

(2003) 01 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 635 of 1998

Amritlal and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 131, 147

Citation : (2003) 2 ACC 614 : (2004) ACJ 1868 : (2003) 2 RLW 779 : (2003) 2 WLC 22 : (2003) 1 WLN 512

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Vinay Jain, for the Appellant; Ravi Bhansali and P.S. Bhati for Respondent Nos. 1 and 2 Railways, Jagdish Vyas, Insurance Co., M.L. Choudhary, for Claimants, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—All the above mentioned civil misc. appeals filed by the owners of the truck in question are being decided by this common judgment as all of them have arisen out of the same accident and in all of them identical and common questions of law and facts are involved.

S.B. Civil Misc. Appeal No. 635/1998

2. This civil misc. appeal has been filed by the appellants against the judgment and award dated 27.7.1998 passed by the learned Judge, Motor Accident Claims Tribunal (First), Jodhpur (for short "Claims Tribunal") in MACT Case No. 288/95 by which the learned Claims Tribunal, on account of death of Chutraram, passed an award of Rs. 76,500/- in favour of the claimants-respondents No. 4 to 6, namely, Smt. Madki, Jetha Ram and Bhinjaram respectively, who are LRs of deceased Chutraram and against the present appellant No. 1 Amrit Lal, owner of the truck in question and the National Insurance Company Limited (respondent No. 3) (for short "Insurance Company") and Railway Administration (respondents No. 1 and 2) were exonerated from their liability to pay compensation to the claimants-

respondents No. 4 to 6.

3. It arises in the following circumstances:-

On 12.6.1991, a Truck bearing No. RRN 5343, owner of which was appellant No. 1 Amrit Lal, was being driven by one Avad Ram (who also died in the accident) and that Truck was carrying about 50-60 passengers and was going towards Satlana and when it reached near Satlana railway crossing, which was unguarded and unmanned level crossing, it met with accident with the Railway engine, as a result of which, deceased Chutraram and some other persons died including the driver of the truck in question and some other persons received injuries.

Thereafter, on 11.11.1991, a claim petition was filed by the claimants-respondents No. 4, 5 and 6 being the wife and sons of the deceased Chutraram and at the time of accident, the age of the deceased Chutraram was 60 years and was doing the work of black-smith and Rs. 3,00,000/- were claimed as compensation by the claimants-respondents No. 4 to 6.

In the claim petition, it was asserted by the claimants- respondents No. 4 to 6 that apart from the negligence of the driver of the truck in question, there was also negligence on the part of the respondents No. 1 and 2 (Railway Administration) also as compliance of paras 1604(6), 1611(0), 1613 & 1601 of the Indian Railway and Works Manual was not made by them and as a result whereof, the alleged accident took place.

A reply to the claim petition was filed by the appellant No. 1 Amrit Lal, owner of the truck in question and it was asserted by him that the truck in question was being driven by the driver slowly, but accident took place because of the negligence of the driver of the Railway engine. Apart from this, at the time of accident, there was no gate at the railway crossing in question and the railway crossing was unguarded and unmanned level crossing. Hence, claim against the appellant No. 1 Amrit Lal, owner of the truck in question, be dismissed.

The respondent No. 3 Insurance Company also filed a separate reply to the claim petition and it asserted that the truck in question was meant for carrying goods and not passengers and, therefore, passengers were being carried in the truck in question in violation of the terms of the policy entered into between the Insurance Company and the appellant No. 1 Amrit Lal, owner of the truck in question, and since there was breach of the terms of the policy, therefore, Insurance Company should not be held liable. Hence, the claim against the Insurance Company be dismissed.

The respondents No. 1 and 2 (Railway Administration) also filed a separate reply to the claim petition and they asserted that accident took place because of rash and negligent driving of the truck in question by the driver of the truck in question and there was no fault on the part of the Railway Administration. Hence, the claim against the Railway Administration be dismissed.

