

Gujarat State Road Transport Corporation, Ahmedabad

Vs

Ramanbhai Prabhatbhai and Another

Special Leave Petition (Civil) No. 2802 of 1987

(K. N. Singh, E. S. Vankataramiah JJ)

11.05.1987

JUDGMENT

VENKATARAMIAH J. -

1. The question involved in this case is whether a brother of a person who is killed in a motor vehicle accident can claim compensation in a proceeding instituted before a Motor Accidents Claims Tribunal established under the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). The High Court of Gujarat has upheld such a claim in this case. This special leave petition is filed against the judgment of the High Court questioning the correctness of the said decision.
2. The brief facts of the case are these. On account of the negligence on the part of the driver of a bus belonging to the petitioner, the Gujarat State Road Transport Corporation, Ahmedabad, a boy named Bhanubhai aged 14 years, was run over by the bus resulting in his untimely death. Ramanbhai and Dineshbhai, who are the brothers of the deceased instituted a petition before the Motor Accidents Claims Tribunal (Auxiliary) Vadodara, claiming compensation for the death of their brother alleging that they were the heirs and legal representatives of the deceased. The Tribunal awarded a sum of Rs. 32,000 as compensation to the claimants and directed the Gujarat State Road Transport Corporation to pay the said amount to the claimants. Against the award of the Tribunal, the Gujarat State Transport Corporation filed an appeal before the High Court of Gujarat under section 110D of the Act. That appeal was dismissed. This special leave petitions filed against the judgment of the High Court.
3. The only point canvassed before us in this special leave petition is that the Tribunal and the High Court were in error in awarding compensation in favour of the brothers of the deceased since, in law, they were not entitled to any compensation under the provisions of the Fatal Accidents Act, 1855, and in support of the said contention, reliance was placed by the petitioner on the decision of the Madhya Pradesh High Court in Budha v. Union of India (AIR 1981 MP 151 : 1981 MPLJ 30). In the present case, the High Court of Gujarat while passing its order has preferred to follow its own decision in Megjibhai Khimji Vira v. Chaturbhai Talhabhai (AIR 1977 Guj 195 : 1977 ACJ 253 : 1977 TAC 366), in which it had held that all the heirs and legal representatives of the deceased could maintain the claim petition under section 110A of the Act and had awarded compensation in favour of the nephews of the deceased. On account of the divergence of opinion prevailing the High Courts on the question involved in this case, we have found it necessary to give reasons in support of our decision on this special leave petition.

4. On account of the close association which came to be established between India and Great Britain owing to the British rule which lasted for over two centuries, in the High Courts established in India, the English common law which was based on principles of justice, enquiry and goods conscience came to be applied wherever they were called upon to award damages or compensation for civil wrongs committed by the defendants in the suits. The application of the English common law, however, had to conform to India circumstances and conditions which necessarily involved a selective application to the English law in India. The adoption of the rules of English law by the Indian courts observes H. C. Setalvad in his Common Law in India. (The Hamlyn Lectures, twelfth series, page 53), was neither automatic nor uncritical. Although they started with a presumption that a rule of English law would be accordance with the principles of justice, equity and good conscience, they bore in mind the reservation which was later expressed by the Privy Council in the words if found applicable to Indian society and circumstances. In the course of the application of the principles of the English law of Torts in India, the Indian courts came to recognise and apply the maxim action personarum moritur cum persona, a personal action dies with the parties to the cause of action. An action for a tort had to be begun in the point lifetime of the wrongdoer and the person injured. The development of railways in England led to a great upsurge in the number of accidents, many of which were fatal. When it was realised that the cause of action for recovery of damages for the death of a person caused by the wrongful act of another person did not survive on the death of the person to his legal representatives in England as a measure of law reform, the Fatal Accidents Act was passed later for compensating the families of persons killed by accidents. That act provided that

whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default it such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof then and in every such case, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

The said Act further provided that

every such action shall be for the benefit of the wife husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action injury may give such damages as they may think proportioned to the injury resulting from such action shall be brought and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

Within a few years after the passing of the said English Fatal Accidents Act, 1846, the Fatal Accidents Act, 1855, came to be passed on March 27, 1855, in India. This Act contains in all five sections. Its preamble runs thus :

Whereas no action or suit is now maintainable in any court against a person who by his wrongful act, neglect or default may have caused the death of another person, and it is oftentimes right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him; it is enacted as follows :

5. Sections 1A and 2 of that Act, which are relevant for our present purpose read thus :

1A. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;

and in every such action the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them in such shares as the court by its judgment of decree shall direct.

