see one of his friends who came from Trichur by 125 Express to go to Tirupathi by passenger train No. 532. He stated that the Scheduled departure time of Train No. 532 was 3-00 A.M. and the train was delayed by one hour. He stated that when he was on the platform, he saw one lady passenger whose name he came to know latter, after putting her children into the compartment, she quickly tried to get into it, the Guard without looking gave signal and the train started moving without any engine whistle. Due to the sudden movement of the train, she was trapped in between the platform and the train and was crushed. Thereafter, the train started at 4-40 A.M. after detaching the concerned bogies. He stated that like others, he

also rushed and helped the family. He stated that he helped the family to go to Dr. Basheer's Hospital at Renigunta for treatment as there was no Railway doctor to attend on her. He was cross-examined by the Railways. In the cross-examination, he stated that he has not brought the letter written by his friend that he was going to Madras, he should come to Renigunta Railway Station. He stated that he did not have any ticket with him either to go to Madras or to Tirupathi. He did not produce any platform ticket at Renigunta Railway Station. He came to Renigunta Railway Station so that he could go to Madras with Balan and Balan changed his programme an decided to go to Tirupathi. He stated that Kerala Express arrived at Renigunta at 4-10 A.M. on 29-5-1989 on platform No. 1 and within five minutes of the arrival of the Kerala Express, they came to platform No. 4 The scheduled departure time of the passenger train No. 532 was 3-00 A.M. and his friend boarded the coach before the train started moving 4 or 5 minutes later. He saw the appellant and her two children getting into the coach through the rear side of the door and he did not see the appellant standing on the platform No. 1. Further he stated that there were no one else near that coach on the platform. He saw the Guard giving green signal flag. By then, his friend was already in the coach and within 3 or 4 seconds, after the Guard giving green signal the train started moving. He stated that he has not noticed the driver of the passenger train waving any flag and he has also not noticed starter signals on the platform. He stated that he has seen the appellant on the platform 2 minutes after his friend got into the coach. He further stated that 'he saw her (appellant) trying to get into the train after the Guard gave green signal. She fell down because the train started moving just as the appellant put her foot on the foot-steps of the coach'.

11. From the evidence of the appellant, her husband and the witness C.K. Thomas, one thing is certain that Ernakulam Train arrived at Renigunta at about 4-05 A.M. and it was at the right time. Train No. 532 by which the appellant wanted to travel was scheduled to leave at 30-00 A.M. only, but it started at 4-15A.M. From this, it is clear that train No. 532 from Renigunta to Tirupathi started after 10 or 15 minutes after the arrival of the Ernakulam train. The result was that there was very little time for the appellant and her family to get into Train No. 532 which was ready on the platform, signals were given. Within that time, the appellant's husband had been drinking tea on the platform itself and meanwhile, the train

started. Being panicky of the situation, the appellant attempted to board the train and her husband got into the train on the other side of the door because, it was near to him and at that juncture of time appellant slipped down and crushed in between the train and the platform. This appears to be a fact on the basis of the evidence on record.

12. On the other hand, the Railway Department filed affidavit of the Guard of the train in question by name L. Ramanatha Reddy. He stated in the affidavit as under:

'At about 04.12 hrs., Line clear was obtained for 532 passenger and despatch signals were taken off. Announcement was also made on Public Address System provided at Renigunta Railway Station that 532 passenger was ready to leave from Platform No. 4. Immediately I had whistled twice to alert the passengers and exhibited green light to the driver, the train started moving at 04.15 hrs. When I looked back to ensure that the complete train is moving safely, I noticed one lady passenger attempting to get into the train. Immediately, I went inside, applied vacuum brake and stopped the train. As soon as the train came to a stop, I had rushed to coach and found the lady passenger fell from the train and stuck up between the last coach and the platform.'

He also stated that he quickly instructed the driver not to move the train and he went and informed the A.S.M. on duty about the situation and the A.S.M. inspected the spot and instructed his staff to break the platform slabs and extricated the lady passenger, and also instructed his staff to detach the coach being the last and the coach was detached. Accordingly the train started at 4-40 hours leaving the rescue operation to the A.S.M. He has been cross-examined. In the cross-examination, he has stated that he noticed the departure of the train at Renigunta at 4-15 A.M. and the final departure was noted at 4-40 A.M. He stated that the injured woman was fat woman. He stated that it was the duty of the Station Master to render necessary medical aid to the injured passengers.