The following issues were framed by the learned Claims Tribunal on 25.4.1994 :-

?1? D;k fnukad 12-6-91 dks fnu ds djhcu 2-30 cts foi{kh la[;k&3 ve`ryky ,oa mEesnjkje ds oSrfud M?kbZoj us V?d la[;k vkj-vkj-,u- 5343 esa ernku dsUnz lrykuk ys tkus ds fy, vkSjrkSa o vknfe;ksa dks mDr V?d esa cSBk;k vkSj mDr V?d dks ykijokgh ,oa rst jQrkj ls pyk dj lrykuk jsyos LVs"ku ds ikl fcuk QkVd ?ksflax ij jsyos ds baftu ls V?d dh VDdj k fn;k \\

?2? D;k foi{kh la[;k&3 ve`ryky ,oa mEesnjkje ds oSrfud M?kbZoj us V?d la[;k vkj-vkj-,u- 5343 dks lrykuk ds ikl fcuk QkVd ds jsyos ?ksflax ij baftu ls VDdj;k ftlesa Jh pqrjk jke] Jherh otw] Jh vksVkjke( Jherh /kwM+h] Jherh eksM+h] Jherh /kkiw] Jh Hkaoj yky dh e`R;q gks xbZ \\

?3? D;k fnukad 12-6-91 dks <kbZ cts ds djhc foi{kh la[;k&1 ds M?kbZoj us mDr dks ykijokgh ls pykdj mDr LFkku ij jsyos baftu ls VDdj;k vkSj nq?kZVuk dkfjr dh ftlesa Jh yknq jke] Jh <ykjke] Qwlkjke vkSj Jh HkSjk jke] ,oe nsok jke ds lk/kkj.k o xEHkhj pksVsa vkbZ \\

?4? D;k mDr nq?kZVuk esa gqbZ Jh pqrjkjke] otw] vksVkjke] /kwM+h] ekMh] Hkaojyky] ,oe~ Jherh jkth dh e`R;q dh ,sot esa muds okfj"kk ftUgksus eqvkots ds nkos fd; gSsa os ?e"k% vius nkos ds eqrkfcr crkSj eqvkots ds foi{khx.k ls la;qDr :i ls o i`Fkd i`Fkd rkSj ij ?e"k% 3]00]000@&] 2]40]000@&] 300]000@&] 2]00]000@&] 2]50]000@&] 2]00]000@&] 8]00]000@&]2]40]000@& izkIr djus ds vf/kdkjh gS \\

?5? D;k mDr nq?kZVuk esa dkfjr pksVksa dh otg ls vkgr izkFkhZ Jh nsok jke] :i;s 5]00]000@& iwlkjke :i;s 1]00]000@&] HkSjk jke :i;s 2]00]000@&] <ykjke :i;s 3]00]000@& vkSj yknwjke :i;s 1]00]000@&] crkSj eqvkots ds eqrkfcd vius vius Dyse foi{khx.k ls la;qDr :i ls ,oa i`Fkd rksj ij izkIr djus ds vf/kdkj gS \\

?6?D;k foi{kh la[;k&1 o 2 }kjk bf.M;u jsyos ,.M oDIz eSuqvy ds isjk 1604? 6?]1611?0?] 1613] 1601 esa vafdr fgnk;rksa ,oa fu;eksa dk Li"V ikyu ugha fd;k ftlls ;g nq?kZVuk gqbZ vkSj bl otg ls foi{kh la[;k&1 o 2 eqvkots dh jk"kh e`rdksa ds okfj"kk ,oa vkgr O;fDr;ksa dks vokj djus ds fy, ftEesokj gS \\

?a7? D;k ;g nq?kZVuk jsyos baftu ls gksus ls eqvktok dk izkFkZuk i= lquus dk vf/kdkj {ks= bl U;k;ky; dks ugha gS \\

