DELHI HIGH COURT

Ishwar Devi

Vs.

Union of India. (Delhi)

F. A. F. O. No. 166-D of 1968.
(I. D. Dua, C.J. and T. V. R Tatachari, J.)

19.3.1968

JUDGEMENT

I. D. Dua, C.J. and T. V. R Tatachari, J.

1.This is an appeal filed under section 110-D of the Motor Vehicles Act against the order of the Motor Accidents Claims Tribunal, Delhi, dated 17-3-1966, dismissing an application filed before the Claims Tribunal under section 110-A of the said Act for the payment of compensation.

2. The first appellant herein is the widow of one Sham Lal Malik, the sixth respondent and the second appellant are the sons, the third appellant is the daughter, and the fourth and the fifth appellants are the father and the mother of the said Sham Lal Malik. They filed the aforesaid application as heirs of the said Sham Lal Malik claiming a sum of Rs. 4,50,000/- as compensation arising out of an accident which took place on 26-12-1961 at Farash Khana Bus Stop, G. B. Road, at about 4 p. m., resulting in the death of the aforesaid Sham Lal Malik. The applicants stated in their application that the deceased Sham Lal Malik was about 40 years old and was doing business earning a monthly income of about Rs. 1,700/- per month; that on 26-12-1961 the deceased was waiting for the bus of route No. 2 at the Farash Khana Bus Stop; that Bus No. 730 of route No. 13 arrived at the said Bus stop at about 4 p.m.; that immediately after Bus No. DLP 230 arrived at the said Bus Stop; and that just when the deceased placed his foot on the foot-board of the said bus, the Conductor rashly and in a very great haste, without allowing the deceased to enter into the bus, rang the bell, and the driver started the bus. The applicants further stated that the driver crossed the bus No. DLP 730 which was standing so closely that the deceased

was crushed between the two buses, and as a result of the same he sustained very serious injuries on the chest; that he was then taken to the Irwin Hospital where, as a result of the said injuries, he died at about 6 p. m. on the same day; that the accident was caused on account of the rash and negligent acts of the Conductor and the Driver of the bus No. DLP 230 of route No. 2; that the said Conductor and Driver (respondents Nos. 4 and 5) were the employees of respondents Nos. 1 to 3, namely (1) the Union of India through the Secretary to the Ministry of Home Affairs, Government of India, New Delhi, (2) the Municipal Corporation of Delhi, and (3) the Delhi Transport Undertaking through the Officer-In charge, Scindia House, New Delhi; that the accident took place during the course of their employment; and that, therefore the respondents 1 to 3 were also liable to pay the compensation claimed by the applicants.

3. It was also stated in the application that the deceased who was aged about 40 years was in a very good state of health; that he was a partner in a flourishing business, namely, M/s Arjan Dass Gupta and Brothers, Coal Merchants, which have seven branches in all important places in India; that the deceased was assessed to income-tax on the yearly income of Rs. 21,296/- in the assessment year 1960-61; that his income was bound to improve every year; that the age of the widow of the deceased was 38 years; that the eldest son of the deceased was aged about 19 years and was studying in B. Sc. (Final) in Kirori Mal College, Delhi; that the other son of the deceased was aged about 18 years and was studying in the 2nd year in Shri Ram College of Commerce; that the daughter of the deceased aged about 14 years, was studying in the Nav Bharat Higher Secondary School; that the father and the mother of the deceased were 67 and 65 years old respectively; and that the applicants claim Rupees 4,50,000/- as compensation from the respondents taking into consideration the loss of pecuniary benefits which they would have received if the deceased had not died, his pecuniary savings from his income, his contributions to the family for their maintenance and education, etc., and also the assistance he would have continued to give to his family members and the loss of estate.

4. The application was contested by respondents 3, 4 and 5, the Delhi Transport Undertaking and the Conductor and the Driver of the offending bus. They filed a reply to the application raising some preliminary objections, namely, that the motor vehicles of the Delhi Road Transport Authority were exempted from the provisions of Chapter VIII of the Motor Vehicles Act by the Central Government by a notification S. R. B. 711, dated 7-4-1953; that on repeal of the Delhi Road Transport Authority Act of 1950, the notification, etc. issued under the said Act remained in force by virtue of