13. These facts spoken to by the Guard also indicate that the train started at 4-15A.M. The witness examined by the appellant, C.K. Thomas has stated that the train arrived at 4-05 A.M. Hardly there was 10 minutes time to board the train in

question. The appellant after putting her children in the bogies, was still standing on the platform. Meanwhile, her husband was taking tea and all of a sudden, the train started moving. The Guard has specifically stated that signals were exchanged between him and the driver of the train. From the evidence of the appellant, her husband and her witness Thomas, it is clear that none of them noticed what signals were given at that time. According to the evidence of Thomas, all the passengers boarded the train including his friend when the appellant was attempting to board the train. From this fact, it is clear that all the signals were given and every one had got into the train when the green signal was given and the train moved and when the train was moving, the appellant and her husband attempted to get into the train by two different doors of the compartments, the husband was successful, but the wife was unsuccessful and she slipped and trapped in between the train and the platform.

14. On the basis of the facts borne out from the evidence of the witnesses, the learned counsel for the appellant submitted that if the Guard and the Driver of the train in question were to follow Rules 115 and 131 called open Lines (Indian Railways) General Rules, 1929, the accident would not have occurred. Because, the Guard and the Driver failed to discharge their duties according to these Rules, the accident had occurred. Therefore, there was negligence on the part of the Guard and the Driver of the train in question and accordingly, the Railway Department was liable for the same.

15. What is to be noted in this context is whether exchanging of signals between the driver and the Guard would include the engine whistle also. It is not in dispute that the exchange of signals between the driver and the Guard is by red and green flag, if it is day time, and by green and red lights if it is night.

16. In order to appreciate this contention, I am extracting Rule 115 of the above said Rules as under:

'115. Permission to start from Station:-- (a) The Guard-in-charge of a train shall not give the signal for starting the train from a station at which it has stopped until he has received permission, from the Station Master:

Provided that the permission of the Station Master to start a train may be dispensed with in the case of suburban trains on such sections of a railway as may be specified by approved special instructions,

(b) The Guard-in-charge of a train with passenger vehicles attached shall not give the signal for starting until he has satisfied himself that no passenger is getting into or out of the train, that no person is riding outside a carriage and that, except in accordance with special instructions, no person is travelling in any compartment or vehicle not intended for the carriage of passengers.'

This rule provides that the Guard-in-charge of a train with passenger vehicles shall not give the signal until he has satisfied himself that no passenger is getting into or out of the train. But, from the evidence on record, it is clear that every one got into the train except the appellant and her husband who was taking tea. Though in a place like Hyderabad, it is very difficult to ascertain whether all the passengers got into the compartment or not, in view of the fact that there would be huge number of persons to see off their relatives and friends. As I have stated above, the signals were exchanged between the Driver and the Guard before the train moved. Therefore, prima facie there has been no breach of this rule on the part of the Guard.

17. The learned counsel for the respondent has submitted that those 1929 Rules have been repealed by the General Rules for Indian Railways (Open Lines) Rules, 1976. The new Rules are adopted by the Railway Department from 11-2-1976. Since the accident has occurred subsequent to the new rules, it is the new rules which apply to the facts of the case. The corresponding new Rule to old Rule 115 is Rule 4-35, the relevant portion of which is extracted below:

'4-35. Starting of trains.

(1) A Driver shall not start his train from a station without the authority to proceed. Before starting the train, he shall satisfy himself that all correct fixed signals and, where necessary, hand signals are given and the line before him is clear of visible obstructions and the Guard has given the signal to starts.

(2) The Guard shall not give the signal for starting the train unless he has received the permission of the Station Master to start, in the manner prescribed by special instructions.

(3) The Guard shall not give the signal for starting unless he has satisfied himself that, except in accordance with special instructions, no person is travelling in any compartment or vehicle not intended for the use of passengers.

