
(1996) 06 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : F.A.O. No's. 214 to 216 of 1984

Bishan Dass and Others

APPELLANT

Vs

New Prem Bus Service and Others

RESPONDENT

Date of Decision : 06-06-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 338

Citation : (1997) 1 ShimLC 201

Hon'ble Judges : Kamlesh Sharma, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : O.P. Sharma, for the Appellant; S.S. Kanwar and Deepak Gupta, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—This court proposes to dispose of these three appeals [F.A.O. (MVA) Nos. 214, 215 and 216 of 1984] by a common judgment as these pertain to the same accident and also arisen out of the common judgment dated 20.8.1984 passed by Motor Accidents Claims Tribunal, Kangra Division at Dharamshala. In the accident in question jeep No. HIL 4824 and bus No. HPK 1589 were involved. Bus No. HPK 1589 was owned by New Prem Bus Service, the respondent No. 1 and driven by Ramesh Kumar, respondent No. 2, at the time of accident. It was insured by New India Assurance Co. Ltd. respondent No. 3. The jeep No. HIL 4824 was owned by one of the claimants, Bishan Dass and was being driven by Kishori Lal at the time of accident.

2. In the accident Bishan Dass and his daughter Sharda Devi, claimants, received injuries whereas Sheela Devi, wife of Bishan Dass died on the spot. Bishan Dass filed claim petition M.A.C.T. No. 7 of 1982 claiming an amount of Rs. 1,40,000 as the compensation. Sharda Devi filed separate claim petition M.A.C.T. No. 10 of 1982 claiming an amount of Rs. 80,000 as compensation. The legal representatives of deceased Sheela Devi, namely, Bishan Dass, her husband, Sharda Devi, her daughter and Bipin Kumar, her son, filed another claim petition

M.A.C.T. No. 11 of 1982 claiming Rs. 50,000/- as compensation. As per the allegations, made in their claim petitions, on 18.10.1981 at about 12.30 p.m. the claimants along with the deceased Sheela Devi were travelling in jeep No. HIL 4824 from Kangra to Nagrota Bagwan and when it entered Pathankot-Mandi Road after crossing Tanda Sanitarium, at a point near 53 miles, bus No. HPK 1589 being driven by Ramesh Kumar, respondent No. 2, came at tremendous speed from Nagrota Bagwan side for going to Pathankot and struck with the jeep with a great force when it had covered 3/4th of the turn and pushed it to some distance. According to the claimants, the bus driver could see from a distance of 100 yards that the jeep was coming on the road from Tanda for going to Nagrota Bagwan, therefore, the accident had taken place due to negligence of the driver of the bus.

3. The respondent Nos. 1 and 2 filed joint reply whereas respondent No. 3 filed a separate reply to the claim petitions. Respondent Nos. 1 and 2 have denied the allegations of negligence of the driver of the bus and according to them the accident had taken place due to negligence of the jeep. Their precise stand is:

That there is a big tree at the point where Tanda Road joins the Mandi-Pathankot Road on the left side while coming from Nagrota Bagwan and as such the Tanda Road is not visible to the driver of the vehicle coming from Nagrota Bagwan side and going to Pathankot side. If a vehicle is coming from Tanda side and if the same has to go towards Nagrota-Bagwan side then at point where Tanda Road bifurcates from Mandi-Pathankot Road, the motor vehicle has to cut a wrong side turn (i.e., right turn) and in order to cut a right turn, in that case the driver of the vehicle has to dead slow the vehicle in order to see the vehicle coming from his right side and then also give hand signal to that effect and then to take the turn. But in the instant case, the petitioner No. 1 had loaded an iron almirah weighing about 8 quintals which he was bringing from Kangra to his residence at Nagrota Bagwan by the aforesaid jeep No. HIL 4824 via Tanda and there were 8 persons including the deceased also sitting in the jeep. While coming from Tanda Road and at the point of entering the Mandi-Pathankot Road, Kishori Lal neither slowed down the jeep nor blew any horn or gave any hand signal for taking the turn of his jeep towards his right side. In fact Kishori Lal was driving the jeep rashly and negligently and as such he could not take the turn and the jeep went straight towards the other end of the road and collided with bus No. HPK 1589. The respondent No. 2 who was coming from Nagrota Bagwan side due to a big tree on the road at point of bifurcation of Tanda Road from Mandi-Pathankot Road did not observe any jeep coming from Tanda side. Moreover, the driver Kishori Lal neither blew horn nor gave any other kind of signal, therefore, respondent No. 2 could not observe the presence of jeep on the Mandi-Pathankot Road for taking turn for going to Nagrota Bagwan. The respondent No. 2 was driving the bus at a normal speed. No sooner he saw the jeep had entered the main road towards the left side of the road, in order to avoid the collision, respondent No. 2 at once steered his bus towards his right side of the road so that the jeep could take its turn towards Nagrota Bagwan. But as the jeep HIL

