



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.334/2020

1. Sunil Kanhaiyyalal Jeswani,
Aged 47 years, Occ.-Business,
Resident of Sindhi Camp, Akot,
Tq. Akot, Dist. Akola.
2. Sanjay s/o Panjabrao Deshmukh, (Amended as per Court's
Aged about 52 years, Occ-Private, order dated 08-01-2024)
R/o- Near Shani Mandir, Takpura,
Akot, Tal-Akot, Dist-Akola-444101. Petitioners.

Versus

1. Secretary, Ministry of Railway,
256-A, Raisina Road, Rajpath Area,
Central Secretariat, New Delhi,
Delhi 110001.
2. Additional Divisional Railway Manager,
Nanded Mandal, Nanded, Tq. & Dist.
Nanded. Respondents.

Mr. A.B. Moon, Advocate for Petitioners.
Mr. N.P. Lambat, Advocate for respondents.

CORAM : Avinash G Gharote & Abhay J. Mantri, JJ
Pronounced on : 09-05-2025

J u d g m e n t (Per Abhay J. Mantri, J.)

Heard. **Rule.** Heard finally with the consent of learned
Counsel for the respective parties.

2. The petitioners are seeking direction against the
respondents' Authorities to provide compensation to them for the

death of their sons aged about 13 years and 12 years old, due to drowning in a pond/pit (hereinafter referred to as the '**Pit**') in the railway premises.

3. Petitioner no.1 is the father of deceased Hitesh, and Petitioner no.2 is the father of deceased Viraaaj, who were 13 years and 12 years old respectively at the time of the tragic incident, and lost their lives by drowning in the pit, which was dug by the Railways in the railway premises in open land having a size 13.70 x 13 x 1.50 Meters.

4. It is contended that the respondents' authorities dug the pit. The pit was not protected with fencing around it to prevent any untoward and unfortunate incidents or any living beings from wandering towards it, lest any harm be caused to them. Similarly, no security guards were deputed at the site. The respondents' Authorities have not taken appropriate steps to erect/install the safety measures at the site to prevent untoward incidents. No signboards were placed at the site.

5. On 19-07-2016, deceased children Hitesh and Viraaaj were passing through the railway premises. At that time, they fell into the pit and drowned in the water accumulated there, and lost their lives by drowning in a pit. Accordingly, AD No.24/2016 was initially registered at the Akot Police Station. Police have conducted an inquest panchanama and spot panchanama. Then, the petitioner No. 1 lodged the report at Police Station Akot (City). Based on the

report, an offence bearing Crime No.24/2016 was registered against the railway Authorities.

6. On 14-03-2017, the petitioner no.1 made a communication to the Hon'ble Railway Minister and requested to provide monetary aid to him due to the loss of his 13-year-old son by drowning in the unfenced pit within railway premises. The Hon'ble Railway Minister did not take cognizance of or pay compensation to him. Therefore, on 31-10-2018, he issued a reminder letter to the Hon'ble Railway Minister.

7. Due to the tragic incident on 19-07-2016, the respondents' Authorities conducted the fact-finding inquiry on 22-07-2016 and accordingly submitted their report. The Additional Divisional Railway Manager, Nanded Division, vide communication dated 01-02-2019, informed the petitioner no.1 that "*this matter is beyond the purview of the Divisional Administration, please*" and failed to provide any compensation to him. Therefore, initially, the petitioner No. 1 approached this Court. During the pendency of the petition, by order dated 08-01-2024, petitioner no.2 came to be added in the petition as petitioner no.2.

8. Learned Advocate for the petitioners vehemently contended that the pit was dug in the premises of the respondents' Authorities. However, the Authorities failed to take care to fence the said pit or depute a security guard at the site to prevent the

untoward incident and thereby neglected to discharge their duty. Therefore, the respondent authorities are liable to compensate the petitioners. In fact, it was incumbent on the part of the respondent Authorities to take proper care to prevent unwanted or unfortunate incidents.