?8? D;k V?d ekfyd ,oa V?d M?kbZoj us V?d la[;k vkj-vkj-,u- 5343 dk mi;ksx lokfj;ka ys tkus ds fy, djds ekVj oghdy ,ssDV ds izko/kkuksa dh vogsyuk dh vkSj ikfylh dh "krksZ dh vogsyuk dh ftldh otg ls chek dEiuh eqvktok vnk djus ds fy, ftEesokj ugha gS \\

?9? D;k chek ikfy"kh esa ;kf=;ksa ds lECU/k esa dksbZ fizfe;e pktZ ugha fd;k x;k ftlls chek dEiuh eqvktok nsus ds fy, ftEesnokj ugha gS \\

?10? D;k mDr V?d esa lQj dj jgh lokfj;ka eksVjokgu vf/kfu;e Lo;a dh tksf[ke ij ;k=k dj jgs Fks blfy, chek dEiuh eqvktok nsus ds fy, ftEesokj ugh gS \\

?11? D;k nq?kZVuk izkFkhZx.k ds vuqlkj jsyos baftu VDdjkus ls gqbZ ftldh otg ls izkFkhZx.k dks vius nkos ;k rks jsyos DysEl fV?C;quy esa djus pkfg;s vFkok l{ke flfoy vnkyr es djus pkfg;s ;g nkos bl U;k;f/kdj.k ds lkeus {ks=kf/kdkj ls ijs gksus

Is ugh py ldrs gS \\\

?12? vuqrks"k D;k gksxk\\\

Thereafter, the parties adduced evidence in support of their respective claims.

After hearing the parties and after considering the entire evidence and materials available on record, the learned Claims Tribunal passed the impugned judgment and award dated 27.7.1998 in the manner as indicated above holding inter-alia:-

(i) That on issues No. 1 to 3, the learned Claims Tribunal came to the conclusion that at the relevant time, the Truck in question was being driven by its driver Avad Ram and the present appellant No. 1 Amrit Lal was owner of the truck in question and in that truck, passengers were being taken for the purpose of casting votes and the truck in question was, being driven by its driver rashly and negligently and because of rash and negligent driving by the driver of the truck in question, the Truck met with accident with the Railway engine at Satlana Railway crossing, which was unguarded and unmanned level crossing, as a result of which, Chutra Ram and some other persons died and some persons received simple as well as grievous injuries.

(ii) That on issue No. 6, the learned Claims Tribunal came to the conclusion that the accident took place because of rash and negligent driving of the truck in question by its driver. The driver of the truck in question was informed that Railway engine was coming and he was asked to drive the truck slowly, but he did not pay any heed and, therefore, the learned Claims Tribunal came to clear cut conclusion that the accident took place because of negligence of the driver of the truck in question and not of the Railway engine driver and thus, the respondents No. 1 and 2 (Railway Administration) were not liable to pay compensation to the claimants-respondents No. 4 to 6.

(iii) That on issues No. 8, 9 and 10, the learned Claims Tribunal came to the conclusion that the truck in question was insured with the respondent No. 3 Insurance Company for the purpose of carrying goods and not for the purpose of carrying passengers and in the truck in question, which was insured for carrying goods, the passengers were travelling, who were neither employees of the owner of the truck in question nor owners of the goods and thus, since terms of policy were breached by the owner of the truck in question, therefore, in these circumstances, the Insurance Company (respondent No. 3) was not held liable by the learned Claims Tribunal.

Aggrieved from the said judgment and award dated 27.7.1998 passed by the learned Claims Tribunal, this civil misc. appeal has been filed by the appellants.

4. In this appeal, the following submissions have been made by the learned counsel appearing for the appellants:-

(i) That the findings of the learned Claims Tribunal that the Insurance Company (respondent No. 3) was not liable to pay compensation to the claimants-

respondents No. 4 to 6 were palpably wrong as the Insurance Company should have been held liable even if in an accident, gratuitous passengers travelling in a goods vehicle, received injuries or died. In this respect, he has placed reliance on the decision of the Hon''ble Supreme Court in *New India Assurance Company v. Satpal Singh and Ors.* (1).