Section 516(2) of the Delhi Municipal Corporation Act and the vehicles of the respondent No. 3 were also exempted from the provisions of Chapter VIII of the Motor Vehicles Act under which the present application was made, and, therefore, the present application was not maintainable that no notice, as required under section 478 of the Delhi Municipal Corporation Act, was given; and that the application was bad as no notice under section 80 of the Civil Procedure Code was served on the Government of India. On the merits, they stated, inter alia, that the deceased attempted to board bus No. DLP 230 which was in a running condition, and in his attempt to board the moving bus, a portion of his body which was outside the bus struck against the stationary bus No. DLP 730, as a result of which he fell down from the said Bus No. 230 that on 26-12-1961, bus No. DLP 230 was proceeding on route No. 2 from Fountain to *Rajouri Garden*; that when the said bus reached the bus stop at Farash Khana near *Lahori Gate*, another bus No. DLP 730 was standing at the same bus stop; that the bus No. DLP 230 which was full to its standing and sitting capacity of passengers did not and could not stop at the above bus stop in view of the fact that under the law, the crew had no right to take any passengers under those circumstances, that since another bus was standing at the same bus stop, the bus manned by respondents Nos. 4 and 5 slowed down its speed, and when it was swerving towards right to overtake the standing bus, suddenly the deceased tried to board the running bus at a great risk and peril, that in his attempt to do so in boarding the moving bus, the major portion of his body was hanging outside the bus when it was dashed against the stationary bus, as a result of which he fell down and received shock that it was thus due to the contributory negligence of the deceased that he was involved in the accident in question; that there was no rashness or negligence on the part of the respondents Nos. 4 and 5; that the allegations in the application regarding the age of the deceased, his state of health and income, and the relationship of the applicants to the deceased should all be proved by the applicants; and that the applicants were not entitled to get anything as compensation, and the petition should be dismissed with costs.

5. The applicants filed a replication in which they pointed out that at the time of the issue of the notification mentioned in the preliminary objections, the provisions under which the application was made were not incorporated in the Act and were enacted subsequently; that the prior notification could not, therefore, exempt the vehicle of the Delhi Road Transport Authority from the provisions enacted subsequently; that the saving clause in the Delhi Municipal Corporation Act had no application at all; and that no notices under section 478 of the Delhi Municipal Corporation Act and under

section 80 of the Civil Procedure Code were necessary. They also reiterated the allegations and contentions in their application and stated that the version given by the respondents was false and concocted; that there was no contributory negligence on the part of the deceased; that under the circumstances, the respondents 4 and 5 had the last opportunity of avoiding the accident by a reasonable care and the plea of the alleged contributory negligence was not at all open to the respondents; and that the applicants were entitled to the compensation as claimed by them.

6. On the aforesaid pleadings of the parties, the Tribunal framed the following issues:

> "1. Whether the vehicles of the Delhi Transport Undertaking are exempt from the provisions of Chapter VIII of the M. V. Act?
> 2. Whether this application is not maintainable for want of notice under Section 478 of the Delhi Municipal Corporation Act?
> 3. Whether the death of Shri Sham Lal Malik was due to an accident caused by the rash driving and negligence of the driver and conductor respectively of Bus No. DLP 230 on 26-12-1961 at about 4 p. m. at Farash Khana?
> 4. to what amount of compensation the petitioners are entitled and from whom?
> 5. Whether the petitioners are the heirs of the deceased?
> 6. Whether the deceased was guilty of contributory negligence?
> 7. Relief."

7. The Claims Tribunal held issue No. 1 in favor of the appellants (applicants) relying upon an unreported decision of the High Court of Punjab (A. N. Grover, J.) in F. A. O. No. 80-D of 1959, (reported in ILR (1964) 1 Punj 529) wherein it was held that the Motor Vehicles of the respondents were not exempted from the provisions of Chapter VIII of the Motor Vehicles Act, and an application for compensation lay against them before the Claims Tribunal. The Tribunal also added that the issue was not pressed before the Tribunal by the learned counsel for the respondents. Regarding issue No. 2 also, the Tribunal observed that it was not pressed by the learned counsel for the respondents during the course of the arguments before the Tribunal, and that at any rate the issue had no substance in the opinion of the Tribunal. On issues Nos. 3 and 6, the Claims Tribunal on a consideration of the evidence held that it could not be said, under the circumstances, that the accident resulting in the death of Sham Lal Malik was due to a rash and negligent act on the part of the driver or the conductor of the offending bus.

On issue No. 4, the Tribunal held that the deceased was a partner in the Firm M/s Arjan Dass Gupta and Brothers, and that the income of the deceased was about Rs.

1,450/- per month. The Tribunal, however, found that the share of the deceased, Sham Lal Malik, was allotted after his death to his wife. Smt. Ishwari Devi, the first appellant herein, and Smt. Ishwari Devi afterwards became the partner of the firm, that it was in the evidence of A. W. 7, Arjan Dass, that the income of the firm increased after the death of Sham Lal as the firm had opened certain other branches, and that, therefore, it could not be said that the appellants (applicants) suffered any pecuniary loss after the death of Sham Lal. The Tribunal negatived the contention on behalf of the appellants (applicants) that the income of Smt. Ishwari Devi, who became a partner in the firm, could not be taken into consideration, relying upon the decision of the Supreme Court in *Gobald Motor Service Ltd. v. R. M. L. Veluswami,*[1]

The Claims Tribunal also held that the appellants (applicants) were, no doubt, also entitled to loss of estate under section 2 of the Fatal Accidents Act, but that in the present case, since it was admitted that the deceased had insurance claim of Rs. 30,000/- to Rs. 40,000/-, which amount was received by the family after the death of Sham Lal, no question of awarding any more amount arose in the circumstances. In the result, the Claims Tribunal held that the appellants (applicants) were not entitled to any amount as compensation. On Issue No. 5, the Claims Tribunal found that the six applicants were the legal representatives of the deceased. Thus, as a result of its findings, the Claims Tribunal dismissed the application. It is against this order that the present appeal has been filed by the unsuccessful applicants.

