

(3) A formal order—Annexure P-4 dated 22nd February, 2002, merely follows the order Annexure P-3. In our view, orders Annexures P-3 and P-4 are devoid of reasons taking into account the fact that the respondent was required to address the circumstances of the case. We are of the view that this reference need not be answered because it is for the respondent to pass a reasoned order on the basis of rule 7.5 of the aforesaid Rules. The respondents are accordingly directed to pass a reasoned order in accordance with Rule 7.5 read with Rule 7.3 of the aforesaid Rules after taking into consideration the facts and circumstances of the case and it will be open to the petitioner to assail, in accordance with law, the order, if it goes against him. The said order shall be passed by the respondent on or before 19th July, 2010.

(4) In view of the above, we are of the view that the reference dated 10th April, 2002, need not be answered at this stage and the reference stands discharged accordingly.

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**R.N.R.**

*Before Rakesh Kumar Garg, J.*

**UNION OF INDIA AND OTHERS,—Defendant-Appellants**

**versus**

**VED PARKASH SHARMA,—Plaintiff-Respondent**

**RSA No. 5563 of 2003**

26th May, 2009

*Constitution of India, 1950—Art. 226—Railway Claims Tribunal Act, 1987—Ss. 13 & 15—Railways Act, 1989—Code of Civil Procedure, 1908—S.9—Plaintiff suffering multiple injuries in an accident at Railway Station on account of gross negligence of employees of railways—Suit for damages/compensation—Whether Civil Court has jurisdiction to try and entertain such a suit—Held, yes—Mere fact that a special Statute provides for certain remedies, may not by itself necessarily exclude jurisdiction of Civil Courts to deal with a case brought before it in respect of some of matters*

*covered by said Statute—Plaintiff claiming damages in respect of injuries on account of negligence of Railway employees as bogies of shunting goods train hit him, therefore, case of plaintiff does not fall within purview of Ss. 82—A and 124 of Railway Act and other clauses of S. 13(1) of Railway Claims Tribunal Act—Courts below rightly rejecting evidence of defendants—Appeal dismissed.*

*Held*, that a plain reading of the provisions of Section 13 of the Railway Claims Tribunal Act shows that the Railway Claims Tribunal shall exercise jurisdiction relating to the responsibility of Railway Administration as carriers in respect of claim of compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to Railway Administration for carriage of railway; compensation under Section 82-A of the Railway Act or the rules made thereunder and in respect of the Claims for refund of fares. Thus, it is clear that under Section 13 of the Act, the Railway Claims Tribunal has jurisdiction only for matters when the responsibility of the Railway Administration as carries is involved.

(Para 23)

*Further held*, that no passenger train was involved in the accident. The Plaintiff was not travelling as a passenger in the train at the time of accident. The plaintiff has not claimed any damages or compensation arising out of the responsibility of Railway Administration as carriers. The plaintiff claimed damages in respect of the injuries sustained by him on account of negligence of Railway employees as the bogies of the shunting goods train hit him. Therefore, the case of the plaintiff does not fall within the purview of Section 82-A and Section 124 of the Railway Act and other clauses of Section 13(1) of the Railway Claims Tribunal Act.

(Para 27)

*Further held*, that the jurisdiction of the Civil Courts is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. The mere fact that a special Statute provides for certain remedies, may not by itself necessarily exclude the jurisdiction of the Civil Courts to deal with a case brought before it in respect of some of the matters covered by the said Statute. Section 9 of the CPC provides that the Civil Court shall try all suits of civil nature subject to

pecuniary jurisdiction, unless their cognizance is expressly or by necessary implications is barred. There is no express provision in the Railway Claims Tribunal Act, 1987 or the Railways Act, 1989 which bars the jurisdiction of the Civil Court, except the matters covered under Sections 13 and 15 of the Railway Claims Tribunal Act, 1987. Thus, the first question of law whether the jurisdiction of the civil court was barred under Section 13 and 15 of the Railway Claims Tribunal Act, 1987, is answered against the defendant-appellants and it is held that the Civil Court has the jurisdiction to try the present case.

