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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

FIRST APPEAL NO.1710 OF 2019

1. Vidya wd/o Dyaneshwar Wankhede,
Aged about 36 years, occupation – household.

2. Piyush s/o Dyaneshwar Wankhede
Aged 16 years, occupation student.

3. Shanta w/o Chanpat Wankhede,
Aged about 79 years, occupation : household.

All R/o ward No.5, Juna Dhamangaon, taluka
Dhamangaon, district Amravati.

Applicant No.2 is minor, through their natural
guardian mother i.e. appellant No.1. **Appellants.**

:: V E R S U S ::

Union of India,
Through General Manager,
Central Railway, Mumbai CST. **Respondent.**

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Shri R.Suryawanshi, Counsel for Appellants.
Mrs.N.G.Chaubey, Counsel for the Respondent.

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CORAM : **URMILA JOSHI-PHALKE, J.**

DATE : **24/02/2023**

ORAL JUDGMENT

1. By this appeal, appellants (claimants) have
challenged judgment and award dated 17.9.2018 passed
by learned Member of the Railway Claims Tribunal at
Nagpur (Learned Member of the Tribunal) in Case

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No.OA(IIu)/NGP/2016/22 whereby learned Member of the Tribunal rejected the claim of claimants.

2. The facts giving rise to filing of the present appeal can be summarized as follows:

On 3.12.2015, Dyaneshwar (deceased) left his house for Wardha to meet his minor son Piyush who was staying at his uncle's residence at Ijapur, district Wardha. The deceased purchased a railway ticket bearing No.AB-85213339 of Rs.30/- from Dhamangaon Railway Station and put the said ticket in his pant pocket and boarded in general compartment of Maharashtra Express Train No.11039. As there was a heavy rush in the compartment of the train, he was standing near door of the bogie. When the train reached near overbridge of Pulgaon Railway Station, kilometer Nos.728/19-20, due to heavy jerk to the train, he fell down from the said running train and died on spot. As per contentions of claimants, the death of the deceased was caused in an "untoward incident" occurred on 3.12.2015 when the deceased was travelling by the said train obtaining a

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valid Railway Ticket. As the deceased was *bona fide* passenger and died in an “untoward incident”, claimants are entitled for compensation.

3. In response to Notice, the Railway Administration resisted the claim of claimants by denying contentions of claimants. It is contended that the deceased was not travelling by the said train. The injuries sustained by the deceased, that the body of the deceased was cut into two pieces, sufficiently show that he was not travelling by the said train but his death was caused due to running over by the train. It was further contention of the Railway Administration that injuries sustained by the deceased are not possible due to falling down from train. Thus, claimants are not entitled for any compensation from the Railway Administration.

4. After hearing both sides, learned Member of the Tribunal rejected the claim of claimants by observing that if a person travelling in a train falls down from train, it is not possible that the body of the said person would cut into two pieces. Learned Member of the Tribunal also

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came to conclusion that the Railway Ticket produced on record is bogus and procured only for purpose of claiming compensation and rejected the claim of claimants. Learned Member of the Tribunal has not accepted that deceased died in an "untoward incident" and held that the Railway Administration is not liable to pay compensation to claimants.

5. Being aggrieved and dissatisfied with the judgment and award passed by learned Member of the Tribunal, the present appeal is preferred by claimants on the ground that learned Member of the Tribunal has observed that as body of the deceased was cut into two pieces, claimants are not entitled to claim compensation inasmuch as claimants failed to prove that death of the deceased occurred in an "untoward incident". As per contentions of claimants, the deceased was having a valid Railway Ticket and also DRM Report shows that the death of the deceased was caused as he came under train and his body was cut into two pieces. It is submitted on behalf of claimants that observations of

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learned Member of the Tribunal are erroneous and the same are liable to be set aside.

6. Heard learned counsel Shri R.Suryawanshi for claimants and learned counsel Mrs.N.G.Chaubey for the respondent/Railway Administration. With their able assistance, I have gone through record and proceedings of the case.

7. Learned counsel Shri R.Surayawasnhi for claimants reiterated contentions and submitted that there is no dispute that the deceased died in the accident on 3.12.2015. The deceased was travelling by Maharashtra Express Train No.11039 from Dhamangaon Railway Station to Ijapur, district Wardha holding a valid Railway Ticket. As there was a heavy rush in the compartment of the train, he was standing near door of the bogie. When the train reached near over bridge of Pulgaon Railway Station, kilometer Nos.728/19-20, due to heavy jerk to the train, he fell down from the said running train and died on spot. Thus, the death of the

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deceased is caused in an “untoward incident” and, therefore, claimants are entitled for compensation.

