
(1969) 02 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Civil Suit No. 70 of 1967

Harbans Lal and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-02-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Fatal Accidents Act, 1855 — Section 1
Limitation Act, 1963 — Article 21

Citation : AIR 1970 J&K 5

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : Ishwar Singh, for the Appellant;

Judgement

Jaswant Singh, J.—The plaintiffs, parents and grandfather of one Brij Mohan Lal Sharma, have brought this suit claiming Rs. 60,000/- as

damages and compensation for the death of the latter alleged to have been caused as a result of collision between Dodge Power Wagon Truck

(B.A.) No. SA 8323 15 CWT driven in a rash and negligent manner by the second defendant and the Scooter driven by the said Brij Mohan Lal

on the afternoon of the 14th February, 1966, on the National High Way near the Water Point, Satwari.

2. The plaintiffs' case as put forth in their petition of plaint is that the aforesaid truck was being driven by the second defendant, a member of

defence services, in the course of his employment and as a part of his official duty as a servant of and for the purposes of the Union of India, the

first defendant, from the side or Jammu cantonment towards the city, that the second defendant was driving the said truck ""in a most rash and

negligent manner and on the wrong side of the road", that when the truck reached near the Water Point it struck a rehra (a cart drawn by a horse)

of one Gur Das Ram Megh of Khaur, Tehsil Ranbirsinghpura, District Jammu, which was going on its correct side of the road at usual pace, that

on seeing the said truck coming to a very rash and negligent manner towards him on the wrong side of the road, the rehra driver in order to ward

off the danger which he thought was imminent pulled his rehra to the extreme left side of the road but despite the precaution taken by him, the truck

dashed against the right side of his rehra breaking its bamboo and right wheel, that after striking the rehra of Gur Das Ram and damaging the same

the truck collided against Scooter No. PNQ 2021 which was being driven at a distance of about 20 yards from the rehra by the said Shri Brij

Mohan Lal from Jammu city side towards the Cantonment side in consequence whereof the said Brij Mohan Lal was thrown off and was badly

injured, that the Scooter got entangled in the said truck and was dragged for some distance in that position and was smashed, that the said Brij

Mohan Lal was removed in an unconscious state to the hospital where he reached at 15-35 hours but despite the best efforts of the doctors

attending on him. he succumbed to his injuries at about 16-45 hours on the same day, that the death of the said Brij Mohan Lal and smashing of his

scooter was the immediate result of the rash and negligent driving of the second defendant, that the scooter was so badly smashed that the

estimated cost of its repairs as assessed by the Insurance Company came to Rs. 1988.10, that Shri Brij Mohan Lal was a young man of 26 years

(having been born on 18-5-1940) and was working as the Territorial Manager, Fire Stone Tyre and Rubber Company of India Ltd. Jammu and

was drawing a salary of Rs. 620/- per month plus an annual bonus of Rs. 1400/- and odd at the time of his death, that ordinarily the said Brij

Mohan Lal would have served for about 34 years more i.e. still he would have attained the age of superannuation of 60 years, that he was a very

competent and promising young officer and had a very bright future and in the normal course he would have earned Increments and promotions

and would have risen to a very high position in life, that even at the rate of the last salary drawn by him the total salary which he would have drawn

upto the age of his superannuation would have been about three lacs and if the increments and promotions which he would have earned in the

normal course are kept in view, then his total salary would have been more than twice the aforesaid amount, that over and above all this the said

Brij Mohan Lal would have also got ""employees"" contribution provident fund and retirement gratuity, that the plaintiffs were being mainly supported

by the said Brij Mohan Lal who was spending most of his salary on their maintenance and that of his grandmother who died shortly after the fatal

accident, that the plaintiffs have been deprived of the financial assistance and support and have suffered a great mental shock and pain and though

they are entitled to much larger amount of damages and compensation yet being unable to incur huge expense by way of court-fees etc. due to

their financial difficulties, they claim Rs. 60,000/- only from the defendants, the second of whom is liable for his rash and negligent act and the first

of whom being an employer is liable for the rash and negligent act of the second defendant who was driving the track on official duty at the time he

knocked down the said Brij Mohan Lal and smashed his scooter.

