

Reserved On : 30/04/2026
Pronounced On : 07/05/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 159 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Approved for Reporting	Yes	No
	Yes	

JAYPRAKASH GHASITELAL

Versus

UNION OF INDIA THROUGH GENERAL MANAGER

Appearance:

MR RATHIN P RAVAL(5013) for the Appellant(s) No. 1

MS ARCHANA U AMIN(2462) for the Defendant(s) No. 1

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. The seminal question which fall for consideration in this appeal is whether parent of stillborn child who met with railway accident can claim compensation under section 16 of the Railway Claims Tribunal Act, 1987 read with section 125 of the Railways Act, 1989.

2. This appeal under section 23 of the Railway Claims Tribunal Act, 1987 challenges judgment and order dated 07.12.2021 passed by learned Railway Claim Tribunal, Ahmedabad in Case No.OA-IIu/2018/0112, whereby the claim application preferred by Jayprakash Ghasitelal – father of stillborn child for getting compensation of Rs.8 lakhs was dismissed.

3. Factual aspects borne out of impugned judgment and order, as well as record and proceedings, in brief are as under :-

3.1. On 15.04.2018, the applicant – Jayprakash Ghasitelal was travelling along with his wife – Usha Devi, who was having 9 months pregnancy, from Kim to Kanpur Railway Station holding railway ticket No.N-28152749 to No.N-28152752 (in all total 4 tickets) including ticket for deceased Usha Devi. Husband and wife along with family were travelling on train No.69109 down memu passenger train. The claimant pleaded that there was heavy rush in the train and therefore, there was no alternative left for the applicant except to stand near entrance door of compartment. It is further pleaded that when train started from Kim railway station, due to heavy jerk and jolt, wife Usha Devi fell from running train and died while shifting to hospital. Along with Usha Devi, her stillborn child also died. It is in this background, claimant claimed compensation of Rs.8 lakhs along with interest for stillborn child.

4. Railway Administration filed written statement along with DRM report contending that death of stillborn child was caused because deceased Usha Devi - wife of claimant become victim of accident due to her own negligence, as she was trying to board the running train and therefore, the case does not fall under section 123(c)(2) of the Railway Act, 1989. Moreover, stillborn child cannot be equated with definition of bona fide passenger and thereby, Railway Administration is not liable to pay compensation. On this basis, dismissal of claim petition was sought by Railway Administration.

5. After framing issues and permitting both the parties to lead evidence, the Railway Claims Tribunal dismissed the claim petition raising preliminary issue that whether the claim application for compensation of unborn child can be maintainable ?.

6. It is in this backdrop, present appellant filed this appeal where seminal issue arise as to whether claim application filed by parent of stillborn child is maintainable for getting compensation under the Railway Claims Tribunal Act, 1987 ?.

7. Heard learned advocate Mr. Rathin Raval for the appellant and learned advocate Ms.Archana Amin for respondent – Railway Administration.

8. Learned advocate Mr.Raval for the appellant submitted that law has been evolved drastically by passage of time. Previously, stillborn child, if born with some deformities subsequent to accident, he was entitled to compensation but later on law has changed wings and vision. Stillborn child which was previously considered as no independent claim or right to sue in paradigms shift right of stillborn child is recognized. He further submit that evolution of law in Indian Court has began to recognize right of stillborn child for prenatal injuries by adopting liberal interpretation of compensation principles. He referred to judgment of Madras High Court, Madurai Bench in the case of **Oriental Insurance Co. Ltd. v/s. Karuppasamy [2020 ACJ 833]**, and submitted that under jurisprudence of tortious claim under M.V.Act, 1988, the claim for stillborn child has been successfully accepted by the Courts and therefore, it is

submitted that learned Tribunal has committed serious error in rejecting claim petition.

8.1. In light of aforesaid submissions, learned advocate Mr.Rathin Raval submitted to allow the appeal.

9. Learned advocate Ms. Amin for respondent referred to section 125 of the Railways Act and submitted that expression 'stillborn child' is missing from provision of law and therefore, lady who dies along with stillborn child, parents would not be entitled to get compensation for loss of stillborn child. Expanding submission, she submits that stillborn child carried in womb is not independent passenger and therefore, does not fall within definition of bona fide passenger.

9.1. In view of above submission, while supporting impugned judgment, learned advocate Ms.Amin for respondent submitted to dismiss the appeal.

