IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 101 OF 2024

1. Smt. Anitadevi W/o Anil Jindal
Age 50 years, Occ: Household.

2. Nikhil S/o Anil Jindal
Age 31 years, Occ: Business.

3. Shubham S/o Anil Jindal
Age 27 years, Occ: Business.

All residents of: Sambhaji Nagar,
Jalna, Taluka and District Jalna.

.....APPELLANTS
(Ori. Claimants)

VERSUS

1. Union of India,
Through General Manager Railway,
(South Central Railway0
At Secundrebad, Dist. Secundrebad,
Andhra Pradesh State.

2. Divisional Railway Manager (S.C.R.)
Division Nanded, at Nanded, Dist. Nanded.

3. Ingal Satishkumar S/o Shamsan
Died through legal heir wife.

3A. Usha S/o Satish Kumar Ingal
Age: 55 years, Occ: Household,
R/o. Building No. E, Flat No.3,
Ground Floor, Padhegaon
Chinar Garden, Aurangabad.

4. The Oriental Insurance Company Ltd.
Through its Branch Manager,
Branch Office Gandhi Chamber
Sarojini Devi Road, Jalna.

5. Banarasidas S/o. Ramkisan Jindal
Age 67 years, Occ: Business.

6. Sau. Geeatdevi W/o Banarasidas Jindal,
Age: 61 years, Occ: Household

R.Nos. 5 and 6 are residents of:
Sambhaji Nagar, Jalna,
Taluka and Dist. Jalna.

.....**RESPONDENTS**
(Ori. Opponents)

Mr. Mahesh R. Sonawane, Advocate for Appellants
Mr. M. V. Ghatge, Advocate for Respondent nos.5 and 6
Mr. D. P. Deshpande, Advocate for Respondent no.4

WITH
FIRST APPEAL NO. 1796 OF 2024

1. Union of India,
Through General Manager Railway,
(South Central Railway), Secunderabad,
Dist. Secunderabad (Andhra Pradesh State)

2. Divisional Railway Manager, (SCR),
Divisional Nanded, District Nanded.

.....**APPELLANTS**
(Original Opponent Nos.1 and 2)

VERSUS

1. Smt. Anitadevi w/o Anil Jindal,
Age 36 years, Occ: Household,
R/o Sambhajinagar Jalna, Tq. And Dist. Jalna.

2. Nikhil s/o Anil Jindal,
Age 30 years,
R/o Sambhajinagar, Tq. And Dist. Jalna.

3. Shubham s/o Anil Jindal,
Age 27 years,
R/o Sambhajinagar Jalna, Tq. And Dist. Jalna.
(Respondent Nos.1 to 3-original claimants)

4. Ingal Satishkumar Shamsan
(Died through L.Rs.)

Usha Satishkumar Ingal,
Age: 59 years, Occ: Household,
R/o. Building No.E, Flat No.3, Ground
Floor, Padnegaon Chinar Garden,
Aurangabad, Dist. Aurangabad.

5. The Oriental Insurance Company Ltd.,
Through its Branch Manager, Branch Office,
Gandhi Chamber, SarojaniDevi Road,
Jalna, Dist. Jalna.

6. Banarasidas s/o Ramkisan Jindal,
Age 75 years, Occ: Business,
R/o Sambhajinagar Jalna, Dist: Jalna.

7. Sow. Geetadevi w/o Banarasidas Jindal,
Age 69 years, Occ: Household,
R/o Sambhajinagar Jalna, Dist: Jalna.

.....**RESPONDENTS**
(Respondent Nos.4 to 7 are
Original Opponent Nos.4 to 7)

Mr. Uttam B. Bondar Advocate for Appellants
Mr. Mahesh R. Sonawane, Advocate for Respondent nos.1 to 3
Mr. Dhananjay P. Deshpande, Advocate for Respondent no.5
Adv. Ranjita Mahajan h/f Mr. S. K. Chavan, Advocate for Respondent nos.6 and 7

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CORAM : KISHORE C. SANT &
AJIT B. KADETHANKAR, JJ.

RESERVED ON : 02ND JULY, 2026

PRONOUNCED ON : 09TH JULY, 2026

JUDGMENT :- (Per Ajit B. Kadethankar J.)

1. Subject-matter:

a. Feeling aggrieved by the Judgment and Award dated 20.05.2023 passed by the Learned Member of Motor Accident Claims Tribunal, Jalna in Motor Accident Claim Petition No. 152 of 2009 these two First Appeals are before us u/s 173 of the Motor Vehicles Act, 1988 ('M.V. Act' for brevity). While First Appeal No. 101 of 2024 is filed by the original claimants for enhancement in the compensation and challenging the division of liability of accident, the First Appeal No.1796 of 2024 is filed by original Respondent nos.2 and 3 ('Railways' for brevity) challenging the liability itself.

b. At the outset we record that while the case of the Claimants sadly reminds the saying that 'haste makes waste'; the case of Railways calls upon to invoke the principle of 'strict liability'.