3. The suit was resisted in the first instance by both the defendants. In their joint written statement while admitting that the second defendant was

driving the aforesaid military vehicle on 14-2-1966 at about 15 hours as a member of the Defence services as a part of his official duty and in the

course of his employment for the purposes of defendant No. 1 from Jammu Cantonment side towards Jammu city side and that Shri Brij Mohan

Lal was going on a Scooter from Jammu city side towards Cantonment at the time the accident took place and that he was removed in an

unconscious state to the hospital where he reached at about 15-35 hours and despite the best efforts of the doctors he succumbed to his injuries at

about 16 45 hours on the same day, the defendant denied that the accident was due to rash and negligent driving on the part of the second

defendant. According to them, the second defendant while returning to his Unit No. 998 INDPT ASC was faced with a grave situation as a result

of reckless driving of a tonga by Shri Gurdas Ram at the Satwari Water Point at about 15.00 hours. The defendants have contended that as a

result of his careless driving, the tonga driver while passing by the aforesaid military vehicle lost control over his horse and took a sudden turn

towards his right bringing his tonga in close contact with the hind wheel of the military vehicle, that accident was averted as the military vehicle was

being driven on its own side at a normal and moderate speed of 18/20 Kmts. per hour, that soon after the said tonga passed by the military vehicle

a scooter bearing No. PNQ 2021 driven very rashly and negligently by Shri Brij Mohan Lal abruptly appeared on the scene, that on observing the

uncontrollable movement of the tonga Shri Brij Mohan Lal because of his rash and negligent driving could not control the scooter which he let

loose after jumping from the same on his left side, that the moving scooter took a right turn and was ""entrapped"" in the right wheel of the military

vehicle when the second de-fendant immediately applied his breaks and stopped the vehicle within a short distance, that the said vehicle being a

very heavy one it was not possible to stop it instantaneously with the application of the breaks and that in this way the scooter was damaged to

some extent but Brij Mohan Lal was injured due to his own act of jumping from the moving scooter, and that the second defendant was in no

manner responsible for the accident which the said Brij Mohan Lal met with. It has also been denied that Shri Brij Mohan Lal was a young man of

26 years and was working as a Territorial Manager in the Fire-Stone Tyre and Rubber Company of India Ltd. and was drawing a salary of Rs.

620/- in addition to the annual bonus of Rs. 1400/- per annum at the time of his death. It has also been denied that the plaintiffs were dependant

for their maintenance upon the earnings of the deceased. Shri Brij Mohan Lal. or that Brij Mohan Lal was legally bound to maintain them. It has

also been denied that any notice of the claim in accordance with law had been served on the defendants. It has been further averred that the

plaintiffs have independent source of income and sufficient means of maintaining themselves. The defendants have further pleaded that second

defendant ""was discharging his duty in the course of defence service of defendant No. 1 and was thus performing the functions of sovereign nature

and in such circumstances no liability attached to either of the defendants. It is further pleaded that the suit is time barred.

4. On the pleading of the parties, the following issues were framed in this case, vide my order dated 29th February, 1968.

(1) Was the defendant No. 2 driving Truck No. BA SC-8323 15 CWT on 14-2-1966 at about 15 hours near Satwari Water point Jammu, in a

rash and negligent manner or on the wrong side of the road? If so, was the defendant No. 2 responsible for the death of Shri Brij Mohan Lal

Sharma and damage to his scooter No. PNQ 2021? OPP

(2) In case Issue No. 1 is proved In favour of the plaintiffs, are they entitled to any compensation? If so what is the quantum of such

compensation? OPP

(3) (a) In case Issue Nos. 1 and 2 are found in favour of the plaintiffs are the defendants not liable to pay compensation to the plaintiffs for the

death of Shri Brij Mohan Lal Sharma and damage to Ms aforesaid scooter? If so why? OPD

(b) Was the act in question done by the defendant No. 2 in the course of employment but in connection with sovereign powers of the State? If so

are the defendants immune from liability? OPD

(4) Does the notice u/s 80 of the CPC suffer from any defect? If so what is its effect on the suit? OPD

(5) Is the suit barred by time? OPD

(6) Has the High Court no jurisdiction to entertain and try this suit?