10. Regard being had to rival submissions of learned Counsel as well as going through impugned judgment along with Record and Proceedings of the case, at the outset, it is to be noted that falling of Usha Devi from down Memu passenger train when it started from Kim Railway station is completely uncontroverted fact. She having fell from train, was taken to hospital but she was declared as brought dead. Again, it is uncontroverted fact. Deceased Usha Devi was travelling with railway ticket. This fact is also not denied. In the report of untoward accident at page no.60, in column no.11, it is stated that deceased while climbing train fell down, received injures in abdomen and she died. It is

further reflected from the report that at the time of death, she was carrying nine month old live foetus and foetus having attained life has expired. Inquest report and PM report also recorded identical facts. Further, it states that deceased died due to rupture of spleen and uterus. For death of Usha Devi, present petitioner has filed claim petition which was allowed and compensation was awarded. Apt to note that Railway Administration has not challenged that order before higher Court. Order passed by learned Railway Claims Tribunal, Ahmedabad in Case No.OA-IIu/2018/0113 dated 07.12.2021 is taken on record.

11. In view of above, let me address core question whether stillborn child can be treated as person who died in accident and whether parent of stillborn child can claim compensation for mishap in railway accident ?.

12. Doctrine of *Nasciturus* applies to core issue in the matter. The maxim *Nasciturus pro iam nato habetur, quotiens de commodis eius agitur* means an unknown child is deemed to be born for its own benefit. Afore-noted doctrine comes from classical roman jurisprudence where jurist recognize limited right of unborn child. It was later adopted by English common law and thereafter, by Indian Law. It has been successfully applied to law of tort, where prenatal injuries or death of foetus has been sought and compensation was granted.

13. Another maxim which can be pressed into service is '*En Ventre Sa Mere*' which means 'in the mother's womb'. It is french phrase and widely used.

14. The legal status of unborn persons is discussed in Salmond on Jurisprudence, 11th Edition, at pages 354 and 355, the relevant portion of which reads as follows:

"A child in its mother's womb is for many purposes regarded by a legal fiction as already born, in accordance with the maxim, Nasciturus pro jam nato habetur. In the words of Coke: "The law in many cases hath consideration of him in respect of the apparent expectation of his birth". Thus, in the law of property, there is a fiction that a child en ventre sa mere is a person in being for the purposes of (1) the acquisition of property by the child itself, or (2) being a life chosen to form part of the period in the rule against perpetuities."

15. In Australia in **Re: Watt v. Rama [1972] VR 353**, it has been held that the foetus is a person and once born is entitled for the compensation. American Court went even a step further ahead and removed the requirement of the foetus to actually be born. In re: **Amadio v. Levin,. 501 A.2d 1085, 1088-89 (Pa. 1985)** the Supreme Court of Pennsylvania held that it makes no difference in liability under wrongful death and survival status where the child dies prior to or after death.

16. **In Moore v. Wingfield, (1903) 2 Ch. 411**, Justice Vaughan Williams L.J. held:

"In Blackstone's Commentaries, 4th ed. vol.i. 129, 130, it is stated that in contemplation of law life begins as soon as an infant is able to stir in the mother's womb: "For if a woman is quick with child, and by a potion, or otherwise, killeth it in her womb; or if any one beat her, whereby the child death in her body, and she is delivered of a dead child; this, though

not murder, was by the ancient law homicide or manslaughter." Then the learned author goes on: "An infant in ventre sa mere, or in the mother's womb, is supposed in law to be born for many purposes. It is capable of having a legacy, or a surrender of a copyhold estate made to it. It may have a guardian assigned to it; and it is enabled to have an estate limited to it's use, and to take afterwards by such limitation, as if it were then actually born."

17. Professor Mulla on Hindu Law in regards to section 20 of Hindu Succession Act, Fifteenth Edition, commented as under :

"It is by fiction or indulgence of the law that the rights of a child born justo matrimonio are regarded by reference to the moment of conception and not of birth and the unborn child in the womb if born alive is treated as actually born for the purpose of conferring on him benefits of inheritance. The child in embryo is treated as in esse for various purposes when it is for his benefit to be so treated. This view is not peculiar to the ancient Hindu law but one which is adopted by all mature systems of jurisprudence. This section recognises that rule of beneficent indulgence and the child in utero although subsequently born is to be deemed to be born before the death of the intestate and inheritance is to be deemed to vest in the child with effect from the date of the death of the intestate."

