



Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.836 OF 1995**

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| 1. Union of India |] | |
| 2. General Manager, Central Railway, |] | Appellants
(Original Defendant Nos.1 and 2) |
| V.T. Bombay. |] | |

Vs.

- | | | |
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| 1. Smt. Umraobi W/o Saiyed Munir |] | |
| 2. The New India Assurance Co. Ltd. |] | |
| Bombay – 1. |] | |
| 3. Galamhussein Amnjibhai Soudagar |] | Respondents |

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Mr. T.J. Pandian, for Appellants.

None for Respondents.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 10th AUGUST, 2023.

JUDGMENT:

1. This is an appeal by Union of India challenging a judgment and decree passed by III Joint Civil Judge (Senior Division) Nashik on 31st March, 1993 in Special Civil Suit No.8 of 1988 by which respondent's suit came to be decreed against the appellants-original

defendants viz: Union of India, The General Manger, Central Railway, V.T. Bombay, The New India Assurance Company Ltd and Gulamhussein Amanjibhai Saudagar holding that they are jointly and severally liable to pay an amount of Rs.51,000/- as compensation to the respondent-plaintiff on account of loss of life of her son in an accident which occurred on 24th January, 1979 when deceased son of the plaintiff, as a cleaner, was travelling in a truck of which respondent No.3 was the owner which met with an accident while crossing railway level crossing gate between Nashik Road and Odha Railway Station.

2. Briefly stated, the facts are as follows.

3. Deceased Maheboob (for short 'deceased') was required to travel in a truck bearing Registration No. MHS 7493 as a cleaner of which respondent No.3 – Gulamhussein Amanjibhai Saudagar was the owner. He was employed with respondent No.3. The said truck was insured with respondent No.2. On the fateful day of 24th January, 1979, during the course of his employment, deceased was travelling in the said truck loaded with sugarcane from the field of one Namdeo Rambhau Pekhale which was situated at Odha. From

Madsangvi to the field via Nashik by Aurangabad Highway, one had to cross Railway Level Crossing gate which was between Nashik Road and Odha Railway station. The said truck was being driven by one Mohamed Amanjibhai Saudagar who was also employed with respondent No.3.

4. The truck was required to cross one railway level crossing gate at 197/57 k.m between Nashik Road and Odha Railway Station. At about 8.30 p.m, when the truck was about to cross railway crossing gate, one light engine belonging to Central Railway was crossing from Odha side towards Nashik Road Railway Station in a reverse direction. The engine suddenly dashed against the said truck which got completely crushed beneath the said engine. The deceased died two years after the accident, in a hospital.

5. The gate of the level crossing was open for road traffic when the truck was crossing the railway track. There was no indication whatsoever at the gate by the concerned railway staff to warn the traffic, particularly to the driver of the truck who was about to cross the level crossing. It is the contention of the respondent that the railway engine was being driven in a rash and negligent manner by

the employee of the appellants. It is further contended that the employees of the appellants acted in rash and negligent manner by keeping level crossing gate open for road traffic of which the gateman was not informed by the concerned staff of the Central Railway about passing of the engine at the relevant time. The gateman even did not give a caution order to the driver of the engine to stop before approaching the gate. It is the contention of the appellants that there was no system of private number between “C” cabin staff and gateman of the railway gate. Driver of the steam railway engine had driven it in a high speed exceeding prescribed limit of 25 k.m per hour.

6. The deceased was 24 years old at the time of his death who was well built and healthy without any disease or vices. It is pointed out that he would have certainly survived up to 65 years of age. He was getting Rs.350/- per month including allowances and spending Rs.200/- for household expenses of the respondent. The respondent contends that she was wholly dependent upon the income of the deceased. She further contends that due to the sudden death of the deceased, she suffered mental shock and agony. She was required to spend Rs.1,000/- for the funeral of the deceased. Respondent had,

therefore, claimed Rs.60,000/- from the appellants and insurer of the truck jointly and severally.