5. The plaintiffs closed their evidence on 3-5-1968 with regard to the issues the burden of proof of which lay on them and the defendants were

directed to produce their evidence on 6-9-1968. When the case came up for hearing at Srinagar on 6-9-1968, it was found that despite the lapse

of nearly four months since the last hearing no witness had been summoned by the defendants. Shri Abdul Karim Malik appearing for the

defendants prayed for further time to produce evidence on behalf of his clients. The request made on behalf of the defendants was granted on

payment of Rs. 100/- as costs to the other side and the case was fixed for 17-10-1968 as prayed for by Shri Malik, On the case coming up for

hearing on 17-10-1968 Shri Malik again made a re-quest for further time to produce his witnesses. The request for further adjournment was

strongly opposed by the learned Counsel for the plaintiffs but the same was granted on payment of Rs. 200/- as costs to the plaintiffs and the case

was, thereafter directed to be put up at Jammu on 12-12-1968 as agreed to by the learned Counsel for the parties. When the case came up on

12-12-1968, no one appeared on behalf of the defendants with the result that the case was set ex parte against them.

6. To prove the issues the burden of proof of which lay on them, the plaintiffs have examined.:

Gurudas Ram Rehra Driver, Dr. Samunder Singh, Shri Krishen Lal Assistant Sub-Inspector of Police, Shri Jai Bhagwan Saini, Shri Yog Raj, Shri

Sham Lal Raina, Shri Kasturi Lal, Shri Amar Nath, and Shri Dharm Paul In addition to these witnesses, Harbans Lal plaintiff No. 1 has also

appeared as his own witness.

7. Before taking up the issues seriatim, it would, I think, be advantageous to give a synopsis of the evidence adduced by the plaintiffs.

(8 to 24) (After giving resume of evidence given by the plaintiffs and P.Ws. 1 to 9 His Lordship proceeded to deal with the issues and then

recapitulating the evidence relevant to issue No. 1 concluded:)

25. To sum up, the evidence adduced by the plaintiffs reasonably establishes that the second defendant was not only driving the military vehicle at a

very high speed at the time of the accident but also on the wrong side of the road. If he had been a little vigilant and cautious his truck would not

have struck the cart driven by Gurdas Ram on proper side of the road nor would it have collided with the scooter driven by Brij Mohan Lal, which

was also moving on its correct side. Even after striking the rehra he did not swerve towards his left side where there was ample room but brought

his truck in close proximity to the scooter and dashed against it knocking off Brij Mohan Lal. On the facts and circumstances proved in the case, I

have no hesitation in holding that there was a breach of legal duty on the part of the second defendant and it was his rash and negligent driving

which was the direct, proximate and natural cause of the death of Brij Mohan Lal, who was in the prime of his life. Issue No. 1, is, therefore,

decided in favour of the plaintiffs and against the defendants.

Issue No, 2.-

26. The second Issue which relates to reparation is the most difficult of all the issues in the case. It cannot be gainsaid that the Fatal Accidents Act,

1977 (1920 AD.) of the State gives a right amongst other persons to parents including grandparents to claim compensation in case of death caused

by actionable wrong. It is, however, the measure of reparation that presents the real difficulty. The principles on which the compensation is to be

awarded in our State are the same as those on which it is awardable in England under the English Fatal Accidents Acts 9, and 10 Vict Chapter 93,

known as the Lord Campbell's Acts and (The Indian) Fatal Accidents Act, 1855

(Act No. XIII of 1855). Section 1 of the State Fatal Accidents

Act 1977 (1920 A.D.) Act No. XVII of 1977 which is a reproduction of Section 1-A of (The Indian) Fatal Accidents Act, 1855 (Act XIII of

1855) provides that the compensation for the loss in case of fatal accidents has to be proportionate to the actual pecuniary benefit which the

dependants of the deceased might reasonably expect to enjoy. Reference in this connection may also be usefully made to the decisions reported in

Staness Motors Ltd. Vs. Vincent Peter, by his next friend and mother and second Respondent herein Mrs. Ruth Aaron Peter, , Vanguard Fire and

General Insurance Co. Ltd. Vs. Sarla Devi and Others, and Bir Singh and Another Vs. Sm. Hashi Rashi Banerjee and Others, .