4824 was loaded with iron almirah weighing about 8 quintals including 8 persons sitting in it (jeep) and the same was being driven at a high speed the jeep could not take its turn towards Nargota Bagwan side, i.e., towards right side and went straight towards the other side of the road and thus collided with the bus and thereby also caused damage to the bus to the tune of Rs. 10,000/-. Under the circumstances mentioned above, the alleged accident took place due to the rash and negligent driving of the jeep by Kishori Lal, who has also been challaned under Sections 304-A, 279/338, Indian Penal Code, by the police of Police Station Kangra and the case is pending in the Court of Judicial Magistrate, 1st Class, Kangra.

4. So far respondent No. 3 is concerned, it has mainly pleaded that the claim of compensation of the claimants is excessive and on the point of negligence it has towed the line of defence of respondent Nos. 1 and 2. On the pleadings of the parties the following issues were framed, which were common in all the three claim petitions:

(1) Whether the accident took place on account of rash and negligent driving of respondent No. 2?

OPP

(2) Whether the petitioner's driver Kishori Lal is responsible for the present accident as he was driving the jeep which met with accident with the bus?

OPR-1

(3) In case the petitioner proves issue No. 1, to what amount of compensation the petitioner is entitled and from whom?

OPP

(4) Relief.

5. The Motor Accidents Claims Tribunal by its order dated 4.10.1983 consolidated all the three claim petitions and directed that evidence would be recorded in claim petition No. 11 of 1982 titled Bishan Dass v. New Prem Bus Service. Claimants Bishan Dass, PW 7 and Sharda Devi, PW 8, appeared as their own witnesses and produced Dr. R.K. Chaudhary, who had conducted post-mortem on the deadbody of Sheela Devi and brought on record post-mortem report, Exh. PA, opining that cause of death of Sheela Devi was shock and due to multiple fractures. Dr. R.K. Chaudhary, PW 1, has also stated that claimant Bishan Dass remained admitted in Male Surgical Ward in District Hospital, Dharamshala, from 18.10.1981 to 2.11.1981 for multiple injuries, fracture pelvis, fracture shaft femur right with shock and produced his discharge slip, Exh. PB, on record. Another witness of the claimants, Dr. A.B. Gupta, PW 2, has stated that on 18.10.1981 he had examined deceased Sheela Devi and issued medicolegal certificate, Exh. PC; after giving her first aid treatment she was referred to District Hospital, Dharamshala. He had also examined the claimant Bishan Dass

and issued his medico-legal certificate, Exh. PD, stating the multiple injuries and fracture found on his person. Similarly, claimant Sharda was also examined and issued medico-legal certificate, Exh. PE, giving the account of injuries and fracture suffered by her in the accident.