7. The appellants in the written statement denied respondent's claim. It is the contention of the appellants that driver of the truck did not possess a valid driving licence. The appellant admitted the factum of the accident, nevertheless, they contended that after detailed inquiry and investigation by a committee, it revealed that the accident took place due to negligence of the truck driver who was responsible for entering the railway level crossing gate in spite of preventive indication given by the Gatekeeper viz. Ramchandra Nana. It is further contended that at the time of the accident, after passing two motorcyclists from up side to down side, gateman closed the level crossing gate of upside and when he was about to close the down side gate of the level crossing, he heard a phone call indicating that some up or down train had left Odha station or Nashik Road Station. The gateman noticed that a truck was about to enter level crossing from down side. He tried to stop the truck by showing danger signal and raising his hand and shouting, however, truck driver ignored the same. The truck ultimately stood on the railway track.

8. As such, it is the contention of the appellants that the accident took place on account of rash and negligent act on the part of the deceased driver of the truck and not on account of negligence of its employees. They contended for dismissal of the suit.

9. Respondent No.2 - original defendant No.3-insurer of the truck also took a plea that the deceased Driver was not holding a valid driving licence at the relevant time and, therefore, the original plaintiff was not entitled to claim any compensation. It is the contention of the original defendant No.3 that the accident occurred on account of railway administration. It is further contended that the insurance policy of the disputed truck was 'third party policy' and not comprehensive one and, therefore, owner of the truck cannot claim any damages.

10. The learned trial Court framed issues, recorded evidence of the witnesses of the appellants and respondent No.1-plaintiff. After going through the evidence of the respective parties, the trial Court held that the respondent No.1-plaintiff is entitled to claim general damages to the tune of Rs.61,075/-. The trial Court, *inter alia*, held that only the appellants are jointly and severally liable to pay

compensation to the respondent as the fatal accident occurred due to rash and negligent act on the part of the appellants.

11. I heard Mr. Pandian, learned Counsel for the appellants at length. None appeared for the respondent.

12. At the outset, Mr. Pandian would argue that the learned trial Judge had misconstrued the evidence tendered by the employees of the Central Railway. According to Mr. Pandian, learned trial Judge erred in not appreciating the evidence tendered by defence witness Ramchandra Nana Barve who was the gateman at the relevant time. It has been categorically testified by the said witness that he had closed one side of the gate and the other side of the gate was about to be closed when the truck suddenly came with high speed from Nashik side. Despite directing it's Driver to stop the truck as Ramchandra was about to close the gate, driver of the truck ignored the same. The said witness categorically testified that he raised shouts and also showed red lantern in order to give signal to the truck Driver to stop the truck and take it in the reverse direction which stood on the track. Mr. Pandian would argue that it is quite evident that it was a negligent act on the part of the truck driver who ignored the signal and stopped the same on the railway track.

13. Mr. Pandian also took me through the evidence of witness Ramdas Ukardu Patil who was the Switchman in the railway cabin on the fateful day when the said witness, in clear terms, stated that he has taken all the precautions for closing the gate. The Court below had also committed grave error in not appreciating the evidence of another switchman viz Pandurang Kisan Kale who had also categorically deposed that he had given clearance to the Pilot engine.

14. According to Mr. Pandian, the learned Judge failed to appreciate the fact that once signal is given to the railway engine, it has to pass through the tracks and it cannot stop on its own. The engine had proper headlights when it was passing through the level crossing in its normal speed. It cannot be ignored that when the railway engine is in motion, it cannot stop on its own or even if the driver tries, it stops only after dragging for some more distance.

15. Mr. Pandian also challenges the quantum of compensation awarded by the trial Court by contending that the trial Judge ought to have applied multiplier for a period of 15 years instead of 20 years while considering the dependency.

16. Apart from the evidence of respondent No.1-Umraobi, who was not an eye witness, P.W.2- Waman Santu Tile was examined on behalf of the respondent as a chance witness who was present at the time of the accident. His evidence indicates that when he was standing near the railway gate at the time of the accident, both gates of level crossing were open. Railway engine was going towards Nashik from Odha with tender end and it gave dash to the truck which was passing the railway track. The truck was completely damaged. The driver died on the spot and the cleaner was admitted in the hospital in a serious condition. He further testified that the accident took place on account of rash and negligent act of officers of railway.

