

(1976) 07 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil First Appeal No's. 180 and 197 of 1974

Immamudin and Others

APPELLANT

Vs

Mst. Khatoon and Others

RESPONDENT

Date of Decision : 01-07-1976

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A

Citation : (1976) WLN 774

Hon'ble Judges : P.D. Kudal, J;A.P. Sen, J

Bench : Division Bench

Judgement

A.P. Sen, J.—These two appeals by the defendants are directed against the judgment and decree of the Additional District Judge, Jalore dated 17th September, 1974 holding them jointly and severally liable to pay Rs. 70,200/- as compensation to the plaintiff for the death of her husband under the Fatal Accidents Act, 1855.

2. The claim for compensation arises in this way. The State Govt. of Rajasthan, defendant No. 1, had by a contract dated 1-8-1966 (Exhibit A/1), given the contract for construction of the Higher Secondary School, Jalore to the defendant No. 2 M/s Dalley Khan & Sons, Jodhpur at 141/2% above the schedule of rates i.e. at an estimated cost of Rs. 1,06,788/-. The defendant No. 2 had undertaken to construct the building in accordance with the specifications, designs, drawings and instructions in writing etc. The building was originally estimated to cost Rs. 2,31,000/-, but the plans were modified to reduce the cost to Rs. 2,03,500/- by replacing stone-slab roofing by Asbestos Sheets. The Chief Engineer, PWD (B&R), however, accorded administrative sanction for the expenditure of Rs. 1,60,000/-. The Technical Note appended thereto reads as under:

The stone slab roofing supported over the heavy R.S Joints over the assembly hall is found uneconomical and the same has been replaced by A C Sheet roofing, Necessary provision for the steel trusses, covering sheets and also for the false ceiling has been made. The design of the steel trusses should be

worked out properly well before the execution of the item and get approved by the Executive Engineer.

Owing the subsequent change in the item of roofing of the assembly hall the thickness of the wall had also been reduced from 2" to 1 1/2" only and corrections in the item of masonry both in ground floor and first floor have been made.

The main hall of the school building had a dimension of 86" x 40 x 20". Exhibit B/2 is the proposed roof truss

3. The contract provided, inter alia by clause 11:

The contractor shall execute the whole and every part of the work in the most substantial and satisfactory manner, and both as regards materials and otherwise in every respect in strict accordance with the specifications. The contractor shall also conform exactly, fully and Faithfully to the designs, drawings and instructions in writing relating to the work signed by the Engineer-in Charge.

4. Clause 12 reads as under:

The Engineer-in Charge shall have power to make any alterations in or additions to the original specifications, drawings, designs and constructions, that may appear to him to be necessary or advisable during the progress of the work and the contractor shall be bound to carry out the working in accordance with any instruction which may be given to him.

5. Initially, in the original plan the hall was Intended and planned to be constructed with steel trusses and A C Sheets roofing and the walls of this hall were planned to be 1 1/2 thick. The defendant No. 2 accordingly began his work and constructed the walls of the hall. They were 1 1/2 thick. At the finishing stage i.e. after the masonry work of the hall was completed, it was found that the steel for making trusses and Asbestos Sheets were not available and accordingly the Assistant Engineer, PWD, Jalore directed the defendant No. 2 to use girders and stone patties and changed the original plan for using stresses on the spot, but no change in the structure of the plan was made. On the instructions of the Assistant Engineer, the defendant No. 2 pulled down some portion of the upper wall, which was made for the use of steel trusses and utilised the girders and stone patties issued by the Public Works Department. There were as many as five girders placed on the walls and made heavier by encasing them. It appears that no ties were used for putting the girders. On these girders, stone patties were put.

6. On May 25, 1962 at about 5.15 P.M. one of the girders slipped from its encasement and after damaging the wall, fell down. Thereafter the whole of the hall and its walls collapsed. The plaintiff's husband Mohammed Khan, who was an unskilled labourer earning Rs. 2 to 3/- per day at Jodhpur, was employed three to four days before the accident as a helper to the Mistry Rahim Bux PW/3 and taken to the work site at Jalore on a wage of Rs. 5/-per day to remove the

defends in the western wall pointed out by the Assistant Engineer on May 23, 1962 vide Ex. A/4. It further appears that his wages were not fixed. The girder unfortunately fell on him and he died almost instantaneously due to the injuries sustained by him. The deceased at the time of his death was 21 years of age, Hence claim for compensation.