6. Om Prakash, PW 3, Ahalmad, Court of Sub-Divisional Judicial Magistrate, Kangra, has produced the summoned record pertaining to the criminal case u/s 304-A, Indian Penal Code, being tried by Sub-Divisional Judicial Magistrate, Kangra, against respondent No. 2, Ramesh Kumar, for the accident in question. Dilbag Singh, A.S.I., who was posted at police station Kangra, at the relevant time had recorded the statement u/s 154, Criminal Procedure Code, of Kishori Lai, the driver of the jeep, on the basis of which F.I.R., Exh. PF, was registered. During investigation, he had prepared site plan, Exh. PG and found the bus on extreme side as shown therein. He has stated that the right side of the jeep was touching the parapet though it was not hit by the bus. According to him, the total width of the road is 26 ft. 8 inches including the metalled portion of 13 ft. and after the accident the traffic was passing at the place of accident by partly using the kacha portion of the road. In his cross-examination, he has stated that besides the claimants and deceased Sheela Devi, Dhani Ram and Jagdish Chand were the occupants of the jeep. According to him, both the vehicles were got examined by mechanic whose statement was recorded by him. He has also stated that almirah which was being carried in the jeep was about 5/6 quintals in weight. From his investigation, he had found that both Kishori Lal, the driver of the jeep and Ramesh Kumar, the driver of the bus, were negligent, as such, both were challaned and were facing trial. Kishori Lal, the driver of the jeep, has appeared as PW 4. According to him, he was coming from Kangra to Nagrota via Tanda and after blowing the horn when he negotiated the curve for going to Nagrota side after entering the main Pathankot-Mandi Road from the bye-road coming from Kangra via Tanda, he noticed bus No. HPK 1589 coming at a fast speed from Nagrota side which struck at the front side of his jeep and pushed it at a distance. He has further stated that the bus could easily cross the jeep if it had remained on its left side, as such, the accident had taken place due to the negligence of the driver of the bus by bringing it to the extreme right end of the road. He has also stated that he had seen the bus from a distance of 25/30 metres. In the accident claimants Bishan Dass, Sharda Devi and Sheela Devi had received injuries to which she had succumbed later. Police had recorded F.I.R., Exh. PF, on his statement. In his cross-examination, he has admitted that a steel almirah was being carried on the back portion of the jeep where the claimant Bipin Kumar, son of Bishan Dass was sitting along with three labourers and on the front seat claimant Bishan Dass, his daughter Sharda Devi and his wife Sheela Devi were sitting. He has denied that he was driving the jeep at fast speed and it was wobbling and Bipin Kumar had asked him to drive slowly and also that he had not slowed down the vehicle and blown the horn before entering the main road but he has admitted that there is a big tree on the left side at the place where the Tanda Road bifurcates from the main road besides 2/3 houses

which are at a distance from the main road.

7. Claimant Bishan Dass has appeared as PW 7 and has reiterated the statement of Kishori Lal, PW 4, the driver of the jeep, in respect of the manner the accident had taken place. According to him, the bus was absolutely on the wrong side being on extreme right and hit the jeep on the unmetalled portion of the road and pushed it back 3/4 feet with an impact when it was almost near the parapet on the extreme left. He has further stated that on the right side of the jeep there was sufficient space and vehicles could easily cross and were in fact crossing even after the accident. According to him, he had sustained the fracture on the right leg and his two front teeth were broken besides other injuries for which he remained admitted in the District Hospital at Dharamshala for about 16 days. He has also stated that rod was inserted in his right leg after operation as a result of which he has suffered permanent disability that he cannot sit for long time and put weight on his right leg with the result his future earnings have been reduced by about Rs. 500/- to Rs. 600/-per month. In cross-examination, he has admitted he was bringing steel almirah, again said safe, from Kangra weighing about 1 1/2 quintals and not 2/3 quintals as suggested to him. He has further admitted that he, along with his daughter Sharda Devi and wife deceased Sheela Devi, was sitting on the front seat with the driver whereas his son Bipin Kumar, along with three labourers, was sitting on the back seat with almirah. He has denied that said almirah was shaking and his son Bipin Kumar had asked the driver of the jeep to slow down. He has further admitted that there are houses on Tanda Road near the point where it meets Pathankot-Mandi Road besides a big tree but denied that a vehicle coming from Tanda Road is not visible from the main road on account of said tree. In further cross-examination, on behalf of respondent No. 3, he has admitted that he has studied up to 5th/6th class and was not submitting income tax return. He has denied the suggestion that his wife was not working with him at the shop at Nagrota which he was running being a goldsmith. Claimant Sharda Devi has not stated a word about the accident and her limited statement is that she sustained fracture on the upper left portion of the chest and other injuries on her head, legs and feet for which she remained admitted in the District Hospital at Dharamshala for 14 days and thereafter in Military Hospital at Yol for 16 days. According to her, she cannot carry weight with her left hand because of the fracture and has been suffering pain. In her cross-examination, she has denied that jeep driver was driving at a fast speed as a result of which the jeep was wobbling and also that the driver had not negotiated the curve properly. She has also denied that vehicles from Tanda Road are not visible from the main road while coming from Nagrota. Last witness Subhash Chand, PW 9, is not material as he has stated about the purchase of the house at Nagrota and jeep by Bishan Dass.