(ii) That Railway Administration (respondents No. 1 and 2) should also have been held liable for causing the accident at Satlana Railway crossing as it was unguarded and unmanned level crossing and in such circumstances, contributory negligence should have also been fastened on the driver of the Railway engine. Thus, the findings of the learned Claims Tribunal on issue No. 6 holding the Railway Administration not liable to pay compensation to the claimants-respondents No. 4 to 6 are wholly erroneous one and should be set aside. In this respect, he has placed reliance on the decision of the Hon''ble Supreme Court in *Union of India v. United India Insurance Co. Ltd.* (2).(5). On the other hand, Mr. Jagdish Vyas, learned counsel for the respondent No. 3 Insurance Company, has submitted that the law laid down in the case of *Satpal Singh (supra)* has been over-ruled by the Larger Bench of the Hon''ble Supreme Court in *New India Assurance Co. Ltd. v. Asha Rani and Ors.* (3) and, therefore, for gratuitous passengers, the Insurance Company cannot be held liable and thus, the issues No. 8, 9 and 10 were rightly decided by the learned Claims Tribunal and no interference is called for with the findings of the learned Claims Tribunal on issues No. 8, 9 and 10. Hence, the appeal against the Insurance Company (respondent No. 3) be dismissed.

5. On behalf of the Railway Administration (respondents No. 1 and 2), the following submissions have been raised by Mr. Ravi Bhansali :-

(i) That the judgment of the Larger Bench of the Hon''ble Supreme Court in the case of *Asha Rani (supra)* absolved the Insurance Company for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury, but not to the case of third party and since the passengers travelling in the truck in question should be treated as third party, therefore, the law laid down by the Larger Bench of the Hon''ble Supreme Court in the case of *Asha Rani (supra)* would not be helpful to the Insurance Company.

(ii) That since there is a clear cut finding of the learned Claims Tribunal that accident took place because of rash and negligent driving by the driver of the truck in question and there was no negligence on the part of the driver of the Railway engine, therefore, in these circumstances, even though the railway crossing in question was unguarded and unmanned level crossing, the Railway Administration could not be held liable and thus, the issue No. 6 was rightly decided by the learned Claims Tribunal and no interference is called for with the findings of the learned Claims Tribunal on issue No. 6.

Hence, the appeal against the Railway Administration (respondents No. 1 and 2) be dismissed.

6. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and gone through the materials available on record.

Point No. 1 with regard to liability of Insurance Company

7. The first question that arises for consideration is whether the findings of the learned Claims Tribunal on issues No. 8, 9, 10 by which the Insurance Company (respondent No. 3) was not held liable to pay compensation to the claimants-respondents No. 4 to 6, are liable to be confirmed one or not.

8. In the case of Satpal Singh (supra), the Hon''ble Supreme Court observed as follows :-

"Under the New Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

9. Thus, the Hon''ble Supreme Court in the above case made the Insurance Company liable even for gratuitous passengers travelling in the goods vehicle. But, in another case in New India Insurance Co. Ltd. v. Asarani and Ors. (4), it was felt necessary that the law laid down in the case of Satpal Singh (supra) required re-consideration by a Larger Bench of the Hon''ble Supreme Court and consequently, the matter was referred to the Larger Bench of the Hon''ble Supreme Court.

10. The reference was answered by the Larger Bench of the Hon''ble Supreme Court in the case of Asha Rani (supra) and in that case, the question, which was referred to the Larger Bench, was as follows :-

"The question that arises in this batch of appeals is whether the insurer is liable to pay compensation to the dependents of the deceased passenger, while the deceased passenger was travelling in a goods vehicle and that vehicle met with an accident on account of which the passenger died or suffered bodily injury."