7. According to the plaintiff, the cause of the accident was attributable to the change in the design and due to the placement of girders on the walls under the instructions of the Assistant Engineer, PWD who was in charge of the work and never ascertained whether the walls would be able to sustain the weight of the girders and due to his not taking the other precautions i.e. not putting up of doors and pillars etc. She holds both the State Government as well as the contractor jointly and severally liable to pay damages sustained by her. She claims that if her husband Mohammed Khan had lived his full span of life, he would have earned Rs. 5/- to 7/- per day as a skilled laborer. Taking his active working life to be 62 years, she claims damages amounting to Rs. 73,800/- @ Rs. 5/- per day for 41 years and further claims Rs. 1200/- for mental agony and shock due to his bereavement i.e. in all Rs. 75,000/-.

8. The defendants contested the plaintiff's claim on a number of grounds. The defendant No. 1 the State Government repudiated its liability on the ground that the defendant No. 2 was an independent contractor and the collapse of the walls was due to his negligence and it could not be made vicariously liable for the same. It disputed that the walls of a width of 1 1/2. were not sufficient to bear the weight of the girders placed thereon. It alleged that the walls collapsed due to three reasons namely, (1) poor workmanship, (2) use of defective lime, and (3) damage to the walls while the girders were being placed and, therefore, the western wall went out of plumb. The defendant No. 1. therefore, asserted that it was not liable to pay any damages at all and in the alternative disputed the quantum of damages claimed.

9. On the contrary, the defendant No. 2 pleaded that the accident occurred due to the negligence of the Engineer in Charge who directed him to cover the hall by stone patts to be placed on girders without ascertaining whether the walls would be able to bear the weight of the girders. This, he alleged, was done without taking due precautions. According to the defendant No. 2, he was bound by clause 12 of the contract to carry out the instructions given by the Engineer in Charge and, therefore, he was not liable, to pay any compensation. The defendant No. 2 also denied the amount of damages claimed.

10. The learned Additional District Judge has come to the following conclusions namely, (1) that, though the defendant No. 2 was an independent contractor, the defendant No. 2 was not absolved of liability for negligence as it had reserved to itself the right of control and the construction of the school building was actually supervised by its officers; (2) originally it was proposed in the plan for walls to be of 2" width, if the girders were to be placed and the roof was to be of stone-patts, and in the alternative if the hall was to be covered by AC Sheets along

with Steel trusses, the walls were to be of a width of 1 1/2 "(3) that, the sanctioned plan, however, approved, of walls of 11/2" width and it showed that the wall was to be covered by AC Sheets; (4) that, contrary to this, there was a change in the design by the Assistant Engineer, who was the Engineer-in-Charge and the defendant No. 2 was ordered to put girders; (5) that, girders and stone patties were, in fact, issued from the Central Stores, PWD and were brought in the truck of the PWD from Jodhpur and placed on the walls under the supervision of Shri Omprakash DW 3 and Ramlal DW 7, both Overseers, who found that the girders were placed in order and no damage had been caused to the wall, (6) that the actual cause of the accident was, therefore, due to change in the design of the roof, (7) that, the plea taken by the defendant No. 1 that the cause of the accident was defective workmanship or the use of defective lime is negatived, and (8) that the walls of the width of 1 1/2" as constructed were not sufficient to sustain the weight of the girders.

11. The learned Additional District Judge accordingly decreed the plaintiff's claims. As regards the quantum of damages claimed, he has taken the expectancy of life of the deceased to be 60 years and on that basis, he has awarded Rs. 70,200/- as damages at the rate of Rs. 5/- per day for 39 years.

12. The questions in these appeals are: Firstly, a question of law, as to whether the State Government as an employer was vicariously liable for the negligence, if any, on the part of an independent contractor; and secondly, a question of fact, as to whether the assessment of damages in this case at Rs. 70,200/- was contrary to law or was so inordinately excessive that it must be held as erroneous.