2. Provided always that not more than one action or suit shall be brought for and in respect of the same subject matter of complaint :

Provided that, in any such action or suit the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned of such wrongful act, neglect or default which sum when recovered, shall be deemed part of the assets of the estate of the deceased.

6. The comparison between the English Fatal Accidents Act, 1846, and the Indian Fatal Accidents Act, 1855, shows that they are almost identical in so far as the persons for whose benefit action for compensation could be brought open the death of a person, and they are wife, husband, parent and child of the deceased. The English law was however, modified insofar as the above question was concerned by the Fatal Accidents Act, 1959. Section 1 of that Act provides that the persons for whose benefit and by whom an action may be brought under the Fatal Accidents Act, 1846, shall include any person who is, or is the issue of a brother sister, uncle or aunt of the deceased person and in deducing any relationship for the purpose of the said Act, it further provides that (a) an adopted person should be treated as a child of the person or the persons by whom he was adopted and not of the child of any other person; and subject thereto (b) any relationship by affinity should be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood and the step-child of any person as a child; and (c) an illegitimate person should be treated as a legitimate child of his mother and reputed father. After the above Act was passed in 1959 in England, there came to be appointed a commission called the Royal Commission, on Civil Liberty and Compensation for personal injury, under the Chairmanship of Lord Person in the year 1973 to consider to what the extent, in what circumstances and by what means compensation should be payable in respect of personal injury (including ante-natal injury) suffered by any person (a) in a course of employment; (b) through the use of a motor vehicles or other means to transport; (c) through the manufacture, supply or use of goods or services; (d) on premises belonging to or occupied by another; or (e) otherwise through the act or commission of another where compensation under the present law is recoverable only on proof of fault or under the rules of strict liability having regard to the cost and other implications of the arrangements for the recovery of compensation, whether by way of compulsory insurance or otherwise. During the period when the Royal Commission was still collecting evidence to prepare its report the Fatal Accidents Act, 1976,

which was a consolidating Act incorporating the provisions of the Fatal Accidents Acts 1846 to 1959 was brought into force on September 1, 1976, in England. The Royal Commission submitted its report in March, 1978. After considering the evidence placed before it on the law prevailing in many of the countries, the Person commission recommended as follows :

399. Claims for damages following death may be made under the present law on behalf of the relatives of the deceased and on behalf of his estate.

The relatives claim for pecuniary loss.

400. An action may be brought on behalf of certain dependent relatives of the deceased for pecuniary loss (lost dependency) under the Fatal Accidents Acts in England, Wales and Northern Ireland. In Scotland, the equivalent action is for loss of support and funeral expenses under the Damages (Scotland) Act, 1976.

The entitlement to claim.

401. Claims under the Fatal Accidents Acts may be made on behalf of the deceased's spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, and - in the case of the last four relatives - their issue. Relationships by marriage are treated as blood relationships; a legally adopted child is treated a natural child, and an illegitimate child is treated as legitimate child of his mother and reputed father. 'Half' and 'step' relationships are treated as full relationships.

402. In Scotland, those entitled to claim damages for loss of support also include all ascendants and descendants; any person accepted by the deceased as a child of his family (whether or not legally adopted); and a divorced spouse. The full list, contained in Schedule I to the Damages (Scotland) Act, 1976, is as follows :

(a) any person who immediately before the deceased's death was the spouse of the deceased;

(b) any person who was a parent or child of the deceased;

(c) any person not falling within paragraph (b) above who was accepted by the deceased as a child of his family;

(d) any person who was an ascendant or descendant (other than a parent or child) of the deceased;

(e) any person who was, or was the issue of, a brother, sister, uncle or aunt of the deceased; and

(f) any person who, having been a spouse of deceased, had ceased to be so by virtue of a divorce.

