IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
FIRST APPEAL NO.116 OF 2022

Smt. Ratta wd/o Subhash Meshram
Aged 62 years, Occ. Husehold, R/o Ward No. 5,
Kating Tola, Aawalajhari, Bharweli, Balaghat, M.P..... Appellant
Versus
The Union of India, through its General Manager
South East Central Railway, Bilaspur, C.G. .... Respondent

Ms. S.G. Barbate, Advocate for the Appellant.
Shri. S.A. Chaudhari, Advocate for the Respondent.

CORAM : M.S. KARNIK, J.
RESERVED ON : MAY 05, 2022
PRONOUNCED ON : MAY 13, 2022

JUDGMENT :

1. The appellant – Smt. Ratta Subhash Meshram (hereinafter referred to as 'Ratta' for short) has preferred this appeal u/s.23 of the Railways Claim Tribunal Act, 1987 challenging the Judgment dated 08.02.2021 passed by the Member, Railway Claim Tribunal, Nagpur Bench, Nagpur (hereinafter referred to as 'the Tribunal' for short). The Tribunal by the impugned judgment has dismissed the claim application of Ratta for compensation.

2. The facts of the case pleaded in the claim application filed before the Tribunal are thus:-

Ratta's son – Ravindra Subhash Meshram was traveling on 14.05.2018 by Train No.22512, Kamakhya Express from Gondia to Kamptee as a bonafide passenger on valid journey ticket

No.49882389 dated 14.05.2018. While traveling in general compartment, Ravindra was standing near the door of the said train as the train was over-crowded. Due to heavy rush and sudden jerk, Ravindra lost his balance and fell down from the running train at Tumsar Road railway station yard, Line No.4 and died on the spot. It is pleaded that the deceased was bonafide passenger and he died in an untoward incident, hence, Ratta- the mother of Ravindra, being a dependent is entitled for compensation as per Section 124-A of the Railways Act, 1989 ("Railways Act", for short).

3. Learned counsel for Ratta, assailing the impugned judgment, contends that Ravindra had a valid journey ticket and therefore, the Tribunal was in error in coming to the conclusion that Ravindra was not a bonafide passenger. She further submitted that the death of Ravindra was on account of fall from the train due to sudden jerk and hence Ravindra is entitled to compensation as Ravindra died in an incident which can be termed as an 'untoward incident' within the meaning of clause (c)(2) of Section 123 of the Railways Act. According to her, the Tribunal is not justified in holding that Ratta was not able to discharge her burden that Ravindra died on account of untoward

incident.

4. The respondent – Union of India through the General Manager, South East Central Railway, Bilaspur, C.G. (hereinafter referred to as 'the Railway' for short) denied the averments made in the claim application filed by Ratta. Railway denied that Ravindra was a bonafide passenger. It is further denied that Ravindra died in an untoward incident. Railway pleaded that Ravindra died due to his own criminal and negligent act and the accident is a fall out of a self-inflicted injury. According to Railway, the deceased committed suicide and therefore, it is not liable to pay compensation to Ratta. It is further submitted that the incident is not an untoward incident. It is pleaded that Railway is not responsible for the death of Ravindra and hence denied its liability to pay compensation.

5. Learned counsel for the Railway argued in support of the findings in the impugned judgment. According to him, the train did not have a scheduled halt at Kamptee railway station and hence Ravindra cannot be said to be a bonafide passenger as his railway ticket was only upto Kamptee. Learned Counsel submits that Ravindra purposely boarded a wrong train to reach home faster. He further submitted that the incident in question is a

result of a self-inflicted injury, as Ravindra tried to de-board a running train which did not have a scheduled halt at Kamptee. Learned counsel invited my attention to the findings of the Tribunal in support of his submissions.

6. The Tribunal for the reasons recorded in the impugned Judgment dismissed the claim application. The Tribunal in answer to issue No.1, held that Ratta is a dependent of Ravindra within the meaning of clause (b) of Section 123 of the Railways Act. The Tribunal in answer to issue No.2, held that Ravindra was not a bonafide passenger as he had no valid journey ticket. Further in answer to Issue No.3, the Tribunal held that the accident was a result of self-inflicted injury which falls under Clause (b) to proviso to Section 124A of the Railways Act, according to which, Railway is not liable to pay compensation.

7. I have heard learned counsel for 'Ratta' and learned counsel for the railway. Perused the pleadings, the impugned order and the relevant record.

