GUJARAT HIGH COURT

Hirji Virji Transport

Vs.

Basiran bibi

First Appeal of 210 of 1968

(J.B. Mehata and D.A. Desai, JJ.)

17.12.1970

JUDGMENT

J.B. Mehta, J.

1. The owner of the track, the driver and the concerned insurance company have filed this appeal against the award of the learned Claims Tribunal awarding an amount of ₹ 45975/- by way of damages to the widow, respondent No. 1, and the three minor sons-respondents 5 to 7. Respondents 2 and 3 were the major sons and respondent No. 4 was the married daughter who were not dependents and who have not raised any dispute for inter-se apportionment of the compensation amount. Even before us respondents 2 to 4 have not made any grievance and, therefore, the case has entirely proceeded on the footing that the amount is to be awarded under both the relevant Sections 1A and 2 as regards the loss of dependency benefit and the loss to the estate only to those four respondents, the widow and the three minor sons. The truck of the appellants 1 and 2 MRT 4756 had dashed against the scooter driven by the deceased Mohamedmiya Mohamed Hussein on the outskirts of the Fatehpur village on August 7, 1966. The concerned truck was coming from Ahmedabad side and was going to Bavla on the Ahmedabad-Bavla Road from east to west; while the deceased's scooter with witness Jambu Nazir, ex. 99, on the pillion was at that time going from Dholka to Ahmedabad. It is an admitted fact, even by the driver of the truck Tukaram Ramji, Ex. 106, that it was a rainy day and even at the time of the incident at about 10.0 RM. it was actually drizzling. It was a dark night. Admittedly, the truck had no wipers as admitted even by the driver. There is hardly any substance in his plea that the wind-screen glass which was in two parts had been separated so that he could peep through. The Panchnama, Ex. 63, discloses that even though the windscreen consisted of two separate glasses they were closed. Besides, in that case, the visibility would be all the more obstructed. Even the statutory requirement of 1969 rules under Rule 147 provides for the wipers. The panchnama, Ex. 63, which has been properly proved disclosed marks of collision. Below the right head light of the truck there was a scratch and black rubber was

brushed. There was a scratch also on the right mudguard. The right handle of the scooter was damaged to the extent of ₹ 200/-. This gives a complete answer to the plea of the driver that the scooter had slipped into the wheel of the truck. In view of the impact of collision as evidenced by the panchnama, Ex. 63, the learned Claims Tribunal rightly disbelieved this theory. The Panchnama, Ex. 63, discloses that it was 12 ft, wide asphalt road with 8 ft. metal road on two sides. The tyre marks revealed that the driver must have applied the brake at a distance of about 30 ft. and the truck had gone about 55 ft. The scooter was only 3 ft. from the road on its correct side. It was, therefore, apparent from the Panchnama, Ex. 63, that the driver was on the extreme wrong side. As he had no wiper and he was taking the truck while it was actually drizzling on the dark night he must have occupied large space on the road by going on the wrong side. As soon as he saw the scooter he had swerved the vehicle and that is why he came right across the road on the other side. Mr. Vakil had vehemently argued that there was some evidence to show that the scooter must have slipped in and he tried to rely on the first police statement of Jambu Nazir who was on the pillion. The learned Claims Tribunal had ignored the main fact that this police statement could go in evidence only as a statement recorded by the P.S.I, and when the P.S.I. Ladhubha, Ex. 66, was not asked a single question fit this connection. The police statement was, however obviously Wrongly exhibited. The learned Claims Tribunal was right in observing that Jambu's statement might not have been correctly recorded because Jambu was not speaking Gujarati language and, therefore, the correct Version was it the second statement. In any event, in view of the marks Of Collision, this slipping theory can hardly be accepted. Therefore, these primary facts that the truck in question was on its wrong side and going without Wipers on the rainy night could not Only lead to presumption of negligence but conclusively establish negligence of this truck driver which resulted in this accident.

