
(1962) 11 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : First Appeal No. 1 of 1960

Jai Singh

APPELLANT

Vs

Mansha Ram and Others

RESPONDENT

Date of Decision : 10-11-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Evidence Act, 1872 — Section 3
Fatal Accidents Act, 1855 — Section 1A
Limitation Act, 1908 — Section 15(2)

Citation : AIR 1963 HP 37

Hon'ble Judges : C.B. Capoor, J.C.

Bench : Single Bench

Advocate : Hira Lal, T.P. Vaidya, for the Appellant; Kirti Ram, for the Respondent

Final Decision : Dismissed

Judgement

C.B. Capoor, J.C.

1. This first appeal by Shri Jai Singh is directed against a judgment and decree of the learned Senior Subordinate Judge, Mandi, whereby the claim put forward by respondents Nos. 1 and 2 and two others under the Fatal Accidents Act for a sum of Rs. 20,000/- was decreed for a sum of Rs. 7,680/- in favour of the respondents Nos. 1 and 2.

2. Near Dehar Tehsil Sundernagar district Mandi, there is a suspension bridge on river Sutlej. On one side of the bridge is Bilaspur District and on the other Mandi district. Dehar is in district Mandi. The bridge was suspended on two galvanised iron ropes on each side. It was to be widened and one more galvanised rope was to be added on each side. The contract for the widening of the bridge and for repair work had been given to the appellant. In August, 1955, the bridge was under repairs. Mehanga Ram, hereinafter to be referred as "the deceased", the son of respondents Nos. 1 and 2, was passing over the bridge from Bilaspur side at about 1 and 2 P. M. on 29-8-1955. All of a sudden the bridge tilted and he fell

down in the river below. His body could not be traced and it is alleged that he breathed his last as a result of falling down.

Respondent No. 1 is the father and respondent No. 2 is the mother of the deceased. They along with their daughters Shankutala and Sheela Devi filed a suit for recovery of Rs. 20,000/- as damages against the appellant, the State of Himachal Pradesh and the Union of India respondent No. 3. It was alleged that the deceased was about 17 years old and was studying in 9th class at the time of the incident. He was stated to be a promising student and it was the intent of the family to educate him upto B. A. at least. The suit was filed in forma pauperis.

Thakur Dass son of respondent No. 1 was impleaded as defendant No. 3 under the guardianship of Anant Ram his adoptive father. It was alleged that the aforesaid Anant Ram did not want Thakur Dass to figure as plaintiff and as such he was impleaded as defendant.

It was further alleged in the plaint that the respondents were guilty of neglect of duty inasmuch as no board was put up cautioning the passersby not to cross the bridge and that the ropes had been loosened. A notice u/s 80 Civil P. C., was issued to the respondent No. 3.

3. The suit was resisted by the appellant and respondent No. 3. The former pleaded that the suit was barred by the statute of limitation and the notice sent to respondent No. 3 was not in accordance with law and the period of notice was not liable to be excluded in computing the prescribed period of limitation. It was denied that the deceased was the son of Mansha Ram respondent No. 1. His case was that respondent No. 2 was married to Panchi Ram and the deceased was born of that union, that the aforesaid lady was abducted by respondent No. 1 after the aforesaid marriage and the respondents Nos. 1 and 2 or for the matter of that the other plaintiffs did not have a right to maintain the suit.

It was also denied that the ropes of the bridge had been loosened or that there was any neglect of duty on the part of the appellant or any of the labourers employed in connection with the widening of the bridge. The tilting of the bridge was stated to be purely accidental. It was also denied that the deceased was a shining student or that any pecuniary loss had been occasioned as a result of his alleged death. The right of the plaintiffs to claim any sum as damages was repudiated and the amount claimed was stated to be excessive in any case.

4. The defence put forward by respondent No. 3 was substantially identical with the one put forward by the appellant. It was further pleaded by respondent No. 3 that no cause of action had arisen against it as the contract for the widening of the bridge and for effecting repairs to it had been given to the appellant who was an independent contractor and no vicarious liability could be fastened upon it for any neglect of duty on the part of the appellant. The application filed by respondents Nos. 1 and 2 and the other plaintiffs for permission to sue in forma pauperis was opposed by the contesting defendants.