13. It is not suggested that the tortious act complained of, was an act done in exercise of Governmental functions which could not be lawfully exercised save by the sovereign authority as to attract the State immunity from liability. Here, the act was non-governmental or non-sovereign, and was one such as could be committed by a private individual. It was fairly conceded that the case was not covered by the decision in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, . Their Lordships emphasised the significance and importance of making such a distinction and stated that this has to be borne in mind particularly at the present time when, the pursuit of their welfare ideal, the Govt. of the State as well as the Government of India naturally and legitimately enter into many commercial and other undertakings and activities which have no relation, with the traditional concept of Government activities in which the exercise of sovereign power is involved.

14. The submission of Shri Hastimal Parekh, learned Counsel for the appellant defendant No. 2 was that there is error in principle in ascertainment of Rs. 70,200/- as the quantum of damages, Reliance is placed on *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, , *Smt. Kamla Devi and Others Vs. Kishanchand and Another*, In view of the settled principles, the Court had, under the Fatal Accidents Act, to ascertain the actual pecuniary loss, which

is but an estimate. The measure of damages is arrived at after selling the figure of annual dependency multiplied by the number of years purchase ie. by the "multiplier". The multiplier, according to the decided cases, tends to be in the region of 13 to 18. The deceased was an unskilled labourer with no settled employment. He earned only Rs. 3.50 P per day for 20 days in a month, but contributed nothing to the family and was himself a dependent. Even taking a generous view, the basic figure at Rs. 360/- per year at the multiplier as 18, the amount of compensation could not, in any event, exceed Rs. 6000/-. In the alternative, he contends that the liability is of the defendant No. 1 and not of defendant No. 2, who was an agent or servant and, therefore, an invitee. The cause of the accident was the change in the design i.e., by the Engineer-in-Charge directing the defendant No. 2 to place iron girders and stone-slabs in place of AC Sheets and he was, by clause 12, bound to carry out such directions. It is said that the walls collapsed because the walls of 1 1/2" width could not sustain the weight of the girders and stone-slabs and this was not due to any bad workmanship on the part of the defendant No. 2 or because of the use of bad lime by him in the construction of the building.

15. The submission of Shri. Shisodiya, learned Additional Government Advocate is that the State Govt. as an employer of an independent contractor is not responsible for the negligence of the independent contractor. The responsibility ceased with the employment of a competent independent contractor who was expected to take due care and exercise his skill. There was no "extra-hazardous activities" involved in the present case. The collapse as the wall was not due to the placing of the girders and stone patties but on account of bad workmanship by the defendant No. 2 and the use of bad lime. In the alternative, he contends that the damages could not exceed Rs. 6000/- This was also the sum awardable under the Workmen's Compensation Act, 1923.

16. In reply, Shri Solanki, learned Counsel for the plaintiff supported the award. He cited a large number of authorities. His submission is that the deceased was cut off in the prime of life. It would be wrong to award damages on the basis of his being an unskilled labourer earning Rs. 3.50 P per day, He would, in course of time, have gained the experience and started earning Rs. 18/- per day as a skilled artisan. It is said that the Court must in evaluating the damages, keep the reasonable future prospects in view.

17. It is trite law that an employer who employs an independent contractor is not vicariously liable for the negligence of that contractor- He is not able to control the way in which the independent contractor does the work, and the vicarious obligation of a master for the negligence of a servant does not arise under the relationship of employer and an independent contractor. This is clear from authorities and for convenience we take from Salmond on Torts 16th Edition Page 497, this statement of principle-

One thing can, however, be said with confidence the mere fact that the work entrusted to the contractor is of a character which may cause damage to others

unless precautions are taken is not sufficient to impose liability on the employer. There are few operations entrusted to an agent which are not capable, if due precautions are not observed, of being sources of danger and mischief to others; and if the principal was responsible for this reason alone, the distinction between servants and independent contractors would be practically eliminated from the law.