9. He further drew our attention to the spot panchanama conducted by the Police Authorities and canvassed that the spot panchanama clearly indicates that the pit was neither fenced nor protected by a wall or any fencing; also, no security guard was deputed there. Therefore, he urged that the tragic incident occurred due to the negligence on the part of the respondents. Thus, the respondent authorities are liable to compensate the petitioners.

10. To buttress his contention, he has relied on the following judgments :-

1. Court on its own motion vs Govt. of NCT of Delhi and others, 2018 SCC OnLine Del 10283,
2. Chairman, Railway Board vs Chandrima Das, AIR 2000 SC 988,
3. M.S. Grewal and another vs Deep Chand Sood, (2001) 8, SCC 151, C.
4. Thyagarajan and another vs Corporation of the City, 2002 ACJ 1282,
5. Kamla Devi vs Govt. of NCT of Delhi and another, 2004 SCC OnLine Del 721,
6. Virender Prasad vs B.S.E.S. Rajdhani Power, 2012 SCC OnLine Del 339
7. Sharafat Khan and another vs Northern Railway and another, 2023 SCC OnLine Del 3594.

11. *Per contra*, Mr. Lambat, learned Counsel for the respondent Authorities, during the argument on 17-03-2025, does not dispute the occurrence of the incident dated 19-07-2016 in the premises owned by the railways, in which Hitesh and Veeraj aged about 13 and 12 years old respectively lost their lives by drowning in a pit which was dug by the railways in its own land/premises. He also does not dispute that, except for the excavated material being laid on the boundaries of the pit, no other protective fencing existed at the relevant time, but only poles were standing, as some miscreants removed wires/cables.

12. To buttress his contention, he has relied on the judgment of the Delhi High Court in the case of *Mohd. Quamuddin and others vs Union of India*, reported in 2015 SCC OnLine Del 10229, and pointed out paragraph Nos. 2, 21 and 38. Hence, he urged that in view of the law laid down in the said decision, the petitioners are not entitled to the compensation as claimed.

13. We have appreciated the rival contentions of the parties and perused the record and the judgments relied upon by the respective parties.

14. Before dealing with the controversy between the parties, we would like to reproduce the findings recorded in the Fact Finding Inquiry conducted by the respondent Authorities on 22-07-2016. The three members of the Committee have

conducted the said inquiry. In the said report, it was categorically observed that on 19-07-2016 at about 3.00 pm, two children, namely Chi. Hitesh Sunil Jeswani, aged about 12 years, and Chi. Veeraj Sanjay Deshmukh, aged about 12 years, fell into a rainwater harvesting pit that existed at the railway premises and lost their lives. In the said report, they recorded the joint findings, which thus read as under:-

"JOINT FINDINGS

- 1. Since the Rainwater harvesting pit was constructed in the Railway premises, protected by the Railway track on the right side and the Railway boundary wall on the left side, no separate protection arrangements were made.**
- 2. There are no prescribed guidelines for providing protection for rainwater harvesting pits.**
- 3. Railway premises are protected areas. Therefore, entries of outsiders are restricted.**
- 4. A rail fence provided in this area was demolished by outsiders."**

15. A conjoint reading of the spot panchanama (page 25) and the fact-finding report of the authorities of the respondents categorically indicates that no separate guidelines were provided for the protection of the rainwater harvesting pit. Outsiders demolished the fencing provided in the said area. It is apparent that the water accumulated in the pit.

16. Thus, considering the spot panchanama, fact finding report and submission of learned Advocate for the respondents it is evident that the respondents does not dispute the occurrence of the incident dated 19-07-2016 in the premises owned by the railways, in which two minor children namely Hitesh and ViraaJ aged about 13 and 12 years old respectively lost their lives by drowning in the pit which was dug by the railways in its own premises/land. It is also not disputed that, except for the excavated material being laid on the boundaries of the pit, no other protective fencing or wall exists, nor was any signboard fixed at the spot to indicate a pit. It also appears that the protective fencing did not exist at that relevant time, but it was removed by some outsiders/miscreants.

17. That being the position, the liability of the respondents' Authorities- Railways to compensate the petitioners, on account of the loss of lives, may not be disputable.