8. In support of his contentions, learned counsel Shri R.Suryawanshi for claimants has placed reliance upon a decision of this Court in the case of Megha w/o Vijay Thakur and another vs. Union of India, reported in 2020(5) Mh.L.J. 144 wherein it has been held that death is caused due to falling down from running train due to jerk. Investigation report and written statement on record also show that deceased fell down from train due to own negligence. It is held that conclusion of the Tribunal that the nature of injuries show that it is a case of coming under the wheels of the train is once again a misconceived conclusion because types of injuries are only one aspect which has to be considered along with other facts of the case to decide whether accident is of a fall from the train or injuries were on account of a person being run over by the train.

He has further placed reliance upon a decision of this Court in First Appeal No.597/2018 decided on

11.2.2020 in the case of Giridhar Natthu Desbhratar and others vs. Union of India wherein it is held that untoward incident-death of *bona fide* railway passenger due to falling down from running train due to sudden jerk-defence by railway that victim committed suicide by jumping from train is not established. The claimants are entitled for compensation.

He has further placed reliance upon a decision of this Court at Aurangabad Bench in First Appeal No.1341/2018 decided on 10.7.2019 in the case of Mohd.Saber s/o Mohd.Ilyas vs. Union of India wherein it is held that in absence of proof that it is not a genuine ticket, tribunal ought to have held that deceased is a *bona fide* passenger.

He further placed reliance upon a decision of this Court in the case of Ranjan wd/o Santosh Devtale and others vs. Union of India, reported in 2020 Mh.L.J. 4 wherein it is held that wife of the deceased stated in affidavit that her husband purchased ticket from Nagpur

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Railway Station and was returning to Wardha by train. The burden is discharged by wife of the deceased.

9. *Per contra*, learned counsel Mrs.N.G.Chaubey for the respondent/Railway Administration vehemently submitted that learned Member of the Tribunal has minutely verified documents and has come to proper conclusion that claimants are not entitled for compensation as story narrated by claimants, that due to jerk the deceased fell down from the train and came underneath the train, is not acceptable. In fact, the death of the deceased is caused due to train running over him and, therefore, his death is not caused in an "untoward incident". Hence, claimants are not entitled for compensation.

10. Having heard both sides and perused material on record, following point arises for my determination:

Whether learned Member of the Tribunal is justified in rejecting the claim of claimants for compensation ?

11. To substantiate the claim of claimants, claimant No.1 Vidya, the wife of the deceased, stepped into witness box and filed an affidavit of examination-in-chief wherein she reiterated contentions as per the application.

Besides her oral evidence, she placed reliance on DRM Report filed by the Railway Administration, papers regarding investigation carried out by investigating agency, khabari report, spot panchanama, inquest panchanama, and postmortem report.

She is cross-examined at length by counsel for the Railway Administration. During her cross-examination, she denied that her husband deceased Dyaneshwar met with the accident when the train Maharashtra Express reached near over bridge of Pulgaon Railway Station and due to heavy jerk to the train he fell down from the said running train and died on spots. She also denied that the body of the deceased was cut into two pieces. Thus, nothing is elicited from her cross-examination.

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12. The Railway Administration has examined Arunkumar Naidu, who was working as Deputy Station Superintendent, Pulgaon Railway Station, Central Railway Division, Nagpur. As per his evidence, he received an information at about 2:30 pm by a passenger that an unknown person is cut into two parts under the foot overbridge at kilometer Nos.728/10. After receipt of the information, he had given memo to Railway Protection Force and GRP. Thus, his evidence is only to the extent that he received information that an unknown person is cut into two parts under foot overbridge. After the said incident, the Railway Administration carried out investigation and DRM Report was filed. The said DRM Report is at Exhibit-A-22. As per the said DRM Report, after receipt of the said incident in question, staff from the Government Railway Police at Wardha was enquired. During the enquiry, it revealed that staff from the Government Railway Police at Wardha attended the place of occurrence and prepared spot and inquest panchanamas. During the panchanama, Railway Ticket bearing No.AB 85213339,

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Dhamangaon to Wardha, was found. They have also found an Aadhar Card along with the deceased. A statement of the deceased's wife was also recorded who disclosed that her husband Dyaneshwar went to Ijapur, Wardha to meet their son by the train Maharashtra Express. A statement of the deceased's relative was also recorded. On the basis of statements, the Railway Administration came to a conclusion that the deceased has not died in an "untoward incident", but he died due to the accident by the train Maharashtra Express. Thus, as per the evidence of the claimant, the deceased died in an "untoward incident". Whereas, as per the Railway Administration, the deceased died as the train Maharashtra Express dashed against him.

13. Before entering into merits of the case, it is necessary to see definition of "untoward incident" defined in Section 123(c) of the Railways Act, 1989 which reads as under:

"Section 123. Definitions. - In this Chapter, unless the context.....

(a) "accident means".....