For the sake of convenience and to avoid confusion, parties are referred as to their factual status.

2. Facts in brief:

a. On the fateful day of 22.03.2009, a private car bearing Registration No. MH-21-C-2349 owned by deceased Anil Jindal attempted to cross an unmanned railway gate identified as level crossing no.59 (LC-59) on Aurangabad-Karmad Track. While the car reached on the railway track, a passenger train bearing no.350

proceeding from Aurangabad to Hyderabad collided with the said car. The impact was fatal, resulting in the death of all four occupants of the car, including the driver.

b. Alleging total negligence on the part of the railway, Motor Accident Claim Petition No.152 of 2009 came to be filed by the dependents of deceased Anil Jindal under Section 166 of Motor Vehicles Act, 1988. Compensation was sought from the Railway Department and the car's insurer jointly and severally to the tune of Rs.6,25,00,000/-. Parents of deceased Anil Jindal were also impleaded as respondents being stake holders.

c. All the respondents appeared in the Claim Petition and defended the claim on merits adducing their adequate evidence.

d. Pertinent to note, initially vide judgment and order dated 13.02.2017, the Motor Accident Claims Tribunal dismissed the claim on the ground of jurisdiction. This was obviously for the reason that compensation was claimed from the Railways. The matter was taken up before this Court in First Appeal No.3273 of 2017. Vide judgment and order dated 28.02.2019, this Court held that the Motor Accident Claims Tribunal had jurisdiction to entertain and decide the claim under the Motor Vehicles Act, 1988. Thus, the matter was again placed before the Tribunal.

e. All the stake holder parties adduced their respective evidence and argued the matter in support of their respective claims. Upon hearing the parties, the learned Member of Motor Accident Claims Tribunal, Jalna pleased to partly allow the Claim Petition vide judgment and award dated 20.05.2023.

f. To summarize, relying upon the documents and versions of the parties, the Tribunal held that both the car driver as well as the Loco Pilots were jointly responsible for the accident. The Tribunal held the Loco Pilots responsible for the negligence @ 60%, while the car driver was held responsible @ 40%. Placing reliance on the income tax returns, the Tribunal fixed the compensation @ Rs.3,63,76,995/-. The formula/guidelines in the case of ***Sarla Verma & Ors. Versus Delhi Transport Corporation and Ors. (2009) 6 SCC 121***, ***National Insurance Company Limited Versus Pranay Sethi & Ors. (2017) SCC 680*** and ***Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram & Ors 2018(4) T.A.C.345 (S.C.)*** were referred to compute the pecuniary and non pecuniary compensation. Feeling aggrieved by the judgment and award, present appeals are filed by the claimants as also by the Railways.

g. At the outset, both the learned advocates for respective Appellants submit that their First Appeals are only on quantum and liability. Claimants' appeal is not only disputing apportionment of

liability but also stands for enhancement on certain other grounds as recorded below. Respondent Railways in its appeal too disputes apportionment of liability, and obviously defends Claimants' appeal for enhancement claimed on other grounds. Suffice to say, both parties dispute findings of the Tribunal on the point of negligence; and want findings of total negligence against each other.

3. Mr. Mahesh Sonawane, learned advocate for claimants seeks enhancement on following points:

(i) Addition of future prospects;

(ii) Addition of future prospects on 'higher side' in exception to the law laid down by the Constitution Bench of the Honorable Supreme Court in the case of *Pranay Sethi [National Insurance Co. Ltd vs Pranay Sethi : 2017 (16) SCC 680]*;

(iii) Application of rate of interest @ 9% p.a. instead of 6.5% p.a. on the compensation;

(iv) Computation of the loss of dependency in terms of the certificate issued by Chartered Accountant;

(v) As recorded supra, findings of the Tribunal holding the Car driver negligent to the extent of 40% are under challenge; seeking findings of total negligence against the Loco Pilot.

4. Mr. Uttam B. Bondar, learned Senior panel advocate for Union of India and Advocate for the respondent Railways opposes enhancement claimed by the Claimants and also disputes the

proportion of liability imposed on the Railways based upon negligence.

5. Mr. Dhananjay Deshpande, representing the Insurance Company i.e. Insurer of the accidental Car submits that he has no effective role to argue. He submits that in view of the fact that the Car was insured under comprehensive policy and that the deceased Anil was owner of the said car, Insurer's liability was restricted to Rupees Two Lakhs as per special contract. He submits that the Insurer has already paid the said compensation to the claimants.

