

Reserved On : 30/09/2026

Pronounced On : 22/10/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4447 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Sd/-

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Approved for Reporting	Yes	No
	Yes	

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JYOTIBEN GORDHANBHAI DABHI & ORS.

Versus

NILESH GOPAL PARMAR & ANR.

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Appearance:

MR ANAND B GOGIA(5849) for the Appellant(s) No. 1,2,3,4,5

MR BB GOGIA(5851) for the Appellant(s) No. 1,2,3,4,5

MR RB GOGIA(5850) for the Appellant(s) No. 1,2,3,4,5

MR KM PARIKH(575) for the Defendant(s) No. 2

MS ARCHANA U AMIN(2462) assisted by MR. MANISH

MALAVIYA for the Defendant(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. The appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'MV Act') is directed against the judgment and order dated 25.08.2009 passed in MACP No.170 of 2003, by the Learned Motor Accident Claim Tribunal (Aux.) at Morbi, by which the claimant's claim petition under Section 166 of the 'MV Act' came to be dismissed.

2. The briefly stated facts of the case are that, on 27.08.2003, the deceased - Bachubhai Dabhi riding with auto rickshaw No.G.T.F-9969, at around 11:30 a.m., was trying to cross the unmanned railway level crossing at crossing No.21C on the Morbi Rafaleshwar road, whereby railway track was cutting the road, was dashed by the Railway Train No.9502. The auto rickshaw was dragged, and ultimately, the driver of the auto rickshaw - Bachubhai Dabhi, died.

2.1 P.W.I. Shri Kundanlal Gulyani, registered the FIR against the deceased with Morbi Taluka Police Station vide CR No. I - 155 of 2003 on same day.

2.2 In the factual background, claimant No. 1 being widow of the deceased and claimant Nos.2 to 6 children of the deceased, claimed the compensation under Section 166 of the 'MV Act' against the owner of the auto rickshaw and Railway Administration - Union of India in the tune of Rs.7,43,000/- with interests and cost.

2.3 The learned Tribunal, after framing the issues at Exhibit-22, believed that the claimants have failed to prove any of the issues in the affirmative. Thus, while answering the issues in negative, dismissed the claim petition. The main finding of the learned Tribunal based upon the evidence led before it, shows that the deceased himself was wholly negligent in crossing the unmanned railway level crossing in breach of the Railways Act, 1989 (hereinafter referred to as the 'Railways Act') as well as provision of the 'MV Act', and therefore, the Union of India is not liable to pay any compensation. The owner was also not held

liable to pay compensation on the ground that the claimant failed to prove that the opponent No.2 was the owner of the vehicle and as RTO book of the auto rickshaw is not produced on record to prove that.

2.4 Being aggrieved, the appeal is filed.

3. Heard learned advocate Mr. Anand B. Gogia appearing for the appellants and learned advocate Ms. Archana U. Amin assisted by learned advocate Mr. Manish Malaviya representing the respondent - Railway Administration - Union of India.

4. Learned advocate Mr. Anand B. Gogia assailing the impugned judgment and order, mainly submitted that the learned Tribunal has committed serious and manifest error in fastening the total liability upon the deceased to cause the road accident.

4.1 He would submit that the deceased was riding the auto rickshaw to attend the folk fair, which was organized one kilometre away from the railway level crossing No.21C. The deceased was, thus, required to cross the unmanned railway crossing No.21C, which cuts the road leading to the folk fair place.

4.2 He would submit that the learned Tribunal was required to apply the Principle of common law liability. He further submitted that the railway route from Morbi to Rafaleshwar is a busy route. Apart from the Railway Train

No.9502, several other railway trains are passing through this railway route and yet, the cutting road was kept with unmanned railway level crossing in breach of Section 13 of the 'Railways Act'. Thus, it is a fit case to apply the common law of negligence.

4.3 He further submitted that the learned Tribunal committed manifest error in not considering the negligence on part of the railway Train Driver, i.e. loco pilot, who was expected to take precaution while passing through a busy area.