18. Hon'ble Apex Court in the case of **S. Said-ud-Din v. Commissioner Bhopal Gas Victims [(1997) 11 SCC 460]** awarded compensation to a child, who was adversely affected due to the gas leakage, which was inhaled by her mother when the child was in the womb. The Supreme Court held as under :-

"...as the infant too was the victim of the MIC poison, she was entitled to compensation. Various Human Rights Commissions also held that the stillborn child is entitled to compensation on account of the injuries caused or death

occurred due to violation of human rights. Even the Transfer of Property Act recognized the rights of the stillborn child and several provisions of the Indian Penal Code, 1980, also provide for punishment by reason of hurt or birth or abortion with regard to the stillborn child.”

19. Worthy to notice that several Human Rights Commission also held that stillborn child is entitled for compensation due to violation of human rights. Apt to note that even Transfer of property Act recognizes right of stillborn child, besides section 20 of the Hindu Succession Act.

20. Apt to note that Hon’ble Apex Court in the case of **National Insurance Company Ltd. v/s. Kusuma [(2011) 13 SCC 306]** recognized right of stillborn child and granted compensation for loss of stillborn child, treating it as born child. This judgment was delivered under jurisprudence of Motor Vehicle Act, but the concept of loss of stillborn child due to tortious Act can be borrowed in case of loss of stillborn child in railway accident. Hon’ble Apex Court in para 7 has held as under :-

“7. Thus, under the given circumstances, the question that survives for our consideration is whether the quantum of compensation determined by the High Court, at a lump sum amount of `1,80,000/-, for the loss of still born child, treating it as a child, and towards pain and sufferings to the respondent-claimant awarded by the Tribunal at `50,000/- and `10,000/- respectively, warrants interference by this Court.”

21. While referring to Modi’s Medical Jurisprudence (25th edition), **High Court of Kerala at Ernakulam in the case of Abhulasees P.P. v/s. Abdumanaf [MACA No.2027 of 2011]** in

para 20 held as under :-

20. For compensating the loss, the 'foetus/still born child' could be equated as a living child and the quantum of damages fixed could be ordered to be given to the Husband and Wife/Appellants. The stage of the foetus is having some importance/relevance in fixation of quantum. After fertilization, the 'Embryo' starts development and on completing 'five months' (20 weeks), formation of different organs will be almost nearing completion. The "viability of the child" as explained in "Modi's Medical Jurisprudence" (25th Edition) is extracted below:

"Viability of Child-The term 'viability' means the ability of neonate to lead a separate existence outside the mother. Viability denotes the stage of maturity at which a normally developed neonate is potentially able to survive. Generally, the term 'viability' is used in its legal rather than in its biological sense, the legal definitions of viability ranging from 180 to 210 days of intra-uterine development. Viability, it should be noted, is not synonymous with live birth."

It is clear from the above authentic version, that formation of the child becomes complete after 180 days and in the remaining period growth of the child takes place, to take birth in the due course. In other words, the 'Embryo' in the womb of the mother would be viable as a 'child' between 180-210 days. If for any reason, a pre-mature delivery takes place after the said stage, it is quite possible to save the child with all faculties and without any deformities, by virtue of the advanced technology and infrastructure available as on the date. In the instant case, the pregnancy had advanced by 'eight months' and as such, the 'foetus' had attained full viability, even if there occurred a pre-mature birth and it was quite possible for the Husband and Wife to have saved the child, by appropriate means. Because of the road traffic accident occurred in 10.10.2006, such a chance is lost for ever and this being the position, the parents/claimants/ appellants are entitled to be compensated for the 'loss of baby' treating the 'foetus' as a 'child'. We hold it accordingly. The reference is answered to the effect that, in all cases where the pregnancy has

advanced beyond 'six months' and if any miscarriage occurs because of a road traffic accident, it is open to claim compensation in respect of the 'loss of baby', treating the 'foetus' as a viable 'child', apart from the compensation payable under other appropriate heads.”