2. The legal position in this connection is now well-settled after the decision of the Supreme Court in *Gobald Motor Service Ltd. v. R.M.K. Velaawami* [1], and in *Municipal Corporation of Delhi v. Subhagwanti*[2]. Their Lordships id terms held that where such an inanimate injurious agency and the surrounding circumstances are all entirely within the defendant's control find the accident takes place which ordinarily could not happen, if the defendant had taken proper care or had not remained negligent, the doctrine of res ipsa locuitur applies where the event charged as negligence tells its own story of negligence on the part of the defendant. In these cases the inference is that the defendant is liable unless he in the first instance discharges the burden to disprove his liability by showing that the accident Could reasonably happen without negligence on his part. In *Henderson v. Henry E. Jenkins & Sons*[3] at page 766 Lord Person made this classic distinction between the evidential burden Of proof and formal (or legal or technical) burden of proof in such negligence cases, The learned Judge observed that in any action for negligence the plaintiff must allege, and has the burden of proving, that the accident was caused by negligence on the part of the defendant. That is the issue throughout the trial and the formal burden of proof does act shift. But if in the course of the trial, there is proved a set of facts which raise a prima facie inference that the accident was caused by negligence on the part of the defendants, the issue will be decided in the plaintiff's favour, unless the defendants by their evidence provide some

answer which is adequate to displace the prima facie evidence. It is in this situation that it is said that the evidential burden of proof rests on the defendants in such cases. It should be noted that the case before the House of Lords was of an accident arising from the latent defect resulting in brake failure and their Lordships held that the defendants who were in control of this injurious agency and the surrounding circumstances had on the establishment of these primary facts to prove that

[1] AIR. 1962 S.C. 1(4) [3]1969 (3) A.E.R. 756
[2]1966 A.C.J. 57 (59)

in all the circumstances which they
knew or ought to have known, they took all proper steps to avoid the danger and as they bad failed to prove that, they were held liable to pay damages to the plaintiff.

3. Therefore, applying these principles, the primary facts could only tell their own story in the present case so as to conclusively prove negligence on the part of the defendants. Therefore, that part of the finding of the learned Claims Tribunal must be maintained.

4. The only material question which arises, is as regards quantum of damages which had been awarded and on which Mr., Vakil had elaborately addressed us, especially in view of the previous decision of this Court in *Bai Nunda v. Shivabhai*[4] by the Division Bench, consisting of myself and M.U. Shah J. In this connection it is now well settled that the appellate Court would interfere with such an award assessing damages where the amount is too low or too high or as it is often said outside the brackets. The damages will always have to be assessed by making estimates of all chances and changes in future. That is why there is an element of some reasonable prophecy as well as arithmetical calculation involved in the assessment of damages. All reasonable possibilities of future will always enter into this assessment and such an assessment necessarily involves some conjecture while assessing the damages on the materials on record as regards various uncertain factors and the probabilities. That is why this rule has been evolved because the estimates would often vary and some bracket has always to be kept in mind. The principle for assessment of damages in such cases have now been completely well settled after the three decisions of the Supreme Court in *Gobald Motor Service v. Veluswami*[5] *Municipal Corporation of Delhi v. Subhugvanti* and *C.K.S. Ayer v. T.K. Nqir*[6]*,* Their Lordships have in terms held that the assessment is to be made of the loss suffered by tortious act by making an account of all gain and loss arising as a result of the death of the concerted victim, (of-course otherwise than as by way of fruits of insurance.) A fair amount of damages has to be assessed not by way of giving any solarium but as a compensation, which is proportionate to the injury. For the loss caused under Section 1A of the Fatal Accidents Act, the loss which results to the dependents is by way of losing the amount which would have been spent on them by the deceased during the period of Jus expected useful life. Under Section 2, however, the loss estimated is of the loss to the estate of the deceased. Under the first bead the loss has an element of maintenance, while under toe second head the loss has a saving element. That is why their Lordships added in jobald Motor Service Case (1962 S.C. 1) that the loss under these two beads should not be assessed twice over.

In other words, there should not be overlapping. If, therefore, from the income of the deceased the amount which had been spent on him is deducted, the remaining amount would either be spent on the dependents or would be saved. Loss to the dependents can be arrived at by capitalizing the first amount which was the amount spent on the dependents, while the second amount can be arrived at by capitalising the savings made by the deceased from year to year. Of course, the estate could get additional amount by way of a damage for the mental agony, suffering and loss of expectation of life. For the loss of expectation of life, as we have already pointed out, in our earlier decision in *Bai Nanda v. Shivabhai*[7] the damages on this head of loss of expectation of life in this country should not be less than ₹ 3,000/-, because such damages are always

[4] VII G.L.R. 662 : 1966 A.C.J. 290
[5] AIR. 1962 S.C. 1,
[6] AIR. 1970 S.C. 376 : 1970 ACJ. 110
[7] VII G.L.R. 662, at pages 691 and 692

assessed at a conventional figure, as in England 200, which was subsequently raised to 500 after the devaluation of the sterling currency. The claimants under the two heads might be different because under the first head the loss assessed is to the dependents, while under the second head the loss assessed is loss to the estate. In the present case there is no dispute that the sums claimed are to be awarded only to these four respondents, widow and minors for the entire loss, both to the dependents and to the estate. The total amount will have, therefore, to be properly capitalized. That is why in such a case no need may arise for any separate calculation in respect of minor dependents as per the method we have adopted in* VII G.L.R. 662.