(Para 29)

P.C. Rakra, Advocate, *for the appellants.*

O.P. Sharma, Advocate, *for the respondent.*

**RAKESH KUMAR GARG, J.**

(1) This is defendants' second appeal challenging the judgment and decrees of the Courts below decreeing the suit of the plaintiff—respondent for recovery of Rs. 8,24,000 alongwith simple interest at the rate of 7.5% per annum as damages/compensation on account of multiple injuries received by him because of gross negligence of the employees of the appellants. The cross-objections have been filed by the plaintiff-respondent for enhancement of compensation.

(2) Briefly stated, the plaintiff-respondent filed a suit for recovery of damages/compensation on account of multiple injuries received by him on 28th January, 1991, with the averments that the Hissar Railway Station divides the main city into two parts and there is no over-bridge linking two parts of the city. However, the Railways was allowing frequent pedestrian traffic to pass over through both the sides of the city through the two gates. The outlets provided on the two gates are not manned at any time. On 28th January, 1991 at about 7 p.m. the plaintiff was coming from Camp side and was going to his home which fell on the other side of the city. There was shunting of goods train and the engine was towards western side of the railway station whereas rear bogies were there and were shunting in the reverse direction without any light, unmanned and without any indication.

There was no shunting man along with the train, regarding the shunting which was mandatory. The shunting was on the broad-gauge line. Neither the engine gave any whistle nor there was any warning from any quarters. There was no light at that time. The bogies hit the plaintiff, who fell on the railway line and sustained serious multiple injuries which were grievous in nature thereby resulting into amputation of his limbs besides other multiple fractures on his body. The accident was reported to the Railway Police immediately. He was medically examined in Govt. Hospital, Hissar, and was advised to be shifted to PGI, Chandigarh where he remained for more than two years and was still under the treatment of various doctors and specialists. Thus, the plaintiff who had suffered multiple injuries sought to recover a sum of Rs. 16,04,896 by way of damages as detailed in the suit on account of the aforesaid accident by filing the present suit. Before filing the suit, the plaintiff also gave a statutory notice under Section 80 CPC to the defendants who did not respond to the same. Since the suit by the plaintiff was filed as an indigent person, the trial Court,—*vide* its order dated 24th April, 1998 allowed the plaintiff-respondent to file the suit as an indigent person.

(3) Upon notice, the defendants appeared and filed written statement raising various legal objections with regard to *locus standi*, cause of action, mis-joinder of parties, non-joinder of necessary parties limitation and jurisdiction of Civil Court etc. On merits, it was alleged that the injuries were suffered by the plaintiff due to his own negligence and there was no negligence on the part of the defendant-appellants. It was further stated that the defendants were not liable to pay any amount to the plaintiff and the suit was liable to be dismissed.

(4) Replication on behalf of the plaintiff was also filed in which the plaintiff denied the averments of the written statement and reiterated his stand taken in plaint.

(5) From the pleadings of the parties, the following issues, were framed by the trial Court :—

- “1. Whether the plaintiff suffered multiple injuries in an accident at Railway Station Hisar on account of gross negligence of the defendants on the grounds mentioned in the plaint ? OPP.
2. If issue No. 1 is proved in affirmative whether the plaintiff entitled for decree of recovery as damages in the sum of Rs. 16,04,896 as detailed in para 7 of the plaint ? OPP.

3. Whether the plaintiff has no *locus stadi* and cause of action to file the present suit ? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
5. Whether the suit is time barred ? OPD
6. Whether the Civil Court has no jurisdiction to try and entertain the present suit ? OPD
7. Relief.”

(6) While deciding issues No. 1, 2 and 6 in favour of the plaintiff, the trial Court held that the Civil Court had got the jurisdiction to try the suit and the accident was caused due to the negligence of the defendants and further held that the plaintiff was entitled to a compensation of Rs. 9,10,000 alongwith interest at the rate of 6% per annum from the date of institution of the suit till the time of actual payment. Issues No. 3 to 5 were not pressed by the defendants before the trial Court. In view of the aforesaid findings, the suit of the plaintiff was decreed partly with proportionate costs.