27. It needs to be emphasised that the standard for estimating the amount of damages in case of actionable negligence resulting in death must not

be a subjective standard but an objective one and regard in this behalf is to be had to the earnings of the deceased at the time of his death, his

future prospects, his life expectancy, the amount he would have spent on himself and on the support of his dependants, the property left by him and

the like. The following observations made by Desai J. in Dinbai R. Wadia and Others Vs. Farukh Mobedjina and Another, are apposite in this

connection:

The standard must not be a subjective standard but an objective standard. Hypothetical considerations should not, as far as possible be permitted

to augment or reduce the quantum of damage. All speculation and conjecture and considerations of sympathy and solatium have to be eschewed.

Even so certain amount of guess work is liable to creep in. Mere speculative possibility of pecuniary benefit is not sufficient; the assessment must

be based on reasonable probability of pecuniary benefit. In cases of higher incomes this would also be affected by Income Tax that the deceased

would have paid on his income if his life had not been cut short. Some uncertain values of reduction resulting from considerations of the widow

remarrying and other matters of doubt of an allied nature would have also to be borne in mind in arriving at the summation. The court has some

discretion in fixing the measure of reparation and the important consideration would be the probable earning of the deceased and what is more

important what amount the deceased would have probably spent for the support

of his wife and children. Expectation of life of the deceased having regard to his age, bodily health and habits and the possibility of premature death is one of the other relevant considerations. The assessment cannot obviously be a matter of multiplication of the datum or basic figure of what the deceased would probably have spent for the maintenance of the claimants by the number of years of expectation of his life although this would have to be done in the first instance. The amount so calculated would have to be discounted to arrive at an equivalent in the sum to be decreed as Immediately payable instead of yearly payments spread over a number of years. Where the deceased has left property which goes to the claimants the resulting acceleration of interest in that property would also be a factor of reduction in the final assessment.

28. The principles for estimating the compensation have been tersely stated by Lord Wright in a judgment of the House of Lords in *Davies v.*

Powel Duffryn Associated Colliers Ltd. 1942 A.C. 601 at p. 617 in the following words:

It is a hard matter of pounds, shillings, and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned in to a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

In *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, where a clock tower situated in Chandni Chowk Delhi belonging to the Municipal

Corporation of Delhi collapsed resulting in loss of life, their Lordships of the Supreme Court after quoting Section 1-A of (The Indian) Fatal

Accidents Act, 1855 (Act XIII of 1855) approved the principles enunciated in the aforesaid judgment of the House of Lords. The dictum of the

House of Lords as approved by the Supreme Court has been followed in one of the recent decisions of the Bombay High Court in *Union of India*

Vs. Sugrabai and Others, .

29. In Amulya Patnaik Vs. State of Orissa, , Misra J. laid down that the following factors should be taken into consideration in determining the

quantum of damages:

i. The amount of wages which the deceased was earning, the ascertainment of which may, to some extent depend upon the regularity of his

employment

ii. An estimate is to be made as to how much of that earning was required or spent on his personal and living expenses.

iii. The balance will furnish the basis which will be turned into a lump sum by capitalising it; and

iv. This capitalised sum would be taxed down having due regard to uncertainties, for instance the widow might get remarried or might die, thus

ceased to become a dependent.

In Satya Wati Devi Vs. Union of India and Others, , it was observed as follows:

The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value in the hands of the plaintiff.

No doubt, in such like cases, which are of frequent occurrence these days, certain rules relating to the measure or assessment of damages have

gradually been evolved, yet in general there is no specific rule upon the matter and it is always left to the good sense of the court to assess as best

as it can what it considers to be an adequate recompense for the loss suffered by the plaintiff. The assessment may well be a matter of great

difficulty, indeed, in some cases one of guess work but the fact that it cannot be made with mathematical accuracy is no reason for depriving the

plaintiff of compensation.

The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future

pecuniary benefit and, on the other any pecuniary benefit which, from whatever source, comes to him by reason of the death.

30. Bearing in mind the principles deducible from the above mentioned decided cases, let me scrutinize the evidence led in the case in so far as it is

relevant to the various factors alluded to above and assess the amount of damages to which the plaintiffs (who manifestly fall within the categories

of persons who can recover compensation under the Fatal Accidents Act) are entitled.