403. We think that there is a good case for extending the present entitlement in England, Wales and Northern Ireland to conform with Scots law. We agree with the law Commission that a child accepted by the deceased and maintained by him as a 'child of the family', even though not legally adopted, has at least as good a claim to damages for lost dependency as, say, a stepchild and that where a divorced spouse can demonstrate dependency on the deceased (if, for example, he or she

has been awarded maintenance payments) he or she should also be able to claim damages. The inclusion under Scots law of all ascendants and descendants further means that claims by a dependent great-grandparent or great grandchild can be considered. Although the likelihood of such claims is in practice remote, we see no person why they should in principle be excluded.

404. We recommend that the relatives entitled to claim damages for lost dependency in England, Wales and Northern Ireland should be the same as those entitled to claim damages for loss of support under the Damages (Scotland) Act, 1976.

7. From the recommendation of the British Royal Commission, which is extracted above, it is seen that the Royal Commission recommended that the area of entitlement to damages following death should be expanded so as to include a larger number of relatives. In our country the Fatal Accidents Act, 1855 has remained unamended, but we have still to consider the effect of the amendment of the Act, i.e. the Motor Vehicles Act, 1939 on the Fatal Accidents Act, 1855. But before examining the relevant provisions of the Act it is necessary to refer to the 85th Report of the Law Commission of India on claims for compensation under Chapter VIII of the Act which was submitted as late as May, 1980. The Law Commission of India, after taking into consideration the differences of opinion prevailing in the various High Courts on the question of the persons who should be entitled to claim compensation on the death of a person, recommended that the entitlement to such compensation should be confined to the spouse, parent and children of the deceased as specified in the Fatal Accidents Act, 1855 overlooking the amendments made in England and other countries by expanding the list of relatives who are entitled to claim compensation on the death of a person. It is surprising that the Law Commission of India recommended that the provisions of the Fatal Accidents Act, 1855 should be adhered to in so far as the persons who were entitled to claim compensative were concerned. We shall now proceed to consider the effect of the amendment of the Act in so far as the question of compensation payable on the death of a person as a result of a motor vehicle accident is concerned.

8. It is submitted that the provisions in Chapter VIII of the Act to which we shall presently refer are merely procedural in character under which an alternative forum is created for deciding the question of compensation payable in respect of injuries and death caused on account of motor vehicles accidents and that they have not modified in any manner the substantive law governing the said question. In other words it is argued that the principles contained in the Law of Torts, as modified by the Fatal Accidents Act, 1855, alone would govern the said question even now. In support of the above submission, reliance is placed on the decision of this court in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* ((1977) 2 SCR 886 : (1977) 2 SCC 441 : AIR 1977 SC 1248 : (1977) Com Cas 736). In that case, this court affirmed the finding of the High Court that the motor vehicle accident which was the cause of the death in that case had happened on account of the negligence of the driver of the vehicle and hence damages were payable to the claimant therein and at page 894 this Court observed that the said finding was sufficient to conclude the judgment but the Court felt that it was desirable to deal with the question of law that had been death with at considerable length by the High Court as to whether it was incumbent on the claimant to prove negligence on the part of the driver of the motor vehicle before he would be entitled to compensation. The High Court had in the course of its judgment after upholding that the driver was negligent, observed that having regard to the changed conditions of modern society where a large number of motor vehicles are put on the roads thus exposing innocent third parties to grave accidents very often resulting in injuries to their lives and limbs, it was necessary in public interest to take the view that proof of negligence was unnecessary on the part of the drivers of the motor vehicles before claiming compensation. The learned judges of this Court were, however, of the view that the above observation was inconsistent

with the law of the land and that no damages could become payable without proof of negligence on the part of the driver of the motor vehicle involved in the accident. They further observed that the provisions of Chapter VIII of the Act were merely procedural and had not altered the substantive law. With great respect, it should be observed that the observations of this court on the above question were in the nature of obiter dicta, since as already stated, there was no necessity to go into the question whether proof of negligence on the part of the driver of the motor vehicle was necessary or not to claim damages under Chapter VIII of the Act because it had been found both by the High Court and this Court that such negligence had been in fact established. In the case before us, however, it is necessary to examine the provisions of Chapter VIII of the Act to ascertain whether there has been any modification by necessary implication of the provisions of the Fatal Accidents Act, 1855 in so far as the persons who are entitled to claim compensation on account of motor vehicle accidents are concerned.