8. The respondents have produced driver of the bus, Ramesh Chand, RW 1, who has stated that when he reached the main Baijnath-Pathankot Road beyond Nagrota where there is bifurcation for Kangra via Tanda, one jeep came from the link road and the accident in question took place on account of the negligence of

the jeep driver. According to him, the vehicle coming from Tanda Road is not visible to the driver of the vehicle coming from Nagrota side on the main road because of a big tree and houses. He has further stated that he had not heard any horn before he reached the place of accident. Seeing the jeep he took the bus towards his right side. Had he not done so all the persons sitting in the jeep would have been killed. He has also stated that a big almirah weighing 8/9 quintals was being carried in the jeep besides 8 persons. As per his version he was driving the bus at the speed of 30 kmph. In his cross-examination, he has admitted that road was about 20/25 feet wide at the place of accident and the site plan, Exh. PG, was prepared by the police in his presence wherein the bus is rightly shown at the extreme right of the road. He has also admitted that jeep had struck against the front side of the bus on the left corner but denied that it was pushed by 10 feet on account of the impact of the bus. He has further denied that link road is visible from the main road from a distance of 30 yards and he could avoid the accident by remaining on the left side and also that the accident had taken place because of his negligence by taking the bus to the extreme right. Onkar Singh, Head Constable, RW 2, is the Motor Mechanic, who had inspected both the jeep and the bus on 20.10.1981 and found them in perfect conditions. However, he has not placed his report on record or stated in which gear both the vehicles were. In his cross-examination, he has admitted that the road at the place of accident was 30 feet wide including kacha portion and the accident had taken place on the extreme end of the road opposite the bifurcation in which the front side of the bus had struck against the right side of the jeep and the jeep was pushed back by 10 ft. because of the impact of the accident. Dilbag Singh, ASI, RW 3, has been examined again and he has brought on record the certified copies of statements of Bipin Kumar and Sharda Devi, recorded u/s 161, Criminal Procedure Code, which are mark "A" and mark "B". One Khinno Devi, RW 4, has been produced to state that she was living near the house of the claimants and deceased Sheela Devi was doing only household job and was not helping claimant Bishan Dass in making ornaments. Respondent No. 3 did not adduce any evidence except production of a copy of insurance policy, Exh. RL, which was admitted by the claimants.

9. The Motor Accidents Claims Tribunal also inspected the spot on 13.7.1984 and report recorded on 24.7.1984 is as under:

The spot was inspected by me on 13.7.1984 at 4.30 p.m. and I prepared the rough site plan of the spot. The accident is alleged to have taken place on the main road of Mandi-Pathankot Road at the place where the road for Kangra via Tanda bifurcates the main road. The road which leads to Kangra is not visible from the main road on account of a big bedar tree with huge girth. After the tree, there are some houses and between this bedar tree and the houses, there are two small trees. The distance between bedar tree and the houses is about 40 feet. However, if with care one tries to locate the road for Kangra, the same is visible from a distance of 30 to 35 yards from the bedar tree. There are two parapets on each side of the road which have been shown in the rough site plan.