18. In truth, there are, according to the authorities, certain well-determined classes of cases in which there is a direct and primary duty upon the employer to see that care is taken rests upon the employer through the operations. Two such classes are directly relevant in the present case. The first class concerns where the employer exercises a right of "supervision or control over the operations. This is stated in Halsbury's Laws of England, Third Edition Volume 28 at page No. 23, thus:

If the employer retains in his own hands, the control over or interferes with the performance of the contract, he also will be responsible as a joint tortfeasor (p).

The second class, which is relevant for consideration, concerns what have sometimes been described as "extra hazardous act" Where the activity carried on by the independent contractor is extra hazardous, the employer of the independent contractor is liable for the negligence of that contractor See *Honey will and Stain Ltd. v. Larkin Brothers* LR (1934) 1 KB 191. These are the cases in which the employer may be liable for torts by the independent contractor or by the servants of the latter. The whole question, here, is whether the defendant No. 1 is to be judged by the general rule, which would result in no liability, or it comes within one of the somewhat special exceptions.

19. Many difficult questions of causations and foreseeability were raised. The case against the defendants, in nut shell, was this First, it was said that it was found by the learned Additional District Judge that the defendants were negligent in placing heavy iron girders and stone slabs on the walls when the approved plan made a provision for placing steel trusses and AC Sheets, and the walls of 11/2" width were not able to sustain the weight of this. Secondly, it was said that the defendants were negligent in not taking any precautions for providing support to the roof i.e. by not putting up wooden pillars, todrs and patties. We are afraid, this is all borne out by the evidence on record. On the contrary the defendants tried to cast the blame on each other. The defendant No. 1 led expert evidence to show that the collapse, of the walls was not due to the weight of the iron girders and stone parties placed upon it, but was due to poor workmanship and the use of defective lime. The defendant No. 2, on the other hand, threw the blame on the Engineer in Charge, who directed him to place iron girders and stone patties due to the unavailability of street trusses and A.C. Sheets and attributed this to be the cause of the accident.

20. Mst. Khatoon PW/1 and her father Habibkhan PW/2 had no personal knowledge as to the cause of the accident. Mistri Rahim Bux PW/3 who had taken

Mohammed Khan from Jodhpur to Jalore as a helper, has stated that due to unavailability of stall trusses and AC Sheets the Assistant Engineer, who was the Engineer in Charge, ordered the defendant No. 2 to place iron girders and stone patties. He further states that no precautions were taken and, That the iron girder, and stone patties were placed on the wads without taking any precautions can hardly be disputed. This was done contrary to the approved plan. It can also hardly be disputed this the iron girders and stone patties were issued from the Central Stores of the PWD at Jodhpur.

21. It is some what strange that the defendant No. 1 should take shelter on the order of the Superintending Engineer dated 28. 6, 1951 (Ex A/7) and contend that there was no written sanction for construction beyond plinth level and therefore, the entire construction was unauthorised. It also does not redound to the credit of Shri. Chandrabhushan. Executive Engineer. 1 DW/1. Ashok Kumar. Assistant Enaineer 1 DW/6 Baliram. Junior Engine. 1 DW4 Omprakash Overseer 1 DW3. Ramlal Overseer. 1 DW/7 and Sumermal. 1-DW2, disavowing all knowledge about the placing of the iron girders and stone patties. After the accident, there was a departmental enquiry held by the Chief Engineer, with a view to fix the responsibility for the accident. These officers appear to have combined to save themselves from the consequence of their act and cast the blame on the defendant No. 2. True, there is no written order by the Engineer-in-Charge under Clause 12 directing the defendant No. 2 to substitute the roof of iron girders and stone state in place of steel trusses and AC Sheet, but that however, hardly matters. The constructions of the hall was under the supervision and control of the PWD. Staff & not only measurement of the work done were taken but payments against the running bills were made. It must therefore, be presumed that all this was all done with the consent on the officers of the PWD & therefore, the defendant No. 1 is equally liable.