(7) Feeling aggrieved against the judgment and decree of the trial Court, Civil Appeal No. 102 of 31st August, 2001 titled as Ved Parkash Sharma *versus* Union of India and others was filed by the plaintiff-respondent in which he claimed enhancement of the compensation, whereas Civil Appeal No. 119 of 18th October, 2001 titled as Union of India and others *versus* Ved Parkash Sharma was filed by the defendants challenging the judgment and decree of the trial Court granting compensation of Rs. 9,10,000 in favour of the plaintiff-respondent. The Lower Appellate Court after appreciating the evidence and hearing the learned counsel for the parties, affirmed the findings of the trial Court except that instead of Rs. 9,10,000 as granted by the trial Court, the compensation was reduced to Rs. 8,24,000 and instead of rate of interest of 6% as granted by the trial Court, it was enhanced to 7.5% per annum. Hence, both the appeals were partly accepted to the extent as mentioned above, rejecting the remaining claim of the parties.

(8) Still not satisfied, the defendants had filed the present appeal challenging the judgment and decrees of the Lower Appellate Court dated

24th May, 2003 passed in Civil Appeal No. 102 of 31st August, 2001 titled as Ved Parkash Sharma *versus* Union of India and others and had not filed any appeal challenging the decree in Civil Appeal No. 119 of 18th October, 2001 titled as Union of India and others *versus* Ved Parkash Sharma. It is also relevant to mention that the plaintiff-respondent has preferred Cross-objections No. 19-C of 2007 claiming higher compensation.

(9) Learned counsel appearing on behalf of the appellants has vehemently argued before this Court that the Courts below have erred at law while holding that the Civil Court had the jurisdiction to try the present suit. According to the learned counsel for the appellants, in view of the provisions of Section 13 and 15 of the Railway Claims Tribunal Act, 1987, (for brevity the 'Act') the jurisdiction of the civil court is barred and thus, the judgment and decrees of the Courts below are liable to be set aside. Learned counsel has further argued that the respondent was not entitled to any amount of compensation in view of the fact that he suffered injuries due to his own negligence and the findings of the Courts below to the contrary are perverse and are liable to be set aside. Learned counsel has argued that the following substantial questions of law arise in this appeal :—

1. Whether the jurisdiction of the civil court was barred under Section 13 and 15 of the Railway Claims Tribunal Act 1987 ?
2. Whether the compensation can be granted under the general law when the remedy under the provisions of Indian Fatal Accident, is available to the plaintiff-respondent ?
3. Whether the respondent is entitled to any amount of compensation in view of the fact that he suffered injuries due to his own gross-negligence ?
4. Whether the claim of the respondent is barred by limitation ?

(10) On the other hand, learned counsel appearing on behalf of the plaintiff-respondent has supported the impugned judgment and decrees insofar as the findings in favour of the plaintiff. It was further argued that the appellants have failed to challenge the decree in CA No. 119 of 18th October, 2001 which has become final between the parties and therefore,

the appeal filed by the appellants even if allowed, will lead to passing of contradictory decrees in the same case. However, the learned counsel for the respondent has further argued that the plaintiff-respondent is entitled to get much higher compensation as proved from the record of the case and the impugned judgment and decrees are liable to be modified accordingly.

(11) I have heard learned counsel for the parties and perused the record.

(12) At the outset, it may be noticed that,—*vide* impugned judgment dated 24th May, 2003, the Lower Appellate Court decided two civil appeals i.e. Civil Appeal No. 102 of 31st August, 2001 titled as Ved Parkash Sharma *versus* Union of India and others filed on behalf of the plaintiff for enhancement of compensation and Civil Appeal No. 119 of 18th October, 2001 titled as Union of India and others *versus* Ved Parkash Sharma filed by the defendants for setting aside the judgment and decree of the trial Court. Both these appeals were partly accepted by one composite judgement dated 24th May, 2003 passed by the Lower Appellate Court whereby the judgment and decree of the trial Court was modified reducing the compensation from Rs. 9,10,000 to Rs. 8,24,000 but rate of interest was increased from 6% to 7.5% per annum and two separate decrees were prepared in both the aforesaid appeals.

(13) The present appeal has been filed by the Union of India challenging the judgment and decree passed in Civil Appeal No. 102 of 31st August, 2001 titled as Ved Parkash Sharma *versus* Union of India and others (which was filed by the plaintiff for enhancement of compensation) whereas Union of India has failed to challenge the decree passed in Civil Appeal No. 119 of 18th October, 2001 titled as Union of India and others *versus* Ved Parkash Sharma passed by the Lower Appellate Court (which was filed by the defendants) whereby the prayer of the defendant-appellants for setting aside the judgment and decree of the trial Court granting compensation to the tune of Rs. 9,10,000 was partly accepted and compensation was reduced from Rs. 9,10,000 to Rs. 8,24,000 but rate of interest was increased from 6% to 7.5% per annum.