They have been noticed as the bus after the accident had struck against the parapet on its right side of the road.

The inspection note could not be prepared at the spot and has been dictated today, in presence of the learned Counsel for the parties after returning from Chamba Circuit.

Dated: July 24 1984.

10. The rough site plan prepared by the Motor Accidents Claims Tribunal is also on record.

11. On his assessment of the evidence on record, the Motor Accidents Claims Tribunal has decided issue Nos. 1 and 2 against the claimants and in favour of respondent Nos. 1 and 2 holding that the accident had taken place due to negligence of driver of the jeep, Kishori Lal, only and respondent Ramesh Chand, the driver of the bus, had not contributed to it in any manner despite his error of judgment in taking the bus to the extreme right side. In view of these findings, the claimants were held not entitled to any compensation as jeep was owned by claimant Bishan Dass who was vicariously liable for the negligence of Kishori Lal and other claimants being members of his family. Now in the present appeals the claimants have challenged these findings of the Motor Accidents Claims Tribunal. Mr. Om Par-kash, learned Counsel appearing for the claimants, has vehemently urged that the Motor Accidents Claims Tribunal has misread and mis-inferred the oral and documentary evidence on record for coming to its conclusion, more specifically the conclusion that respondent No. 2, the driver of the bus, had not contributed to the accident by his negligence of taking his bus to the extreme right of the road. On the other hand, Mr. S.S. Kanwar, learned Counsel appearing for respondent Nos. 1 and 2 and Mr. Deepak Gupta, learned Counsel for respondent No. 3, have supported the impugned judgment and have urged that it has been proved on record that the jeep coming from Tanda on the main Mandi-Pathankot Road was not visible to respondent No. 2, the driver of the bus, coming from Nagrota Bagwan because of obstruction of a big tree and houses on the left side of the road near the junction, therefore, the bus driver was right in steering his bus towards right to avoid collision of his bus with jeep after noticing it approaching the main road from the link road all of a sudden.

12. We have given our best consideration to the respective contention of the learned Counsel for parties. Before we deal with them we may refer to the observations made by learned Judges of Supreme Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, in para 7 of the judgment that:

During the last few decades question of payment of compensation for accidents has assumed great importance, which is correlated with the accidents which have touched a new height not only in India but in different parts of the world. Initially, the theory of payment of compensation was primarily linked with tort compensation-only if the injury or damage was caused by someone's fault. Of late the injury or damage being caused by someone's fault is being read as

because of someone's negligence or carelessness. That is why any damage caused by negligent conduct is generally actionable irrespective of the kind of activity out of which the damage arose. Even in an action based on the tort, the applicant has to show that the defendant was negligent, i.e., there was a failure on his part to take that degree of care which was reasonable in the circumstances of the case. There has never been any doubt that those using the highways are under a duty to be careful and the legal position today is quite plain that any person using the road as a motorist will be liable, if by his action he negligently causes physical injuries to anybody else.

(Emphasis added)