8. Ravindra boarded Kamakhya Express at Gondia Railway Station on 14.5.2018. Ravindra had a journey ticket dated 14.05.2018 from Gondia to Kamptee. Kamakhya Express has no scheduled halt at Kamptee railway station. It is the claim of

Ratta that Ravindra fell down from the running train at Tumsar railway station due to heavy rush and sudden jerk. On the other hand, it is the case of railway that as the train does not have a stop at Kamptee railway station, Ravindra tried to alight from a running train at Tumsar railway station. That Ravindra was travelling by Kamakhya Express is not denied.

9. The Railways Act, 1989, prior to the insertion of Section 124-A w.e.f. 01.08.1994, already contained a provision defining “passenger” in clause (29) of Section 2 therein. As per this definition, “passenger” means a person travelling with a valid pass or ticket. This definition presupposes that a person who undertakes a journey must travel with a valid ticket or pass. The corollary is that if such person undertakes travel without a valid pass or ticket cannot be regarded as a “passenger” in terms of clause (29) Section 2 of the Railways Act. Chapter III of the Railways Act contains provisions regarding carriage of passengers. Section 55 is a prohibition against travelling without pass or ticket. Sub-section (1) of Section 55 provides that no person shall enter or remain in any carriage of a Railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket. Section 55 clearly prohibits

travelling without pass or ticket. Sub-Section (1) of Section 55 leaves no scope for any ambiguity. To put it differently, for a person to enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger, he must have with him a proper pass or ticket. It is implicit that if such person enters or remains in the carriage for the purpose of travelling therein as a passenger, it is not enough for such person to have any pass or ticket but must have a proper pass or ticket. At this stage it is pertinent to note that clause (2) of the definitions contained in Section 2 of the Railways Act defines “carriage” means the carriage of passengers or goods by a railway administration. The consequences of travelling or attempting to travel without proper pass or ticket are provided in Chapter XV of the Railways Act under the heading penalties and offences.

10. When the definition of 'passenger' as per clause (29) of the definition in Section 2 of the Railways Act is so clear and unambiguous, what then was the intent of the legislation in providing for an Explanation of the term “passenger” for the purposes of section 124-A. The liability of the Railway Administration for death and injury to passenger is provided under Chapter XIII. The extent of liability in the course of working

a railway is provided under Section 124 of the Railways Act. The definition of “untoward incident” for the purpose of Chapter XIII was inserted by Act 28 of 1994 w.e.f. 1-8-1994. Section 124-A providing for compensation in an untoward incident also came to be inserted by Act 28 of 1994, w.e.f. 1-8-1994.

11. Clause (c) of Section 123 defines “untoward incident”. It reads as under:

> “**(c) “untoward incident” means—**
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> (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
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> (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 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 by me)

12. The accidental falling of any passenger from a train carrying passengers came to be included within the meaning of “untoward incident” defined by clause (c) of Section 123 of the

Railways Act. Section 124-A which provides for compensation on account of “untoward incident” reads thus:

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

13. If the explanation to Section 124-A is analysed as it is, for the purpose of Section 124-A, the ingredients necessary to be fulfilled for being a passenger within the ambit of clause (ii) of the Explanation are :

(a) a person must have purchased a valid ticket for travelling;
(b) by a train carrying passengers on any date;
(c) or a valid platform ticket;
(d) and becomes a victim of an untoward incident.

14. Before proceeding further, at this juncture, let me test if in the present case Ravindra can be said to be a passenger within the meaning of the term 'passenger' for the purpose of Section 124-A. Ravindra purchased a valid ticket for travelling; the ticket was for travelling by a train carrying passengers on the given date; he became a victim of an untoward incident (that he is a victim of 'untoward incident' is dealt with by me in the later part of the judgment). Considered from this point of view, as Ravindra

satisfies the test of a passenger in terms of the Explanation, he can be regarded as a passenger within the meaning of Clause (ii) of the Explanation to Section 124-A of the Railways Act.

15. The point raised by learned Counsel for railway is that Ravindra did not have the train specific ticket for the train in which he was travelling i.e. Kamakhya Express, and in any case he did not have a proper ticket beyond the authorised distance as the train has no scheduled halt at Kamptee Railway Station. Ravindra had a ticket from Gondia to Kamptee. The contention of railway is that the person travelling must have a valid ticket of the particular train in which he is travelling and becomes a victim of untoward incident to claim compensation u/s. 124-A.