5. The learned Senior Subordinate Judge held that the plaintiffs were paupers, that the plaint disclosed enforceable cause of action, that the notice u/s 80, Civil P. C., was in accordance with law, that the suit was not barred by the statute of limitation, that respondent No. 2 was married to respondent No. 1 and the deceased was the offspring of that union, that the deceased died as a result of falling down from the bridge, that the tilting of the bridge was due to neglect of duty on the part of the appellant and that the total pecuniary benefit which respondents Nos. 1 and 2 would have received from the deceased if he had not died could reasonably be assessed at Rs. 7,680/-. He further held that the plaintiffs Shakuntala and Sheela Devi did not have a cause of action for the suit, that there was no cause of action against the State of Himachal Pradesh as it had ceased to be a State and had become a Union territory and that respondent No. 3 was not liable as the contract for the widening of and for effecting repairs to the bridge had been given to the appellant. He accordingly passed a decree for a sum of Rs. 7,680/- against the appellant.

6. Aggrieved by the aforesaid decree the appellant has come up in appeal. A cross objection in forma pauperis was filed on behalf of respondents Nos. 1 and 2 claiming a sum of Rs. 12,320/-. On behalf of the appellant it was contended that the respondents were not paupers and that since the filing of the plaint their house had been improved upon. A commission was issued to ascertain the market value of the house and on the basis of the report submitted by the commissioner it was held that respondents Nos. 1 and 2 were not paupers. The requisite court-fee on the cross objection has not been paid by them.

7. In view of the contentions advanced on behalf of the parties, the following questions arise for determination :

1. Whether the Court below erred in allowing respondents Nos. 1 and 2 to sue as paupers?
2. Whether the suit was barred by the law of limitation?
3. Whether Mehanga Ram died as a result of falling down from the bridge?
4. Whether the Court below erred in holding that respondent No. 1 was married to respondent No. 2 and the deceased was born of that union?
5. Whether the tilting of the bridge was not due to wrongful act, neglect or default on the part of the appellant or the labourers under his employ? In case the first part of the question is answered in the affirmative and the second part in the negative, was the appellant not vicariously liable for the loss, if any, occasioned by the death of the deceased? Was the deceased guilty of contributory negligence?
6. Whether the Court below was wrong in holding that pecuniary loss had been caused to respondents Nos. 1 and 2 as a result of the death of the deceased ?
7. Whether the amount of compensation awarded by the learned Court below

was excessive?

FINDINGS

8. Question No. 1: The reasons assigned by the Court below for allowing respondents Nos. 1 and 2 and the other plaintiffs to sue as paupers were quite sound. It appears from the affidavit filed by the appellant on 14-9-1962 in reply to the affidavit filed by respondent No. 1 that the building possessed by him and respondent No. 2 had been materially altered since the filing of the suit and as such the increase in value as a result of the alteration could not be taken into consideration in determining the question as to whether the application for permission to sue in forma pau-peris had been rightly allowed by the Court below. The question is accordingly answered in the negative.

9. Question No. 2 : Sub-section (2) of Section 15 of the Limitation Act runs as below:

"In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded".

10. It will have been noticed that the aforesaid sub-section does not say that the period of notice shall be excluded only so far as the defendant to whom notice is required to be and has been given. What the section provides is that in computing the period of limitation prescribed for any suit the period of notice given in accordance with the requirement of any enactment for the time being in force shall be excluded. Thus if a notice is required under law to be given to one of the defendants (Union of India) and such notice has been given to him the period of such notice shall be excluded in computing the period of limitation prescribed for the suit as against all the defendants.

11. In the instant case one of the defendants was the Union of India and u/s 80, Civil P. C., it was obligatory on the respondents Nos. 1 and 2 to have given two months notice of the claim before instituting the suit. The contention advanced on behalf of the appellant that in computing the period of limitation prescribed for the suit against him the period of notice should not be excluded has no force.