13. So far the present appeals in hand are concerned, the crucial point for the decision of this Court is whether from the evidence on record it is proved that there was a failure on the part of respondent No. 2, Ramesh Chand, the driver of the bus, to take that degree of care which was reasonable in the circumstances of the case. It cannot be disputed that while using the highway he was required to be careful or otherwise he would be liable if by his negligence he had contributed to the accident in question. Since the accident had taken place due to collision of his bus with jeep being driven by Kishori Lal, PW 4, it is to be seen whether he had also exercised due care and caution while negotiating the curve after entering the Mandi-Pathankot main road from the link road coming from Tanda knowing fully well that as many as 7 persons were travelling in it besides the load of a steel almirah or safe which was admittedly 172 quintals, if not more. From the oral evidence as well as the site plan, Exh. PG and the rough site plan prepared by the Motor Accidents Claims Tribunal it is established on record that the accident had taken place near the parapet at the extreme right of Mandi-Pathankot main road and the front portion of the bus had struck with the left side of the jeep at a place which is opposite to the link road coming from Tanda. It is also proved that there is a big bedar tree towards the left side of the link road where it joins the main road and there are houses and two small trees at a distance of 40 feet before this tree. It is stated by the Motor Accidents Claims Tribunal in his inspection report that, "If with care one tries to locate the road for Kangra, the same is visible from a distance of 30-35 yards from the bedar tree", which is corroborated by Kishori Lal, PW 4, the driver of the jeep, that he had seen the bus from a distance of 25-30 metres. If it is true, the driver of the bus coming from Nagrota could also see the jeep coming from Kangra from a distance of 30-35 yards. Otherwise also, he was supposed to know that there was a link road joining the main road where he was required to be extra careful and drive the vehicle at a slow speed to see that any vehicle may not be coming from the link road to the main road. Had he done so, he would have seen the jeep coming on the main road from the link road and negotiating the curve, covering more than half of the width of the road and would have applied the brakes and would not have steered the bus to the extreme right. On the other hand, Kishori Lal, PW 4, the driver of the jeep, was also required to be extra careful to slow down his jeep and to cross the intersections or junctions after

ensuring that no vehicle is coming from either side as a duty enjoined upon him under the regulations 6 and 7 in the Tenth Schedule of the Motor Vehicles Act, 1939, which also provides that had he done so he would have also noticed the bus coming and would not have negotiated the curve in a hurry. Therefore, from the totality of the facts and circumstances on record, we have no hesitation to hold that both, the driver of the bus as well as the driver of the jeep, by their negligence had equally contributed to the accident in which Sheela Devi, wife of Bishan Dass claimant, had died and he and his daughter Sharda Devi had suffered injuries. In view of these findings, we set aside the findings of Motor Accidents Claims Tribunal on issue Nos. 1 and 2.

14. For coming to the conclusion, we have taken support from the recent judgment of the Supreme Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, in which the accident had taken place in the city of Gwalior, on the cross-section of two roads. Road No. 7 was proceeding from Gola-Ka-Mandir situated on the western side and running eastwards towards another locality known as J&K, on which the offending truck was being plied from Gola-Ka-Mandir to J&K locality. The scooter was being driven by deceased along with the pillion rider on the north-south road leading towards Chandra Prasth Colony. It was on record that at the intersection of the north-south road with road No. 7 the scooterist had already come halfway so far as the breadth of road No. 7 was concerned, when the said truck dashed with it. On the basis of evidence on record the learned Judges held that the deceased scooterist was not negligent and had not contributed to the accident. Dealing with the regulation (7) of Tenth Schedule of the Motor Vehicles Act, 1939, it was held that having sounded the horn and having given hand signal to indicate that he intended to go across road No. 7, there was no occasion for him to halt and give way to the truck coming from the western side and proceeding towards the eastern side of road No. 7 for the simple reason that he had already entered the intersection and had travelled almost halfway across the breadth of road No. 7. This regulation could be pressed in service against deceased scooterist if it was shown that while entering the intersection, having seen the oncoming truck from his right hand side he had not taken due precaution. On the other hand, respondent No. 2 driving the offending truck was found committing breach of regulation (6) of the very same Schedule which reads as under:

(6) The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

It was further held that driver of the truck was required to slow down while approaching the road intersection or junction, which was not done and he went on driving with full speed crushing the scooterist who was already in the middle of the intersection, as such, he was guilty of breach of regulation (6) of Tenth Schedule and had endangered the safety of the persons crossing the said road at

the relevant time.

15. As the extent of negligence of the respondent No. 2, Ramesh Chand, the driver of the bus, is only 50 per cent, the respondent No. 1, the owner of the bus, is vicariously liable to pay only 50 per cent of the compensation payable to the claimants to be assessed hereinafter which is to be indemnified by respondent No. 3, insurance company.