8. The questions raised in issues 1 and 2 were not urged before us by Shri D. D. Chawla, the learned counsel for the respondents, nor did he dispute the finding on issue No. 5. The only questions which were argued before us were those raised under issues 3, 4, and 6, namely:

> (1) Whether the death of Sham Lal Malik was due to an accident caused by the rash driving and negligence of the driver and the conductor respectively of Bus No. DLP 230 on 26-12-1961 at about 4 p.m. at Farash Khana Bus Stop?
> (2) Whether the deceased was guilty of contributory negligence; and
> (3) to what amount of compensation the appellants (applicants) were entitled and from whom?

9. Questions Nos. 1 and 2 mentioned above are connected, and it is convenient to discuss them together. The appellants (applicants) examined 3 eye witnesses to prove that the accident which resulted in the death of Sham Lal Malik was due to the rash driving and negligence on the part of the driver and the conductor.

10 to 25. (After narrating the evidence adduced by the parties the Judgment proceeds:)

26. Thus, according to the appellants (applicants), the bus No. 230 of route No. 2 stopped at the Farash Khana bus stop, the deceased Sham Lal was boarding the bus and was still on the footboard when the conductor gave the bell with the result that the bus moved and that too very closely to the standing bus, and Sham Lal got pressed between the two buses. On the other hand, the version of the respondents was that the offending bus did not stop at Farash Khana bus stop, that it was already full and was, therefore, slowed down as it had to overtake or pass by the other stationary bus, that the deceased Sham Lal tried to board the moving bus, and he being a bulky person, a good portion of his body was outside the bus, and he hit against the stationary bus and fell down on the road. The question, therefore, is as to which of the versions is correct. The Claims Tribunal accepted the version of the respondents. On a consideration of the evidence, we are not inclined to accept his view. As already stated, the appellants (applicants) examined three eye witnesses. A. W. 1, Lachman Dass, deposed that bus of route No. 2 did stop at the Farash Khana bus stop and Sham Lal boarded the bus of route No. 2 and was still on the footboard when it started, with the result that he struck against the rear portion of the stationary bus of route No. 13. He was in his car just behind the bus of route No. 2, and had to stop his car as there was not sufficient space for him to cross or overtake the two buses. He owns a shop near *G. B. Road*, *Ajmeri Gate,* and deals in building materials, paints etc. He is a respectable witness and he gave his evidence in a straightforward manner. Nothing has been elicited in his cross-examination to discredit his veracity. The Claims Tribunal gave two reasons for not believing the witness. The Tribunal firstly observed that the statement of the witness that there was no sufficient space for him to overtake the bus seemed to be wrong, and that the Tribunal was not prepared to believe the said statement of the witness, and opined that "if at all, he reached there after the accident and he did not himself actually see the facts leading to the accident" In our opinion, the Tribunal was in error in taking the above view.

27-29. (After discussion of evidence of A. W. 1 and A. W. 3 the judgment proceeds;)

30. The third eye witness was A. W. 7, Arjan Dass. The Tribunal considered that much reliance cannot be placed on the evidence of this witness as he is the real brother-in-law of the deceased and was, therefore, an interested witness. It is true that A. W. 7 was the brother-in-law of the deceased and was, therefore, in a sense an interested witness. But, as pointed out by the Supreme Court in *Masalti v. State of Uttar Pradesh,* [2] at p. 209, even in a criminal case, the evidence of an interested

person is not to be rejected mechanically merely because the witness is an interested person, but the court has to be careful in weighing such evidence and see whether the evidence strikes the court as genuine or as probable. In the present case, the Tribunal mechanically rejected the evidence of A. W. 7 on the ground that he was related to, and, therefore, interested in the heirs of the deceased, Sham Lal Malik. It failed to note that the evidence of Arjan Dass regarding the occurrence of the accident was corroborated in material particulars by the evidence of A. W. 1 and A. W. 3. In the view we have taken that the evidence of A. W. 1 and A. W. 3 was reliable, the evidence of A. W. 7 also can be relied upon as regards the occurrence of the accident.