16. The compensation on account of untoward incident is paid to provide some solace to the passenger who has been injured or the dependent of the passenger who has been killed in the course of working a railway in an untoward incident. In my opinion, Section 124-A of the Railways Act being a beneficial legislation, should be given liberal and not a literal or strict interpretation. This being a welfare provision, must of necessity, receive a broad interpretation.

17. As indicated earlier, Section 55 prohibits any person from travelling without valid ticket or pass. Sub-section (1) of Section 55 prohibits a person from entering or remaining in a carriage of a railway for the purpose of travelling therein as a passenger unless he has with him a proper ticket. The passenger for the purpose of Section 55 of the Railways Act is the one who is defined by clause (29) of Section 2. Thus, for a person to enter or remain in a carriage as a passenger, he must have a proper ticket. If the intention of the legislature were to be that the benefit of Section 124-A, is to be given only to a passenger who may enter or remain in a carriage on the railway with a valid ticket, there was no need to have expanded the term ‘passenger’ for the purpose of section 124-A of the Railways Act. The definition of passenger in clause (29) of Section 2 was sufficient in that case, if at all the intent was to provide compensation under section 124-A only to the passenger having a valid ticket to enter or remain in a carriage. If the explanation to section 124-A is seen, the term ‘passenger’ for the purpose of Section 124-A includes a person, who has purchased a valid ticket for travelling, by a train carrying passengers on any day and becomes of a victim of untoward incident. Even a person who

has purchased a valid platform ticket and becomes a victim of an untoward incident is covered by the term ‘passenger’ for the purposes of section 124-A. The liability to pay compensation under section 124-A is based on the concept ‘no fault theory’ as held by the Supreme Court in case of **Union of India Vs. Rina Devi reported in (2019) 3 Supreme Court Cases 572.**

18. In the present case, Ravindra purchased a valid ticket for travelling from Gondia to Kamptee. Ravindra boarded a train which did not have a scheduled halt at Kamptee, nonetheless he boarded a train carrying passengers. On the date of the journey, Ravindra became a victim of an untoward incident. The intention of legislature is benevolent as can be seen from the expression 'passenger' used in the explanation for the purposes of Section 124-A, in comparison with the term ‘passenger’ used in clause (29) of section 2 of the Railways Act for the purposes other than Section 124-A. It is obvious that the legislature wanted to bring within the sweep of the term ‘passenger’ for the purposes of Section 124-A, a much wider category of persons who become victims of untoward incidents.

19. Keeping the facts of this case aside, it is common knowledge that the passengers, having valid journey ticket

bonafide board a wrong train under some mistaken impression; illiteracy and panic leads a passenger holding a valid travel ticket to board a wrong train; of course the possibility of purposely boarding a wrong train for convenience without a proper ticket cannot be ruled out.

20. The underlying object of Section 124-A is to compensate a bonafide passenger holding a valid journey ticket if he becomes a victim of an untoward incident. The proviso to Section 124-A has carved out circumstances under which the passenger is not entitled for compensation. Ravindra's case does not come within the proviso to Section 124-A.

21. In such view of the matter, I have no hesitation in holding that Ravindra who purchased a valid ticket for travelling, by a train carrying passenger and became a victim of an untoward incident cannot be deprived of the compensation which a passenger is entitled to under Section 124-A of the Railways Act, merely because he did not have a valid ticket beyond Kamptee railway station where the train does not have a scheduled halt. Accordingly, I hold Ravindra to be a 'passenger' within the meaning of clause (ii) of the explanation to Section 124-A of the Railways Act.

22. Now, in the context of Section 124-A, the concept of strict liability or no fault liability came up for consideration before the Supreme Court in the case of ***Rina Devi (supra).*** Relevant for the decision in the present facts, a profitable reference needs to be made to Para 20 to 25 of the decision in Rina Devi (supra) which reads as under:-