(14) This Court,—*vide* order dated 23rd January, 2009 after noticing this situation had adjourned the matter to enable counsel for the

appellants to address further arguments. Learned counsel for the appellants has relied upon a judgment of this Court in **Umrao Singh versus Mst. Munni and others (1)** and **Narhari and others versus Shankar and others (2)** to contend that in a single judgment wherein two decrees are prepared and an appeal is preferred against one decree only, the fact that there is an unappealed decree, does not create an estoppel against the hearing of the appeal and therefore, there was nothing wrong as far as the decision of the present appeal is concerned. Elaborating further his argument, learned counsel has argued that it was not necessary to file separate appeals in this case as there was one suit and both the judgment and decrees were in the same case and based on the same judgment and the matter decided concerned the entire suit.

(15) On the other hand, learned counsel for the respondent has argued that in the present situation even if one decree is set aside, the other decree would remain intact which will lead to the passing of the two contradictory decrees in one suit and therefore, the present appeal is liable to be dismissed on this ground alone.

(16) In the judgment of this Court in **Umrao Singh's case (supra)** and **Narhari's case (supra)**, it was held that an unappealed decree does not create an estoppel against the hearing of the other appeal. There is no dispute as far as the aforesaid ratio of law is concerned and there is no impediment in the hearing of present appeal in which the decree appealed against is Civil Appeal No. 102 of 31st August, 2001 titled as **Ved Parkash Sharma versus Union of India and others** which was filed by the plaintiff-respondent for enhancement of compensation and this appeal has been allowed only to the extent of increasing the rate of interest from 6% to 7.5%. Thus, in the present appeal which has been filed against Civil Appeal No. 102 of 31st August, 2001 by the defendants, the only issue which may arise can be with regard to granting of higher rate of interest to the plaintiff on the amount of compensation. However, the appellants have failed to raise any grouse against the grant of rate of interest at the rate of 7.5% per annum on the amount of compensation and therefore, no substantial question of law in favour of the appellants arises at all from the decree appealed from. On the other hand, it is also relevant to mention that the learned counsel

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(1) AIR 1958 Punjab 83

(2) AIR 1953 S.C. 419



for the plaintiff-respondent was unable to substantiate his claim for higher compensation as claimed by him in Cross-objections. Learned counsel for the plaintiff-respondent was unable to point out any material evidence which was not taken into consideration while determining the compensation. Thus, I find no merit even in the cross-objections filed by the plaintiff-respondent and the same are also dismissed.

(17) Civil Appeal No. 119 of 18th October, 2001 titled as Union of India and others *versus* Ved Parkash Sharma filed by the defendants for setting aside the judgment and decree of the trial Court was partly accepted only to the extent of reducing the compensation from Rs. 9,10,000 to Rs. 8,24,000; However, the aforesaid decree has not been appealed by the defendants. May be the judgment is one but under Section 100 CPC, the appeal is permissible against the decree and therefore, decree passed in Civil Appeal No. 119 of 18th October, 2001 has remained unchallenged and definitely even if the present appeal (which has been filed challenging CA No. 102 of 31st August, 2001) is allowed, it will amount to passing of contradictory decrees in the same suit.

(18) Although the questions as raised by the appellants do not arise in the impugned decree and the same would have arisen in appeal No. 119 of 18th October, 2001 but under Order 41 Rule 33 CPC, the Lower Appellate Court has the power to pass or make such further order or decree which ought to have been passed in favour of a party although such party may have not filed any appeal where two or more decrees are passed in one suit in respect of any of the decree. In view of the aforesaid provisions of Order 41 Rule 33 CPC and the fact that one composite judgment was passed in both the appeals (i.e. CA No. 102 of 31st August, 2001 and 119 of 18th October, 2001 before the Lower Appellate Court) this Court now proceeds to examine the arguments raised by the defendant-appellants in support of their case.