17. In the cross-examination, P.W.2 – Waman Tile admitted that he did not keep note of the day of the accident. He, however, admitted that for the first time, he deposed in the Court about the fact that the gates were open and the accident took place on account of rash and negligent act of the railway employees. The Court below disbelieved his evidence as, according to it, his evidence is not trustworthy. He was disbelieved on the count that he had not disclosed about the said accident to anyone before giving

evidence in the Court. The Court further held that it is an admitted fact that an accident took place which must have occurred on account of rash and negligent act either on the part of the driver of truck or on the part of the employees of railway.

18. In support of their contention, the appellants examined four witnesses. D.W.1-Sadanand Ramchandra Raje was Divisional Engineer at the relevant time. He was not a witness to the accident, however, he had given certain admissions which are recorded by the trial Court. This witness in his cross-examination had testified as regards certain rules framed for working order for the railway crossing gates. He deposed that certain registers are to be maintained for traffic control of the railway gate. He admitted that railway route where the accident took place is a super fast track. He admitted that there was no signal provided to the crossing gate at Odha. He admitted that train drivers cannot get any indication as to whether the gate is open or closed. Admittedly, the truck entered into a railway track as the gate was open. D.W.1 – Sadanand Raje has clearly admitted that the truck did not enter upon the railway track by breaking of the crossing gate. He also admitted that road traffic is allowed, in case, crossing gate is open. He further admitted

that engine should be run in slow speed in case it is going in a reverse manner. He further admitted that at time of the accident, there was a telephone connection in the shed of the gateman. This witness has deposed in detail as to how the gateman is contacted on telephone for opening and closing gate and the procedure thereof.

19. In his further cross-examination, he had admitted that there were instructions that the headlight shall be affixed on the tender end of the engine and no such tender light was on the engine which collided with the truck. He further admitted that one buffer light of the engine was not working. According to this witness, headlight is for the benefit of the driver as well as for passers by crossing the gate. He admitted that there was signal board at a distance of 800 meters on either side of a railway track meant for the driver of the engine to blow a whistle when they reach at that point. It is obligatory on the part of the engine driver to blow a whistle as soon as they reach near the signal board. There is no evidence on record to indicate that the engine driver had blown whistle upon reaching near the said signal board. He further admitted that in case there is any obstruction on the level crossing, gatekeeper shall show red light signal indicating that line is not clear. He further admitted that gateman at the time of the accident did not show any such signal to the railway engine.

20. All the aforesaid admissions in the cross-examination of D.W.1 – Sadanand Raje are taken into consideration by the Court below while coming to a conclusion as regards negligent act on the part of the appellants, resulting in giving dash to the truck in which the deceased was traveling. It has been rightly observed by the Court below from the admissions of D.W.1 – Sadanand Raje that several mandatory acts were not performed by the railway officials at the relevant time. Admittedly, the gateman did not show red light signal to the railway engine indicating that line is not clear. Admittedly, there was no headlight to the tender end of the engine which was necessary for driver of the engine as well as passers by. Admittedly, only one buffer light out of two was working. Thus, it can be seen that certain material rules were breached by the concerned railway staff at the relevant time.

21. D.W.2- Ramdas Ukardu Patil was working as Switchman at the relevant time. According to this witness, it was his duty to clear the line for incoming and outgoing railways. One pilot engine was standing at Odha Station and it was going towards Nashik. He had given a line clearance after verifying Nashik “C” cabin. In his cross-examination, he admitted that the switchman has to inform the

gateman in case there is a railway crossing in between two stations about line clearance and gateman also informs the switchman if there is some obstruction. He testified that the gateman closes the gate after receiving switchman's intimation. He admitted that the telephone connection in gateman's cabin at the time of the accident was not connected to Odha Gate. In the cross-examination, this witness further admitted that Assistant Station Master records the departure of the train after the switchman gives clearance and that a private number sheet is maintained in a book by the Assistant Station Master. The said book was not produced before the Court. As there was no telephone connection between Odha cabin and gateman, question of informing obstruction by gateman did not arise.