11. The main judgment in the case of Asha Rani (supra) was delivered by Hon''ble Mr. Justice G.B. Pattanaik, CJI (as he then was) and in the end, His Lordship observed as follows :-

"It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury."

12. On the above observations, the learned counsel appearing for the Railway Administration (respondents No. 1 and 2) has argued that the liability of the Insurance Company in the case of gratuitous passengers was protected, but the learned counsel appearing for the Insurance Company (respondent No. 3) has submitted that once the law laid down in the case of Satpal Singh (supra) has been over-ruled in totality, therefore, the above argument of the learned counsel for Railway Administration does not stand any where.

13. There is no dispute on the point that the law laid down by the Hon"ble Supreme Court in the case of Satpal Singh (supra) has been over ruled by the Larger Bench of the Hon"ble Supreme Court in the case of Asha Rani (supra).

14. The argument of the learned counsel appearing for the Railway Administration (respondents No. 1 and 2) cannot be appreciated in view of the observations made by Hon"ble Mr. Justice S.B. Sinha, who also agreed with the views expressed by Hon"ble Mr. Justice G.B. Pattanaik, CJI (as he then was) and in para No. 27, the following observations were made by His Lordship :-

"In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

15. The above observations clearly make out a case that the Insurance Company would not be liable in the case of gratuitous passengers travelling in a goods vehicle and thus, it should be taken for granted that the law laid down by the Hon"ble Supreme Court in the case of Satpal Singh (supra) was over-ruled by the Larger Bench of the Hon"ble Supreme Court in the case of Asha Rani (supra) in totality.

16. When this being the position, the Insurance Company (respondent No. 3) cannot be held liable as the passengers travelling in the truck in question were gratuitous passengers.

17. For the reasons stated above, the findings of the learned Claims Tribunal on issues No. 8, 9 and 10 holding the Insurance Company (respondent No. 3) not liable to pay compensation to the claimants-respondents No. 4 to 6, are liable to be confirmed.

Point No. 2 with regard to liability of Railway Administration

18. The Findings of the learned Claims Tribunal in this respect on issue No. 6 have already been quoted above where the learned Claims tribunal categorically held that the accident took place because of rash and negligent driving of the truck in question by its driver and there was no fault on the part of the driver of the Railway engine.

19. There is also Finding of the learned Claims Tribunal that before the accident took place, the driver of the truck in question was informed by the passengers travelling in that truck that Railway engine was coming and he should stop the truck, but the driver of the truck in question did not pay any heed and thus, from every point of view, for the alleged accident, negligence was attributed on the part of the driver of the truck in question.

20. There is also no dispute on the point that at the time of alleged accident, the railway crossing in question was unmanned and unguarded level crossing and the said railway crossing had no gates or stiles.

21. Looking to the above facts and circumstances, the question for consideration is whether the findings of the learned Claims Tribunal on issue No. 6 by which the Railway Administration was not held liable to pay compensation to the claimants-respondents No. 4 to 6, are liable to be confirmed one or not.

22. The learned counsel for the appellants has placed reliance on the decision of the Hon"ble Supreme Court in the case of Union of India v. United India Insurance Co. Ltd. (supra). The salient features of the law laid down by the Hon"ble Supreme Court in that case may be summarised in the following manner :-

(i) That inasmuch as in this case, the driver of bus did not stop the vehicle at the unmanned crossing, it must in our view be held that he was guilty of negligence even though there was no curve or obstruction at the point.

(ii) That even if the driver of the passenger vehicle was efficient, the Railways, if its negligence was otherwise proved, could not plead contributory negligence on the part of the passengers of the vehicle.