12. It has next been contended on behalf of the appellant that as the contract for the repairs of the bridge had been given by the Public Works Department of Himachal Pradesh to the appellant, the Union of India was not answerable for the loss, if any, occasioned by the death of the deceased and that respondents Nos. 1 and 2 did not have any cause of action against the Union of India and as such it was not obligatory on them to have issued a notice to the Union of India and Sub-section (2) of Section 15 was not applicable.

In support of that contention reliance has been placed upon the cases : *Ladli Prasad v. Nizamuddin Khan* AIR 1919 Oudh 26 and the *The State Vs. Jamna Das and Another*, The facts of the former case were that one Piare Lal Risaldar who was the proprietor of two groves in the city of Lucknow usufructuarily mortgaged

them. Those groves were acquired under the Land Acquisition Act and compensation was paid to one Nizamuddin Khan the successor-in-interest of the mortgagee. The successor-in-interest of Piare Lal mortgagor filed a suit for redemption of the mortgage against Nizamuddin, the Secretary of State for India-in-Council and the Lucknow Municipality and two months notice was given to the last mentioned two defendants. The trial Court and the first appellate Court held that the mortgage could not be redeemed as the mortgaged property had been destroyed. The latter further held that the suit was barred by the law of limitation. The plaintiff preferred a second appeal. One of the questions at issue was whether the suit was barred by time and whether the period of two months was liable to be excluded in computing the prescribed period of limitation. It was held that no enactment required the plaintiff to give notice to the Secretary of State or the Municipality in the particular matter for he had no cause of action against them. In the course of the judgment the following observations were made:

"The learned counsel is really arguing for the proposition that where a plaintiff under a mistake of law or fact conceives that he has a cause of action against the Secretary of State or a public body in addition to his cause of action against a private person and joins without reason the Secretary of State or the public body, he shall be entitled to extend the period of limitation ordinarily allowed by law against the private person by two months. The proposition cannot be accepted. The section has only application in cases in which the plaintiff has a good cause of action against such a body. The law forbids him to institute a case against such a body until he has given them notice".

13. In the other case, one Jamna Dass claimed decree for compensation for wrongful detention of 10 maunds of rice. In computing the period of limitation the period of notice given to the State of Punjab and the Union of India was sought to be excluded u/s 15(2) of the Limitation Act. In resisting the suit the State of Punjab pleaded that the period of notice given to the Union of India could not be excluded. The Court of first instance held that the suit was barred by time. From that decree Jamna Dass appealed. The learned District Judge was of the opinion that the notice was given to the Union of India under a bona fide belief that the Union of India was liable for wrongful detention of rice and setting aside the order of dismissal remanded the case for trial on merits. The State of Punjab preferred a second appeal and it was held that the plaintiff had no cause of action against the Union of India and that the period of notice given to the Union of India could not be excluded in computing the period of limitation prescribed for the suit.

14. The aforesaid cases, it will have been noticed, were such in which even prima facie there was no cause of action against the defendant to whom notice u/s 80 was given. There is a vital distinction between want of even a prima facie cause of action and of a good cause of action.

15. Respondents Nos. 1 and 2, on the other hand, relied upon the following

cases: *Udharam Vassanmal v. Grahams Trading Co., Ltd.* AIR 1937 Sind 281; *Laxmichand v. Dominion of India*, (S) AIR 1955 Nag 265 and *Mohamed Sharif Vs. Nasir Ali and Others*,

16. In the first of the aforesaid cases it was held that where a suit for damage is brought against joint tort-feasors and one of, them requires a notice u/s 80, Civil P. C., which extends the period of limitation by two months as against him, time must be calculated in the same manner as against both even though notice u/s 80 is not necessary to the other tort-feasor.

17. The second case was for malicious prosecution. The Dominion of India was impleaded as defendant No. 1 for the tortious act of its employee, defendant No. 2, and it was necessary to serve a notice u/s 80, Civil P. C., to defendant No. 1. Defendant No. 1 was absolved from the vicarious liability as it was found that defendant No. 2 was actuated by personal malice in prosecuting the plaintiff. It was held that under the circumstances the plaintiff was entitled to exclude the time required for the notice u/s 15(2).