31-36. (After discussion of evidence of witnesses of respondents, the Judgment proceeds :)

We, therefore, prefer to accept the version of the witnesses of the appellants (applicants) to that of the witnesses of the respondents, and hold that the bus of route No. 2 stopped at the Farash Khana bus stop at about a distance of 5 or 6 feet from the stationary bus of route No. 13, that the deceased boarded the bus, and when he was still on the foot-board, the conductor gave the bell and the bus moved passing by the side of the stationary bus very closely, with the result that the deceased either struck against the right rear corner of the stationary bus or got pressed between the two buses and sustained the injuries, as a result of which he died later in the hospital.

37. The next question for consideration is as to whether the accident was caused by the rash driving and negligence of the driver and the conductor respectively of the offending bus. According to the findings arrived at by us above, the deceased Sham Lal boarded the bus when it was stationary, but when he was still on the foot-board with a part of his body outside the bus, the conductor gave the bell and the bus moved passing by the side of the stationary bus very closely. Sri S. N. Chopra, the learned counsel for the appellants, contended that the deceased was not at all in wrong in boarding the bus which was stationary, that it was the conductor who was negligent and even rash in ringing the bell and thereby giving the signal to the driver for the starting of the bus without waiting till the deceased Sham Lal moved himself from the foot-board into the bus. Shri Chopra also contended that the driver also acted in a rash and negligent manner in overtaking or passing by the stationary bus of route No. 13 very closely. We consider that there is considerable force in the two contentions of Shri Chopra. The conductor, R. W. 1, Jai Dayal, stated in the examination-in-chief that the deceased, Sham Lal, was standing on the footboard of the bus with his body outside the bus. He admitted in cross-examination, that he (the witness) was standing

near the second seat from the rear at that time, and was seeing the deceased running towards the bus, getting on to it, and standing upon the foot-board of the offending bus. No doubt, according to the conductor, he gave a double bell even when the bus was nearing Sharda Nand Market i.e. before it reached the Farash Khana bus stop, and the bus was actually moving at the time when the deceased ran towards the bus and got on to the foot-board. But, we have rejected above this version of his. However, the fact remains that the conductor was aware of the deceased person running towards the bus and getting on to and standing on the foot-board of the bus, on his own statements in his deposition. Therefore, the question is as to whether he should not have, in that situation, given the bell for the starting of the bus without waiting till the deceased moved from the foot-board and got inside the bus. The answer is obviously that he should not have done so.

It need hardly be emphasized that the safety of the public who travel by public conveyances like the bus in question is the primary concern of the conductor and the driver who are in charge of and control of public conveyances. When the conductor saw that the deceased, Sham Lal, was boarding the bus and was yet on the foot-board, he should not have given the bell for the starting of the bus, but should have waited till Sham Lal got inside the bus. To have given the bell and thus signaled the driver to start the bus, is nothing but rashness and negligence on the part of the conductor. The conduct of the driver also was rash and negligent, in that he drove the offending bus so closely near to the stationary bus that there was no sufficient clearance between the two buses land the dece ased got squeezed or sandwiched between the two buses. No doubt, some of the witnesses stated that the body of the deceased struck against the stationary bus while others stated that the deceased got sandwiched between the two buses. But the doctor, A. W. 2, who examined the body of the deceased found that the heart was shifted to the right side and sounds were feeble, and that on the left side of the chest there was tenderness, surgical emphysema and fracture of ribs on the left side. The said injuries suggest that it was not a case of mere striking against the rear corner of the stationary bus, but was a case of the deceased getting squeezed or pressed between the two buses.

It is also true that the driver of the offending bus, R. W. 2, stated that the distance between the two buses at the time of the overtaking was about 11/2 feet. The mention of the said distance by the witness was and could only be an approximation. The very fact that the deceased got pressed or squeezed between the two buses speaks for itself, and clearly shows that the offending bus passed very closely by the stationary bus. It

has to be recalled that the width of the road on the left side of the verge was stated to be 20 to 22 feet, and the stationary bus was parked at a distance of about 11/2 feet from the Petri on the left side. Thus, adding the said 11/2 feet to the approximate width of the bus at its rear (i.e. about 6 feet), a space of about 12 feet or even more, between the stationary bus and the verge, was available to the driver of the offending bus. He thus had ample space for giving a larger clearance between the two buses. He, however, drove his bus very closely near to the stationary bus. In doing so, he was obviously careless, rash and negligent. On a consideration of the evidence, we are of the opinion that it has been established by the appellants (applicants) that the accident was caused by the rash driving and negligence of the driver and the conductor of the offending bus No. DLP 230.

