

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.1205 OF 2019

- 1 Smt. Kusumtai w/o Purbha Gaikwad,
Age 43 yrs., Occ. Household,
R/o Kudla Bolsa, Tq. Umri,
Dist. Nanded.
- 2 Surendra Purbha Gaikwad,
Age 27 yrs., Occ. Education,
R/o as above.
- 3 Virendra Purbha Gaikwad,
Age 25 yrs., Occ. Education,
R/o as above.
- 4 Shailendra Purbha Gaikwad,
Age 23 yrs., Occ. Education,
R/o as above.

... **Appellants.**

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellants

Mr. S.S. Rathi, Advocate for the respondent

...

FIRST APPEAL NO.345 OF 2019

- 1 Sahajadibegum w/o Shaikh Mulana,
Age 49 yrs., Occ. Household,
R/o Chikna, Tq. Dharmabad,
Dist. Nanded.
- 2 Shaikh Mobin Shaikh Mulana,
Age 28 yrs., Occ. Labour,
R/o as above.

... **Appellants.**

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellants

Mr. S.S. Rathi, Advocate for the respondent

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FIRST APPEAL NO.346 OF 2019

- 1 Sushma Chandrakant Desai,
Age 32 yrs., Occ. Housewife,
R/o Chudva, Tq. Purna,
Dist. Parbhani.
- 2 Shreya d/o Chandrakant Desai,

Age 12 yrs., Occ. Nil,
R/o as above.

- 3 Ganesh Chandrakant Desai,
Age 08 yrs., Occ. Nil,
R/o as above.
(Appellant Nos.2 and 3 are minor, U/G
of their natural mother appellant No.1)
- 4 Gangadhar Dhondaji Desai,
Age 76 yrs., Occ. Nil,
R/o as above.
- 5 Subhadra w/o Gangadhar Desai,
Age 65 yrs., Occ. Household,
R/o as above.

... **Appellants.**

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellants
Mr. M.N. Navandar, Advocate for the respondent

...

FIRST APPEAL NO.347 OF 2019

- 1 Sandhya w/o Gangadhar Hatode,

Age 31 yrs., Occ. Household,
R/o Ambedkar Nagar, Kundalwadi,
Tq. Biloli, Dist. Nanded.

2 Vaibhav Gangadhar Hatode,
Age 08 yrs., Occ. Nil,
R/o as above.

3 Snehal Gangadhar Hatode,
Age 06 yrs., Occ. Nil,
R/o as above.

(Appellant Nos.2 and 3 are minor, U/G
of their natural mother i.e. appellant No.1)

4 Gangubai Urba Hatode,
Age 50 yrs., Occ. Household,
R/o as above.

... **Appellants.**

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellants
Mr. M.N. Navandar, Advocate for the respondent

...

FIRST APPEAL NO.370 OF 2019

1 Ranjana wd/o Amol Mundhe,
Age 26 yrs., Occ. Household,
R/o Nichapur, Tq. Kinwat,
Dist. Nanded.

2 Shruti d/o Amol Mundhe,
Age 05 yrs., Occ. Household,
R/o as above.

(Appellant No.2 is minor and U/G
of her natural mother i.e. appellant No.1)

3 Latabai w/o Shalikrao Mundhe,
Age 53 yrs., Occ. Nil,
R/o as above.

... **Appellants.**

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellants

Mr. S.S. Rathi, Advocate for the respondent

...

FIRST APPEAL NO.813 OF 2019

1 Datta Somla Rathod,
Age 41 yrs., Occ. Labour,

R/o 127, Dhanora, Tq. Kinwat,
Dist. Nanded.

- 2 Mrs. Sangeeta w/o Datta Rathod,
Age 36 yrs., Occ. Household,
R/o as above.

... **Appellants.**

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellants
Mr. M.N. Navandar, Advocate for the respondent

...

FIRST APPEAL NO.815 OF 2019

- 1 Smt. Dhurpatatai w/o Piraji Kamble,
Age 48 yrs., Occ. Household,
R/o Bondhadi, Tq. Kinwat,
Dist. Nanded.
- 2 Sikander Piraji Kamble,
Age 23 yrs., Occ. Nil,
R/o as above.
- 3 Priyanka d/o Piraji Kamble,
Age 21 yrs., Occ. Household,

R/o as above.

... **Appellants.**

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellants
Mr. M.N. Navandar, Advocate for the respondent

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FIRST APPEAL NO.1206 OF 2019

- 1 Smt. Shamlabai w/o Shahebrao Kadam,
Age 48 yrs., Occ. Household,
R/o Limgaon, Tq. & Dist. Nanded
- 2 Arjun Sahebrao Kadam,
Age 33 yrs., Occ. Service,
R/o Sy.No.53/2/1, Netaji Nagar,
Road No.2, Near Katepuram Chowk,
Pimple Gurav, Pune.
- 3 Mrs. Sandhya Dnyaneshwar More,
Age 32 yrs., Occ. Household,
R/o Behind Hanuman Temple,
Post Islampur, Tq. Kinwat,
Dist. Nanded.