(4) The Station Master shall see, before he gives the Guard permission to start a train, that all is right for the train to proceed.

(5) The permission of the Station Master referred to in Sub-rule (2) may be dispensed with in case of suburban train on such sections of a Railway as may be specified by special instructions.

(6) When permission of the Station Master to start has been dispensed with under Sub-rule (5) or at a station where no Station Master is posted, the Guard shall see, before giving the starting signal, that all is right for the train to proceed.'

On the basis of this rule, the learned counsel for the appellant contended that the Guard should not have given the signal without verifying whether all the passengers have got into the train or not. He further submitted that according to the evidence of the appellant, the appellant and her husband were still on the platform. Therefore, he could not have given the signal to start the train. This argument is based on the old Rule 115. But, from the corresponding new Rule as extracted above, it is clear that the old Rule 115 (b) has been modified and the provision that 'the Guard-in-charge of the train, with passenger vehicle, shall not give the signal until he has satisfied that no passenger got into or out of the train', has been omitted and it was not in the statute book as on the date of the accident. Therefore, prima facie this contention of the learned counsel for the appellant cannot be accepted. According to the new Rule 4.35, the Driver shall start the train after the Guard has given signal to starts. The appellant and her witnesses themselves admitted that the Guard had given signal to start the train. But,unfortunately, the appellant and her husband were still on the platform for taking tea. Therefore, 1st point of the learned counsel for the appellant that the

Guard should not have given the signal when the appellant and her husband were still on the platform, cannot be accepted. As I have stated above, in these days, platforms are over-crowded not only by passengers travelling by train, but also by the relatives and friends who have come to see them off. In these circumstance, it is not possible either for the Guard or for anybody to know whether every one has already boarded the train or not. Having regard to the circumstances only, 1976 Rules have omitted the said earlier provisions of 1929 Rules. As on to-day, there is no statutory obligation on the part of the Guard to find out that every one has already boarded the train. Therefore, the first contention of the learned counsel for the appellant is rejected as unsustainable.

18. The second contention of the learned counsel for the appellant was with reference to old Rule 131, which reads as under:

'131. Sounding the engine whistle: Except under special instructions, the Driver shall always sound the engine whistle-

(a) before putting an engine in motion;

(b) when entering a tunnel; and

(c) at such other times as may be prescribed by special instructions.'

The corresponding new Rule to old Rule 131 is Rule 4-50, which reads as under:

'4.50. Sounding of engine whistle.-

(1) Except under special instructions, the Driver shall always sound the whistle of the engine according to the prescribed code of whistle-

(a) before putting an engine in motion;

(b) when entering a tunnel; and

(c) at such other times and places as may be prescribed by special instructions.

(2) Engine whistle code shall be prescribed under special instructions.' On the basis of old Rule 131 and the new Rule 4-50, the learned counsel for the appellant

submitted that the driver should not have started the train without giving a whistle. He further contended that the appellant and her witnesses squarely spoke to the fact that the engine whistle was not given by the Driver before the train started. Therefore, there was violation of statutory provision and as such, there was negligence on the part of the Driver in starting the train without giving whistle. On behalf of the Railways, only the guard has been examined, as I have already noticed above. He stated that at that time announcement was made on Public Address System of the Renigunta Railway Station that Train No. 532 was ready to leave Platform No. 4 and immediately, he had whistled twice to alert the passengers and exhibited green light to the driver and the train started moving at 4.05 hours, From his evidence, it is clear that he never stated that the Driver sounded the engine whistle. The Driver has not been examined by the respondent to the effect that whether really the train moved after the engine whistle or no.(sic) The witnesses examined on behalf of the appellant-claimant i.e., herself, her husband and one C.K. Thoma9 have categorically stated that the train started moving without any engine whistle. From the evidence on record, it is clear that their statements go unchallenged. They were not cross-examined on this point. No suggestion was also made by the respondent to the witnesses that really the Driver of the train gave engine whistle. From these facts, I have to hold that the train started moving without any engine whistle as required under old Rule 131 and new Rule 4-50. In substance, both the Rules in pari materia are the same.