4.4 He would further submit that the evidence on record indicates that there is no sign board or any other board, which can inform the passerby about the unmanned railway crossing.

4.5 He would further submit that according to the evidence on record, around the unmanned railway level crossing, many bushes and trees also existed and which also reduced the vision. He would submit that in such event, Railway train passing through railway track in absence of any signals or blowing the horns, etc., and cause accident, is fully liable to pay compensation. Further, as such Railway Train cannot pass through an unmanned railway level crossing, endangering the human lives.

4.6 Learned advocate Mr. Anand B. Gogia would further submit that the learned Tribunal erroneously relied upon the evidence of complainant – Mr. Kundanlal Gulyani, who after filing the affidavit-in-chief, did not come forward to be offered for cross-examination. Therefore, his evidence was of no use and yet, the learned Tribunal has taken assistance from the said

evidence to believe that the deceased was solely negligent in causing the accident.

4.7 Lastly, learned advocate Mr. Anand B. Gogia submitted that there is a use of motor vehicle involved in the accident and it gives the jurisdiction to the Claims Tribunal to decide the claim petition under Section 165 of the 'MV Act'.

4.8 Mainly upon aforesaid submissions, learned advocate Mr. Anand B. Gogia submitted to allow this appeal.

4.9 In support of his submissions, he has relied upon the judgment of the Supreme Court in the case of:- **i) Union of India v. United India Insurance Company Limited**, reported in **1997 8 SCC 683**, **ii) Union of India v. Bhagwati Prasad**, reported in **2002 ACJ 721**, **iii) The judgment of Division Bench of the Orissa High Court in Guri Behera and others v. DRM East Coast Railway and others**, reported in **AIR 2012 Orissa 62** and the judgment of the coordinate Bench of this Court in **iv) Union of India v. Indiraben Wd/o. Panchpadhi Thandapani and others, First Appeal No. 4898 of 2008**.

5. *Per contra*, learned advocate Ms. Archana Amin relying upon the judgment of the **Karnataka High Court in the case of G. Nagarathna v. G. Manjunatha in Misc. First Appeal No. 2850 of 2017**, confirmed by the Supreme Court in **SLP (Civil) Diary No. 22411 of 2025**, submitted that the learned Tribunal has, in its vivid examination of the evidence, rightly believed that the deceased was solely negligent in causing the accident.

5.1 She would further submit that Railway was in its settled route, the driver of the auto rickshaw, at the unmanned railway level crossing, was required to first stop the vehicle and then, to see on the either side of railway track and then to ensure that no railway train is coming and only thereafter, he is required to cross the unmanned railway crossing.

5.2 She would further submit that, in the present case, it appears from the evidence that, at the time of incident, two other rickshaws were already stopped at the unmanned railway level crossing, whereas the deceased, in a hurry of reaching at the folk fair, tried to cross the railway track, but was frightened and during which, his auto rickshaw was stopped. The railway, which was on its settled route, therefore, dashed with the auto rickshaw stood in middle of railway track and this resulted in the unfortunate death of the deceased.

5.3 In this scenario of the incident, the loco pilot of the Train cannot be held negligent in causing the accident. She would further submit that the loco pilot as well as the co-loco pilot of the Train, both have entered into the witness-box. Both of them have even submitted that the unmanned railway level crossing was just one or one and half kilometres away from the railway station. The loco pilot, having knowledge that the railway level crossing is cutting the busy road, was continuously blowing horn from the railway station.

5.4 She would further submit that the presence of sign boards or stop-sign boards, etc. as per the evidence of the loco pilot were proved. In these circumstances, the learned Tribunal

rightly analyzed the issue of complete negligence of the deceased and dismissed the claim petition.

5.5 She further submitted that, in the claim petition, the vehicle, which is said to be involved in the accident, was driven by the deceased himself and the claim petition levels the complete negligence against the Railways. Thus, merely invoking the phrase “Motor Vehicle”, the claimants cannot seek the compensation from the learned Motor Accident Claims Tribunal under Section 165 of the 'MV Act'. Claimants were required to file the claim petition under the 'Railways Act' before the Railway Claims Tribunal.