38. A similar view was taken by a learned Single Judge of the Circuit Bench of the Punjab High Court at Delhi (S. B. Capoor, J.) in *Kuldip Lal Bhardari v. Umed Singh* [3] In that case also, a lady boarded a bus at a bus stop, the conductor gave the bell while she was still on the foot-board, and the driver failed to steer clear of another bus which was parked ahead, with the result that the foot-board side of the offending bus collided against the said stationary bus, and the lady was sandwiched between the buses and died. The learned Judge held that both the conductor and the driver were negligent, the former being negligent in signaling the bus to proceed before the lady had got safely into it, and the latter in not allowing sufficient clearance while passing the bus in front of him. We referred to the decision only to point out that another learned Judge had taken the same view as we have taken, namely, that the act of the conductor in signaling the bus to proceed before the passenger standing on the foot-board moved into the bus, and the act of the driver in not allowing sufficient clearance while passing by the side of the stationary bus, are acts of rashness and negligence on the part of the conductor and the driver.

39. The next contention of Shri D. D. Chawla was that the deceased Sham Lal was guilty of contributory negligence. In view of our finding on a consideration of the evidence in the present case that the bus of route No. 2 was not in motion as alleged by the respondents but was stationary, as alleged by the appellants, at the time when Sham Lal boarded it, the question of contributory negligence on the part of Sham Lal does not arise.

40. As regards the compensation payable to the appellants (applicants), it has to be remembered that the application for compensation was filed under section 110-A of the Motor Vehicles Act, 1939, and not under section 1-A of the Fatal Accidents Act,

1855. The preamble to the Fatal Accidents Act shows that the said Act was enacted in 1855 as it was considered at that time that no action for suit was maintainable in any court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and because it was right and expedient that the wrong doer in such a case should be answerable in damages for the injury so caused by him. The act provided for the maintainability of civil actions by certain persons to recover compensation for wrongs resulting in the death of a person to whom they stood in special relation. The provisions of the Act are to a large extent similar to the provisions in the English Fatal Accidents Act, known as the Lord Campbell's Acts. The Act provides for compensation or damages -

(1) For the loss caused by the death of the person as a result of the accident to the representatives of the deceased person, namely, wife, husband, parent and child; and

(2) For any pecuniary loss to the estate of the deceased.

It is thus a general law providing for compensation to the representatives of a deceased person or to his estate for the loss occasioned by his death as a result of an accident On the other hand, the Motor Vehicles Act is a special law which, by sections 110 to 110-F provides for adjudication upon claims for compensation in respect of accidents involving the death of, or injury to, persons arising out of the use of motor vehicles. By section 110, a State Government is empowered to constitute one or more Motor Accidents Claims Tribunals for adjudicating upon the aforesaid claims for compensation. Section 110-A provides that an application for compensation arising out of an accident of the nature specified in section 110 (1) may be made by the person who has sustained the injury, or where death has resulted from the accident, by the legal representatives of the deceased, or by an agent duly authorized by the person injured or the legal representatives of the deceased, as the case may be. and also prescribes the period within which such an application may be made. Section 110-B provides for the holding of an enquiry into the claim and for the making of an award by the said Tribunal. Section 110-C contains provisions regarding the procedure and the powers of the Claims Tribunal Section 110-D provides a right of appeal to the High Court to a person aggrieved by the award. Section 110-E provides for the recovery of money due from an insurer under an award as arrear of land revenue. Section 110-F bars the jurisdiction of civil courts to entertain any question relating to any claim for compensation which may be adjudicated upon by a Claims Tribunal. The Act purports to consolidate and amend the law relating to motor vehicles. The present sections 110 to 110-F were substituted in the place of the old section 110 by

section 80 of the Motor Vehicles (Amendment) Act, 1956 (Act No. 100 of 1956). and were intended to provide a cheaper and speedier remedy by way of an application before a Claims Tribunal instead of the remedy of a suit in a civil court as provided in the Fatal Accidents Act. Thus, the Act is a self-contained Act, and, as such, an application filed under section 110-A of the Motor Vehicles Act is governed by the provisions in the Motor Vehicles Act and not by the provisions in the Fatal Accidents Act. A similar view was taken by a Division Bench of the High Court of Madras (Ananta Narayanan, C. J. and Ramakrishnan J. in *Mohd. Habibula v. K. Sitammal, 1966 Acc. C. J. 349 (Mad)*, to which the learned Judges observed as follows:

> "But the law has not been stationary since that Central Act was enacted in 1855. On the contrary, there has been considerable development since then, and it is also obvious that, in the subsequent century that has elapsed, the volume of motor traffic and the statistics of motor accidents, fatal or otherwise, must both have originated and increased beyond all proportions. In this prospective, the Legislature has deliberately enacted the Motor Vehicles Act, and provided by virtue of sections 110 to 110-F of that Act, nor merely a self contained code for, the adjudication of claims to compensation on behalf of the victims of a motor accident, but also a complete machinery for the adjudication of such claims. Under section 110-F, the jurisdiction of the civil court is specifically ousted by the Claims Tribunal for the area. The claim in the present case is under sections 110 to 110-F of the Motor Vehicles Act. It has no connection whatever with the Indian Fatal Accidents Act (No. 13 of 1855) and is not advanced under any section or provision of that Act. It is noteworthy that sections 110 to 110-F that we have referred to make no mention of any kind concerning any of the provisions of the Fatal Accidents Act, and do not incorporate any such provision even by the most oblique reference." Reference may also be made to the decision of a learned Single Judge, D. K. Mahajan, J. in *Veena Kumari Kohli v. Punjab Roadways,*[4] in which the learned Single Judge, distinguished the decision of the Supreme Court in AIR 1962 Supreme Court 1, by observing as follows:
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> "That decision would have applied only if a claim under Fatal Accidents Act had been made before the Tribunal. No such claim was made. Therefore, it is idle to suggest that the Tribunal has gone wrong in not determining the claim on the principle enunciated by their Lordships of the Supreme Court in Gobald Motor Service's case."