9. It is true that Chapter VIII of the Act provides for an alternative forum for realisation of compensation payable on account of motor vehicle accidents but as well as we shall presently show it is not correct to say that the said provisions in Chapter VIII of the Act are merely procedural.

10. When the Fatal Accidents Act, 1855 was enacted, there were no motor vehicles on the roads in India. Today, thanks to the modern civilization, thousands of motor vehicles are put on the roads and the largest number of injuries and deaths are taking place on the roads on account of motor vehicle accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent to coming within the principle of liability as defined in *Rylands v. Fletcher* ((1868) LR 3 HL 330, 340). From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives, as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission, Chapter VII-A was introduced in the Act. Sections 92-A to 92-E of the Act are to be found in Chapter VII-A. Section 92-E of the Act provides that the provisions of Chapter VII-A shall have effect notwithstanding anything contained in any other provisions of the Act or of any other law for the time being in force. Section 92-A of the Act provides that where the death or permanent disablement of any person has resulted from an accident arising out of the use of motor vehicle or motor vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section. The amount of compensation which is payable thereunder in respect of the death of any person is a fixed sum of fifteen thousand rupees and the amount of compensation payable under it in respect of the permanent disablement of any person is a fixed sum of seven thousand and five hundred rupees. Sub-section (3) of section 92-A of the Act provides that in any claim for compensation under sub-section (1) of section 92-A, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. It is thus seen that to a limited extent relief has been granted under section 92-A of the Act to the legal representatives of the victims who have died on account of motor vehicle accidents. Now they can claim Rs. 15,000 without proof of any negligence on the

part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified. The special provisions contained in section 109-A to Section 109-C of the Act providing for a scheme for granting relief to victims or the legal representatives of victims of 'hit and run' motor vehicle accident cases is another novel effort on the part of the Government to remedy the situation created by the modern society which was been responsible for introducing so many fast moving vehicles on roads. Now we shall analyse the provisions of Chapter VIII of the Act which deals with the insurance of motor vehicles against third party risk. Sections 93 to 111-A are in that Chapter. The Act insist that the owner of a motor vehicle should take out an insurance policy to cover third party risk except in some specified cases. Section 102 of the Act provides that notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance has been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of Chapter VIII of the Act shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer. The death of an owner of a motor vehicle which is involved in a motor vehicle accident in whose favour a certificate to insurance has been issued is thus no longer a bar to the survival of any cause of action arising out of the said event. Section 110 of the Act provides for the establishment of Claims Tribunals. It provides that a State Government may by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals for such areas as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both. Section 110-F of the Act bars the jurisdiction of civil courts where any Claims Tribunal has been constituted for any area to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. On the occurrence of any motor vehicles accident, an application for compensation arising out of it can be made before the Claims Tribunal. Section 110-A of the Act which is material for the purpose of this case, reads thus :

110-A. Application for compensation. - (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 110 may be made -

(a) by the person who has sustained the injury; or

(aa) by the owner of the property; or

(b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be :

Provided that, where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed :

Provided that where any claim for compensation under section 92-A is made in such application the application shall contain a separate statement of that effect immediately before the signature of the applicant.

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident :

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

11. Clauses (b) and (c) of sub-section (1) of Section 110-A of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of Section 110-A provides that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. The expression 'legal representative' has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines 'legal representative' as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance, the said expression is understood almost in the same way in which it is defined in the code of civil procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clauses (b) of sub-section (1) of Section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. The proviso to sub-section (1) of section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representative of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent and (ii) that such application shall be made on behalf of the benefit all the legal representatives. Both the person or persons who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in section 110-A of the Act. This section in a way is a substitute to the extent indicated above for the provisions of Section 1-A of the Fatal Accidents Act, 1855 which provides that "every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased". While the Fatal Accidents Act, 1855 provides that such suit shall be for the benefit of the wife, husband, parent and child of the deceased, section 110-A(1) of the Act says that the application shall be made on behalf of or for the benefit of the legal

representatives of the deceased. A legal representative in a given case need not necessarily be a wife, husband, parent or child. It is further seen from section 110-E of the Act that the Claims Tribunal is authorised to make an award determining the amount of compensation which appears to it be just and specifying the person or persons to whom compensation shall be paid. This provision takes the place of the third paragraph of section 1-A of the Fatal Accidents Act, 1855 which provides that in every such action, the court may give such damages as it may think proportioned to the loss resulting from such from such death to the parties respectively, for whom and for whose benefit such action shall be brought. Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with the section 110-A and Section 110-B of the Act and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855 in so far as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new", the right given to the legal representatives under the Act to file an application for compensation for death due to motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.