In fact, even in VII G.L.R. 662 at page 691, because same persons were claimants under both the heads, we have ploughed back the savings which would be made to the estate after the amount ceased to be payable to the minor dependents on their attaining majority. There is also an assumption made in that decision that on the minors attaining majority the dependency would completely cease, which may not be true in all cases, as the dependency might continue even after attaining majority and where the dependents' education and other expenses would have to be taken into account. In all these three decisions of the Supreme Court, the two famous English decisions which are taken as guide lines and which are held to reiterate the same rule are those of Lord Wright in *Davies v. Powell Duffryn Associated Galleries Ltd*[8]. at page 616, and of *Viscount Simon in Nance v. British Columbia Electric Railway Company Ltd*[9]. at page 614. These cases lay down the method of assessing the loss to the dependents under the first head. Under Lord Wright's formula which is usually applied the loss is ascertained by first arriving at the estimate of the annual dependency amount from the income of the deceased after deducting the amount which he would have spent on himself. The damage on this head of loss to the Dependents is arrived at by awarding a lump sum amount that is calculated by applying a proper multiplier to the amount of one year's dependency. This multiplier is known as year's purchase factor. Even though Lord Wright contemplated the conversion of this annual dependency figure into a lump sum by taking a number of year's purchase, he also provided in terms for a subsequent reduction to allow for all the various uncertainties and matters of speculation and doubt. In practice, however, when this year's purchase method is adopted the Courts have usually adopted such a

multiplier by way of a number of year's purchase as would be deemed to take into account all the doubts and uncertainties which would go to reduce the sum to be awarded. What this multiplier must be in any individual case would of-course depend on the particular circumstances of the case because one has to take into account the probable duration of the life of the deceased, duration of the life of the widow and their dependents who might prematurely die, the possibility of widow's remarriage, acceleration of interest in the estate, possibilities of increased earning on the one hand as well as disablement or unemployment on the other. All other possibilities and chances are taken into account and in practice Lord Wright's method is applied by fixing a basic sum of annual dependency and multiplying it by an appropriate multiplier. *Explaining this method Lord Reid in Taylor v. O'Connor*[10] observed that this is a perfectly good method in the ordinary cases of calculating damages to be awarded as a lump sum by applying the multiplier to one year's dependency but it conceals the fact that there are two quite separate matters involved, the present value of the series of future payments, and the discounting of that

[8]1942 A.C. 601 (616)
[9]1951 A.C. 601 (614)
[10]1970(1) A.E.R. 365 (367)

present value to allow for the fact that, for one reason or another, the
person receiving the damages might never have enjoyed the whole of the benefit of the dependency. Lord Reid rightly added that in ordinary cases which do not involve special factors, as one in Taylor's case as regards the questions of income tax and surtax, the wealth of experience of Judges and Counsels would be an adequate guide to the selection of this multiplier without any necessity of any expert evidence, so that on this method by adopting a common multiplier the loss of dependency over a period of years can be worked out at a lump sum to be given to the dependents. The other method which is known as Nance's method evolved by Vicount Simon K.C. also starts with the basic dependency amount. Even though this amount is required to be multiplied by the figure of expected useful life of the deceased, Viscount Simon had rightly added that there should be a proper discounting of this amount on two grounds: (1) that the sum was spread over a period of years and so equivalent amount in the form of lump sum should be worked out and further allowance must be made because of uncertainties because of premature death, or remarriage of widow, acceleration of her other interest in the estate etc. Therefore, even though Viscount Simon in Nance's case, contemplates multiplication of the amount of dependency by the figure of expectation of life, one arrives at the same result, if proper discounting is done to arrive at the lump sum equivalent of this dependency benefit which is spread over the expected period of life. That is why their Lordships held in Delhi Corporation case that Viscount Simon had reiterated the same principle as evolved by Lord Wright in Davies's case. In actual practice the method of applying year's purchase to the annual dependency figure is found to be simpler by experienced Judges in such ordinary cases which do not involve complicated question by way of special factors where expert evidence might be necessary to make a proper arithmetical calculation with the help of actuarial tables in this connection. That is why their Lordships in terms held in the later decision of Ayer's case that a number of years' purchase is left fluid and the number 12 to 15 has been quite the common