6. For the purpose of correct adjudication of the controversy, we frame following points for consideration:

No.	Point	Answer
(I)	Whether the award is deficit of compensation towards Future Prospects?	Yes
(II)	Whether Future Prospects needs to be granted @ 50% instead of 40%?	No
(III)	Whether interest @ 6% needs to be escalated? If yes, at what rate?	Yes, needs to be escalated @ 7.5% p.a.
(IV)	Whether apportionment of liability of accident i.e. negligence needs to be modified?	Yes. As per findings.
(V)	Whether income of the deceased Anil Jindal is rightly computed for the purpose of fixing the loss of dependency?	Yes
(VI)	Whether findings of the Tribunal need to be interfered?	As per the reasoning.
(VII)	What order and award	As per final order and modified award.

7. With the able assistance of learned advocates for respective parties, we have gone through the record and proceedings, the private paper-book containing all the material documents. On the basis of the material placed before us and the arguments advanced, we now deal with the appeals which are based on common points.

8. Submissions, Discussion and findings :

8.1 Point No. I and II (Future Prospects and proportion):

a. It is the trite law in view of the Judgment and Order delivered by the Constitution Bench of the Honorable Supreme Court in the case of ***Pranay Sethi (supra)*** that component of future prospects must be added while computing the third party compensation award under the Motor Vehicles Act, 1988. It is not in dispute that the principle equally applies even to the persons other than salaried.

b. Evidently, learned Member of the Motor Accident Claims Tribunal has not added the component of future prospects in the compensation. Addition of future prospects necessarily needs consideration of the age of the deceased.

c. Age of the deceased Anil was undisputedly '38' years at the time of the accident. Hence, 40% of the deceased Anil's income needs to be added while reassessing the compensation in view of the law laid down in ***Pranay Sethi case (supra)***.

d. Mr. Mahesh Sonawane, learned advocate for the Claimants made a sincere attempt to convince us for taking exception to the standards laid down in ***Pranay Sethi*** case. He would rely upon the findings rendered by the Honorable Supreme Court while deciding ***Civil Appeal No.19605 of 2017 [Uttambhai Per LRs. Vs. Oriental Insurance Co.ltd.and ors.]*** vide its Judgment and Order dated 22.11.2017.

e. Mr. Sonawane submits that in the said case, the Tribunal held the future prospects on higher side taking exception to the law laid down in ***Pranay Sethi's case***. The High Court interfered and reduced the future prospects to the proportion as laid down in ***Pranay Sethi's case***. While disposing the appeal filed by the legal representatives of deceased Uttambhai, the Honorable Supreme Court restored the earlier proportion of future prospects negating High Court's findings.

f. Referring to the findings of the Honorable Supreme Court in ***Uttambhai's case*** (supra), Mr. Sonawane, learned advocate for the claimants submits that instead of 40% future prospects, let it be 50% in exception to the rule laid down in ***Pranay Sethi's case***.

g. Mr. Bondar, learned advocate for the Railways fairly concedes to the legal position on applicability of future prospects, he however insists for the standard fixed in the ***Pranay Sethi's case*** by Constitution Bench of the Honorable Supreme Court.

Our findings

h. With utmost respect, we find that the law laid down by the Constitution Bench of the Honorable Supreme Court in ***Pranay Sethi's case*** shall hold field in the case in hand. We find force in the arguments of Mr. Bondar that the order passed by the Division Bench in ***Uttambhai's*** case would not override the standard proportion defined in the Constitution Bench's judgment in ***Pranay Sethi*** case unless the claimants make out such case. We find that except referring to ***Uttambhai's*** case, the claimants could not demonstrate as to how and why exception needs to be taken to the standard percentage of future prospects.

i. Hence, we deem it appropriate to add future prospects @ 40% as per the law laid down in ***Pranay Sethi's*** case. Accordingly, point Nos. I and II are answered.

8.2 Point No. III (Interest rate on compensation)

a. While fixing the award compensation, learned Member of the Tribunal has applied interest @ 6% per annum on the quantum w.e.f. 08.09.2009 (d/o filing the claim petition) till its full realization.

b. Learned advocate Mr. Sonawane for the claimants submits that the interest be applied @ 9% per annum.

c. Apparently, interest @ 6% is on lower side than the standard trend. There is no definite law or guidelines as to percentage of interest to be applied on the compensation. We could expect from the end of claimants' side as to under what special circumstances and for what extra ordinary reasons interest could be awarded @ 9%. However, no such warranting reasons are offered by the claimants before us.

d. Hence, considering the prevailing rate of interest awarded by the nationalized banks, we deem it appropriate to enhance the rate of interest from 6% to 7.5%. In our considered view, this shall meet ends of justice.