5.6 Mainly upon above submissions, learned advocate Ms. Archana Amin appearing for the Railway Administration - Union of India submitted to dismiss this appeal.

6. I have heard learned advocates for both the sides and perused the Record and Proceedings as well as the impugned judgment and order.

7. As far as the facts of the case are concerned, it is undisputed that the deceased was riding an auto rickshaw at the time of road accident and was crossing the unmanned railway level crossing No. 21C, which was on Morbi to Makansar railway line. Deceased got frightened seeing the on-coming railway train, his rickshaw was stopped in the middle of the railway tracks and it was dashed by the oncoming railway train. The rickshaw was dragged to some extent and ultimately, resulted in the death of the rickshaw driver.

8. In regards to these factual aspects, what is noticeable is that the FIR is filed against the deceased and abated summary was also filed.

9. The wife of the deceased entered into the witness box at Exhibit-27 and has testified on oath. To be noted that the wife of the deceased was not an eyewitness to the accident.

9.1 In her chief-examination, she stated that the train was not visible due to the various plants, bushes and trees and there was some loud noise going around the spot of incident, which was a reason for not hearing the blowing of horn.

9.2 It was also deposed by her that the railway level crossing was very busy and many trains are running up and down on this railway track, and thus, there was a necessity of gate man as well as regular railway barrier, which may inform the passers-by to stop there.

9.3 In the cross-examination, she has admitted that she was not present at the spot of accident and she does not know that who was negligent in causing the accident. She has further admitted that if a train is passing over the railway track, it is visible or it could be seen from a distance.

9.4 She has further admitted that she does not have any personal knowledge that whether the railway driver had blown the horn or had slowed down the train. She has further admitted that whenever people are passing through the railway level crossing, they are required to take more care. She has further admitted that the accident took place due to negligence of her husband.

10. Claimant has examined Mr. Bhikhubhai Devshibhai at Exhibit-28, He claimed that he was an eyewitness to the accident, however, no evidence comes on record that at the time of the incident he was present on the spot.

10.1 Be that as it may, his chief-examination is alike the chief-examination of Gitaben – P.W-1. In his cross-examination, he has admitted that he has already crossed the railway level crossing and the auto rickshaw driven by the deceased was coming behind. He has further admitted that when he was crossing the railway track, he could hear the train.

10.2 He has further admitted that when he had reached up to 50 feet away from the railway level crossing, after crossing it, the accident took place. He has further admitted that the place of incident was just one agricultural field away from the railway station.

10.3 He has further admitted that he has stated in the chief-examination that one cannot hear the blow of horn due to loud noise of the people, on insistence of learned advocate who was appearing for the claimant.

10.4 He has further admitted that the rickshaw drivers, in greed of getting more fare, were driving the rickshaw rashly and at excessive speed. He has further admitted that as per the Rule, if you intend to cross the railway level crossing, you have to see on either side of the railway track and then pass the unmanned railway crossing.

10.5 He has further admitted that he cannot say that whether deceased stopped at the unmanned railway level crossing and got down from there to see either side of the railway track and to ascertain that whether the railway train is coming or not.

10.6 He has further admitted that a sign board was kept near the unmanned railway level crossing, but on his own, he said it was not readable.

10.7 He has further admitted that had the deceased taken a precaution, accident could have been avoided.

11. Aforementioned is the oral evidence from the claimant's side.

12. Mr. Dilipkumar Mehta and Mr. Jayesh Rajnikant, loco pilot and co-loco pilot of the Train No.9502 Bhuj-Rajkot Inter-city Train, entered into the witness box at Exhibit-32 and 33 respectively. They are defence witness. Both of them have stated that when train was passing through the unmanned railway level crossing near Makansar village, the train was continuously blowing the whistles to avoid any mishap. They have further stated that two rickshaws were stopped near unmanned railway level crossing seeing the oncoming train, but as deceased was in a hurry, he quickly tried to cross the railway track, but got frightened due to which his rickshaw stopped in the middle of the railway track and ultimately, dashed with running railway train.