18. The only question that arises is the determination of the quantum of compensation.

19. According to Mr. Moon, learned Counsel for the petitioners, compensation may be determined as per the formula given under the Motor Vehicles Act. Accordingly, the petitioners have filed their respective affidavits calculating the quantum of compensation of Rs. 43,58,666/- in respect of the death of the son of petitioner no.1 and the amount of Rs. 25,28,066/- in respect of death of son of petitioner no.2. He relies upon the judgments as

cited above. He further argued that the facts in the case of **Sharafat Khan and another** (supra) are similar to those in the case in hand. Therefore, the compensation may be granted on the basis of the law laid down in the case of **Sharafat Khan and another**, followed by the **mandate of Kamla Devi** (supra).

20. As against this, the learned Advocate for the respondents submitted that the children died due to a fall into the pit and their death was not caused by a motor vehicle accident; therefore, the provisions of the Motor Vehicles Act do not apply to the case at hand. Similarly, no specific rules or regulations are framed for the grant of compensation in such types of cases. In the absence of the rules and regulations, it would not be proper to grant compensation to the petitioners. However, he submitted that as per the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (for short '***the Rules, 1990***') stipulates to grant the compensation for the occurrence of the accident as described in Section 124 of the Railways Act, 1989. As per the schedule under Rule 3 of the Act of 1999, for the death, the amount of compensation was prescribed as Rs. 8 Lakhs. However, the facts in the case do not denote that the accident occurred as specified in Section 124 of the Act, and therefore, the petitioners are not entitled to the compensation as claimed.

21. That being so, we reproduce **Rule 3** of the Rules, 1990 as under:-

"3. **Amount of compensation.**- (1) The amount of compensation payable in respect of death for injuries, shall be as specified in the Schedule.

(2)

(3)

(4) Where compensation has been paid for any injury which is less than the amount which would have been payable as compensation if the injured person had died and the person subsequently dies as a result of the injury, a further compensation equal to the difference between the amount payable for death and the already paid shall become payable.

(5)

22. Rule 3 would indicate that the Railway Authorities are liable to pay compensation in respect of death or injuries suffered by a person.

As per Rule 4, the total compensation payable under Rule 3 shall in **no case exceed Rs. 8 Lakhs** in respect of any one person.

23. It is apparent from the record that the tragic incident occurred within the railway premises owned by the respondents' Authorities so also the respondents' Authorities have not taken proper care nor erected/installed safety measures at the site i.e. a pit, to prevent any untoward and unfortunate incident, like one which resulted in death of two minor children. Similarly, the respondents were neither vigilant nor sensitive in taking appropriate safety measures at the site to avoid unfortunate accidents. The respondents were duty-bound to take proper caution and care at the site to prevent accidents or untoward incidents. Thus, the

respondents were found negligent in taking safety measures at the site to avoid any accident. The respondents neither deputed any security guard at the site nor erected/installed fencing around the pit to prevent any living being from wandering towards it, lest any harm be caused to innocent persons. Similarly, the said land/railway premises were used as a playing ground, and the children used the same to play the game. It was the responsibility of the railway authorities to take care of and exercise proper caution at the site to avoid any accident.

24. The young boys aged about 13 and 12 years old do not know the difference between the railway land and the land of other civic agencies. For children, all open areas/lands and fields are for games, running, fun and frolic. The said fatal mischief occurred due to negligence on the part of the respondents' authorities, as they have not provided safety measures around the pit to avoid the untoward incident. In such circumstances, the respondents' authorities cannot be absolved of their liability for taking proper safety measures at the site even after awarding the contract to the contractor. Consequently, the respondents' authorities cannot be absolved of their liability to compensate the parents of the victims.

25. Now, the question arises as to how compensation can be determined in the absence of any specific rules or regulations.

It is worth noting that, in the tragic incident that occurred in the case at hand, no specific rules or regulations or formulas or methods are prescribed by the railways, nor any provision is prescribed under the Railways Act, 1989 and Rules, 1990, in that regard, as prescribed under the Motor Vehicles Act. In such circumstances, determining compensation is a difficult task in the absence of the rules. Even assuming that no specific regulations or formulas are prescribed to determine the compensation that would not absolve the respondents' Authorities from paying the compensation to the petitioners but, as indicated in Rule 3 of the Rules of 1990, this Court can grant the compensation to the petitioners and therefore this Court in exercise of the jurisdiction under Article 226 of the Constitution of India has not only the power and jurisdiction but an obligation to grant such relief to the victims or the heirs of the victims for such negligent act on the part of the respondents.