8.3 Point No.IV (Negligence and proportion of liability)

a. Deceased Anil was traveling in his own private car driven by his paid driver. While the car was over-crossing a train at an unmanned gate, the train crashed on the car. In terms of the Railway record, the said gate is known as 'LC-59' i.e. Level Crossing No.59. Suffice to note, the identified spots where roads cross railway track are known as Level Crossing.

b. The incident happened hardly one kilometer after the train started from the nearest railway station Chikalthana.

c. Its not in dispute that the subject-matter railway gate was previously a manned gate. However, after conversion of the track into

Broad-gauge from Meter Guage and upon superannuation of earlier gateman, the Railway Department did not deploy any gateman there nor the gate was barricaded.

d. The Railway rules are clear that 'an unmanned gate can be manned, but not a vice versa'. During the days of the unfortunate accident, the area where the accident occurred has become hotcake in the real estate market. This was for the reason of establishment of Five Star Industrial Area and the then proposed Delhi Mumbai Industrial Corridor. As such, the incidences and occasions by vehicle travelers crossing the subject-matter unmanned railway gate was drastically increased. No doubt, it was sheer, superfluous and reckless negligence on the part of the Railway department to leave the subject-matter railway gate unmanned.

e. Claimants' argument is that due to the bushes and trees, the car driver could not see the approaching train. That, since there were no sign board before the railway gate nor any speed breakers were on the road, the car driver could not be set at fault. It is further submitted that the track was below the road level, due to which the car driver even could not see the exact track but the car easily reached on the track.

f. Mr. Sonawane relied upon the version of claimants' witness. CW-1 i.e. widow of the deceased Anil examined herself. However, she

is not eye witness to the accident. Hence on the point of negligence, her evidence is rightly discarded by the Tribunal. Nothing worthy is put before us to take exception to such finding of the Tribunal.

g. CW-2 is one Mahadeo Shejul who happens to be son of the earlier gateman. He briefly deposed that the road on which the accidental car was driven, was a rough road without speed-breaker and that there were bushes on both sides of the railway track. In cross examination, CW-2 submitted that the railway track passer vehicles had to bump over the track to cross. This witness is also not an eye witness to the accident.

h. CW-4 Shaikh Isaq at Exh.86 also speaks about road condition, bushes, absence of rail signs etc. He is resident of area nearby the accident spot. He additionally deposes that the railway track is atleast 8 to 9 inches above the road level. In cross examination he specifically admits that he has not witnessed the accident.

Thus, on the point of negligence, above is the evidence offered from Claimants side.

i. The Railways too, examined their witnesses mainly to rebut the negligence. The OW-1 namely Mr. Brijbhushansing serving as Section Engineer offered his evidence at Exh.93. He denied that there were no signboards, whistle board, level crossing board etc. on the track. He deposed that he himself conducted Trolley Inspection on

the track near the LC-59, prepared a sketch and panchanama of the spot [EXH.48], prepared site visibility diagram and reported the same to the Assistant Divisional Railway Manager. He submits that he found no traffic rules infringement at the hands of the loco pilot. That, the visibility was atleast of 600 mtrs from both side of the LC-59 for the loco pilot. He denied that there were bushes and trees that could camouflage the approaching train. That, an enquiry committee was set up by the Railways to investigate the accident and negligence. The committee conducted a thorough enquiry and found that there was no negligence on the part of the loco pilots. That, all the infrastructural mandates were cautiously in existence on the railway track i.e. the Whistle sign, Level Crossing sign etc. That, the loco pilot blew whistles timely as is the rule. However, the car driver hastily attempted to cross the track and caused the accident.

Except suggestions of denial, claimants could not fetch anything else out of this witness.

j. Important and relevant evidence is of OW-4 i.e. Surendrakumar who happened to the Assistant Loco Pilot. He submitted that the whistles were blown timely and as per the mandates and signboards. He deposed that the train was driven as per the rules and mandates of the Railways. He was on left side while the car entered on the track from right side. He submitted that

apprehending collision, he and the main Loco Pilot applied emergency breaks. However, the train does not stops abruptly on the spot. He attributed entire negligence on the car driver.

k. Surendrakumar is cross examined at length. His depositions are denied with suggestions. Obviously, except suggestions the claimants had least opportunity to shake his testimony.

l. The Tribunal found negligence on the part of both the Loco Pilots as well as the Car driver. Findings are rendered in the absence of any eye witness, the principles of *res ipsa loquitur* needs to be applied. Upon discussing the evidence on the point of negligence, the Tribunal divided the negligence in the proportion of 60/40 between the Loco Pilots and the car driver respectively.