18. In the last case a police Inspector proceeded to the scene of offence on receipt of the report forwarded to him by the Head Muharrir. His subsequent report complaining of assault and obstruction by the plaintiff and his party was made by him in his capacity as police officer. One of the offences with which the plaintiff was charged was u/s 332, I. P. C. The plaintiff was acquitted and a suit was filed by him for damages against police Inspector and others. A notice u/s 80, Civil P. C., was given to the police Inspector and it was held that as it was necessary for the plaintiff to bring a suit claiming relief against all the defendants jointly and as a notice u/s 80, Civil P. C., was given to one of the defendants, the period of notice should be excluded in computing the limitation for the suit not merely so far as the defendant to whom notice was given is concerned but also so far as the other defendants were concerned.

19. The principle deducible from the aforesaid rulings and the rulings relied upon on behalf of the appellant is that if a plaintiff *prima facie* has cause of action against the defendant to whom notice has been given the period of notice should be excluded in computing the period of limitation. But if it be otherwise and even *prima facie* there is no cause of action against the defendant to whom statutory notice has been given the period of notice should not be excluded in computing the period of limitation prescribed for the suit.

Applying the aforesaid test to the instant case one finds that the bridge belonged to Government and was under the charge of the Public Works Department. A contract for its widening and repairs had been given to the appellant. Normally respondents Nos. 1 and 2 could not have been aware of the terms of the contract and there is nothing to show that they were aware of the terms of contract and they might reasonably have believed that the Union of India was also answerable, for the damage occasioned by the death of their son. On a perusal of the notice u/s 80, Civil P. C., or of the plaint it could not be said that

respondents Nos. 1 and 2 did not even prima facie have a cause of action against the Union of India. Thus the rulings cited on behalf of the appellant were distinguishable on facts.

20. After the close of the argument on the part of respondents Nos. 1 and 2 the learned counsel for the appellant wanted to argue that the notice u/s 80, Civil P. C., served at the instance of respondents Nos. 1 and 2 and the other plaintiffs was not in accordance with law but for reasons assigned in the order dated 22-9-1962 he was not allowed to advance that argument. I have, however, for my own satisfaction looked into the validity of the aforesaid objection. The notice u/s 80, Civil P. C., issued to respondent No. 3 was sought to be served through the P. W. D. Secretary, New Delhi. It was contended in the Court below that the aforesaid notice should have been served through the Secretary, Ministry of Home Affairs.

The aforesaid contention was repelled by the learned Subordinate Judge on the grounds that Section 80(a), Civil P. C., required that in the case of a suit against the Central Government except where it related to a railway, notice should be served on a Secretary to that Government and as the case had arisen as a result of the tilting of the bridge the notice u/s 80, Civil P. C., was properly sought to be served on respondent No. 3 through the Secretary P. W. D. A notice u/s 80, Civil P. C., was also served on the Collector of district Mandi. The reasons assigned by the learned Court below for holding that the notice u/s 80, Civil P. C., was not defective were quite sound. The notice was thus in accordance with law and the period of notice was thus liable to be excluded in the computation of the period of limitation prescribed for the suit. The question is answered in the negative.

21. Question No. 3 : (His Lordship went through the evidence on this point and proceeded :)

In view of the overwhelming evidence on the record, I affirm the finding recorded by the learned Subordinate Judge. The question is answered against the appellant.

22. Question No. 4. (His Lordship examined the evidence and proceeded :)

The finding recorded by the learned Subordinate Judge on the question under consideration must, therefore, be affirmed.

23. Question No. 5 : Before I proceed to discuss the points at which the parties are at issue, the defence case as disclosed in the evidence may with advantage be stated as the written-statement filed by the appellant was quite vague on the question under consideration.