31. Life Expectancy of the deceased. Adverting first to the life expectancy of the deceased reference in the first instance has to be made to the

deposition of Shri Harbans Lal plaintiff No. 1 who has examined himself as a witness in the case. According to him, Brij Mohan Lal who was the

youngest of his four sons was born on 15-3-1940, was selected for service in the Firestone Tyre and Rubber Company in April 1963 and but for

his premature death due to the aforesaid accident would have served the company for a period of 24 years and 3 months more. It also appears

from his statement that he himself was born on 1st September 1901, that the age of his father, i.e. Brij Mohan Lal's grandfather, plaintiff No. 3 is

89 years, that the age of his mother was 87 years when she died in March 1966, that the age of his wife is 65 years, that the ages of his father-in-

law and mother-in-law were 74 and 70 years respectively at the time of their death, that his wife's maternal uncle was 82 years when he died, that

his wife's aunt was 95 years when she died, that his grandfather was 70 years when he died in 1915, and that his paternal aunt who is 80 years is

still alive. The plaintiff has further stated that considering the ages of his ancestors and the average life of an Indian, he and his wife expect to live for

two decades more and his father expects to live for Anr. decade. The statement of Shri Harbans Lal plaintiff receives corroboration from the

statement of Shri Amar Nath P.W. 7 who is the maternal uncle of the deceased. Further the fact that the deceased was a healthy young man

possessed of good character and temperate habits is proved not only from the statement of Shri Harbans Lal plaintiff but also from the statements

of Shri Sham Lal Raina P.W. 6, Sales Assistant, Firestone Tyre and Rubber Company, Jullunder, Shri Amar Nath P.W. 7, maternal uncle of the

deceased and Shri Kasturi Lal P.W. 8, the landlord of the deceased. Shri Sham Lal Raina has also proved the photographs of the deceased

appearing in the Issues of the Firestone News Journal for the months of October 1965, and January 1966 marked Ex. P.W. 6/2 and Ex. P.W. 6/1

respectively produced for the purpose of showing that the deceased was a handsome tall young man and had robust physique. The testimony of

these witnesses in regard to the sound health of the deceased is also supported by the statement of Dr. Samunder Singh P.W. 2 who performed

the post mortem examination of the dead body of the deceased. According to Dr. Samunder Singh, the dead body was stout, and healthy and the

deceased Brij Mohan Lal who was twenty-six years of age at the time of his death did not appear to suffer from any disease. Thus from the

evidence led by the plaintiffs it can be safely concluded that the deceased would in the ordinary course have easily attained the age of

superannuation which according to Shri Sham Lal Raina is 60 years in case of the employees of the Firestones Tyre and Rubber Company.

32. The earnings of the deceased and his future prospects. Under this head which relates to the wages and earnings capacity of the deceased

reference has to be made to the statements of Shri Harbans Lal plaintiff No. 1, and Shri Sham Lal Raina P.W. 6. Shri Harbans Lal plaintiff has

stated that on the date of his death the deceased, who was a graduate of the Punjab University, was getting more than Rs. 1000/- by way of

salary, allowances and bonus in addition to other amenities to which he was entitled. He has further stated that if the deceased had remained alive

he would have earned several lacs by way of salary etc. in addition to the gratuity and provident fund. The statement of Harbans Lal receives

ample corroboration from the statement of Shri Sham Lal Raina P.W. 6 Sales Assistant in the office of the Firestone Tyre and Rubber Company at

Jullunder, who has deposed that on 14-2-1966 when the death of the deceased, who was Territory Manager with Head quarters at Jammu,

occurred he was drawing a salary of Rs. 611 per month besides Rs. 7/- per day as head quarter expenses and Rs. 17-50 per diem as T.A. for the

days he remained on tour, and that over and above his emoluments he was getting transport and other incidental charges etc. The witness has

further stated that the superannuation age of the employees of his company is 60 years, that the work of Brij Mohan Lal was satisfactory and he

was due for promotion, that apart from salary and allowances every employee of his company is entitled to bonus at the rate of 20% of his pay,

that if Brij Mohan had survived there was every chance of his becoming a District Manager whose pay ranges between Rs. 1500/- and Rs. 5000/-

per mensem, that on retirement after the service of 20 years, the employees of his company are given 22 months pay as gratuity and that the

company was contributing Rs. 49/- to the provident fund of the deceased.