multiple in the case of a healthy man. Their Lordships added that this number should not be materially reduced by reason of the hazardous nature of occupation of the deceased man, These principles are appropriate where the deceased is the bread winner of the family. Their Lordships further added at page 380 that in estimating future provision for the dependents the amounts the deceased usually applied in this way before his death are obviously relevant, and often the best evidence available though, not conclusive, since if he had survived, his means might have expanded or shrunk, and his liberality might have grown or wilted, Their Lordships in terms pointed out at page 378 that the damages should be calculated with reference to the reasonable expectation of pecuniary benefit from the continuance of the life of the deceased. If the deceased was a man on the high ladder of success, the possibility of his expanding me would have to be kept in mind. Whenever a future contingency is to be taken into account in the judicial assessment of damages, these possibilities which are not remote would dearly affect the caleutipa, while those possibilities which are remote would have to be almost discarded. In fact, in all these three cases before the Supreme Court, we find that their Lordships always applied this years' purchase method for judging the assessment of damages, In Gobald Motor Service of age the estimate which came to about 8 years' purchase was held to be too conservative and was maintained, in Delhi Corporation case, it should be noted that the Municipality had taken the extreme contention that in the absence of any satisfactory evidence as to the income of the deceased, no amount whatever should be paid by way of damages. That is why to page 1754 their Lordships in terms observed that even though the evidence adduced regarding the income of the deceased and the amount of such benefit to the dependents was not satisfactory, the High Court was right in at least considering that a monthly sum of ₹ 150/- must at least have been spent by the deceased on the three minor children for their subsistence and education. It should be noted that the deceased Ramprakash was 30 years old, while the deeaied Tekchand was 46 years old. In such cases their Lordships held that if sigh bogie figure of annual dependency was multiplied by the multiple of 15 years purchase, the estimate of damages was based on arrete principles, it should also be noted that as they were the same claimants both as regards the loss of benefit to the dependents and the loss to the estate, their Lordships did not make any separate calculations for apportionment of amount to be given to the minors who may on their attaining majority become independent. The total loss to the dependents in e.g. of all |he three individuals before their Lordships was arrived at by applying the multiple of 15 years' purchase to the annual dependency amount. Even in Iyer's case where the deceased child was only eight years old and where the assessment of his service to the family would be a guess work, their Lordships maintained the award of damages of ₹ 5000/- on the first head and ₹ 1000/- on the second head. It is in this last ease that their Lordships gave their approval to the practice followed by the English Courts of turning the annual dependant figure into a lump sum by applying the proper multiple by way of years' purchase. Their Lordships even gave their approval to this flitted number of years' purchase by stating that 12 to 15 has been quite the common multiple in case of such healthy persons, which should not be reduced by reason of the hazardous nature of the occupation of the deceased man. Of-course, this principle would apply where the deceased is a

bread-winner of the family. It should also be noted that their Lordships in the Delhi Corporation case in terms applied year's purchase multiple as 15, which took into account not only the discount for arriving at the lump sum amount of the benefit spread over the number of years but caveat the other discount for other contingencies and imponderables which necessarily enter into in such calculations.

5. Mr. Vakil, however, vehemently relied upon our earlier decision in Bai Nandav, Shivabhai, VI G.L.R. 662. It is true that in that case We had followed the other method of calculation as evolved by Viscount Simon io Nance's case. It is true that the preferable method is the other method which has now been accepted of applying year's purchase factor to the dependancy figure and adopting such year's purchase factor which takes into account all the uncertainties. Even in the other method, which we had followed in the earlier decision, we had multiplied annual dependancy figure with the expected life, which we had taken as 25 in that case because the claim had been made on that basis. As the amount was arrived at on this method of multiplying annual dependancy figure by the figure Of expected useful life, we had taxed down the entire amount by 33 1/3 and, therefore, the effective multiplier which was adopted was one reduced by 1/3rd, i.e. only 16, even in the case of the widow. In fact, in para 45 at p. 690 we had judged the adequacy of compensation by the other method of years' purchase by in terms pointing out that the awarded amount was only capitalizing the dependency figure of ₹ 500/- at little over 12 to 13 times.