12.1 Both the witness have further stated that the stop board was kept at unmanned railway level crossing. In the cross-examination, both of them have admitted that they have not seen the stop board as the railway train was running at a speed of 75 km/hr, but clarified that it's the usual speed of a railway train.

12.2 They have further admitted that they have continuously blown the whistle and even one minute before incident took place, they have blown the whistle. They have further admitted that at the place of incident, no trees are grown up. They have further admitted that the railway track is busy with several running trains and denied that the incident took place due to the negligence of the railway train.

12.3 At Exhibit-67, a map prepared by the railway authority is produced and it shows the railway track, the place of incident, the standing of the sign board etc. It further shows that the *kachcha* road was cut by the railway track from Morbi to Makansar and after the railway level crossing, there was a cross junction on the road.

13. At this juncture, let refer Section 161 of the 'Railways Act', which reads as under:-

"161. Negligently crossing unmanned level crossing.- If any person driving or leading a vehicle is negligent in crossing an unmanned level crossing, he shall be punishable with imprisonment which may extend to one year.

Explanation.--For the purposes of this section, "negligence" in relation to any person driving or leading a vehicle in crossing

an unmanned level crossing means the crossing of such level crossing by such person--

(a) without stopping or caring to stop the vehicle near such level crossing to observe whether any approaching rolling stock is in sight, or

(b) even while an approaching rolling stock is in sight.”

14. Though the aforesaid provision is stating the punishment for driving or leading a vehicle crossing an unmanned level crossing, however, the word “*negligence*” in view of explanation (a) says, the person will be treated as negligent if he is crossing without stopping or caring to stop the vehicle near such level crossing to observe whether any approaching rolling stock is in sight, or as per explanation (b), if the person is crossing even while an approaching rolling stock is in sight.

15. Apt to refer Section 131 of the 'MV Act', which reads as under:-

“131. Duty of the driver to take certain precautions at unguarded railway level crossing.—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.”

15.1 Plain reading of Section 131 of the 'MV Act' put statutory duty upon driver to take precaution at an unguarded railway crossing. The driver has to stop his vehicle, and has to ensure that no trolley or train is crossing from either side, and only thereafter, to cross the railway track.

16. A conjoint reading of both the provisions from the different Acts marshal the liability upon the person approaching to cross railway level crossing to take full precaution, particularly at an unguarded railway level crossing and to stop its vehicle, get down from the vehicle and to ensure that no train or trolley is approaching from either side before the railway track is crossed.

17. In ***Union of India v. United India Insurance Co. Ltd.***, reported in **(1997) 8 SCC 683**, the Supreme Court examined the provisions of Section 13 of the Railway Act, 1890 in regards to unmanned level crossing, *vis-a-vis* the statutory and common law duties of the railway. It has been observed by the Supreme Court that the railway has no statutory duty under clause (c) and (d) of the Section 13 to erect gates, chains, bars etc., or to employ person to open and shut the gates, chains, bars unless Central Government, by requisition, requires the railway to do so. The railway's common law duties are concurrently enforceable along with or independently of statutory duty under Section 13. Relevant para 12 to 17 of the judgment reads as under:-

“12. 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 Condor v. Ballaprosad Bhagwandin, (1895) Un PJ 91 (Bom) by Sir Charles Sargent, C.J. (quoted in B.N. Rly. Co. Ltd. v. Tara Prosad Maity, AIR 1928 Cal 504 : 48 Cal LJ 45) the direct obligation cast on the Railways by Section 21 of Act 18 of 1854 was repealed later by Act 25 of 1871. To this extent, the Indian statute therefore differs from the English statute. Under Section 13 of the Railways Act, 1890 no such duties are imposed directly on the Railway administration by the statute. The section on the other hand only confers a power on the Central Government to issue a requisition to the Railway administration, i.e. the General Managers or the Railway Companies (if any) to take steps as per Section 13. Obviously, if the Central Government does not think fit to exercise that power and does not issue any such requisition, the occasion for the Railway administration to take steps under Section 13, as per the statutory mandate, will not arise. (As to what can be the effect of an omission to exercise this statutory power to issue a requisition, will be dealt with separately under Point 4.) Section 13 of the Indian Act may be noticed:

“13. Fences, screens, gates and bars.— The Central Government may require that, within a time to be specified in the requisition or within such further time as it may appoint in this behalf,—

(a) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith;

(b) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the

railway;

(c) suitable gates, chains, bars, stiles or handrails be erected or renewed by a railway administration at places where a railway crosses a public road on the level;

*(d) persons be employed by a railway administration to open and shut such gates, chains or bars.”
(emphasis supplied)*

In view of the above provision, which does not cast a direct obligation on the Railway administration, several High Courts have taken the view, and in our opinion, rightly that the statutory duties of the Railway administration under Section 13, do not arise unless a requisition is made by the Central Government. The above anomaly has naturally compelled the courts to fall back upon the common law duties resting on the Railways. It has been contended for the claimants that under the common law, the Railways, as an occupier of the level-crossing for the purpose of running railway trains which are inherently dangerous to those who use the public road at that point, has special responsibilities as a responsible body to see that accidents are kept at the minimum. The question then arises whether the common law duties are concurrently enforceable along with or independently of the statutory duties under Section 13.

13. *The law in this behalf is again well settled that the claimants can at their choice sue the Railways to enforce either or both types of these duties, i.e., under common law as well as under the statute. These aspects have been summarised by the Privy Council in Commr. for Rlys. v. McDermott, (1966) 2 All ER 162, PC. That was a case which arose from the judgment of the High Court of Australia. In that case, Lord Gardiner L.C. stated:*

“Theoretically, in such a situation, there are two duties of care existing concurrently, neither displacing the other. A plaintiff could successfully sue for breaches of either or both of the duties....”

(emphasis supplied)

14. *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.*

15. *The next question is as to what are the common law duties of the Railways at level-crossings from time to time? In the same decision of the Privy Council in Commr. for Rlys. v. McDermott, (1966) 2 All ER 162, PC it has been stated that the Railways' duty of care at common law is based on the principle of neighbourhood laid down by Lord Atkin in Donoghue v. Stevenson, 1932 AC 562 : 1932 All ER Rep 1 inasmuch as the Railway*

“was carrying an inherently dangerous activity of running express trains through a level-crossing which was lawfully and necessarily used by the local inhabitants and their guests and persons visiting them on business. Such an activity was likely to cause accidents, unless it was carried on with all reasonable care. ... In principle, the liability is not based, however on matters of title but on the perilous nature of the operation and the de facto relationship which after Donoghue v. Stevenson, 1932 AC 562 : 1932 All ER Rep 1 would be called ‘proximity’ or ‘neighbourly’ relation between the railway operator and a substantial number of persons lawfully using the level-crossing”. (emphasis supplied)

The duty to care at common law is therefore based upon the dangerous or perilous nature of the operations of the Railways.

16. *In Donoghue v. Stevenson, 1932 AC 562 : 1932 All ER Rep 1 a manufacturer was held liable to the ultimate consumer at common law on the principle of duty to care. Lord Atkin said: “You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.” He asked:*

“Who then, in law, is my neighbour? The answer seems to be, persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

The test of breach of common law duty is again the test of a reasonable or prudent person in the particular fact situation — of course the amount of care, skill, diligence or the like, varying according to the circumstances of the particular case. The standard of foresight is again that of a reasonable person. Such a person is also expected to take into account common negligence in human behaviour. Of course, he need not anticipate folly in all its forms (London Passenger Transport Board v. Upson, 1949 AC 155 : (1949) 1 All ER 60, HL). That if there is omission to exercise such a common law duty of care, an action at common law can be filed for nonfeasance is also clear from a judgment of this Court in Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat, (1994) 4 SCC 1. In our view, therefore, because the Railways are involved in 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.