Thus, a claim for compensation by an application under the Motor Vehicles Act has to

be determined with reference to the provisions in the Motor Vehicles Act. Section 110-B of the Motor Vehicles Act runs as under.

> "110-B. Award of the Claims Tribunal- On receipt of an application for compensation made under section 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an enquiry into the claim and may make award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award, the Claims Tribunal shall specify the amount which shall be paid by the insurer."

The measure for the compensation is thus stated to be the amount of compensation which appears to the Tribunal to be just. On the other hand, in section 1-A of the Fatal Accidents Act, provision is made that -

> "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 under section 2 of the said Act, provision is made that the administrator or representative of the deceased may insert a claim for and recover -
>
> "Any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default,...."

There are various decisions in which courts had to deal with claims under the Fatal Accidents Act and interpret the above mentioned words in the sections 1-A and 2 of the Fatal Accidents Act. But, in view of the difference between the language of sections 1-A and 2 of the said Act and section 110-B of the Motor Vehicles Act, the decisions under the Fatal Accidents Act are not directly applicable to a claim made under the Motor Vehicles Act. A Claims Tribunal under the Motor Vehicles Act is empowered to determine the amount of the compensation which appears to it to be just What amount of compensation would be just has necessarily to depend upon the circumstances in a given case. The word "just" has a wider ambit than the words used in sections 1-A and 2 of the Fatal Accidents Act. Therefore, a Claims Tribunal dealing with a claim under the Motor Vehicles Act has only to consider what appears to it to be just compensation on the facts and circumstances of the case before it and need not strictly follow and apply the basis of the assessment of compensation indicated in the various decisions under the Fatal Accidents Act or under English Law.

41. The said decisions, Indian or English, can at the most if at all, be of general guidance. The Claims Tribunal may, in deciding the just compensation in a case, bear

in mind and apply any general principle or principles laid down in the aforesaid Indian or English decisions as far as they may be applicable, and in so far as they may promote the interests of justice on the facts and the circumstances of each case. In other words, the said principles laid down in the decisions under the Fatal Accidents Act may be used or applied if they, in the opinion of the Tribunal, would serve as a proper measure of what is just compensation on the facts and circumstances of the case in hand.

42. As already stated, there are two distinct kinds of damages or compensation i.e. two distinct heads, recoverable under the Fatal Accidents Act 1855. The first is the compensation proportionate to the loss resulting from death to the beneficiaries named in Section 1-A while the second, provided for in Section 2 of the Act is the compensation for the loss resulting to the estate of the deceased, not from his death or as a consequence of his death, but resulting from the wrongful act neglect or default and as a consequence of such act or default. Decisions under the Fatal Accidents Act have interpreted the loss in both the cases as pecuniary loss. In the present case, there is no claim for compensation of the second category or head, and it is, therefore, not necessary to consider the same. As regards the first head of compensation the basic rule is stated to be that the beneficiaries are entitled to compensation for a pecuniary or material loss from the death of a person or the support of which the beneficiaries have been deprived. It appears to us that this principle provides a sound and reasonable basis in assessing just compensation in claims under the Motor Vehicles Act. In fact Shri Chopra, the learned counsel for the appellants, stated before us, and we think rightly, that the application of this principle in the present case would be a just and proper one. Shri Chawla, the learned counsel for the respondents also maintained that this principle has to be applied in the present case.

43. We have, therefore, to see what the just compensation in the present case would be on applying the above principle to the facts of the present case. Shri Chawla referred us to an observation of the Supreme Court in the judgment in AIR 1962 Supreme Court 1 at p. 6. In that case, the Supreme Court in dealing with a claim under the Fatal Accidents Act after referring to the mode of estimating the damages under the aforesaid first head laid down by Viscount Simon in *Nance v. British Columbia Electric Railway Company Limited,*[5] observed at p. 6 as follows:

> "It would be seen from the said mode of estimation that many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the respondents may depend upon data which cannot be ascertained accurately,

but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, i.e. the balance of loss and gain to a dependent by the death must be ascertained."