That case was as below: Prior to the day on which the incident occurred the whole of the galvanised iron rope (which was to be cut into two portions to supplement the extant ropes on each side of the bridge) had been placed along side the extant ropes on the upstream side of the bridge i.e. on the left side as one would proceed from Debar side to Bilaspur. One end of the rope (i. e. on the

Bilaspur side) was fastened to the existing ropes with a clamp. On the other side the end was fastened to the existing ropes with an ordinary (Kucha) wire (according to Ghantu Ram (D. W. 1) and Churu (D. W. 2) and was not at all fastened to the existing ropes according to Shankar (D, W. 3). The Debar side end of the new rope fell down in the river. It is alleged that some one unfastened the knot on the Debar side but no direct evidence has been led on that point. The river was in spate and the current was swift and the suggestion is that as a result of the impact of the water on the rope the bridge tilted.

Neither Shri R. D. Jain, then an Overseer in the Himachal Pradesh P. W. D. nor any other witness examined on behalf of the defence made a definite statement as to how the bridge tilted. Churu (D. W. 2) has stated that after the rope had fallen down and water was lashing it he had during the leisure period--which used to be from 12 noon to 2 P. M.--told two or three boys including the deceased who were on the Bilaspur side and were to cross the bridge that water was" dashing against the rope and they should not go over the bridge but they did not pay any heed to that and went over the bridge and shortly afterwards the bridge tilted. It has not been disputed in the course of the defence evidence that no red flag or board cautioning the passersby not to pass over the bridge had been put up.

24. The case of the respondents, it may be recalled, was that the ropes had been loosened and even though the river was in spate no precaution was taken to warn the people not to use the bridge.

25. The relevant portion of Section 1A of the Fatal Accidents Act, 1855, reads as below:

"Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof....."

26. The main question that calls for determination is as to whether the tilting of the bridge was due to any wrongful act, neglect or default on the part of the appellant or of the labourers employed by him and in that connection reference may first be made to the statements made by the witnesses for the respondents. It has already been seen that Tawarsu (P. W. 5) and Sunder (P. W. 6) were employed by the appellant as labourers and on the day of the incident were working at the bridge. Tawarsu has stated that the nuts had been oiled and the new rope had been placed on the old ropes and on account of the weight of the new rope the nuts got loosened and bridge tilted down. Sunder (P. W. 6) has stated that the ropes became loose and the bridge collapsed. Madan Lal (P. W. 12), Batan Singh (P. W. 13) and Gopalu (P. W. 15) have stated that on the day of the incident they had occasion to pass over the bridge prior to the incident and they saw the labourers removing the lead which had accumulated on the ropes.

27. It will have been noticed that neither Tawarsu nor Sunder stated that the

existing ropes had been loosened. The former merely stated that the nuts had been oiled but that by itself cannot lead to the conclusion that the existing ropes had been loosened. What Sunder stated was that the existing ropes had become loose. He did not state that they had been loosened. Neither Tawarsu nor Sunder corroborated the statement made by Madan Lal, Batan Singh and Gopalu that the accumulated lead was removed and I find it rather difficult to accept the statement made by the aforesaid three witnesses.

The defence case was that for, the execution of the work assigned to the appellant under the contract it was not necessary to loosen the existing ropes and I find it rather difficult to accept the plaint allegation that the existing ropes had been loosened. I am, however, in agreement with the finding recorded by the learned Subordinate Judge that the evidence adduced on behalf of the appellant indicated that there was neglect of duty on the part of the labourers employed by the appellant. "Negligence", according to Alderson B.,

"is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do" vide *Blyth v. Birmingham Waterworks Co.*, (1856) 11 Ex 781 at page 784. It was an act of negligence on the part of the labourers to fasten one end of the new rope with Kucha wire and to leave it unguarded. A reasonable and prudent man should have foreseen that the knot might become loose or be unfastened by some one and as a result of such loosening or unfastening the rope will fall down in the river and cause damage to the bridge and the users thereof. No direct evidence has been led on behalf of the appellant in proof of the allegation that some one had unfastened the knot. Even if it be assumed that it was so it would not bring about a break in the chain of causation. A nova causa interveniens does not necessarily have the effect of making the consequence too remote.

In some cases the law imposes a duty to take care that harm shall not be caused by the act of a third party. In such cases if harm is caused by a third party's act the damage is imputable to the person who has failed in the duty of care. The basis of liability in such a case seems to be that the defendant by his negligence, provided an opportunity for another to cause harm. The whole question, as was observed in the case of *Hadley v. Baxendale*, (1854) 9 Ex. 341 would be whether the accident could be said to be the natural and probable result of the breach of duty.