m. We have considered the argument advanced by Mr. Sonawane, learned advocate for the claimants that the Railways ought to have examined the main Loco Pilot who was responsible for acceleration of speed and had overall control over the rail engine. He would have been the best person to tell as to how the accident occurred. This is for the reason, that the OW-4 clearly stated that he was sitting on left side while the car entered from right. It is therefore submitted that, entire liability of negligence be saddled on the Loco Pilots.

n. Mr. Uttam Bondar, learned advocate for the Railways vehemently opposed such arguments. He would submit that the

witnesses examined by the Railways clearly established that the Loco Pilots didn't miss any precaution and mandate while driving the train. His foremost submission is that in view of the consistent whistle blowing and the noticeable railway track, the car driver ought not to have tried hastily to cross the track before the train approaches. He submits that except suggestions of denials, there is nothing on record to show that the loco pilots failed to blow whistles. He would submit that apparently, it is nothing but the extreme haste on behalf of the car driver to cross the track, the mishap took place.

o. We take on record reference by Mr. Bondar to Section 131 of the Motor Vehicles Act 1988 which reads thus:

Section 131 of the Motor Vehicles Act 1988 which reads thus:

> *"Every driver of a motor vehicle at the approach of any unguarded railway level crossing shall cause the vehicle to stop and the driver of the vehicle shall cause the conductor or cleaner or attendant or any other person in the vehicle to walk up to the level crossing and ensure that no train or trolley is approaching from either side and then pilot the motor vehicle across such level crossing, and where no conductor or cleaner or attendant or any other person is available in the vehicle, the driver of the vehicle shall get down from the vehicle himself to ensure that no train or trolley is approaching from either side before the railway track is crossed."*

p. Referring to the Section 131 of the M. V. Act, Mr. Bondar submits that none of the witnesses from Claimants' side deposed that the car driver discharged his duty as per the section. He submits that

there is no evidence to show that car driver was within compliance of Section 131 of the Act.

q. Further Mr. Bondar specifically points out the version of OW-4 i.e. the Assistant Loco Pilot. He would submit that so far as Loco Pilots are concerned, this witness has clearly stated how each mandate is followed by them. That, nothing incriminating has been brought on record by the Claimants in the cross examination of the said witness.

r. Mr. Bondar disputes contention of Mr. Sonawane, that the respondent Railways ought to have examined the main Loco Pilot; and that failure to do so the evidence tendered by the OW-4 is stands meaningless. He submits that what is material, is that the loco pilots stated that they blew whistle timely and applied emergency breaks. He submits that that way, the evidence is sufficient.

Our findings:

s. There is no eye witness to the accident who are examined by the Claimants. The evidence of Mahadeo (CW-2) and Shaikh Isaq (CW-4) are of no avail to the claimants to establish that the Car driver was absolutely not at fault, and that, it is only the Loco Pilots and the Railways who are solely responsible for the accident. They mere offer verbal evidence as regards to the road condition and that the gate was unmanned.

t. We find and hold that the LC-59 gate was unmanned. However, those two witnesses themselves say that the road was in bad condition. If so, the car driver was expected to drive slow; and while doing so he ought to have been extreme cautious while crossing the track. We may observe that the car driver had no occasion to see that railway track was in the way and that, he was surprised to find his car on the track suddenly.

u. In fact, the evidence of CW-4 Shaikh Isaq show that deceased Anil and his driver were much conversant with area and the road on which the accident took place. The witness claimed to be a real estate broker and deceased Anil was known to him as the later use to visit that area to purchase land. Thus, it can not be accepted that the car driver was absolutely unaware of location of the railway track and the LC-59.

v. It has come in the panchanama and the visibility diagram produced by the witness of Railways that there are signboards for the Loco Pilots to blow whistle for Level Crossing. Claimants could not dispute the diagram, rather they also rely upon the same to identify the location. The OW-4 i.e. the assistant loco pilot deposed that they blew the whistle while crossing the LC-59 as per the signboards and the mandate.

w. It is a common knowledge that a train is not such a vehicle which would ever approach calmly and without any noise. It certainly creates huge noise while moving. It is brought on record that at the relevant time the train was at the speed of 95 KMPH. It can not be believed that appearance of a train at a level crossing would be a surprise to the passers by. Existence or non-existence of bushes beside the track would make no difference.

x. True that the evidence from the Railways is through the record and submissions prepared and offered by its officials only. The claimants are genuinely not able to gainfully fetch anything from the cross examination of those witnesses, except bare denial.

y. However, merely for these reasons we do not accept that there was absolutely no fault on the part of the Railways.

z. The facts are very peculiar. In a case like the one in hand, the negligence of the respondent Railways needs to be judged from two angles i.e. the negligence of Loco Pilots and the negligence of the Railways itself. Looking to the entire scenario, we find that liability of the Railways must be weighed as Institutional negligence rather than individual negligence.