Relying on the said observation of the Supreme Court. Shri Chawla argued that, in the present case, the deceased was a young man of 40 years, his date of birth being 19-12-1921 as shown in the Matriculation Certificate (Ex. P. W. 7/10), that his occupation was business and he was a partner in M/s Arjan pass Gupta and Brothers, that on a consideration of the assessment orders passed by the Income-tax authorities, the Claims Tribunal found that the income of the deceased was about Rs. 1,450/- per month, that the said income was not reduced and the appellants were not deprived of the said income after the death of Sri Sham Lal, and they did not suffer any pecuniary loss because of the death of Sham Lal, as the share of Sham Lal was allotted to his wife Ishwari Devi, after the death of Sham Lal, and Ishwari Devi became the partner of the firm, that the deceased had an insurance claim of Rupees 30,000/- to Rs. 40,000/- which was received by the family, and that, therefore, in the circumstances, the question of awarding any more amount as compensation does not arise, as held by the Claims Tribunal.

On the other hand, relying on the same observation of the Supreme Court Shri Chopra contended that the Claims Tribunal found that the deceased was earning Rs. 1450/- per month, that presuming that he was spending Rs. 450/-on his person, loss to the family was Rs. 1000/- per month, that the deceased who was aged 40 years and was in good health at the time of his death could be expected to have lived for another 25 years, that the loss to the family for twenty five years would come to about Rs. 3 lakhs, that at the most a sum of Rs. 73,874/25 np which was standing as a capital of the deceased in the aforesaid firm may be deducted from the aforesaid amount of Rs. 3 lakhs that the balance of about Rs. 2,16,000/- could be awarded as compensation to the appellants, and that the alleged insurance claim of Rs. 30,000/- or Rs. 40,000/- should not be deducted at all as it was a case of life insurance of the deceased, for which the deceased himself must have paid the premium.

It is clear from the principle enunciated by the Supreme Court, which, in our opinion, should be applied in the present case in determining the just compensation payable to the appellants (applicants), that the pecuniary loss to the claimants has to be

ascertained by balancing the loss to them of the future pecuniary benefit and the pecuniary advantage which came to them by reason of the death.

44. Sham Lal's income from the firm's business was found by the Claims Tribunal as Rs. 1450/- per month. This in not questioned by either of the learned counsel. How much out of this amount was being spent by Sham Lal for himself and for each of the appellants (applicants) is a matter for determination according to the evidence on the record. But, no evidence was let in by either party regarding the same. In the absence of any evidence adduced by the parties, the court can only try to guess what the deceased must have been reasonably spending as there does not seem to be any other way. There is no evidence in the case to show if Sham Lal was laying by any portion of his income. In the circumstances, we think we can reasonably assume that he must have been spending about Rs. 450/- for himself, i.e. for his personal requirements, and about a sum of Rs. 250/- towards other general expenses, leaving a balance of Rs. 750/-which he may be taken to have been spending for appellants (applicants). Therefore, the loss to the appellants (applicants) of the future pecuniary benefit which they would have received from the deceased but for his death may be taken as Rs. 750/- per month that is, the loss of future pecuniary benefit sustained by each of the six applicants was about Rs. 125/- per month.

45. We shall now consider if any pecuniary advantage came to any of the appellants (applicants) by reason of the death of Sham Lal. Such a pecuniary benefit, if any would have to be deducted from or balanced against the aforesaid pecuniary loss. It is for the claimants to adduce evidence and show what the income of the deceased was and what pecuniary loss they had suffered by the death. Once they adduce such evidence, it is then for the opposite party to adduce evidence and show what pecuniary advantages the claimants received by reason of the death and which they would ask the Court to deduct from or balance against the pecuniary loss shown by the claimants. In the present case, there was neither a pleading nor any evidence adduced by the respondents regarding the same. They chose to only elicit from Arjan Dass, A. W. 7, in his cross-examination, by asking him about the share of Sham Lal in the firm and certain insurance amount. A. W. 7 stated that after the death of Sham Lal, his share was given to his wife, Smt. Ishwari Devi. The Tribunal stated in its judgment that Smt. Ishwari Devi became partner in the firm. In other words all the interest which Sham Lal had in the firm's business came to Ishwari Devi only and not to any of the other applicants. There is nothing on the record which shows that Ishwari Devi was given the share in the firm and made a partner for and on behalf of the other appellants

also. We have, therefore, to proceed on the basis that Ishwari Devi alone got the advantage of the share or interest of Sham Lal in the firm. As regards the insurance amount, A. W. 7 just stated in cross-examination as under:

> "Marhum ka Bima Tha. Malum Nahin Hai Kitne Rupaya Ka Tha. 30/40 Hazar Rupaya Ka Ho Ga, Thik Yad Nahin Hai" (The deceased was insured. I do not know for how many rupees it was. It might be for Rs. 30/40 thousand; I do not remember exactly). The said statement is very vague. It is not known whether it was life insurance simpliciter or whether he was insured for accidents also whether the insured nominated any particular individual, and whether the amount was duly claimed and collected by any or all of the appellants (applicants). In the absence of any evidence that the 5 applicants other than the wife got advantage of the said insurance amount, we consider that the said amount should not be taken into consideration as against the 5 applicants other than the wife.