12. Amongst the High Courts in India there is a cleavage of opinion as regards the maintainability of an action under section 110-A of the Act by persons other than the wife, husband, parent and child of the person who dies on account of a motor vehicle accident. All these cases are considered by the High Court of Gujarat in its decision in *Megjibhai Khimji Vira v. Chaturbhai Taljabhai* (Writ Petition No. 5486 of 1980, decided on November 21, 1986, in the High Court of Madras. The first set of cases are those which are referred to in paragraph 5 of the above decision which lays down that every claim application for compensation arising out of a Fatal Accident would be governed by the substantive provisions in Sections 1-A and 2 of the 1855 Act and no dependent of the deceased other than the wife, husband, parent or child would be entitled to commence an action for damages against the tortfeasors. Amongst these cases are *P. B. Kader v. Thatchamma* (AIR 1970 Ker 241 : 1969 Ker LJ 491 : ILR (1969) 2 Ker 307 : 1970 Lab IC 1273), and *Dewan Hari Chand v. Municipal Corporation of Delhi* (AIR 1973 Del 67 : (1972) 74 Pun LR (D) 177 : 1973 ACJ 87). The second group of cases are those referred to in paragraph 6 of the decision of the Gujarat High Court. They are *Preumal v. G. Ellusamy Reddiar* (1974 ACJ 182 (Mad)) and *Vanguard Insurance Co. Ltd. v. Chellu Hanumantha Rao* (1975 ACJ 344 (AP)). These cases lay down that while the compensation payable under section 1-A of the Fatal Accidents Act, 1855 is restricted to the relatives of the deceased named therein in the compensation payable under section 2 thereof may be awarded in favour of the representatives of the deceased who are entitled to succeed to the estate of the deceased. The third group of cases are those referred to in paragraph 7 of the judgment of the Gujarat High Court. They are *Mohammed Habibullah v. K. Seethammal* (AIR 1967 Mad 123), *Veena Kumari Kohli v. Punjab Roadways* (1967 ACJ 297 (P & H)) and *Smt. Ishwar Devi Malik v. Union of India* (AIR 1969 Delhi 183), which take the view that a claim for compensation arising out of the use of a motor vehicle would be exclusively governed by the provisions of Sections 110 to 110-F of the Act and bears no connection to claims under the 1855 Act and the Claims Tribunal need not follow the principles laid down under the latter Act. Having considered all the three sets of decisions referred to above, Ahmadi J., who wrote the judgment in *Megjibhai Khimji Vira v. Chaturbhai Taljabhai* (Writ Petition No. 5486 of 1980, decided on November 21, 1986, in the High Court of Madras) came to the conclusion that an application made by the nephews of the deceased who died on account of a motor vehicle accident was clearly maintainable under section 110-A of

the Act.

13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, enquiry and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of the law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and so specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family, brothers, sisters and brother's children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicle accidents. We express our approval of the decision in *Megjibhai Khimji Vira v. Chaturbhai Taljabhai* (Writ Petition No. 5486 of 1980, decided on November 21, 1986, in the High Court of Madras) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is legal representative of the deceased.

14. We have carefully gone through the decision of the High Court of Madhya Pradesh in *Budha v. Union of India* (AIR 1981 MP 151). We feel that the view taken in that decision is a narrow one and does not give full effect to the object with which Sections 110-A and 110-B of the Act were enacted. We overrule the said decision.

15. Before concluding, we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend section 110-A of the Act by defining the expression "legal representatives" in relation to claims under Chapter VIII of the Act as "the spouse, parent and children of the deceased" as recommended by the Law Commission. The Law Commission had observed in its 85th Report that it would be appropriate to assign to the expression "legal representative" the same meaning as had given to the expression 'representative' for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression 'legal representatives' in section 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression 'legal representative' in Section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.

16. We, therefore, do not find any ground to interfere with the judgment of the Gujarat High Court against which this special leave petition has been filed. The special leave petition is dismissed.

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