33. From the foregoing evidence I have no manner of doubt in my mind that the deceased was earning nearly Rs. 1000/- per mensem at the time of his death and that his earning capacity was likely to increase with the passage of time.

34. Benefits which the claimants have lost as a result of the accident and consequent death of Brij Mohan Lal deceased. Regarding the amount spent by the deceased Brij Mohan Lal on the maintenance of the plaintiffs, reference may be made to the statements of Shri Harbans Lal plaintiff

No. 1, Shri Dharam Paul Saraf P.W. 9 and Shri Amar Nath, P.W. 8. Shri Harbans Lal has stated that the deceased was remitting Rs. 250/- to Rs.

300/- to him every month. This statement receives corroboration from the statement of Shri Amar Nath P.W. 8 and Shri Dharam Paul P.W. 9.

The fact that the deceased was not only contributing to the maintenance of his parents but was also supporting his grand parents who were residing

with him is proved not only from the statement of Shri Harbans Lal plaintiff but also from the statements of Shri Kasturi Lal P.W. 7, Shri Amar

Nath P.W. 8 and Shri Dharam Paul P.W. 9. Even if it be taken that the deceased was spending nearly Rs. 400/- per mensem as his personal and

living expenses out of his monthly emoluments of nearly Rs. 1,000/- there is nothing improbable in his remitting Rs. 250/- per mensem to his

parents whose monthly income is only Rs. 100/- according to the statement of Shri Harbans Lal plaintiff and his spending Rs. 125/- per mensem

on the maintenance of his grand father, plaintiff No. 3 who gets a meagre pension of Rs. 36/- to Rs. 37/- per mensem as proved from the

statements of Shri Amar Nath P.W. 8 and Shri Harbans Lal plaintiff. Thus the plaintiffs Nos. 1 and 2 have incurred a loss of Rs. 250/- per mensem

and plaintiff No. 3 a loss of Rs. 125/- per mensem as a result of the death of the deceased due to the aforesaid accident which was a consequence

of the gross negligence of defendant No. 2.

35. Quantum of damages to which the plaintiffs are entitled. Although the plaintiffs claim Rs. 60,000/- as compensation yet taking the yard stick of

16 years purchase for capitalizing the loss as adopted in *Bir Singh and Another Vs. Sm. Hashi Rashi Banerjee and Others*, and *Vanguard Fire*

and *General Insurance Co. Ltd. Vs. Sarla Devi and Others*, let us ascertain the benefit which the plaintiffs have lost as a result of the death of Brij

Mohan Lal deceased. As already seen the plaintiffs Nos. 1 and 2 have lost an income of Rs. 250/- per mensem and plaintiff No. 3 has lost the

benefit of Rs. 125/- per mensem. This comes to Rs. 3,000/- per annum in case of plaintiffs Nos. 1 and 2 and Rs. 1,500/- in case of plaintiff No. 3.

Capitalising the figure of Rs. 3,000/- at 16 years purchase the damages in case of plaintiffs Nos. 1 and 2 come to Rs. 48,000/-. Deducting the net

amount of Rs. 1,2067.66 realized by plaintiff No. 1 according to his own admission from the insurance policy etc. of the deceased, the plaintiffs

Nos. 1 and 2 are entitled to Rs. 3,5932.34. As the plaintiff No. 3 is already 89 years of age, I think he cannot reasonably expect to live beyond 95

years. Capitalizing the sum of Rs. 1,500/- at 8 years purchase i.e. with effect from 1966 when the accident took place the plaintiff No. 3 should, in

my opinion, get Rs. 12,000/- as compensation. Thus the total compensation to which the plaintiffs are cumulatively entitled comes to Rs.

47,932.34. Issue No. 2 is decided accordingly.

Issue No. 3.-

36. This issue consists of two parts and the burden of proof of both the parts was on the defendants but they have failed to discharge the same.