(iii) That we shall now deal with the main point. At the outset it is necessary to notice the difference between the statutes in England and in India. In England as shown below, duties are statutorily imposed under two statutes of 1845 and 1863 directly on the Railways to erect gates and employ watchmen, etc. at the level crossings if the railway was cutting across a public road. But the position in our country is somewhat different. As pointed out by the Bombay High Court in Henry Conder v. Ballaprosad Bhagwandin (5) by Sir Charless Sargent, C.J. (quoted in B.N. Rly. Co. Ltd. v. Tara Prosad Maity (6) the direct obligation cast on the Railways by Section 21 of Act 18 of 1954 was repealed later by Act 25 of 1871. To this extent, the Indian statute therefore differs from the English statute. u/s 13 of the Railways Act, 1890 no such duties are imposed directly on the Railway administration by the statute.

(iv) That it must, therefore, be accepted that the claimants can sue the Railways concurrently for breach of the common law or statutory duties or for breach of either of the duties.

(v) That in our view, therefore, because the Railways are involved to what is recognised as dangerous or perilous operations, they are at common law, to take

reasonable and necessary care, on the "neighbourhood" principle even if the provisions in Section 13(c) and (d) of the Railways Act, 1890 are not attracted for want of requisition by the Central Government.

(vi) That further in our view, the following passage of the judgment aforesaid learned Judicial Commissioner correctly represents the position at common law :-

"A level-crossing is on the one hand a danger spot in view of the possible movement of trains, and on the other is an invitation to the passers-by. This is a public crossing and not merely one by private accommodation. Therefore it is the legal duty of the Railway to assure reasonable safety. The most obvious way of doing it is to provide gates or chain barriers and to post a watchman who should close them shortly before the trains pass.

But failure to do so is not by itself an act of negligence provided that the Railway had taken other steps sufficient in those circumstances to caution effectively a passer-by of average alertness and prudence. At a reasonable distance on either side, prominently written boards can be affixed, asking the road-users to beware of trains. If the track on either side is visible from near the caution board or within a short distance from the crossing, this would be sufficient because a diligent road-user could look around and see the train. On the other hand, if there is a bend on the track or there are trees or bush in between or the road on either side of the crossing is very far below the level of the railway track, or for any other similar reasons the track is not visible beyond a short distance, then even the caution boards are useless. In that case gates are indicated. Similarly boards may be affixed along the railway, say half to three-fourth of a mile in either direction calling upon the engine driver to whistle. A whistle by the driver can supplement, but cannot replace gates or caution boards as a device to protect the users of a crossing."

(vii) That for the aforesaid reasons; no case is made out by the appellant for disturbing the finding of the High Court that applying common law principles, the Railways must also be deemed to be negligent in not converting the unmanned level- crossing into a manned one with gates having regard to the volume of rail and road traffic at this point.

(viii) That we hold that the Tribunal and the High Court were right in holding that an award could be passed against the Railways if its negligence in relation to the same accident was also proved.

23. Apart from the above, in the case of railway level crossing, the following principles have to be kept in mind :-

(i) That to make the Railways liable, mere allegation or proof that the driver of the Railway engine was guilty of negligence in such cases is altogether irrelevant; the plaintiff must allege and prove, not merely that the Railway Administration was negligent, but its negligence caused or materially contributed to the injury.

(ii) That there is an obligation on the part of the Railway Company or

Administration to ensure that whenever a railway line passes over a thoroughfare adequate warning should be given to the public of the passing of the trains at the time they pass so that accidents may be avoided. This duty need not necessarily be a statutory duty. It is implied and inherent in the functions to be discharged by the railway administration in the matter of running their railways. The railway administration must, therefore, when the road crossed is busy and the visibility of incoming train is obstructed take the precaution of either putting up a railway gate and keeping it closed at the time the train is due to pass or put up some other obstruction which would prevent the public from passing over the level crossing giving them information and notice of the approaching train.

(iii) That but, there is no general duty to man all level crossings e.g. when the road crossed is not busy and the visibility is not obstructed.