(19) The first argument of the learned counsel for the appellants that the jurisdiction of the civil court is barred under Sections 13 and 15 of the Act is erroneous. Learned counsel for the Union of India laid emphasis on the contention that only the Railway Claims Tribunal has the jurisdiction to award compensation in respect of railway accidents under Section 13 of the Act the jurisdiction of the civil court is absolutely barred under the

provisions of Section 15 of the Act. The learned counsel for the appellants further argued that as per the claim of the plaintiff, he sustained injuries in railway accident, and therefore, he could approach the Railway Claims Tribunal for claiming damages/compensation and his suit for damages/compensation in civil court, is not maintainable as the jurisdiction of the civil court is barred.

(20) Relevant provisions of Section 15 of the Railway Claims Tribunal Act, 1987 (hereinafter called the “Act”) are as under :

**Bar of jurisdiction.**—On and from the appointed day, no court or other authority shall have, or be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in [sub-sections (1) and (1A)] of section 13.

(21) Thus, according to Section 15 of the Act, on and from the appointed day, no court or other authority shall have jurisdiction, in relation to the matters referred to in [sub-sections (1) and (1A)] of section 13 of the Act. Therefore, the questions arises whether the claim of the plaintiff for damages in respect of the injuries sustained by him due to the negligence of Railway employees’ falls within the ambit of Section 13 of the Act or not.

(22) For proper appreciation of the matter Section 13 of the Act are reproduced as under :—

**“13. Jurisdiction, powers and authority of Claims Tribunal.—**

(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act.—

(a) relating to the responsibility of the Railway Administrations as carriers under Chapter VII of the Railways Act in respect of claim for—

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a Railway Administration for carriage by railway;

- (ii) compensation payable under section 82A of the Railway Act or the rules made thereunder; and
- (b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a Railway Administration to be carried by railway.

[(1A)] The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the Railway Administration under section 124A of the said Act or the rules made thereunder.]

(2) The provisions of the [Railways Act, 1989 (24 of 1989)] and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.”

(23) A plain reading of the aforesaid provisions of Section 13 of the Act shows that the Railway Claims Tribunal shall exercise jurisdiction relating to the responsibility of Railway Administration as carriers in respect of claim of compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to Railway Administration for carriage of railway; compensation under section 82-A of the Railway Act or the rules made thereunder and in respect of the Claims for refund of fares. Thus, it is clear that under Section 13 of the Act, the Railway Claims Tribunal has jurisdiction only for matters when the responsibility of the Railways Administration as carriers is involved.

(24) It is also relevant to state that Section 82-A of the Railway Act only deals with liability of Railway Administration in respect of accident to trains carrying passengers which reads as under :—

**Section 82-A of the Railways Act :—**

**“Liability of railway administration in respect of accidents to trains carrying passengers.—(1) When in the course of working an accident occurs, being either a collision between**

trains of which one is a train carrying passengers, or the derailment of other accidents to a train or any part of a train, carrying passengers, 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 person who has been injured or has suffered loss to maintain an action and recover damage in respect thereof, the railway administration shall, notwithstanding any other provision of law to the contrary be liable to pay compensation to the extent set out in sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods owned by the passenger and accompanying the passenger in his compartment or on the train sustained as a result of such accident.

(25) It may be relevant to state here that the above referred provisions of the Railways Act have been substituted by Section 124 of the aforesaid Act which is as under :—

**Extent of Liability.**—When in the course of working a railway, an accident occurs, being either 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, 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 has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

(26) It is crystal clear from the language of old and new provisions the Railway Act that it relates to liability of Railway Administrations when in the course of working the railway accident occurs being either a collision between trains of which one is a train carrying passengers or the derailment of or other accidents to a train or any part of a train carrying passengers, to pay compensation for loss caused by death of passenger dying as a result of accident and for personal injury and loss, destruction or deterioration of animals or goods, owned by passengers and accompanying the passengers in his compartment. In **Retnakar Tanbari Itankar versus Union of India (3)**, it was held by the Hon'ble Bombay High Court that the Railway Claims Tribunal is a Tribunal of limited and specified jurisdiction and it can exercise jurisdiction and power as conferred upon it under the said Act only Section 13(1) of the Act provides for jurisdiction power and authority of the claims Tribunal and by virtue of the express provisions contained in Section 15 thereof the jurisdiction of the Civil Court or any other authority is barred only in regard to the matters specified in Section 13(1). Therefore, in regard to the matters other than matters covered by Section 13(1) of the Act, the Civil Court has jurisdiction to entertain the Civil Suit. It was further held that the accident in which passenger fell out of the bogie of the train and dies on being caught, between the platform and the running train, is not cognizable by the Claims Tribunal as the accident in question is not an accident to the train within the meaning of Section 82-A of the Railway Act and does not fall in sub clause (ii) of Section 13(1) of the Act.