> *20. From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and 124-A provide that compensation is payable whether or not there has been been wrongful act, neglect or fault on the part of the Railway Administration in the case of an accident or in the case of an "untoward incident". Only exceptions are those provided under proviso to Section 124-A. In Prabhakaran Vijaya Kumar it was held that Section 124-A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in Jameela.*
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> *21. Coming to the proviso to Section 124-A to the effect that no compensation is payable if passenger dies or suffers injury due to the situations mentioned therein, there is no difficulty as regards suicide or attempted suicide in which case no compensation may be payable. Conflict of opinions in High Courts has arisen on understanding the expression "self-inflicted injury" in the proviso. In some decisions, it has been held that injury or death because of negligence of the victim was on a par with self-inflicted injury. We may refer to the decisions of the decisions of the High Courts of Kerala in Joseph P.T., Bombay in Pushpa and Delhi in Shyam Narayan on this point.*
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> *22. In Joseph P.T., the victim received injuries in the course of entering a train which started moving. Question was whether his claim that he had suffered injuries in an*

“untoward incident” as defined under Section 123-A clause (c) could be upheld or whether he was covered by proviso to Section 124-A clause (b). The High Court held that while in the case of suicide or attempt to commit suicide, intentional act is essential. Since the concept of “self-inflicted injury” is distinct from an attempted suicide, such intention is not required and even without such intention if a person acts negligently, injuries suffered in such an accident will amount to “self-inflicted injury”. Relevant observations are : (SCC OnLine Ker para 24)

Therefore, the two limbs of the proviso should be construed to have two different objectives to be achieved. We can understand the meaning of the term “self-inflicted injury” not only from the sources provided by the dictionaries, but also from the context in which it is used in the statute. The term “self-inflicted injury” used in the statute can be deduced as one which a person suffers on account of one’s own action, which is something more than a rash or negligent act. But it shall not be an intentional act of attempted suicide. While there may be cases where there is intention to inflict oneself with injury amounting to self-inflicted injury, which falls short of an attempt to commit suicide, there can also be cases where, irrespective of intention, a person may act with total recklessness,in that, he may throw all norms of caution to the wind and regardless of his age, circumstances, etc. act to his detriment. Facts of this case show that the appellant attempted to board a moving train from the offside unmindful of his age and fully aware of the positional disadvantage and dangers of boarding a train from a level lower than the footboard of the train. It is common knowledge that the footboard and handrails at the doors of the compartment are designed to suit the convenience of the passengers for boarding from and alighting to the platform. And at the same time, when a person is trying to board the train from the non-platform side, he will be standing on the heap of rubbles kept beneath the track and that too at a lower level. Furthermore, he will have to stretch himself to catch the handrails and struggle to climb up through the footboard hanging beneath the bogies. The probability of danger is increased in arithmetic progression

when the train is moving. Visualising all these things in mind, it can only be held that the act of the appellant was the height of carelessness, imprudence and foolhardiness. It is indisputable that the purpose of Section 124-A of the Act is to provide a speedy remedy to an injured passenger or to the dependents of a deceased passenger involved in an untoward incident. Section 124-A of the Act provides for compensation to a passenger or his dependents who suffers injury or death, as the case may be, 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. To this extent, it can be said to be a no-fault liability. Even though the provisions relating to payment of compensation in the Act can be said to be a piece of beneficial legislation, it cannot be stretched too much to reward a person who acts callously, unwisely or imprudently. There is no provision of law brought to our notice permitting the passengers to entrain from the non-platform side of the railway track. However, the counsel for the respondent did not show any provision of law prohibiting the same. The question whether an act by which a passenger sustains injury while boarding a train through the offside, is a self-inflicted injury or not depends on the facts of each case. Merely because a person suffered injury in the process of getting into the train through the offside, is a self-inflicted injury or not depends on the facts of each case. Merely because a person suffered injury in the process of getting into the train through the offside, it may not be sufficient to term it as a self-inflicted injury, unless the facts and circumstances show that his act was totally imprudent, irrational, callous and unmindful of the consequences. All the facts and circumstances established in this case would show that the act of the appellant was with full knowledge of the imminent possibility of endangering his life or limb and, therefore, it squarely comes within the term "self-inflicted injury" defined in Section 124-A proviso (b) of the Act." (emphasis supplied)

23. In Pushpa a hawker died in the course of boarding a train. It was held that he was not entitled to compensation as it was a case of "self-inflicted injury". The relevant

observations are: (SCC OnLine Bom para 14)

"Such an attempt by a hawker has been viewed by the trail court as something amounting to criminal negligence on his part and also an effort to inflict injuries to himself. The trial court reasoned that if the deceased had to sell his goods by boarding a train, he should have ensured to do so only when it was quite safe for him to get on to the train or otherwise he could have avoided catching the train and waited for another train to come. It also hinted that there was absolutely no compulsion or hurry for the deceased in the present case to make an attempt to somehow or the other board the train while it was gathering speed."