22. Another Switchman D.W.3- Pandurang Kisan Kale was on duty in Nashik Road cabin at the time of the incident. During cross-examination, this witness admitted that he did not give line clearance to the pilot engine. He testified that he used to keep record of clearance and it's time, time of clearance given by him as well as private numbers. However, the same was not produced before the trial Court. This witness had no record to show that he

gave intimation to gate No.91 about passing of the said engine. According to him, record was seized by the officers of the Railway Department after the accident and the same was with the Station Superintendent. The trial Court had, therefore, rightly observed that since the appellants did not produce material record before it which could have thrown light on the fact as to whether there was negligence on the part of the railway employees or not, adverse inference was required to be drawn against Railway Department for suppressing material evidence from the Court. Had the record been produced, it would have exposed negligence on the part of the railway officers.

23. Last witness of the appellant was D.W.4 - Ramchandra Nana Barve, gateman at the disputed Gate No.91 at the time of the accident. He testified that at the time of the accident he had telephonic talk with Nashik Road cabin as to whether any train was coming. He received negative reply. He, therefore, opened the gate towards Niphad side. One motor cycle crossed the track. While he was just closing the gate, one truck came in speed from Nashik side. Though he directed the driver that he was closing the gate by shouting and also shown a red lantern, truck did not stop and came

directly on the railway track. He further deposed that he requested the truck driver to take the truck in reverse direction. Meanwhile, railway engine came from Niphad side without having any signal light and dashed the truck. It is pertinent to note that the accident took place around 8.00 p.m. when the engine was without light. D.W.4 – Ramchandra Barve admitted in the cross-examination that the engine did not give any whistle. He showed red lantern to the engine driver but in the next breath, he testified that he did not show signal lamp to anybody as it was just in his hand.

24. It is apparent that neither the engine driver blew whistle nor gave any signal which was essential before passing level crossing which was in breach of the rules and regulations. The engine driver ought to have given whistle blow which would have signaled and and it was equally incumbent on the part of the gateman to show red light signal in case there was obstruction on the track. From the evidence of this witness, it is apparent that he was opening the gate after having a telephonic talk that no train was passing. It is clearly an act of negligence on the part of the employees of the appellants as it appears from the evidence that there was no proper communication between the switchman and the gateman as well as

by the concerned Railway station. Had there been proper communication, there would have been an advance intimation to the gateman about passing of the engine. There is no explanation forthcoming from the appellants as to how the engine suddenly came when the gateman was unaware about the said fact. The trial Court has, therefore, rightly observed that the rules and mandatory directions were not followed by the engine driver and the gateman at the time of the accident.

25. There are few more admissions by D.W.4- Ramchandra Nana Barve wherein he admitted that there was no private number sheet provided to him before the accident. There was no documentary evidence to show that he was directed to close the gate at the time of the accident. He admitted that he never opens the gate unless he takes permission from C cabin of Nashik Road. He also admitted that he could have stopped engine by affixing detonators. According to him, the gate towards Nashik side was open when the truck entered upon the track from Nashik side. The gates are open only when the traffic is permitted. He also admitted that the gate was open four minutes prior to the accident. He admitted that there was no talk with the switchman on the date of the accident. He further

admitted that he had detonators, on the basis of which he could have stopped the engine by placing the same on the railway track. It is apparent that neither he had shown red lantern to the railway engine nor placed detonators in order to alert the engine driver. Since the engine came without any signal and without any prior intimation to the gateman, this witness had no occasion to give any signal or place detonators on the track and, therefore, the engine gave dash to the truck when he was talking with the truck driver. This witness clearly admitted that the accident occurred on account of mistake of switchman.

26. As such, after having considered the evidence on record as well as it's appropriate appreciation by the Court below, I do not find any reason to interfere with the impugned judgment and decree passed by the trial Court. Since there is no merit in the appeal, it stands dismissed with costs.

27. Appeal stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]