22. Few more judgment can also be referred to strengthen the finding that foetus of certain weeks or having been conceived is living person. In the case of **Divisional Controller, KSRTC, Bangalore v/s. Vidhya Shindhe [2003 SCC Online Kar 447]**, Karnataka High Court held that for all practical purpose, the stillborn child has to be considered as child and claim petition filed by mother on account of death of her 37 weeks old foetus in accident is entitled to maintain claim petition. Observation of Karnakata High Court reads as under :-

“5.As per the doctor's evidence, if the foetus has completed 37 weeks, for all purpose even the still born child has to be considered as child. In the instant case, in the accident the child has also received injuries which has compelled the mother to undergo a surgery. The baby died due to the injuries received by him in the accident while in the womb. Though there is no direct impact between the vehicle and the baby, since the baby had received injuries while in the womb, this Court has to hold that there is a nexus between the accident and the cause of death of the child. In the circumstances, this Court is of the opinion that the claim petition filed by the mother on account of the death of her two days baby who has born subsequent to the accident as maintainable.”

23. In the same line, Madhya Pradesh High Court in the matter of **Shraddha v/s. Badresh [2005 SCC Online MP 574]**, held that still born baby has to be considered as child. The findings of the Court reads as under :-

“ 7. It is not in dispute that claimant was pregnant and the child was in the womb of the mother at the time of accident. It is also not in dispute that the mother who is appellant herein has sustained grievous injuries and on account of which she was hospitalized. It is also not in dispute that if claimant had not suffered injuries, child in her womb would not have been affected. She had to undergo a surgery and delivered a dead male baby. For the purpose of considering the case for awarding compensation even the stillborn baby has to be considered as child.

8. Stillborn baby died in the womb due to the injuries sustained by the appellant in the accident. In the opinion of this court there is a nexus between the accident and the cause of death of the child. Appellant is entitled for compensation on account of death of or stillborn male baby. It was first delivery of the appellant. Since, no separate amount has been awarded on that account, therefore, this appeal stands allowed. Appellant shall be further entitled for a sum of Rs. 1,00,000 on account of death of stillborn male child. Total sum for which appellant shall be entitled comes to Rs. 2,50,000. The enhanced amount of Rs. 1,00,000 shall carry interest at the rate of 6 per cent per annum from the date of application.”

24. Andhra Pradesh High Court in the case of **Oriental Insurance Co. Ltd. v/s. Santhilal Patel [Manu/AP/0349/2007]** held that an unborn child aged five months onwards in the mother's womb till its birth can be treated as child in existence. Relevant observations reads as under :-

“6.Under Section 166 of the Act a person who has sustained injury or the legal heirs of the deceased person are entitled for compensation arising out of the accident involving death or bodily injuries. Therefore, if the child comes within the definition of person, I am of the opinion that the legal heirs of the child are entitled for compensation. Under Section 8 of the Indian Penal Code, 1860 a gender

means the pronoun "he" and its derivatives are used of any person, whether male or female. The meaning of a person as per Oxford Dictionary is 'a human being regarded as an individual and an individual's body :concealed on his person'.

7. No doubt, the Karnataka High Court in Divisional Controller, Karnataka State Road Transport Corporation v. Vidya Shindhe 2005 ACJ 069 : 2003 ILR (Kar) 04269, held that the stillborn child has to be considered as a child. The Madhya Pradesh High Court in Shraddha v. Headrest's II (2006) ACC 304, following the aforesaid judgment of the Karnataka High Court held that the stillborn child died in the accident due to the injuries sustained by its mother in the accident is also entitled to compensation, as there is nexus between the accident and the cause of death of the child and awarded a compensation of Rs. 1,00,000/- for the death of the stillborn child. In the said case the appellant was having pregnancy of 28 weeks whereas in the instant case the child in the womb was counting his days for delivery as he was aged about 10 months i.e. 40 weeks..."

8. To decide whether a child in the womb of the mother can be called as a person, it is pertinent to discuss different stages of birth of a child in the womb of a mother. Technically the term developing ovum is used for the first seven to ten days after conception i.e. until implantation occurs. It is called an 'embryo' from one week to the end of the second month and later it is called 'foetus'. It becomes an infant only when it is completely born. The life may enter immediately on the date of conception in the form of a small cell, which gets multiplied, but physically a mother can feel the movement of child only when the foetus is twenty weeks old i.e., five months, as the cell changes its structures and texture to become an eye, legs, bones, blood, head etc. and only when the child makes movements touching the internal walls of the womb, then the actual life does take its physical form, therefore, there may be controversy as regards the exact date of life entering the foetus but there cannot be any controversy as regards the life of the unborn child if a woman is carrying seven months pregnancy, as in many instances premature delivery takes place during the seventh month of pregnancy and the child still survives.