24. In Shyam Narayan, same view was taken which is as follows: (SCC OnLine Del para 7)

"I cannot agree with the arguments urged on behalf of the appellant applicants in the facts of the present case because there is a difference between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, self-inflicted injury, bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity."

25. We are unable to uphold the above view as the concept of "self-inflicted injury" would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on "no fault theory". We may in this connection refer to the judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on "no fault theory" under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury

in the course of boarding or de-boarding a train will be an "untoward incident" entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.

(emphasis supplied by me)

23. Their Lordships in ***Rina Devi's case (supra)*** explained the concept of "self-inflicted injury". It is held that the principle of contributory negligence cannot be invoked in the case of liability based on "no fault theory". Their Lordships accordingly held that death or injury in the course of boarding or de-boarding a train will be an "untoward incident" entitling a victim to compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of victim as a contributing factor.

24. In view of the dictum of the Hon'ble Supreme Court in Rina Devi's case (cited supra) I need not delve any further on the plea of the railways that no compensation is payable in view of proviso (b) to Section 124A of the Railways Act.

25. The Tribunal proceeded on the footing that Ravindra died due to a self-inflicted injury within the meaning of proviso (b) to Section 124A of the Railways Act. Such finding of the Tribunal is in the teeth of the decision in ***Rina Devi's case (supra)***.

The Tribunal relied upon the decision of this Court in the case of ***Fakira s/o Mangal Gautel v/s. Union of India in F.A.No.406 of 2002*** in support of its conclusion that Ravindra is not entitled for compensation as the train had no halt at the station where the appellant tried to de-board. The decision of the Supreme Court in ***Rina Devi (supra)*** binds me. The decision in ***Fakira s/ o. Mangal Gautel (supra)*** was rendered much before the decision in ***Rina Devi***", and therefore does not now apply.

26. It is relevant to refer to the findings of the Tribunal which are reproduced as under:

> "The evidence placed on record, oral and documentary by the respondent and the applicant clearly established that it was a case of fall while making unsuccessful attempt for alighting from a running train. It is not a case where the deceased had accidental fall while trying to alight the train which is halting at the station. I find force in the arguments of respondent that the act of the deceased was totally imprudent, irrational, callous and unmindful for the consequences.
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> The fact that Ravindra s/o Subhash Mesharam died, on account of an untoward incident, must be proved by the applicant in order to claim compensation under Section 124-A of the Railways Act. The applicant has not been able to discharge her burden in this respect. On the other hand, respondent has a force of argument that death of the deceased is self-inflicted injury and fall under the proviso of Section 124 A (b) of the Railway Act, according to which no compensation shall be payable by the railway administration. It, therefore, can be concluded that the deceased was neither a bona fide passenger nor involved in

an untoward incident as defined in Section 123 (c)(2) of the Railways Act. This issue, stand decided accordingly against the applicant."

27. In my opinion, the finding of the Tribunal is erroneous in view of the law laid down by Their Lordships in ***Rina Devi (supra)***. Ravindra tried to de-board a running train which did not have a scheduled halt at Tumsar. At the highest this act on the part of Ravindra may be regarded as a negligence of a particular degree. The Supreme Court has held that death or injury in the course of boarding or deboarding a train will be an “untoward incident” entitling a victim to the compensation and will not fall under the proviso (b) to Section 124-A of the Railways Act merely on the plea of negligence of the victim as a contributory factor. There is nothing on record to support the contention of the railway that Ravindra committed suicide. The appeal deserves to be allowed.

28. For the reasons stated above, the impugned judgment cannot be sustained. Hence, the following order:-

ORDER

1. Appeal is allowed.

2. The impugned judgment dated 08.02.2021

passed by the Member, Railway Claim Tribunal, Nagpur Bench, Nagpur in Case No.OA(IIu)/NGP/54/2019 is quashed and set aside.

3. The respondent-Union of India is directed to pay to the appellant a sum of Rs.8,00,000/- (Rupees Eight Lacs only) with interest @ 6% p.a. from the date of accident.

4. The said amount shall be deposited in the account of the appellant – Smt. Ratta wd/o Subhash Meshram, after verifying the identity within a period of three months from today.

5. No order as to costs.

(M.S. KARNIK, J.)