The principles governing the vicarious liability of the State in case of tortious acts of its employees are well settled and it has now been consistently

held that unless it is shown that the employee was acting in exercise of sovereign power delegated to him by some law or rule and was doing

something which could not be done by a private individual the State cannot claim immunity. The fundamental principles bearing on the subject were

succinctly stated as far back as 1861 by Chief Justice Peacock of the Supreme Court at Calcutta in the leading Full Bench case of *Penninsular and*

Oriental Steam Navigation Company v. Secretary of State for India (1868) 5 Bom HCR App. 1, in the following words:

There is a great and clear distinction between acts done in the exercise of what are usually termed sovereign powers, and acts done in the conduct

of undertakings which might be carried on by private individuals without having such powers delegated to them. Where an act is done or a contract

is entered into in the exercise of powers usually called sovereign powers by which we mean powers which cannot be lawfully exercised except by

sovereign or private individual delegated by a sovereign to exercise them, no

action will lie.

In a Rajasthan case entitled *Mt. Vidyawati and Another Vs. Lokumal and Another*, where the deceased was run over and killed by a motor

vehicle owned by the State of Rajasthan but driven by its employee, it was observed:

It does not require any sovereign authority or governmental powers to purchase or maintain cars or to keep drivers for driving the same. There are

a number of public and private companies and persons who also purchase cars and give them to their employees in order that they may render

better service to them. They cannot be allowed to invoke any immunity for tortious acts of their employees.

The State is in no better position in so far as it supplies cars and keeps drivers for its employees in its civil service. When Government employs

person to drive vehicles on public roads for purpose for which ordinary persons also do then, in our opinion the State may be held vicariously

responsible for the acts of its employees just as any private employer.

In deciding the appeal from the above decision of the Rajasthan High Court, their Lordships of the Supreme Court observed as follows The State

of Rajasthan Vs. *Mst. Vidhyawati and Another*, :

This case also meets the second branch of the argument that the State cannot be liable for the tortious acts of its servants, when such servants are

engaged on an activity connected with the affairs of the State. In this connection it has to be remembered that under the Constitution we have

established a welfare State, whose functions are not confined only to maintaining law and order, but extend to engaging in all activities including

Industry, public transport, state trading, to name only a few of them. In so far as the State activities have such wide ramifications involving not only

the use of sovereign powers but also its powers as employers in so many public sectors. It is too much to claim that the State should be immune

from the consequences of tortious acts of its employees committed in the course of their employment as such. In this respect the present set up of

the Government is analogous to the position of the East India Company, which functioned not only as a Government with sovereign powers, as a

Delegate of the British Government, but also carried on trade and commerce as also public transport like railways, post and telegraphs and road

transport business.

Reference may also be usefully made to the following observations of the Full Bench of the Punjab High Court in *Rup Ram Kalu Ram Aggarwal*

Vs. The Punjab State and Another, .

The decided cases thus show that the State is in certain circumstances liable for the tortious acts of its servant, but that the circumstances must be

such as to make the relation between the case and that particular servant identical with the circumstances of private employment The liability would

depend not only on the nature of the act in which the servant may have been engaged but also on the nature of the employment and, of course, the

nature of the tort committed. The mere fact that the act may or may not have been done in the course of governmental activity is not one way or

the other conclusive.

Again in *Union of India Vs. Jasso and Others*, , *Falshaw J.* (as his Lordship then was) speaking for the court observed as follows in regard to the

liability of Union of India to be sued for a tort committed by a military driver while transporting coal to General Headquarters at Simla in discharge

of his duties.

The Government's immunity from actions in respect of the acts of its servants is limited to cases involving acts of State and cases Involving the use

of sovereign powers. In a case like the present no question of any act of State can arise since acts of State can only be taken against persons not

subjects of the government concerned, and the question which thus arises in this case is whether the act of the servant which was carried out in

exercise of the sovereign powers of the State.

Such a routine task as the driving of a truck loaded with coal from some depot or store to the General Headquarters' building at Simla presumably

for the purpose of heating the room cannot be held to be something done in exercise of a sovereign, since such a thing could obviously be done by

a private person. Such being the case, the mere fact that the truck happened to be army truck and the driver a military employee cannot make any

difference to the liability of the Government for damages for the tortious act of the driver.