An unborn child aged five months onwards in the mother's womb till its birth can be treated as equal to a child in existence. The unborn child to whom the live birth never comes can be held to be a 'person' who can be the subject of an action for damages for his death. As already stated above a person means a human being regarded as an individual and an individual's body : concealed on his person'. Therefore, human foetus to whom personhood could be attributed was also destroyed in the accident in the instant case; had the accident not occurred the unborn child would have survived and seen the light of the day.”

25. It would be an advantage to refer recent judgment of Allahabad High Court, Lucknow in the case of **Shri Sukhnandan v/s. Union of India through General Manager, Northern Railway Baroda House, New Delhi [2026-AHC-LKO-16113]** addressing the issue, in para 28 and 29 held as under :-

“28. In view of the aforesaid, this court concludes that the rights of the child in the mother’s womb are well protected by laws of the land as the foetus is another life in the pregnant woman and loss of foetus is actually a loss of child. Thus, this court has no hesitation in holding that an unborn child aged more than five months onwards in the mother’s womb till its birth is treated as equal to a child in existence. The unborn child to whom the live birth never comes is held to be a 'person' who can be the subject of an action for damages for his death. The appellants are, therefore, entitled to compensation for the loss of foetus independently treating the foetus as a child.

29. Though the word “foetus” is not specifically mentioned under the Railways Act, 1989, however the present case would fall within the ambit of Section 124A of the Railways Act, as the death occurred as a result of an untoward incident arising out of a railway accident, thereby attracting the statutory liability of the Railways to pay compensation to the claimants in case of death.”

26. Above being exposition of law, the question raised herein-before remain no more *res-integra*. Since the foetus is treated as child, death of child would be treated as independent accident apart from death of mother. Stillborn child for all purpose is person and entitled to claim compensation under Railways Act. Further, child can plead cause of action through parents. Liberal interpretation of law provides that still-born child being victim of accident is entitled to claim compensation. Therefore, according to this Court, impugned order passed by learned Tribunal suffers from patent illegality and unjustified. In the case on hand deceased Usha Devi at the time of untoward incident, was carrying 9 month pregnancy. Foetus of nine month for all the purpose is a child in existence. Pragmatic and liberal interpretation of definition of bona fide passenger shall also include stillborn child.

27. The appellant who got compensation for his wife – Usha Devi in case No.OA-IIu/2018/0013 in tune of Rs.8 lakhs with 9% per annum from the date of accident i.e. 15.04.2018 till the date of realization, is also entitled to get compensation in the present case for loss of stillborn child out of same untoward incident.

28. Before parting with the order, with profit, I may refer to judgment of Rajasthan High Court in the case of **Hemraj v/s. Ramdhan [S.B.Civil Misc. Appeal No. 4767/2009]**, whereby, while granting compensation under jurisdiction of M.V.Act, Rajasthan High Court referred to various authorities and held that foetus is another life in woman. Relevant observation in

para 18 reads as under :-

“In the first place, foetus is another life in the woman and it comes as a baby in the course of time. Though foetus grows in the body of the woman, it cannot be equated to or considered to be a part of the body of the woman. In effect, loss of the foetus consequent upon the death of the pregnant woman is actually loss of a child in the offing for the husband of the woman. Secondly, there is no scope for considering compensation for the bodily injury of the victim who died in the road accident. Therefore, it would be illogical to grant compensation treating death of the foetus along with the woman dying in the accident treating death of the foetus along with the Woman dying in the accident treating it as another bodily injury. In our view, compensation to be granted for the death of a pregnant woman in motor accident is for loss of two lives. Therefore, appellant in this case is certainly entitled to claim compensation separately for the loss of his child in the womb of his wife who perished in the accident.”

29. In view of above, the first appeal is allowed. Impugned judgment is quashed and set aside. Compensation of Rs.8 lakhs with 9% interest per annum is granted to the appellant - claimant from the date of accident i.e. 15.04.2018 till realization for stillborn child. Railways Administration is directed to deposit the entire amount with interest accrued before the learned Tribunal concerned within twelve weeks from today. Upon deposit of entire amount, learned Tribunal shall disburse the amount to the claimant in accordance with law by passing specific order. Record and proceedings, if any, be returned to learned Tribunal concerned.

SATISH

(J. C. DOSHI,J)