... **Appellants.**

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellants

Mr. S.S. Rathi, Advocate for the respondent

...

FIRST APPEAL NO.1220 OF 2019

1 Smt. Sonutai w/o Ananda Dhage,
Age 25 yrs., Occ. Labour,
R/o Abdulpura, Tq. Umri,
Dist. Nanded.

2 Krushna Ananda Dhage,
Age 08 yrs., Occ. Nil,
R/o as above.

3 Ishwari d/o Ananda Dhage,
Age 07 yrs., Occ. Nil,
R/o as above.

(Appellant Nos.2 and 3 are minor and U/G
of their natural mother i.e. appellant No.1)

4 Bhujang Waghaji Dhage,
Age 63 yrs., Occ. Labour,
R/o as above.

- 5 Mrs. Ahilyabai w/o Bhujang Dhage,
Age 59 yrs., Occ. Household,
R/o as above.

... Appellants.

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... Respondent.

...

Mr. P.S. Agrawal, Advocate for the appellants

Mr. S.S. Rathi, Advocate for the respondent

...

FIRST APPEAL NO.1221 OF 2019

Shaikh Salim Shaikh Kasim,
Age 27 yrs., Occ. Nil,
R/o Bagmar Galli, Mukhed,
Tq. Mukhed, Dist. Nanded.

... Appellant.

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellant

Mr. V.D. Soman, Advocate for the respondent

...

FIRST APPEAL NO.2606 OF 2019

- 1 Faridabee Shaikh w/o Shaikh Riyaz,
Age 34 yrs., Occ. Housewife,
R/o Bhabhulgaon, Tq. Wasmal,
Dist. Hingoli,
- 2 Sk. Amin s/o Shaikh Riyaz,
Age 14 yrs., Occ. Education,
R/o as above.
- 3 Sk. Aayan s/o Shaikh Riyaz,
Age 09 yrs., Occ. Education,
R/o as above.
- 4 Sk. Fayaj s/o Shaikh Riyaz,
Age 12 yrs., Occ. Education,
R/o as above.

(Appellant Nos.2 to 4 are minor and U/G
of their natural mother i.e. appellant No.1)

- 5 Shaikh Bismilla s/o Nabi,
Age 68 yrs., Occ. Nil,
R/o as above.

... **Appellants.**

... **Versus** ...

Union of India,
Through General Manager,
South Central Railways,
Secunderabad.

... **Respondent.**

...

Mr. P.S. Agrawal, Advocate for the appellants

Mr. S.S. Rathi, Advocate for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 4th AUGUST, 2019

PRONOUNCED ON : 9th OCTOBER, 2019

JUDGMENT :

1 The point involved in all these appeals is, as to whether the Railway Claims Tribunal was justified in awarding interest only on an amount of Rs.4,00,000/- from the date of the application till actual realization of the entire amount, when the statutory amount of compensation, that was granted, was Rs.8,00,000/-.

2 All these appeals have been filed by original claimants challenging the above said part of the Judgment and Award passed by the learned Railway Claims Tribunal at Nagpur in respective petitions. All the

claimants had filed application Section 124 A of Indian Railways Act for getting compensation on account of 'untoward incident'. All the petitions were allowed. It is to be noted that in all the petitions the date of accident was of prior to Notification issued by the Government enhancing the compensation in the Schedule itself. The said Notification in the form of amendment to the Schedule came into operation on 01.01.2017. In respect of compensation for death the amount has been increased from Rs.4,00,000/- to Rs.8,00,000/-, whereas, as regards the injury claims are concerned, the amount has been increased, taking into consideration the injury sustained. In all these appeals, the learned Railway Claims Tribunal has granted interest @ 6% per annum, on the amount which was before the Notification as compensation i.e. Rs.4,00,000/-, but for the enhanced statutory amount interest (which comes to Rs.4,00,000/- more) has not been awarded and therefore, these appeals have been filed claiming interest, on the entire amount of the compensation.

3 Heard learned Advocate Mr. P.S. Agrawal for all the appellants and learned Advocate Mr. S.S. Rathi, Mr. M.N. Navandar and Mr. V.D. Soman for respondent in respective appeals.

4 The learned Advocate appearing for the appellants submitted that as per the Rule 3 of the Schedule to Railway Accidents and Untoward

Incidents (Compensation) Rules 1990, the amounts have been fixed in respect of 'untoward incident'. Amount of compensation in case of death is Rs.4,00,000/- as prescribed in part I, and in part II & III an amount of compensation has been prescribed as per the injury sustained. The said change in the amounts has come into force from 01.01.1997. But thereafter vide Notification dated 22.12.2016 the Schedule has been amended and the amounts were enhanced and as per the said Notification it has come into force from 01.01.1997.