The question of vicarious liability of the State again came up for decision before their Lordships of the Supreme Court in *Kasturilal Ralia Ram Jain*

Vs. State of Uttar Pradesh, , where it was held as follows:

There is a material distinction between acts committed by the servants employed by the State where such acts are referable to the exercise of

sovereign powers delegated to public servants and acts committed by public servants which are not referable to the delegation of any sovereign

powers. If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is; Was the tortious act

committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on the delegation of the sovereign

powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not

lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the

delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his

employment is, in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose. This

distinction which is clear and precise in law, is sometimes not borne in mind in discussing questions of the State's liability arising from tortious acts

committed by public servants.

Again in Satya Wati Devi Vs. Union of India and Others, . It was laid down that the State is immune from liability when tortious act is committed In

course of an undertaking which is referable to exercise of sovereign power or to exercise of delegated sovereign power but where act is done which

cannot truly be called exercise of sovereign power, State would be liable.

37. Then again in State of Madhya Pradesh Vs. Saheb Dattamal and Others, , it was observed as follows:

Whenever the State is sued for tort committed by any of its servants, the court has to examine firstly whether the servant has been acting or

purporting to act in exercise of powers delegated to him. The immunity from action in a court of law arises not only in regard to acts done while

functioning within the strict letter of the delegation but also while purporting to do so; secondly, it has to see whether or not these acts have been

done in exercise of sovereign power of the State, the simplest test in this behalf being to consider whether these functions could be discharged by

any private citizen or association; and thirdly if the breach of tort has been committed while purporting to exercise such sovereign function, there is

no remedy in law courts for the aggrieved person.

Again in a recent case of the Bombay High Court *Union of India Vs. Sugrabai and Others*, it has been observed as follows:

Can it be said that when the jeep car was being driven back from the repair shop to the Collector's place when the accident took place, it was

doing anything in connection with the exercise of sovereign powers of the State? It has to be remembered that the injuries resulting in the death of

Jagdish Lal (the deceased in that case) were not caused while the jeep car was being used in connection with the sovereign powers of the State.

Thus from a resume of the above authorities it clearly follows that it is only when the servant is acting in exercise of delegated sovereign power of

the State and doing something which could not be done by a private individual that the State would not be liable for the tortious acts of its servant

In the instant case, there is no material on the record to indicate that defendant No. 2 while driving the military vehicle at the time of accident was

carrying on any peculiar duty of sovereign nature assigned to him under any law or rule or that there was anything special about his employment. In

the circumstances, I have no hesitation in deciding Issue No. 3 in favour of the plaintiffs and against the defendants.

Issue No. 4.-

38. This issue relates to the validity of the notice given in the present case by the plaintiffs to the defendants. I have gone through the notice with

care but I have not been able to detect any material defect therein which can be said to have an adverse effect on the suit. The notice clearly sets

out the cause of action and the relief claimed and substantially fulfils the requirements of Section 80 of the Code of Civil Procedure. Issue No. 4 is,

therefore, decided in favour of the plaintiffs and against the defendants.

Issue No. 5.-

39. The burden of proof of his issue was also on the defendants, and they have not been able to show as to how the claim; of the plaintiffs is time

barred. The present action is, in my opinion, governed by Article 21 of the Limitation Act which prescribes one year's limitation for a suit under the

Fatal Accidents Act The accident which occasioned the death of Brij Mohan Lal

and has given rise to the claim for compensation by the plaintiffs

occurred, as stated above, on the 14th February, 1966. Excluding the statutory period of notice the present suit which was brought on 13-3-1967

is clearly within time. Issue No. 5 is, therefore, decided against the defendants and in favour of the plaintiffs.

Issue No. 6.-

40. The burden of proof of this Issue too was on the defendants and they have not shown as to how the High Court Is deprived of its jurisdiction

to entertain and try the suit This issue, is therefore, decided in favour of the plaintiffs and against the defendants.

41. In the result I grant a decree for Rs. 47,932.34 with proportionate costs in favour of the plaintiffs and against the defendants. The payment of

the decretal amount shall be made to the plaintiffs within three months from today failing which it will be open to the plaintiffs to realize the amount

by taking out execution of the decree.