16. So far claim of claimant Bishan Dass is concerned, he has stated that his monthly income was Rs. 1,000/- including the income of his wife, which, according to him, was Rs. 400-600/- p.m. meaning thereby that his own income was Rs. 400-600/- p.m. which was reduced to Rs. 200-250/- p.m. At another place, he has stated that his future income is reduced to Rs. 500-600/- p.m. On such type of statement of claimant and in the absence of any other evidence on record, we may hold that the reduction of his own future income was not more than Rs. 150/- p.m., i.e., Rs. 1,800/- per annum. By applying multiplier of 7, looking to his age of 50 years, the total loss of future income will come to Rs. 12,600/-. For the fracture and injuries suffered by him he remained in the hospital for a period of 15 days, as stated by Dr. R.K. Chaudhary, during which period he was operated upon and a rod was inserted in his right leg which was fractured, therefore, it can be safely presumed that he was not able to work for a period of two months and total loss of his income for this period at the rate of Rs. 600/- would be Rs. 1,200/- accepting his statement with regard to his income. Though he has not either stated orally or produced any evidence to show how much actual expenditure he had incurred on his treatment yet in the facts and circumstances on record, it can be presumed that it was not less than Rs. 2,000/-. So far as permanent disability is concerned, no medical certificate has been placed on record and his mere statement that he limps, cannot walk properly, cannot sit for long and cannot put weight on the right leg is not of much help to him. Moreover, he has already been given compensation for loss of his future income which will cover compensation under the item of permanent disability also but he is entitled to another sum of Rs. 18,400/- as pain and suffering. Accordingly, the total compensation to which he is entitled for the injuries suffered by him comes to Rs. 35,000/-, out of which only 50 per cent is the liability to be paid by the respondents jointly and severally.

17. So far the claim of claimant Sharda Devi, daughter of Bishan Dass is concerned, it is stated by her that she remained in the hospital at Dharamshala for 14 days and Military Hospital, Yol, for 16 days and the fracture and injuries suffered by her are proved by the statement of Dr. A.B. Gupta and medico-legal certificate, Exh. PE. She was 21 years old at the time of accident but there is nothing on record to show that what was the loss suffered by her monetarily by way of loss of income or expenditure on treatment, etc. However, it can be presumed that an amount not less than Rs. 2,000/- was spent on her treatment. For the pain and suffering suffered by her she is entitled to another sum of Rs. 18,000/-. Accordingly, the total compensation to which she is entitled comes to

Rs. 20,000/- out of which Rs. 10,000/- is liable to be paid by respondents jointly and severally.

18. Now coming to the assessment of compensation for the death of Sheela Devi, wife of Bishan Dass claimant and mother of Sharda Devi and Bipin Kumar claimants, the only evidence of her contribution to the family income is the statement of Bishan Dass claimant that she was helping in making of the ornaments in his shop which was of Rs. 400-600/- p.m. in terms of money which appears to be on the higher side looking to the total income of Rs. 1,000/- of the establishment. However, besides assistance to Bishan Dass claimant in his shop, she must be performing household chores for looking after her husband and children and her total contribution in terms of money can safely be presumed at Rs. 400/- per month or Rs. 4,800/- per annum to which multiplier of 12 should be applied looking to her age of 38 years. Accordingly, the total compensation will come to Rs. 57,600/- plus the conventional figure of Rs. 7,400, i.e., Rs. 65,000/-. The respondents are jointly and severally liable to pay 50 per cent of the total compensation which comes to Rs. 32,500/- which is apportioned as under:

Claimant Bishan Dass Rs. 12,500/- Claimant Sharda Devi Rs. 10,000/- Claimant Bipin Kumar Rs. 10,000/-

The claimants are also entitled to interest at the rate of 8 per cent per annum from the date of filing the petitions to the date of payment.

19. Therefore, the appeals are allowed in the terms stated hereinabove. No costs.