17. *The next important question is whether there can be any breach of a common law duty on the part of the Railway if it does not take notice of the increase in the volume of rail and motor traffic at the unmanned level-crossing and if it does not take adequate steps such as putting up gates with a watchman so as to prevent accidents at such a point? What is the extent of care required at common law has also been decided.”*

18. In view of the aforesaid finding, the railway may be fastened with the common law liability, if not the statutory liability, to pay the compensation but on proving any inaction or non-performance of the statutory/mandatory duty or failure to exercise the duty required to be followed. Common law duty to consider exercise of power vested by the statute would come into picture on omission to exercise and not deciding whether or not to exercise the discretionary statutory power.

19. In the present case, it indisputably is that the unmanned railway level crossing has been crossed by the deceased hurriedly, ignoring that the two other rickshaws, intend to cross railway track were stopped and were waiting for the railway train to pass. It comes on record through the evidence that deceased was frightened seeing the train up close, unfortunately the rickshaw stopped in the middle of the track and was dashed by running railway train.

20. It is true that it was an unmanned railway crossing, but simultaneously it also appears that the sign board was kept. Plaintiff's witness as well as defence witness, both were analogous on the fact of keeping of sign board near the unmanned railway crossing, except minor difference that sign board was not readable. What further appears from evidence that the train having left the railway station, the loco pilot of it was continuously blowing the horn and it was in force till the accident took place.

21. The loco pilot and co-loco pilot of the train involved in the road incident have been examined and nothing fruitful comes on record, which specifies omission on the part of the Railway to perform the duty enshrined by the statute. In contrast, it is evident that the deceased was at peak of his negligence and in a hurry of getting more fare from the folk fair, impulsively, without following the Rules and provisions of law, ignoring two stopped rickshaws at the unmanned railway crossing, attempted to cross the railway level crossing and lost his life in an unfortunate and tragic incident.

22. Recently, the Gauhati High Court in **MACApp. No.349 of 2013, Neutral Citation: GAH010014202013**, in the identical fact situation having referred the Section 161 of the 'Railways Act', in para 22 to 24 of the judgment held as under:-

"22. Section 161 of the Railways Act, 1989, makes it compulsory for the drivers of every vehicle crossing an unmanned level crossing, to stop and to observe whether any train is coming, before crossing the level crossing. The driver Lok Bahadur Chetri has stated in his evidence that he did not stop his vehicle before crossing the level crossing. He has stated that though he did not stop before crossing the level crossing, he had looked for incoming train in the direction of Dibrugarh while his handyman had looked towards Tinsukia/Lidu direction. The driver further stated that when he and his handyman did not see any incoming train, he took the vehicle forward for crossing the level crossing.

23. At this stage, I find it hard to believe that the driver did not hear the sound of a huge incoming train.

24. Now, it is clear on the face of the record that the driver Lok Bahadur Chetri had violated the provision of law as laid down in Section 161 of the Railways Act, 1989. It is proved that the accident took place because of the negligence of Lok Bahadur Chetri who was driving the vehicle bearing Registration No.AS-23-AC-0846. In that case, the appellant NF Railways is not liable to pay any compensation to the claimant."

23. In the aforesaid analysis of the evidence emerging from the facts of the case, I find that even if the learned Motor Accident Claims Tribunal has the jurisdiction to hear and decide the matter, but for the self-negligence of the deceased, the learned Tribunal has rightly dismissed the claim petition.

24. The authorities, which are relied upon by the learned advocate Mr. Anand B. Gogia, are factually distinguishable. Therefore, they are of no assistance in the present case.

25. In view of above and for the foregoing reasons, the appeal *sans* merit, deserves to be dismissed. Accordingly, it is hereby ***dismissed***.

26. Record and Proceedings, if any, be sent back to the concerned Court forthwith.

Sd/-
(J.C. DOSHI, J.)

Raj

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RAJ SUBHASH DHOBI(HC01779), Private Secretary, at High Court of Gujarat on 22/10/2026 15:01:53