Even though it may not be quite apposite, reference may usefully be made to the leading case of *Scott v. Shepherd*, (1773) 2 Wm. Bl. 892. Its facts were as below: The defendant threw a lighted squib into the market house at Milborne Port on a fair day. The squib fell upon the stall of Yates who sold ginger bread, one Willis in order to prevent injury to himself and the goods of Yates, instantly picked up the squib and threw it across the market place; it landed upon the stall of one Ryal who in his turn threw the squib to another part of the market house. On this occasion the squib burst in the plaintiff's face and destroyed one of his

eyes. It was held that the defendant was responsible for the damage caused¹ to the plaintiff.

28. The matter, however, does not rest at this only. It appears from the statement made by Churu that the new rope had fallen down into the river and water was dashing against it before 2 or 3 boys including the deceased went over the bridge. He has stated that he asked those boys not to go over the bridge but they did not pay any heed. That allegation did not carry conviction with the learned Subordinate Judge and in my opinion rightly. It does not find place in the written-statement either directly or indirectly. Indeed there is not even a vague suggestion in the written-statement that the deceased was guilty of contributory negligence. It is quite permissible for a Court of law to accept one part of the statement made by a witness and reject the other. It was the clearest duty of Churu to have closed the bridge to traffic as soon as he noticed that the new rope had fallen down and the river water was dashing against it with force and velocity.

29. It has been urged on behalf of the appellant that under the terms of the contract the bridge was to be kept open to traffic and as such it could not be closed. The contention has to be heard only to be rejected. It could not have been the intent underlying the agreement that the bridge should be kept open to traffic even though it had become dangerous for people to pass over it. The deceased was not a party to the aforesaid contract and in any case the aforesaid plea could not be put forward in answer to a claim for damages like the present.

30. It was argued on behalf of the appellant that the onus of proving neglect of duty rested on the shoulders of respondents Nos. 1 and 2 and MO advantage could be taken of the facts and circumstances disclosed in the defence evidence. The contention is barren of substance. A presumption of negligence is drawn even from the accident itself and it is futile to argue that an inference of negligence cannot be drawn on the basis of the defence evidence. In the case of Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, it was held that the events that happened told their story and there was a presumption that the accident was caused by the negligence of the driver.

31. It was further argued on behalf of the appellant that he had not authorised his labourers to place the new rope along side the old ropes and as such no liability could be fastened on him for an act of negligence, if any, on the part of the labourers. It is firmly established that a master is liable for an act of negligence committed by his servant in the course of employment. A negligent mode of doing an act within the scope and course of employment of a servant fastens liability on both the servant and the master.

In the case of Canadian Pacific Railway Co. v. Leonard Lockhart AIR 1943 PC 63, S was employed as a carpenter and general handman by the defendant Railway company. In the course of his employment S was required to make repairs of various kinds to employers' property. He had made a key for use in a lock in a

station at N far away from his headquarters at W. He was paid per hour and the Railway company had kept vehicles to be used by S available for him. S, however, had a motor car of his own and without communicating his intention to use it to his foreman he used it on his way to N. An accident happened on the way owing to S's negligence. Prior to the accident the Railway company had issued notices to its servants and particularly to 9 warning them against using their private cars unless they had got their cars insured against third parties risks. It was held that the means of transport used by S on these occasions was clearly incidental to the execution of that which he was employed to do. He was not employed to drive a car but he was entitled to use that means of transport as incidental to execution of that which he was employed to do, provided that the motor car was insured against third parties risks. If the prohibition had absolutely forbidden the servant to drive the car in the course of his employment it might well have been maintained that he was employed to do carpentary work and not to drive a motor car and that therefore the driving of the motor car was outside the scope of his employment. It was not the acting of the driver that was prohibited but the non insurance of the motor car. The breach of the prohibition, therefore, did not exclude the liability of the master to third parties. In the course of the judgment it was observed that a master is responsible not merely for what he authorizes his servant to do, but also for the way in which he does it. If the unauthorized and wrongful act of the servant is not so connected with the authorized act as to be a mode of doing it but is an independent act the master is not responsible; for in such a case the servant is not acting in the course of his employment but has gone outside of it and each case will depend for decision on its own facts.