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(b) “dependent” means.....

(i)

(ii)

(iii)

[(c) “untoward incident” means—

(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

(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.]”

14. Now, by considering the definition of the “untoward incident”, it is to be seen whether the deceased was travelling by the train which was carrying

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passengers and whether he was holding a valid Railway Ticket and, therefore, he was a *bona fide* passenger. As regards the contention of the Railway Administration is concerned, the Railway Ticket was seized from the body of the deceased and that too the Railway Ticket was found by the Railway Police at the time of drawing of the spot panchanama. The DRM Report filed on record which also shows that the staff from the Railway Police at Wardha attended the place of the occurrence and prepared the spot panchanama. During the panchanama, a railway ticket bearing No.AB-85213339 of Rs.30/- from Dhamangaon Railway Station to Ijapur, Wardha was found with the dead body of the deceased. This observation of the Railway Administration, while conducting the enquiry, is sufficient to show that the deceased had obtained the Railway Ticket to travel from Dhamangaon Railway Station to Ijapur, Wardha on 3.12.2015 by the train Maharashtra Express. In view of the said report, the contention of the Railway Administration, that the deceased was not holding a valid Railway Ticket, is not sustainable. The oral evidence of

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the claimant, supported by the DRM report, that the deceased was having a valid Railway Ticket, is sufficient to hold that the deceased was a *bona fide* passenger.

15. Insofar as the issue regarding the "untoward incident" is concerned, DRM report also shows that the death of the deceased was caused as the train ran over on him. As per the evidence of the claimant, the deceased met with the accident when the train Maharashtra Express reached near overbridge of Pulgaon Railway Station and due to heavy jerk to the train he fell down from the said running train and died on spot as the train ran over on him. The evidence of Arunkumar Naidu, who was working as Deputy Station Superintendent, Pulgaon Railway Station, Central Railway Division, Nagpur, nowhere shows that the deceased died as the train Maharashtra Express gave dash to the deceased and, therefore, the body of the deceased was cut into two pieces. His evidence is to the extent that he received an information that an unknown person is cut into two parts under the foot overbridge at kilometer Nos.728/10. He was also cross-examined at

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length. He admitted that he had received the information about cut down of an unknown person. Thus, this admission, during the cross-examination, shows that he had not received any information about suicide or dash by any train to any person. Learned Member of the Tribunal disbelieved the evidence by observing that if the person fell down from the running train, he would not come underneath the train and considering the injuries that the deceased was cut into two pieces, it cannot be said that the deceased died as he fell down from the train.

16. In the present case, there was no eyewitness to the incident in question. The deceased was resident of Dhamangaon, district Amravati. The Railway Ticket found with deceased shows that he had obtained a Railway Ticket to proceed to Ijapur, district Wardha. The Railway Administration has not adduced any evidence to show that the deceased has attempted to commit suicide. On the contrary, the admission given by the witness examined by the Railway Administration shows that he had not received any information about suicide

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or dash by any train to any person. Thus, the Railway Administration has not adduced any evidence to show that the deceased, while crossing the railway track, was dashed by the train and he sustained injuries and his body was cut into two pieces. The Railway Administration has also not adduced any evidence to show that the deceased has attempted to commit suicide. Therefore, the conclusion of learned Member of the Tribunal that the nature of injuries shows that it is the case of the deceased coming under the wheels of the train is once again misconceived conclusion because types of injuries along with other facts pertain to decide whether the accident is of a fall from the train or injuries were on account of a person being run over by the train. It is not unknown that a body may badly cut up and crush up after falling from the train either on account of *bona fide* passenger getting entangled in the place of the train and thereafter in the wheels or the other equipment of the train in which he was travelling or that the deceased on account of fall from the train dashed by the various equipment of the railways which are joined to the

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tracks, such as polls, singles, wires etc. Therefore, in the facts of the present case, the observation of the tribunal that the death of the deceased is not possible by falling from the train merely because he was cut into pieces, is completely unjustified.

17. As observed in the present case, there is no evidence to show that the deceased was crossing the railway track and, therefore, he was run over by coming train. On the contrary, the evidence that the railway ticket found while drawing inquest panchanama shows that the deceased has obtained the railway ticket to travel from Dhamangaon Railway Station to Ijapur, district Wardha and, therefore, the contention of claimants is supported by the fact that the deceased has obtained the ticket to proceed towards Ijapur, district Wardha. Thus, the evidence of the claimant is supported by circumstances that the deceased has to travel towards Ijapur and, therefore, he obtained the Railway Ticket and he was travelling by the said train. Not only, the evidence of the claimant but also the evidence of the witness examined by the Railway Administration shows

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that the death of the deceased is caused as the train Maharashtra Express ran over him. Thus, this evidence also sufficiently shows that the deceased died due to the injuries sustained by him as he came underneath the train.