5 By placing reliance on the decision in **N. Parameswaran Pillai vs. Union of India and another, 2002 STPL 6915 SC**, he submitted that Hon'ble Supreme Court after taking into consideration the note of decision in **Rathi Menon vs. Union of India [2001 (3) SCC 714]** allowed the petition and granted interest on the total sum. In that case, on the date of the accident as per the Schedule the compensation for death of a person the heirs were entitled to get Rs.2,00,000/-. However, during the pendency of the petition, the Schedule was amended and the amount of compensation was enhanced to Rs.4,00,000/-. Therefore interest was also awarded on the amount of Rs.4,00,000/-. He, further relied on the decision in **Thazhathe Purayil Sarabi and Ors. vs. Union of India and Anr., AIR 2009 Supreme Court 3098**, wherein it has been held, that the interest can be awarded

either from the date of the claim and from the date principal sum adjudged to be payable and/or awarded. It has been observed -

“Though, there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the date of institution of the proceedings for the recovery of the amount, the other view is that such interest is payable only when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of proceedings for recovery of the dues, where the same is provided for by the terms of the agreement entered into between the parties or where the same is permissible by statute. Accordingly, the order of the Railway Claims Tribunal directing payment of interest on default of the payment of the principal sum within a period of 45 days would not be sustainable. When there is no specific provision for grant of interest on any amount due, the Court and even Tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil P.C..”

Based upon these submissions, it was submitted that the learned Tribunal committed the gross irregularity in not awarding interest as per the pronouncements of the Hon'ble Supreme Court.

6 Per contra, the learned Advocates appearing for the respondents in respective appeals submitted that the crucial date to award compensation would be, when 'untoward incident' had taken place. Upon the said event

the amount of compensation would become 'due and payable' and if that amount is not paid, the interest will have to be paid on that amount only and the amount, if increased than the earlier scheduled amount of compensation, then interest cannot be awarded, on the enhanced amount. In all these cases, the 'untoward incident' in each of the matter had taken place prior to the Notification dated 22.12.2016, that means, even prior to coming into force the said Notification i.e. 01.01.2017. The said amount of compensation became 'due and payable' prior to notification, though their claims have been adjudicated after the notification. Under such circumstance, the learned Railway Claims Tribunal has rightly awarded compensation of Rs.8,00,000/-. In view of the fact that the award has been passed after the Notification had come into force, but for interest it was rightly awarded on the amount of Rs.4,00,000/- only. In order to support their respective contentions, they have relied on the decision in **Union of India vs. Rina Devi, AIR 2018 SC 2362**, wherein the point of liability of the railways to pay compensation was considered. Note was also taken in respect of the two authorities which have been relied by the learned Advocate for the appellant and the law laid down in **Rathi Menon** (supra) has been further explained by observing that, "*Since it has been held that interest is required to be paid, the premise on which **Rathi Menon** (AIR 2001 SC 1333) (supra) is based, has changed, we are of the view that law in the present context should be taken to be that the liability will*

accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable, but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time”.

Further it has been observed, “accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount so prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in **Rathi Menon** (AIR 2001 SC 1333) (*supra*) and **Kalandi Charan Sahoo** (*supra*) stands explained accordingly.”

Further reliance has been placed on the decision in **Union of India vs. Radha Yadav, AIR 2019 Supreme Court 1410**, wherein it has been observed -

“The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of **Rina Devi** (AIR 2018 SC 2362) is very clear. What this Court has laid down is

that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.

All the learned Advocates appearing for respondent, therefore, prayed for dismissal of the appeals.

7 In fact, taking into consideration the decision in **Radha Yadav** (supra); wherein, even it was explained by giving illustration then it can be said that the point is not *res integra*. The interest will have to be calculated on

that basis as explained therein. In all these cases the liability to pay the amount of compensation as against the respondent-Railway had arisen before the amendment was brought in and therefore, the basic figure would be as per the Schedule, as was in existence before the amendment and on such figure reasonable rate of interest would be calculated. Therefore, in these cases, where there is death claim, the interest has been awarded on the amount of Rs.4,00,000/-, which was the basic figure of compensation prior to the amendment in the schedule. As regards the other injury claims are concerned, it would also be charged on the basic figure as per earlier Schedule. None of the appeal has been pointed out, which is against the ratio that has been laid down in **Radha Yadav**, and therefore, there is no merit in the present appeals. The claimants were not entitled to get interest on the amount, which was enhanced in the Schedule that had come into force from 01.01.2017 i.e. entire amount of Rs.8,00,000/-. Hence, all the appeals are dismissed. No order as to costs.

(Smt. Vibha Kankanwadi, J.)