46. The deceased was aged about 40 years at the time of his death and was stated to be in good health. It can, therefore, be reasonably assumed that but for the accident he would have lived up to the age of 60 years i.e. for a further period of 20 years. Capitalizing the sum of Rs. 125/- per month for 20 years, the pecuniary loss of each of the appellants would be Rs. 30,000/-. The wife Ishwari Devi, got the husband's share in the firm, the capital value of which, according to A. W. 7, was Rs. 73,874/25 np. The advantage thus got by her was much more than the pecuniary loss suffered by her. We, therefore, consider that no further amount of compensation need be paid to the wife, Ishwari Devi. As regards the children left by Sham Lal, the eldest son Jagjit Kumar was aged about 19 years and was studying in Karori Mal College, Delhi, in B.Sc. (Final), the second son, Naresh Kumar, was aged about 18 years and was studying in Shri Ram College of Commerce in 2nd year, the daughter, Asha, was aged about 14 years, and was studying in the Nav Bharat Higher Secondary School. Each of them, as stated above, had suffered a pecuniary loss of Rs. 30,000/- and they have not been shown to have received any pecuniary advantage by reason of the death of their father.

47. Sham Lal also left behind him his father, Mela Ram Malik, who was aged about 67 years, and his mother, Lakshmi Devi, who was aged about 65 years, on the date of the application. In view of their ages, we consider that in computing the pecuniary loss suffered by them, it would meet the ends of justice if the calculation is made for 5 years and not for 20 years in their cases. So calculated, the pecuniary loss suffered by

each of them would be Rs. 7500/-.

48. In the case of the daughter, Asha, had the father not died in the accident, he would have got her married in another 5 or 10 years and she would not have remained unmarried till the father attained the age of 60 years. Since we have taken the entire period of 20 years in computing the pecuniary loss in her case also, we consider that the expenses for her marriage, which the father might have incurred, need not be taken into account, in computing the compensation payable to her.

49. No other head of claim was canvassed before us.

50. However, since the claimants get a lump-sum, and also because of the uncertainties of life, such as the deceased or the claimants might die before the expiry of the normal span of life, a deduction of 10 to 20 per cent from out of the amount of pecuniary loss has usually been made in decisions dealing with cases under the Fatal Accidents Act, vide *Krishnamma v. Alice Veigos* [6] In our opinion, the reasons for the said deduction are based on justice and fairplay between the parties, and, therefore, a deduction on that account may be made even in claims made under the Motor Vehicles Act. In the present case, we think that a deduction of 15 % on the ground of lump-sum payment would be fair and just. Making the said deduction of 15% from the sum of Rs. 30,000/- in the case of each of the 3 children of Sham Lal, the amount of compensation payable to each of them would come to Rupees 30,000/- minus Rupees 4,500/- : Rupees 25,500/-. Similarly, making the said deduction of 15% from the sum of Rs. 7,500/- in the case of each of the parents of Sham Lal, the amount of compensation payable to each of them would come to Rs. 7,500/- minus Rupees 1,125/- : Rs. 6,375/-.

51. In this appeal, the eldest son, Jagjit Kumar, who was one of the claimants before the Tribunal, was added as respondent 6 in the appeal. However, as the cause of action for all the claimants was the same, and we are going to make an order which ought to have been made by the Claims Tribunal we are of the opinion that in exercise of our power under Order 41, Rule 33 read with section 151, Civil Procedure Code, we should make an order for compensation in favor of Jagjit Kumar also in order to do complete justice between the parties.

52. In view of our finding that the accident took place on account of the rashness and negligence on the part of the Driver and the Conductor of the offending bus, they (respondents 4 and 5) as well as the Municipal Corporation of Delhi and the Delhi Transport Undertaking (respondents 2 and 3) are liable for the payment of the

compensation to the claimants.

53. Accordingly, we allow the appeal, set aside the judgment and order of the Claims Tribunal, dated 17-3-1966, and order that Jagjit Kumar Malik, Naresh Kumar Malik, Asha Malik be paid Rs. 25,500/- each, and Mela Ram Malik and Smt. Lakshmi Devi, parents of Sham Lal, be paid Rs. 6,375/- each, by respondents 2 to 5. The appellants (applicants) are also entitled to their costs throughout payable by respondents 2 to 5.

Appeal allowed.

Cases Referred.

1. AIR 1962 Supreme Court 1.

2. AIR 1965 Supreme Court 202

3. , 1966 Acc. C. J. 110 (Punj).

4. 1967 Acc. C. J. 297 (Punj)

5. 1951 A. C. 601,

6. 1966 A. C. J. 366 (Mys).