18. It cannot be said that the deceased has committed suicide and he was run over by train. The Railway Ticket found on the person of the deceased sufficiently shows that the deceased was travelling by the train and he fell down from the running train. Thus, it is an "untoward incident" as defined in Section 123(c) of the Railways Act.

19. The Honourable Supreme Court of India in the case of Union of India (UOI) vs. Prabhakaran Vijaya Kumar and others, reported in (2008)9 SCC 527 has held thus:-

13. In Hindustan Lever Ltd. v. Ashok Vinshu Kate this Court observed:

41 "In this connection, we may usefully turn to the decision of this Court in Workmen vs.

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American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations: (SCC p.76).

4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these lations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds* 10). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour*

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Court we had occasion to say: (SCC p.447, para 6).

"6. ... Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions."

42. Francis Bennion in his Statutory Interpretation, 2nd Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

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(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

At p. 661 of the same book, the author has considered the topic of 'Purposive Construction' in contrast with literal construction. The learned author has observed as under:

Contrast with literal construction - Although the term "purposive construction" is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: "If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions". The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used

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would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.” (emphasis supplied).

20. In the light of the above principles, the evidence in the present case is to be appreciated. There is no dispute that deceased was travelling in a train by holding a valid ticket. The claimants have proved that the deceased fell from the train while travelling, sustained injuries and succumbed to injuries. The burden of the claimants to prove that the deceased died in an “untoward incident” and said burden can be discharged by the claimants by filing an affidavit of the relevant facts. Thereafter, burden will shift on the Railway Administration and the issue can be decided on the facts shown or the attending the circumstances.

21. The Honourable Supreme Court of India in the case of Union of India (UOI) vs Rina Devi, reported in (2019)3 SCC 572 held that: initial burden will be on the

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claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the railways and the issue can be decided on the facts shown or the attending circumstances.

22. The next contention raised by the Railway Administration is that the act of the deceased standing on the entrance covers under the self inflicted injury. It is a settled law by the Honourable Apex Court in the case of Union of India vs Rina Devi (supra) that for attracting the provisions of Section 124-A of the Railways Act, intention of the person who had sustained a self inflicted injury is to be proved. It is further held that 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. The Honourable Apex Court has referred the earlier decision in Union of India vs Sunil Kumar reported in 2017(13) SCALE 652 wherein it is held that the plea of negligence of the victim cannot be allowed wherein the claim based on 'no fault theory' under Section 163 A of

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the Motor Vehicle Act, 1988 and it is held 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 contributory factor.

23. Here, in the present case, admittedly initial onus is discharged by claimants by adducing reliable evidence. Whereas, the Railway Administration failed to prove that the deceased has sustained injuries while crossing railway track or has attempted to commit suicide. As such, I have no hesitation to hold that the burden shifted on the Railway Administration is not discharged by it. The claimants have proved that the deceased was a *bona fide* passenger and his death was caused in an "untoward incident."

24. Learned counsel Mrs.N.G.Chaubey for the Railway Administration vehemently submitted that claimants are not entitled for any interest on the compensation amount. The Honourable Apex Court in

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the case of Union of India vs. Rina Devi *supra* has dealt the said aspect of interest and observed as follows :-

“15.4 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 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. The 4-Judge Bench judgment in Pratap Narain Singh Deo (AIR 1976 SC 222) (*supra*) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

25. Thus, the Honourable Apex Court has held that the compensation as applicable on the date of

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incident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of the award of the Tribunal is higher than revised amount with interest the higher of the two amounts has to be given.

26. The alleged incident occurred on 3.12.2015. The Railway Administration issued a notification dated 22.12.2016. In view of that notification, claimants are entitled for compensation of Rs.8.00 lacs with interest @ 6% per annum. The Calcutta High Court in the case of Bandana Mishra vs Union of India decided on 12.5.2017 in FMA No.213/2010 relying upon the said notification dated 22.2.2016, it is held that claimants are entitled to get the compensation Rs.8.00 lacs with interest 7.5% per annum from the date of lodging of claim till payment. This Court has also in First Appeal No.878/2009 decided on 17.2.2020 and in First Appeal No.924/2010 decided on 6.8.2019 granted compensation Rs.8.00 lacs along with interest.

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27. In view of the above discussion, I pass the following order:

ORDER

(1) The First Appeal is **allowed**.

(2) The judgment and award dated 17.9.2018 passed by learned Member of the Railway Claims Tribunal at Nagpur in Case No.OA(IIu)/NGP/2016/22 is hereby quashed and set aside.

(3) The Railway Administration is directed to pay compensation of Rs.8,00,000/- to the claimants within a period of 60 days from the date of receipt of copy of this judgment.

With this, the First Appeal is **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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