19. The learned counsel for the respondent relying on Clause (2) of new Rule 4-50 contended that sounding the engine Whistle was only an indication to the Guard in the form of a Code that., he was star ting the train and it was not meant for the passengers at all. He invited, my attention to whistle Code provided under new Rule 4-50. According to this Code, one short whistle has to me given before starting the train. If two short whistles are given that was meant to call for Guards signal to indicate him that the singles were not exchanged by Guard or by other Station staff. Thereafter, one long and one short signal meant for the Guard to release the breaks, etc. As contended by the learned counsel for the respondent that these signals may also be used to indicate certain things to the Guard, but in my opinion the signal before starting the train is not only meant for the Guard, but also meant for the passengers of the train. At any rate, one thing is certain that as

per new Rule 4-50, the Driver shall not put the engine in motion without sounding the whistle of the engine. When according to the evidence on record, the train was put into motion without engine whistle, it means that the statutory direction is violated by the Driver, who is an employee of the Railway Department. If the engine whistle were to be given, it was a sufficient warning to every one that the train was moving. If such a whistle were to be given the appellant would have got into the train much earlier to the movement of the train. When without the whistle the train started, the appellant and her husband have tried to get into the train and at that point, the appellant must have slipped either of her own weight or otherwise. (Evidence is that she is a fat woman) and met with the accident. This accident has, therefore, occurred due to the negligence on the part of the Driver of the train in not sounding the engine whistle as per the statutory requirements before the train was put into motion.

20. In similar circumstances, even the Courts in England have taken the same view. In 'Robson v. North Eastern Rail Co.' ((1874-1880) All.E.R. Reprint 1281), a woman passenger travelling on the defendants railway arrived at a small station. The carriage in which she was travelling stopped short of the platform. The only railway servant at the station was engaged with the luggage, and the passenger after waiting until she feared that the train would move on, attempted to descend without assistance and she slipped and sustained injury. His Lordship Coleridge, C.J. speaking for the Bench followed with approval the earlier judgment in 'Cockle v. London and South Eastern Rail Co.' in which it was held:

'It is established that an invitation to passengers to alight a on the stopping of a train without any warning of danger to a passenger, who is so circumstanced as not be able to alight without danger, such danger not being visible and apparent, amounts to negligence, and it appears to us that the bringing up of a train to a final standstill for the purpose of the passenger's alighting, amounts to an invitation to alight, at all events, after such a time has elapsed that the passenger may reasonably infer that it is intended that he should get out if he purposes to alight at that particular station.'

In 'Taylor v. Manchester, Sheffield and Lincolnshire Rail Co.' ((1891-1894) All.E.R. Rep. 857) the plaintiff after purchasing the ticket while entering into the compartment of the railway carriage, his thumb was crushed due to the negligence of the railway porter in shutting the door, the plaintiff was awarded damages. In appeal, the question arose whether the action was founded on tort' or'founded on contract' within Section 116 of the County Courts Act, 1888. In appeal, it was held that:

'an action against a railway company for personal injuries by reason of the active neglect of the company's servant,......................even though the plaintiff has taken a ticket, is an action founded upon tort and not upon contract within Section 116 of the Country Courts Act, 1888.'

21. In another case in 'Metropolitan Railway Co. v. Delaney' (1921 All.E.R. Rep.301), a railway passenger after purchasing the ticket, entered the carriage by the rear door and when he was turning towards the seat, without any warning, the train started with unusual abruptness causing the said passenger to lose his balance and consequently, he was thrown against the back of the carriage. He put out his arm to save himself from falling, and the sliding door of the carriage, actuated by the sudden motion of the train, closed upon his right hand and crushed it. HOUSE OF LORDS in appeal, by majority reversed the decision of the Divisional Court and held that the inference of negligence drawn by the Jury of the Mayor's Court was correct.