24. Keeping the above principles and law laid down by the Hon''ble Supreme Court in mind, if the findings of the learned Claims Tribunal on issue No. 6 are examined, it is very much clear that at the time of alleged accident, there was no negligence on the part of the Railway engine driver and not only this, before the alleged accident, truck driver was informed by the passengers travelling in that truck that Railway engine was coming forward and, therefore, he should stop the truck, but the truck driver did not pay any heed and instead of stopping the truck, he pushed the truck ahead and struck the truck with the Railway engine.

25. The Hon''ble Supreme Court in the case of Union of India v. United India Insurance Co. Ltd. (supra) has clearly observed that award could be passed against the Railways if its negligence was also proved. Since in the present case, no negligence on the part of the Railway Administration is proved, therefore, the Railway Administration cannot be held liable.

26. Apart from this, Section 131 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act of 1988") prescribes certain duties for a driver approaching unmanded and unguarded railway level crossings to ensure safe crossing of the vehicle in the interest of public safety. Such duties were not observed in the present case by the driver of the truck in question and thus, the learned Claims Tribunal has rightly observed that the truck driver was responsible for causing the accident and not the Railway engine driver and in these circumstances, the Railway Administration cannot be held liable.

27. No doubt in the case of Union of India v. United India Insurance Co. Ltd. (supra), the Railway Administration was held liable, but the facts of that case were different in nature to some extent from the facts of the present case, as in that case, negligence on the part of the Railway Administration was found proved as in that case the bus driver was from Tamil Nadu, he was not familiar with this place in Kerala State where the accident occurred, there was no caution board or other indication to show that the road was cutting across a railway line and there were no gates or handrails to alert the passers-by and if the Railway Administration had taken adequate precautionary measures such as erecting

hand rails or gates, a severe accident like this would not have taken place, but such type of facts are missing in the present case and there was no negligence on the part of the railway engine driver and in such circumstances, the Railway Administration cannot be held as joint tort-feasors.

28. Simply because the Railway crossing in the present case was unmanned and unguarded, therefore, liability on the part of the Railway Administration should be attributed, cannot be accepted as in law there is no general duty to man all level crossings.

29. For the reasons stated above, the findings of the learned Claims Tribunal on issue No. 6 holding the Railway Administration (respondents No. 1 and 2) not liable to pay compensation to the claimants-respondents No. 4 to 6 are liable to be confirmed.

30. In view of the discussion made above, no case for interference with the judgment and award of the learned Claims Tribunal dated 27.7.1998 is made out and this appeal filed by the appellants is liable to be dismissed.

Cross-objections

31. In this case, claimants-respondents No. 4 to 6 have filed cross-objections for enhancement of the amount of compensation.

32. Looking to the entire facts and circumstances of the case, the amount of compensation awarded by the learned Claims Tribunal to the claimants-respondents No. 4 to 6 appears to be just and reasonable one. Thus, no case for enhancement of amount of compensation awarded by the learned Claims Tribunal is made out and the cross-objections are liable to be rejected.

S.B. Civil Misc. Appeal No. 628/1998

S.B. Civil Misc. Appeal No. 630/1998

S.B. Civil Misc. Appeal No. 631/1998

S.B. Civil Misc. Appeal No. 634/1998

S.B. Civil Misc. Appeal No. 636/1998

S.B. Civil Misc. Appeal No. 637/1998

33. The above mentioned appeals raise the same questions of law and facts which have been decided above in S.B. Civil Misc. Appeal No. 635/1998 and thus, for the reasons given in S.B. Civil Misc. Appeal No. 635/1998, these appeals are also liable to be dismissed.

S.B. Civil Misc. Appeal No. 627/1998

34. This appeal raises the same questions of law and facts which have been decided above in S.B. Civil Misc. Appeal No. 635/1998 and thus for the reasons given in S.B. Civil Misc. Appeal No. 635/1998, this appeal is also liable to be

dismissed.

35. In this case, claimants-respondents No. 4 to 7 have filed cross-objections for enhancement of the amount of compensation.