6. Therefore, relying on the aforesaid decision in VII G.L.R. 662 Mr. Vakil could never ask us to make such a large deduction of 33 1/3 even when we adopt the common appropriate multiplier as per the settled practice, for the said multiple takes into account both the discounts that a lump sum payment is ordered immediately of a benefit which is to extend over a number of years and as regards various uncertainties and imponderables. The larger deduction of 33 1/3 had to be done in that case because the years purchase method was not followed in that case and the annual dependancy figure was multiplied by the figure of expectancy of life itself. Mr. Vakil next argued that in any event, conversion into a lump sum could never be done on such year's purchase method except with the help of proper annuity tables. Mr. Vakil even went to the length of saying that an error had crept in all the decisions as it was not borne in mind that this loss to the dependents should be estimated not by giving them such capitalized amount on the year's purchase method which would leave capital untouched and enable the dependents to earn perpetual income, but only that amount which would buy the annuity of this amount equal to annual dependency. This argument of Mr. Vakil equates this assessment of damages by way of giving fair compensation for the loss suffered by the dependents with buying an annuity for the dependents. This aspect has been duly considered by *Lord Pearson J in Taylor v. O'connor*[11] at p. 380 by pointing out that annuity would not protect a person against inflation. An annuity is not an article the claimant requires, the price of which is not the correct measure of the sums he should receive. The cost of an annuity must tend to be low, because the whole risk which is a virtual certainty of continuing inflation is placed on the purchaser. Mr. Vakil is also wrong in

thinking that in the year's purchase method we are only capitalizing the amount of annual dependency at a proper rate of interest. The whole concept of annuity, which would make this element of arithmetical calculation involved in this process mathematically exact, with the help of expert actuarial tables, could not be straight-away invoked in such cases where the amount has to be only estimated keeping in view future chances and changes, which necessarily involve many imponderables, the matters of speculation and doubt. It is true that in Taylor's case the majority of their Lordships of the House of Lords took the view that inflation is not a valid reason for increasing a multiplier by way of years' of purchase but Lord Reid's dissenting reasoning may be more applicable in this country where even as a matter of economic reality we could not ignore the inflationary trend and proceed on the basis that it could not affect any realistic estimate of damages. In fact, Lord Diplock in the decision in *Mallett v. McMonagle*[12] has tried to work out the amount even on the basis of annuity tables. He found at p. 191 that the 16 years' purchase of the dependancy represented the capital value of the annuity certain for a period of 26 years at interest rate of 4A 29 years at interest rates of 41/2 or 33 years at interest rates of 5. If the period was even to be extended to 40 years, because the deceased died in his twenties, the learned Lord pointed out that the years' purchase multiplier would only vary by about 4 years in the case of 4 rate of interest; 2 years in the case of 4 rate of interest and by only one year in the case of 5 rate of interest. Therefore, when this common multiplier is accepted by this English decisions as varying normally from 12 to 15, as pointed out by their Lordships in Iyer's case, rhe said factor clearly takes into account the element of annuity. That is why their Lordships adopted years' purchase factor of 15 years in the case of such persons who were in thirties and forties. That would be all the greater reason to apply this outer multiple of 15 years' purchase in the present case as the deceased in the

[11]1970 (1) A.E.R. 365

[12]1969 (2) A.E.R. 178 at p. 191

present case was the owner of the Munshi garage and he himself built up this business for the last 20 years. The son has in terms deposed and he has not been cross-examined on this point that the Munshi garage is the famous garage in Gujarat. The son had also deposed that the income was rising. The deceased having built up the reputation of the garage, if any economic reality is to be taken into account it should be at least in the fact that now was the turn in his life-time for encasing the goodwill benefit of the business that he had established all these years. That is why he brought in his son as a partner only a few months back.