(27) It is worth pointing out that no passenger train was involved in the accident. The Plaintiff was not travelling as a passenger in the train at the time of accident. The plaintiff has not claimed any damages or compensation arising out of the responsibility of Railway Administration as carriers. The plaintiff claimed damages in respect of the injuries sustained by him on account of negligence of Railway employees as the bogies of the shunting goods train hit him. Therefore, the case of the plaintiff does not fall within the purview of Section 82-A and Section 124 of the Railways Act and other clauses of Section 13(1) of the Act

(28) The judgment in **Smt. Nridhaniya Devi versus Union of India** (4) cited by the learned counsel for the appellants is not applicable to the facts and circumstances of the case. In this case, the bus in question was hired by the Railways for carrying the passengers which met with an accident with another vehicle. The question arose whether the bus would be deemed to be included in the vehicles of the Railways as defined under Section 2(31) (e) of the Act for the purpose of grant of compensation under the provisions of Section 124 of the Railways Act and it was held that an accident which had taken place between the bus which is hired by the Railways with another bus, it would be called a railway accident and a person travelling in a bus hired by Railways when died as a result of such accident, his legal representative would be entitled to the grant of compensation as provided under Section 124 of the Act. Thus, the aforesaid judgment, in no way holds that jurisdiction of the Civil Court is barred in a case where a person has suffered multiple injuries because of the gross negligence of the employees of the Railways. Similarly, the judgment of the Hon'ble Supreme Court of India in **Sabitri Sahoo versus Union of India** SLP(C) No. 22919 of 2002 is of no help to the appellants because the question for consideration before the Hon'ble Apex Court was whether the amount of compensation laid down in the Railway Accident (Compensation) Rules, 1990 is to be the compensation which must be granted or the Court has the discretion to grant lower compensation.

(29) The jurisdiction of the Civil Courts is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. The mere fact that a special Statute provides for certain remedies, may not by itself necessarily exclude the jurisdiction of the Civil Courts to deal with a case brought before it in respect of some of the matters covered by the said Statute. Section 9 of the CPC provides that the Civil Court shall try all suits of civil nature subject to pecuniary jurisdiction, unless their cognizance is expressly or by necessary implications is barred. There is no express provision in the Railway Claims Tribunal Act, 1987 or the Railways Act, 1989 which bars the jurisdiction on the Civil Court, except the matters covered under Section 13 and 15

of the Railways Claims Tribunal Act, 1987. Thus, the first question of law as raised by the defendant-appellants is answered against them and it is held that the Civil Court has the jurisdiction to try the present case.

(30) Question No. 2 was not raised by the appellants in their pleadings and therefore, the same cannot be allowed to be raised at this stage as held by the Hon'ble Apex Court in **Bachhaj Nahar versus Nilima Mandal and another (5)**, Similarly, issue No. 5 with regard to the limitation was not pressed by the defendant-appellants before the trial Court which amounted to waiver, and therefore, the same cannot be allowed to be raised in the present appeal. Thus, questions No. 2 and 4 as raised by the appellants do not arise in this appeal.

(31) The other argument of the appellants that the plaintiff-respondent was not entitled to any compensation as injuries were suffered by him due to his own negligence is also liable to be rejected. Both the Courts below on appreciation of evidence available on record have recorded a concurrent finding of fact that the plaintiff-respondent suffered multiple injuries due to gross-negligence of the employees of the railways. In the pleadings, the defendant-appellants had taken a plea that at the time of accident level crossing gate was closed for road traffic and the plaintiff himself was negligent. However, to prove this assertion, the defendant-appellants came with the version that the plaintiff was going on scooter which dashed into the shunting train because of the negligence of the plaintiff-respondent himself. The aforesaid evidence of the appellants is beyond pleadings and therefore, the same was rightly rejected by the Courts below. Even otherwise, the question whether the plaintiff-respondent suffered injuries due to his own negligence or due to the negligence of the appellants is a question of fact and therefore, question No. 3 does not arise.

(32) For the reasons recorded above, I find no merit in this appeal.

(33) Dismissed.

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**R.N.R.**