22. In another case in 'Schlarb v. London & North Eastern Railway Co.'((1936) I All ER 71), the plaintiff, having descended the staircase of a railway station, was proceeding cautiously forward on the platform, she fell over the edge. It was proved that on this particular night the lighting of the station was quite ineffective at this particular point, and the construction of the station was such that the plaintiff was without any indication of which way the platform was run. The foot of the staircase was within three yards of the edge of the platform, but the latter was marked by a white line paited along it. There was no guard rail. An action was brought in respect of personal injuries sustained by the plaintiff, the defendant denied the negligence. The Court held that the defendants knew or ought to have

known that the lighting was wholly inadquate on this particular night. No warning was given her by the person who served her with the ticket; no warning was given by a porter, there was no curved rail to help a passenger and the stairway was half-way across the platform and as such, there was a breach of duty on the part of the railway. The Court further held that there was no evidence of contributory negligence on the part of the plaintiff. Therefore, she was entitled to relief as prayed for.

23. The other case in 'Hare and Anr. v. British Transport Commission'((1956) 1 All ER 578) is more closer to the facts of this case. In that case, the plaintiff had gone to the railway station to see her husband off. As the train moved off, she remained standing close to the train facing the direction in which train was moving and waving to him. After the train had travelled some 60 yards, she was struck from behind by the open door of the guard's van. She had not moved appreciably from the position she was in when the train started In an action by her against the Birtish Transport Commission for personal injuries, she relied on the railway rules which stated that the doors must be fastened before the train leaves the station and that the guard in charge of then train must see that the doors are properly closed. The QUEEN'S BENCH DIVISION held that the defendants were negligent because the door of the guard's van should not have been allowed to remain open while the train travelled so great a distance, although the rules of the railway, being designed for the protection of passengers, did not require a guard of a passenger train to be in his van with the door closed at the moment when the train started. It was further held that the plaintiff was not guilty of contributory negligence.

24. The ratio of these decision support my conclusions arrived at in this case with reference to old Rule 131 and new Rule 4.50 extracted above. The learned signel Judge of the Kerala High Court in Ulahannan Rajan v. Union of India' : AIR1992 Ker230 also held that if the train was put into motion without complying the old Rules 115 and 131, negligence could be inferred on the part of the railways.

25. In the instant case, as I have pointed above, there was no evidence on the part of the railway department to show that the engine whistle was given before the

train was put into motion as against the positive assertion of all the witnesses in support of the claimant-appellant, that the train started without giving any engine whistle. In those circumstances, I have to infer that due to the negligence on the part of the railway servant, in not giving warning to the passenger by engine whistle before starting the train, the accident occurred causing personal injuries to the appellant. The contention of the learned counsel for the railways that the engine whistle was only meant for the guard as a Code cannot be accepted. The engine whistle before the train was put into motion is also a warning to the passengers and at the same time, it may as well serve as a signal to the guard that the train was moving. In these circumstances, I am setting aside the finding given by the Railway Claims Tribunal on issue No. 3 by holding that the accident has occurred due to the negligence on the part of the railways.

26. Since the Railway Claims Tribunal after answering all other issues in favour of the claimant, dismissed the claim petition only on the finding on issue No. 3 thereby refusing to consider issue No. 4 regarding the quantum of compensation, I think fit appropriate to remand the matter to the Railway Claims Tribunal to consider issue No. 4 on the basis of the material on record after giving opportunity to both parties. Regarding the findings of the Railway Claims Tribunal on other issues are concerned, they are not challenged by the Respondent-Railways either by cross-objections or by cross-appeal. Hence, those findings are hereby confirmed. The learned counsel for the appellant contended that in case the appeal were to be allowed, this Court itself may consider issue No. 4 regarding compensation on the basis of the Railway Accident (Compensation) Rules, 1990. But in my opinion it is for the Railway Claims Tribunal to decide the same on the basis of the evidence on record as to the injuries sustained by the appellant with reference to the relevant rules applicable to the facts of this case.

27. In the result, I pass the following order:

The appeal is partly allowed. The impugned judgment and award of the Railway Claims Tribunal is set aside only regarding the finding on issue No. 3 And the matter is remanded back to the Railway Claims Tribunal to decide the quantum of compensation on issue No. 4 and dispose of the claim petition within (3) months

from the date of receipt of this order on the material available on record according to law after hearing both sides. No costs. The fee of the respondent's counsel is fixed at Rs. 2000-00 in term of the Rule applicable.

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