22. It is difficult to accept the view of the learned Additional District Judge that the collapse of the walls was entirely due to the placing of the iron girders and stone patties which could not bear their weight and therefore, gave way. In our view, this was one of the many factors, which resulted in the collapse of the ball. There was not only poor workmanship on the part of the defendant No. 2, but also the use of defective time mortar. Actually, the wall bad gone out of plumb. This is clearly borne out by the testimony of Vidbyaratan, former Additional Chief Engineer, 1 DW/8, Chandrabhushan, Engineer, 1 DW/1 and Baliram, Junior Engineer, 1-DW/4. Two days before the accident i.e. 28-5-1962 the Assistant Engineer had inspected the works and found that the walls above the bed plates were out of plumb and that the cracks had appeared in the western wall, vide inspection note Ex A/4. The plaintiff's sole witness Mistry Rahim Box PW 3 admits that at the time of the accident, be was engaged in removing the defects pointed out. The authenticity of the document Ex A 4 is beyond question. Immamudin, a partner of the firm defendant No. 2,2 DW 1 admits that the Assistant Engineer had, on 23-5-62. pointed out to him the defects on the spot. There can, therefore, be no doubt that the part of the wall had gone out of plumb

and that cracks had also appeared. This clearly shows poor workmanship on the part of the defendant No. 2. After the accident, the PWD authorities sent the samples of lime used by the defendant No. 2 to the Government Test House, Calcutta. The Test Certificates are on record and the report of the Superintending Engineer to the Chief Engineer dated 6-8-1964 Ex A 8 on the basis of these certificates was that the failure of the walls was due to eccentricity of loading occurred as a result of the wall not being plumbed and the specification of the mortar being poor. There can, therefore, be no doubt whatever that both the defendants were jointly and severally liable to pay damages.

23. There can be no doubt that the collapse of the wall was not due to any particular factor but was the cumulative effect of many factors.

24. We are, however, spared the necessity of going into it in any detail. We prefer instead to approach the matter broadly and on a common-sense basis. The substitution of the roof of iron girders and stone slabs in a hall of such dimensions, without taking the usual precautions, was, to our mind, an "extra hazardous act" and the defendants must, therefore, bear the consequences of their act. Each defendant left to the other to take the necessary safety precautions and that appears to extend to the whole field of their relationship. In the result, no body gave the matter any thought and certainly neither of them took any action. The primary responsibility for taking necessary precautions appears to lie, in the first place, on the Engineer-in Charge who made no arrangements for safety in relation to this dangerous work which was undertaken at his request. He was directly concerned with the work in hand and did nothing to ensure safety and had no reason to think that the defendant No. 2 would take any safety precautions. In a practical sense, the defendant No. 2 was conducting the operations and was expected to use his expertise. He had not parted with over-all responsibility towards his workmen for his negligence. Under the conditions, which changed as the work progressed, there arose a continuing duty for both the defendants to take reasonable care and see that those in the near vicinity particularly the workmen engaged in the work were not confronted with unnecessary risk.

25. This takes us to the question of assessment of damages, which flow from the accident.

26. There are three decisions in which the Supreme Court had occasion to deal with a claim under the Fatal Accidents Act and to interpret Sections 1A and 2. The principles governing the assessment of damages under Sections 1A and 2 are, therefore, well settled. *Sec. Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, Municipal Corporation of Delhi v. Subhagwanti* AIR 1966 SC 1760 and *Ram Dayal Vs. Municipal Corporation of Delhi and Another*. The damages are to be based on the reasonable expectation of pecuniary benefit or benefits reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered. 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 advantage which from whatever source comes to him, by reason of the death.

27. Their Lordships of the Supreme Court in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, have stated the same principles. that the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources comes to them by reason of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained.

28. In *Smt. Sushila Devi and Others Vs. Ibrahim and Another*, I had occasion to deal with this question and state :

The principles governing award of damages for death are well settled and may be briefly stated here:

(i) when the Court awards damages to the dependents for death due to negligence, it awards the lump sum calculated by taking the yearly pecuniary loss and multiplying it by the number of years purchase.

(ii) It does not divide it into two parts, such as special damage upto the date of trial and future loss after the date of trial. The Court treats it s damage inflicted once and for all at the time of accident.

(iii) It has to follow the rule of basic figure a certain number of years" purchase and allowance for lump sum down.