36. Looking to the entire facts and circumstances of the case, the amount of compensation awarded by the learned Claims Tribunal to the claimants-respondents No. 4 to 7 appears to be just and reasonable one. Thus, no case for enhancement of amount of compensation awarded by the learned Claims Tribunal is made out and the cross-objections are liable to be rejected.

S.B. Civil Misc. Appeal No. 629/1998

37. This appeal raises the same questions of law and facts which have been decided above in S.B. Civil Misc, Appeal No. 635/1998 and thus, for the reasons given in S.B. Civil Misc. Appeal No. 635/1998, this appeal is also liable to be dismissed.

38. In this case, claimant-respondent No. 4 has filed cross- objections for enhancement of the amount of compensation.

39. Looking to the entire facts and circumstances of the case, the amount of compensation awarded by the learned Claims Tribunal to the claimant-respondent No. 4 appears to be just and reasonable one. Thus, no case for enhancement of amount of compensation awarded by the learned Claims Tribunal is made out and the cross-objections are liable to be rejected.

S.B. Civil Misc. Appeal No. 632/1998

40. This appeal raises the same questions of law and facts which have been decided above in S.B. Civil Misc. Appeal No. 635/1998 and thus, for the reasons given in S.B. Civil Misc. Appeal No. 635/1998, this appeal is also liable to be dismissed.

41. In this case, claimants-respondents No. 4 to 6 have filed cross-objections for enhancement of the amount of compensation.

42. Looking to the entire facts and circumstances of the case, the amount of compensation awarded by the learned Claims Tribunal to the claimants-respondents No. 4 to 6 appears to be just and reasonable one. Thus, no case for enhancement of amount of compensation awarded by the learned, Claims Tribunal is made out and the cross-objections are liable to be rejected.

S.B. Civil Misc. Appeal No. 633/1998

43. This appeal raises the same questions of law and facts which have been decided above in S.B. Civil Misc. Appeal No. 635/1998 and thus, for the reasons given in S.B. Civil Misc. Appeal No. 635/1988, this appeal is also liable to be dismissed.

44. In this case, claimants-respondents No. 4 to 6 have filed cross-objections for

enhancement of the amount of compensation.

45. Looking to the entire facts and circumstances of the case, the amount of compensation awarded by the learned Claims Tribunal to the claimants-respondents No. 4 to 6 appears to be just and reasonable one. Thus, no case for enhancement of amount of compensation awarded by the learned Claims Tribunal is made out and the cross-objections are liable to be rejected.

46. Before parting with these appeals, one more argument has to be dealt with.

47. It has been submitted by the learned counsel for the respondents that since in respect of one claim No. 298/95 Bhera Ram v. Union of India where the learned Claims Tribunal awarded Rs. 7000/- as compensation, a writ petition being S.B. Civil Writ Petition No. 548/1999 was filed by the present appellants and the same was dismissed by this Court vide order dated 13.2.2002 and therefore, since against the same judgment and award of the learned Claims Tribunal, a writ petition has been dismissed by this Court, therefore, all the appeals should be automatically dismissed.

48. In my considered opinion, the above argument cannot be appreciated because in that case, the amount of compensation awarded to the claimant was a meagre amount of Rs. 7000/- and against that amount, no appeal was preferable and, therefore, in these circumstances, the writ petition was filed and the same was dismissed by this Court by holding that no interference was called for under Article 226 of the Constitution of India. Therefore, these observations would not come in the way if the owners have preferred appeals against the same judgment and award where the amount of compensation is more and for that also, the appeals are maintainable.

49. Thus, the judgment passed by this Court in S.B. Civil Writ Petition No. 548/99 would not operate as res-judicata and the present appeals are maintainable and the above argument stands rejected.

In the result, all the afore-mentioned appeals filed by the appellants are dismissed. The cross-objections filed in S.B. Civil Misc, Appeals. No. 635/98, 627/98, 629/98, 632/98 and 633/98 are also rejected.

50. No order as to costs.