aa. Individual negligence is attributable to the loco pilots, while the institutional level negligence is attributable to the Railways.

bb. This constrains us to go to the root of the principles of motor accident claims. Chapter XI of the Motor Vehicles Act 1988 (as was applicable) govern third party compensation claims. These claims are based on the principles of Torts. Tort is defined as 'a civil wrong for which remedy is damages.' A wrongdoer is liable to compensate the victim by damages. In the motor accident claims, driver is the wrongdoer, while the owner becomes liable on the principles of 'vicarious liability i.e. indirect liability'. To add, liability of an Insurer is merely a contractual liability.

cc. 'Negligence' is a component of Tort. There is no specific definition of 'negligence.' However, since from the oldest case law identifying the principles of Torts i.e. ***Rylands Versus Fletcher (1868) LR. 1 Ex. 265*** to one of the landmark judgment by our Honorable Supreme Court in the case "***M.C. Mehta case" 1987 SCR (1) 819***, the cases generally defined 'negligence' as 'failure to take reasonable care while commission of an act and failure to take reasonable care by omission of an act.' Needless to mention, these cases are the landmark cases on absolute liability of which 'negligence' is at the center point.

dd. Railways is the owner of the railway tracks in the country. They have their own rules and mandates for administering and operating the level crossings i.e. the railway gates. There are two types of Level

Crossings i.e. Manned Level Crossing and Un-manned Level Crossing. At both, the Loco Pilots are under obligation to blow whistle. While at former it is the strict responsibility of the Railways to keep a Gateman present and gate/barricade intermittently open-close, at later everything is left to the passers crossing the level crossing.

ee. It has come on record that the LC-59 where the accident occurred is in fact identified as a Manned Level Crossing. However, since after superannuation of the last gateman namely Mr. Shejul, the Railways didn't deploy any gateman there. As such, the LC-59 remained unguarded and unmanned. Resultantly, the passers became extremely vulnerable to railway accidents at LC-59.

ff. We have gone through the evidence of OW-5 namely Paparao Cherupalli in his cross examination at Exh.176 at paragraph No.2 has unequivocally stated that, *"As per my knowledge received orally from my superior officer that after upgradation of the track from meter-guage to broad-gauge, the gate was not continued as a 'manned gate'. The upgradation took place in the year 1991-1992. The position before that I don't know. I don't have any document as to when exactly the gate was made unmanned. I can not say whether the record pertaining to any gate whether manned or unmanned is maintained forever, as it is the original record. Witness volunteers such record is not required for all the times. I don't have any*

document with me to substantiate that the said gate from the beginning was always unmanned"

gg. We gainfully refer to the "Level Crossing and Gateman" rules at Chapter IX of the Railways Rules. Rule 924 of those rules is reproduced here for ready reference:

> ***"924. Provision of New Level Crossings/ Manning/Demanning/Elimination:-***
> *(a) Provision of the new level crossings: If, provision of new level crossing is inescapable, then only manned level crossing is to be provided. This is applicable to all existing lines, new constructions and gauge conversions. However, these instructions are not applicable in case of private sidings.*
>
> *(b) Manning of Unmanned Level Crossing :*
>
> *(i) Based on traffic density, visibility and regular plying of buses etc., unmanned level crossings have been categorized into I-V categorized for manning at Railway's cost in a phased manner on a programmed basis as per following priority. Category-I Level Crossings where the Train Vehicle Units (TVUs) exceed 10000.*
>
> *Category-II Level Crossings where TVUs exceed 6000 and where visibility is restricted.*
>
> *Category-III Level Crossings where TVUs is less than 6000 and visibility is restricted but buses, motor vehicles ply regularly. Category-IV Level Crossings where TVU is less than 6000 and visibility is restricted but motor vehicles do not ply.*
>
> *Category-V Level crossings where visibility is adequate but traffic density exceeds 6000 TVUs.*
>
> *(ii) All unmanned level crossings on Rajdhani and Shatabdi routes where maximum permissible speed is 120 Kmph or more should be manned on priority.*

> *(iii) For manning of unmanned level crossings with traffic density more than 10000 TVUs, Board's approval is not required. However, in all other cases Board's sanction is required.*
> *(c) De-Manning/Elimination of the Level Crossing: The existing manned level crossings should not be demanned. However, the detailed review/survey of the existing level crossings both manned and unmanned to be carried out with a view to eliminate them by either passing the road through an existing bridge or by constructing link roads to combine two or more level crossings etc.*

hh. It is a matter for fact that, the LC-59 was originally a manned level crossing. However, the Railways left it unmanned since after retirement of the last gateman. We find that the respondents have given ceremonial sendoff to their own rules. The defense and the evidence of Railways on this point is not at all acceptable. We record our observation that this is most lethargic and negligent than anything.