26. In *Mohd. Quamuddin* (supra) the facts were that the victims therein who were run over by a train and have lost their lives on the railway track while they were trying to catch "cut off kites" and the material was brought before the Court that the railway tracks at the incident site have been laid at an elevated level which clearly indicates that there is a railway tracks. Therefore, the Court held that the railway Authorities were not negligent for the occurrence of the tragic incident and consequently rejected the claim of the petitioner therein. However, in the case at hand, the respondents'

authorities have not disputed the occurrence of the tragic incidents in a pit located on their premises. They have not provided safety measures around the pit to avoid an untoward incident. Similarly, the respondents were neither vigilant nor sensitive in taking appropriate safety measures at the site to prevent unfortunate accidents. Thus, the respondents were found negligent in taking safety measures at the site to avoid an untoward incident. Therefore, the observations made in the said judgment are of hardly any assistance to the respondents.

27. On the contrary, the dictum laid down in the case of *Sharafat Khan and another* (supra) applies to the case at hand.

28. The other judgments on which the learned Counsel for the petitioners rely, the facts in the said cases were relating to the accidents arising the motor vehicle, for dealing with the question of compensation specific statute is enacted and therefore in our considered opinion the facts in the said cases are distinct from the case at hand and hence, what has been held in the said judgments is not helpful for the petitioners in support of their case.

29. By order dated 07-03-2025, this Court granted an opportunity to the respondents to submit any additional affidavit if found to be necessary shall be placed on record to work out the matter based on the said material and if in case it is not so placed then, the matter will be worked out on the basis of material placed on record. Despite the said order, the respondents have not filed an

additional affidavit nor produced any material on record. Therefore, considering the facts of the case at hand and the prescribed Rules of 1990, we would like to determine the compensation in the present case.

30. Thus, to sum up the aforesaid discussion, it is evident that on 19-07-2016 the tragic incident occurred in the premises owned by the railways, in which two minor children namely Hitesh and Viraaj aged about 13 and 12 years old respectively lost their lives by drowning in the pit which was dug by the railways in its own premises/land. Similarly, it is not in dispute that the respondents' authorities did not take appropriate care, caution, and safety measures at the site to prevent untoward and unfortunate incidents. Thus, the respondents' Authorities were found negligent in taking safety measures at the site to prevent any accident, and therefore, the respondents' Authorities are responsible for the death of the two minor children. Thus, in absence of any specific rules and regulations it cannot be said that they were absolved from their liabilities to pay the compensation but based on Rule 3 of the Rules 1990, the authorities/Railways are liable to pay the compensation to the legal heirs of the victims i.e. the petitioners for the death of their minor sons on account of the negligent act on the part of the respondents. Rule 3 read with Section 124A of the Act prescribed liability on the railway authorities/respondents to pay compensation for any untoward incident occurred, then whether or not there has been any wrongful act, neglect or default on the part

of the railway administration, the railway administration is liable to pay compensation to the tune of Rs.8 Lakhs for the loss of life of the person to his/her dependent/legal heirs. Therefore, we have no hesitation in holding that the respondents are liable to pay compensation to both petitioners to the tune of Rs. 8 Lakhs each. As a result, we answer the question partly in the affirmative in the above terms.

31. In the background above, we partly allow the petition. The respondents are directed to pay compensation to the tune of Rs. 8 Lakhs each to petitioner no.1 and petitioner no.2 for the loss of lives of their 13-year-old and 12-year-old sons, respectively, within 8 weeks from the date of receipt of the copy of this order. Respondents, if fail to comply with the order within the prescribed time, are liable to pay interest @ 7% p.a. on the compensation amount.

32. Rule is made absolute in the above terms. No costs.

(Abhay J. Mantri, J.)

(Avinash G. Gharote, J.)