(iv) If the period is a long one, the "multiplier" will be much smaller, than the number of years, even where the contingencies which are allowed for are of small account. The reason is that while in so far as the lump sum of damages is still unspent. It will be earning interest and the damages and interest together will be adequate to last out for the period. The reason is that a prudent person receiving a lump sum, to make good his loss over a period, is expected to invest it and to use it up gradually.

(v) The sum to be awarded as damages should be equal to the cost of purchasing an annuity of the relevant amount for the relevant period.

29. In the light of the principles, we shall proceed to ascertain the damages claimed by the plaintiff. The deceased was about 21 years of age at the time of his death and was said to be in good health. It can, therefore, be reasonably assumed that but for the accident, he would have lived for another 39 years upto the age of 60 years. He was an unskilled laborers. The evidence of the plaintiff Mst. Khatoon PW 1 and her father Habib Khan PW2 shows that he was not the bread-winner of the family and had no settled employment. They no doubt assert

that he was earning Rs. 3.50 per day but the other evidence shows that he was getting Rs. 2 to 3/- per day. Indeed, they unequivocally admit that he was not contributing anything for the support of the family.

30. The plaintiff herself has said that if her husband had lived, he would have earned Rs. 5 to 7/- per day. However, contrary to this, it was urged before us that the deceased would have earned Rs. 18 to 20/- per day as a skilled artisan. We are aforesaid, there is no basis for that claim in the pleadings. While this is true that the deceased might have, in course of time, become a skilled artisan with all his experience, but we cannot award that damages on a more speculated possibility of pecuniary advantage. The plaintiff herself has indicated the extent of her loss, and there is no reason for us not to act on that basis.

31. At the time of his death, whenever the deceased was engaged as labourer, he was getting Rs. 2 50 to 3 50 per day, & that, too, for 15 to 20 days in a month. Earlier, he was getting Rs. 1.50 to 2/- per day. Evidently, he was spending whatever he earned on himself. The future loss is necessarily conjecture. If all had gone well, the deceased may have become a skilled artisan and earned more, so that he could have maintained his wife and children, if born, at least at their standard of living. But all may not have gone well, and either he or any of them might have died prematurely, he may not have been able to earn more, or other misfortune might have occurred. So allowance must be made for all this. Per Lord Reid in *Taylor v. O'Comoor* (1970) 1 All ER 365.

32. In view of the evidence on record, we are inclined to think that it is reasonable to estimate that in all reasonable probability, the deceased could have given atleast Rs. 3/- per day for 20 days in a month to his wife.

33. Taking the basic figure as Rs. 60/- per month which the deceased Mohammed Khan might have given to his family for their maintenance, the extent of loss to the plaintiff has to be ascertained by multiplying the basic figure by a number of years. The "multiplier" of "18" can be wholly justified on the settled principles. The application of "18 year multiplier" to the dependency of Rs. 720/- per year is the resultant figure of financial loss to the plaintiff at Rs. 12 960/-. The decided cases under the Fatal Accidents Act show that the claimant gets a lump sum and because of the uncertainties of life, such as the deceased or claimant might die before the expiry of their normal span of life, a deduction of 10 to 20% from pecuniary benefit is usually made. The reasons for such deduction are based on justice and fair play within the parties. The plaintiff, no doubt, is entitled to damages for loss of consortium and she has assessed this at Rs. 12001; but this has to be set off against the prospect of her re-marriage. She was only 19 years of age at the time of accident. For all these reasons, we award Rs. 10,000/- (Rupees Ten thousand only) as compensation to the plaintiff together with interest at 6% per year from 17th September, 1974, the date of the award in question.

34. Even adopting the other method, the resultant figure is more or less the

same. The cost of purchasing an annuity yielding income of Rs. 80/-per month at the normal bank rate of 10% per annum would be Rs. 10,000/-.

35. The result, therefore, is that appeals succeed and are partly allowed and the award passed by the learned Additional District Judge, Jalore dated 17-9-74 stands modified by reducing the amount of compensation from Rs. 70, 200/- to Rs. 10,000/- with interest at 6% p.a. from 17th September, 1974 till realisation. The costs shall be borne by the parties as incurred throughout.