ii. Indeed the car driver was negligent, however the nature and quantum of negligence of the Railways is not only greatest, but the same is worrisome. Its affecting the public at large and all the passers from such unmanned gates are vulnerable to such negligence. Hence, we hold the respondent No.2 more liable at institutional level, rather on the negligence of the Loco Pilots.

jj. We beneficially place our hands on the 'law of strict liability' thoroughly discussed by the Honorable Supreme Court in the case of

M.P. Electricity Board Versus Shail kumar and ors. *reported at* ***2002(1) ALL MR 963 (S.C.)***

kk. Relevant portion from ***Shail Kumar*** case (supra) is reproduced for convenience:

> *"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.*
>
> *8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the*

defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

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12. In M.C. Mehta v. Union of India this Court has gone even beyond the rule of strict liability by holding that "where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Rylands v. Fletcher."

13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In Northwestern Utilities, Limited v. London Guarantee and Accident Company, Limited {1936 Appeal Cases 108}, the Privy Council repelled the contention of the defendant based on the aforesaid exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage."

ll. Hence in continuation with definition of ‘negligence’, we observe that since the Railways miserably and irresponsibly omitted to take strict care of operating the LC-59 as properly manned level crossing, the car driver erred in commission of approaching on the track.

mm. The negligence of the Car driver and the Railways can neither be equated nor can be compared. We can not loose sight of the fact that there are a numberless level crossings on the railway tracks. Some are manned and some may be unmanned. Level crossings might have been classified corresponding to the parameters and guidelines laid down in the Railway Rules. However, looking to the Rule No.924 of Chapter IX (supra) the Railways is under strict liability to observe the operation of manned level crossings. We observe that ‘an unmanned level crossing can be manned, but in no circumstances a manned level crossing can be made or left unmanned/de-manned’.

nn. A simple logic therefore a prudent mind needs to apply: had the Railways manned LC-59 as it was, there was least occasion for any passer to approach on the railway track. Despite LC-59 being manned if anyone had approached on the track, then such driver/passer could alone has been said to have committed ‘negligence’.

oo. For the reasons recorded above, we may say that the Car driver committed fatal error in entering on the track. However, in our considered view the Railways is mainly negligent for occurrence of the unfortunate accident. That's why at the outset we recorded that Claimants' case suffers car driver's haste, while Railway's defense suffers failure to follow the strict liability principle.

pp. For the reasons recorded above, we deem it appropriate to interfere into the findings of the Tribunal as regards to division of negligence between the Railways and the car-driver. We accordingly hold the Railways liable for negligence @ 75%, and the Car driver liable for negligence @ 25%. Accordingly, we hold Railways alone liable for compensation. Claim Petition is already dismissed against respondent nos.3A, 5 and 6. Suffice to note, respondent nos.5 and 6 have not filed any appeal.

8.4 Point No.V (Loss of dependency)

We shall now deal with the compensation awarded towards pecuniary damages i.e. loss of dependency. These damages are to be computed considering these factors i.e. Age of deceased, applicable multiplier, income of the deceased and deduction out of income towards personal expenses.

a. Age & Multiplier:

Determination of pecuniary damages in a third party motor accident compensation claim is carried out by applying a formula. "Annual net income minus proportionate personal expenses multiplied by appropriate multiplier" is the standard formula. The Honorable Supreme Court redefined the appropriate multipliers corresponding to age groups in ***Sarla Verma*** case. Age of the deceased is not disputed by anybody. Undisputedly, deceased Anil was 38 years old while the accident took place. Hence, as per the law laid down by the Honorable Supreme Court in the case of '***Sarla Verma***', appropriate multiplier of "M-15" is rightly applied by the Tribunal. Neither party has any objection for application of the multiplier M-15.

b. Deduction towards personal expenses :

For calculating pecuniary damages in a third party compensation case under Motor Vehicles Act, 1988, amount towards personal expenses needs to be deducted in 1/3rd proportion, considering the number of claimants/dependents. As per the law laid down in ***Sarla Verma*** case, the proportion of deduction is corresponding to the number of claimants. We find that the learned Member of the Tribunal has rightly done so in view of the law laid down in ***Sarla Verma's*** case (Supra).

c. Income of the deceased:

i. Its not disputed that deceased Anil was a businessman. The Claimants produced on record his income tax returns. We go by the latest pronouncement of the Honorable Supreme Court in the case of *'Rashmirekha Tripathy Vs. the Branch Manager (Legal Claims), Shriram G.I.Co.ltd. and ors.* bearing neutral citation *2026 INSC 661"*. At paragraph Nos. 17 to 20 their Lordships have laid down the principles and guidelines to compute the loss of dependency against death of a non-salaried person, particularly a self-employed or businessman.