7. Therefore, in the light of these settled principles we should make 1 calculation of damages in the present case. Even though Mr. Vakil vehemently argued that in the income-tax return the deceased had mentioned the figure of ₹ 3000/-, what should be taken into account is the expert assessment of his income even by the Income-tax Department at ₹ 4500/-. The assessment order Ex. 54 is for the year 1961-62 and for 1963-64 is Ex. 53 and in both these orders he is assessed at the same amount of ₹ 4500/ - Therefore, this estimate of income arrived at by the learned Claims Tribunal must be easily accepted. The learned Tribunal has divided the family into 7 units as per

the method shown by us in VII G.L.R. 662, on the assumption that an adult might be treated as an equivalent of two units. We should also keep in mind the important fact in this case that the deceased was a loving person as husband or father. He had been sending amounts to the aged mother. He had built a house for the family. He joins his sons recently in business which he had himself built up. The said deceased could never be said to be a person spending all to himself. The amount estimated by the learned Tribunal is only 2/7th which is slightly less than even 1/3rd, which is quite proper for such a loving father or husband. Therefore, the basic dependancy figure was rightly arrived at in this case at the remainder 5/7th amount of ₹ 4,500/- or to the figure of ₹ 3,215/-. If the total amount awarded by the learned Tribunal is considered, it is of ₹ 4,59,757-, which consists of the amount of ₹ 1,680/- by way of funeral and religious ceremonies expenses which is not challenged by Mr. Vakil in this appeal. Loss to the estate has been assessed at ₹ 4,000/-. We have already pointed out in VII GLR 662 that even then the conventional amount should never be less than ₹ 3,000/- in this country. For total loss to the estate by way of mental suffering and agony and loss of expectation of life if an amount of ₹ 4,000/- is awarded, it could hardly be challenged on this head. Therefore, so far as the loss to dependents is concerned, the amount awarded by the Tribunal would come to about ₹ 40,000/-, which would be on the years' purchase of 13 as multiplier. It should also be kept in mind that there is evidence of the age of the deceased being 45 years which is accepted by the learned Tribunal and which is corroborated even by the medical evidence by way of post-mortem notes. There was history of longevity in this family. The grandfather died at 95 and the grandmother at 85. The learned Tribunal was right in treating the expectancy of the deceased's life as 70 years in these circumstances. The post-mortem notes show that the deceased was well nourished. He is not shown to be suffering from any ailment. Therefore, the sum which is to be provided for the dependents would be at least for 25 years. Mr. Vakil vehemently argued that the son has deposed that the father would work for 60 years. That may be the wish of such loving son who had immediately joined in partnership with the father but that would be no measure of the father's capacity to put in useful work. Therefore, we can proceed on the footing that the provision for the annual dependency amount has to be made for 25 years' period. Even if 33 1/3 deduction is done, the multiplier would work out at about 16. Besides, in order to evaluate various uncertainties and imponderables we should keep in mind how far they would affect the normal multiplier one way or the other. In the present case, the deceased was a normal healthy man who had history of longevity in the family and that would be a factor in his favor. The widow is a young widow of only 27 years, but with the child only eight months' old, prospects of remarriage even in such Mahomedan community can be treated as remote. There was no question of acceleration of any other interest. Therefore, except for the remote chance of the life of the widow and the dependents being prematurely cut short by accident, there is no factor suggested in the evidence which would require any reduction of the normal multiplier. In fact, there would be some factor for taking the outer limit as we have already suggested, as the deceased had fair chances of earning a larger income from the business

which he had already established and for which he had made out a name in Gujarat. In any event, if we are to make a reasonable assessment of all chances and changes in future, there would be no reason to have any further reduction of the normal multiplier 15 in this case. Even the House of Lords had adopted the multiplier of 12 years' purchase even for a man in his fifties in *Taylor v. O'connor*[13] We have already mentioned that the amount worked out by the learned Tribunal works out at the multiplier of 13 years' purchase. Therefore, the award is in fact on the conservative side of the estimate rather than being too liberal as contended by Mr. Vakil. Therefore, no ground whatever has been made out which would justify any interference with the present assessment of damages by the learned Claims Tribunal. We have counter checked the results even on both the methods and the award appears to be on correct principles, the estimate being on the conservative side. This appeal fails and is dismissed with costs.

8. Mr. Vakil at the end made a request for grant of a certificate in this I case under Article 133(l)(c). As it is a judgment of affirmance, a substantial question of law has to be made out. We have only proceeded on the settled principles as laid down by their Lordships and, therefore, we do not think any case has been made out for granting a certificate under Article 133(1)(c). The request is rejected. Interim stay is, therefore, vacated.

Appeal dismissed.

[13]1970 (1) A.E.R. 365 (380)