ii. In this context, we find that the Tribunal has discussed much about the income of the deceased at paragraph Nos.48 to 50 of its judgment. We have gone through it. Learned Member of the Tribunal has fully relied upon the income tax returns placed on record by the claimants for 2006-07 to 2008-09, and thereafter the average of such income is taken into consideration for computation of loss of dependency.

iii. During the course of hearing, Mr. Mahesh Sonawane, learned advocate for the claimants produced on record a calculation sheet titled as Income Statement of Anil Jindal prepared and signed with seal by one Gopal Agrawal for GSA & Co., a chartered accountant firm. This statement sought to say that average of income of

deceased Anil was higher than what is stated in the Income Tax Returns.

iv. We feel that the exercise carried out by the Tribunal could be approved in the light of the observations made by the Honorable Supreme Court in the case of '***Rashmirekha***" (supra). The claimants can not take any different stand from what they had taken in the Trial. There is nothing on record nor it is the case of the Claimants that such additional income was placed before the Tribunal, and yet it was not considered. On the other hand, learned Member of the Tribunal has accepted the income as was placed by the Claimants. We don't comprehend with the submissions of Mr. Sonawane, that income of the deceased needs to be escalated on the basis of the said Income Statement which is not part of the Income Tax Returns submitted by them. Nothing prevented the claimants to produce relevant information to the Chartered Accountant nor the Chartered Accountant was prevented from computing such calculation in the Income Tax Returns.

d. Non Pecuniary damages:

These damages are of such nature that there can be no definite formula to ascertain. Hence learned Member of the Tribunal seems to have taken resort to go by the guidelines laid down by the Honorable Supreme Court in the ***Pranay Sethi's*** case and ***Magma General***

Insurance co.ltd. Vs. Nanu ram and ors. (neutral citation ***2018 INSC 828***). The non pecuniary damages are award to the tune of Rs. 4,77,000/-. We are of the considered view that the said quantum requires no variation.

e. Conclusion:

Thus, we are of the considered view that the First Appeal No.101 of 2024 filed by claimants deserves to be allowed partly with following findings:

I. The Tribunal did not err in holding the average income of the deceased @ Rs.35,90,000/- per annum for the purpose of computing the compensation.

II. Compensation deserves to be enhanced by adding future prospects @ 40% in the income of the deceased.

III. Interest on compensation shall be @7.5% per annum instead of 6%.

IV. We concur with the findings of the Tribunal that both car driver and the Loco Pilots were negligent to cause the accident. However, for the reasons recorded above, the Railways is held responsible for the accident @ 75%, and the car driver is held responsible for the accident @25%.

V. Consequently, First Appeal No.1796 of 2024 is liable to be dismissed.

VI. Thus, we find that the appropriate calculation would be as follows:

Sr. No.	Particulars	Amount
	Total Income of 03 years	1,07,68,021.00
1	Annual income (round figure)	35,90,000.00
2	Future prospects @ 40%	14,36,000.00
3.	**Total (1+2)**	**50,26,000.00**
4.	Personal deduction @ 1/3	16,75,333.00
5.	**Total (3-4)**	**33,50,667.00**
6.	Multiplier M-15	5,02,60,005.00
7.	Non pecuniary damages	4,77,000.00
8.	**Total (6+7)**	**5,07,37,005.00**
9.	Liability of respondent Nos.1 and 2 @ 75%	3,80,52,753.00

9. Thus, we find that the respondents no.1 and 2 i.e. railways are liable to pay compensation to the claimants i.e. appellants in First Appeal No.101 of 2024 in the tune of Rs.3,80,52,753.00 with interest @ 7.5% per annum from the date of filing of the claim petition till its full realization. Hence, we pass following order:

ORDER

a. First Appeal No.101 of 2024 is partly allowed with proportionate cost.

b. First Appeal No.1796 of 2024 stands dismissed.

c. Respondent nos.1 and 2 in First Appeal No.101 of 2024 shall pay Rs.3,80,52,753.00 to the appellants with interest @ 7.5% per annum from the date of filing of the claim petition till its full realization.

d. Amounts if any, deposited/paid by the respondent nos.1 and 2 to the appellants shall be adjusted accordingly.

e. Clause Nos.IV to VII of the operative part of the impugned judgment and order dated 20.05.2023 passed by learned Member of Motor Accident Claims Tribunal, Jalna in M.A.C.P. No.152 of 2009 shall remain as it is.

f. Award be modified accordingly.

g. Pending Civil Application if any, stands disposed of.

[AJIT B. KADETHANKAR, J] [KISHORE C. SANT, J.]

Rushikesh/2026