32. In the instant case the existing galvanised ropes had to be supplemented by one rope on each side. The placing of the new rope along side the existing ropes was an act in the course of employment and any negligence on the part of the servant, in placing it would visit not only the servant but also the master with liability for any damage which may be the direct consequence of the negligent act.

33. On behalf of the appellant reliance was placed upon the case of Madras and Southern Maratha Railway Co. Ltd. Vs. Jayammal, In that case a young girl of 7 years entered the railway line through a wicket gate which had been left open and through which people used to pass and cross the railway line to the knowledge of the Railway authorities was run over by a railway engine. It was held that she was only a licensee if not a trespasser and for damage caused to her by her own negligence the Railway Company was not liable.

Spencer, Offg. C. J., one of the Judges who composed the Bench made the following observations :

"Where a licensee is concerned the owner of the premises is not liable for damage caused by the negligence of the licensee provided that he does not place any trap in the way of those who come upon his premises. Leaving a wicket gate

on a railway line unlocked is not an invitation to people wanting to go to the other side of the line to take the short cut instead of crossing by the level crossings".

34. The aforesaid case is distinguishable from the instant case inasmuch as unlike the wicket gate the bridge was for the use of the public.

35. Another case on which reliance has been placed on behalf of the appellant is "Mt. Sultan Bi v. Nandlal Suganchand AIR 1938 Nag 296. In that case the defendants engaged certain persons to cut down a tree situate on their land. The work was done negligently and in consequence a part of the tree fell on the plaintiff's house and injured it. The plaintiff sued for damages he had sustained. The defendants admitted the damage but pleaded that they were not responsible as the persons engaged were experts who had acted as independent contractors. It was held that the defendants were not liable for damages. The aforesaid case is clearly, distinguishable from the instant case and is not an authority for the proposition that a master is not vicariously liable for the tortious act committed by his servant. It would of course be different if the tortious act were committed by an independent contractor. It is not the case of the appellant that the labourers who were employed by him for effecting repairs to the bridge were independent contractors.

36. It only remains to consider the argument advanced on behalf of the appellant that no liability could be fastened on him as the labourers who might have been negligent were not parties to the case. Joint wrongdoers are jointly and severally responsible for the whole damage. The person may sue any one of them separately for the full amount of loss or he may sue all of them jointly in the same action and even in the latter case the judgment so obtained against all of them may be executed in full against any one of them vide Vanguard Fire and General Insurance Co. Ltd. Vs. Sarla Devi and Others,

37. I, therefore, hold that the deceased was not guilty of contributory negligence and that the appellant was vicariously liable for the loss, if any, occasioned as a result of negligence on the part of the appellant's labourers. The question is answered accordingly.

38. Questions Nos. 6 and 7 : These questions are interconnected and may well be disposed of together. A portion of Section 1A of the Fatal Accidents Act has been quoted in the earlier portion of this judgment. The remaining portion of it which has a bearing on the questions under consideration runs as below :

"Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased; and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses,

including the cost not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct".

39. It has already been held that the respondents were legally married and that the deceased was their son. In accordance with Section 1A, referred to above, they are entitled to recover damages proportioned to the loss resulting from the death of the deceased to them. In this view of the matter it is not necessary to notice in detail the contention advanced on behalf of the appellant that respondent No. 2 would not have been entitled to maintain the suit in case the deceased was found to be the son of Panchi Ram. Suffice it to say that no authority was cited in support of the contention and on the face of it it lacks merits. Respondent No. 2 would be the mother of the deceased even in that contingency and she would be entitled to claim damages for the loss resulting from the death of her son.

40. The principles governing the assessment of damages in a case under the Fatal Accidents Act are well established and it is not necessary to notice in detail the case law on the point and I will content myself with noticing the recent cases only.

41. In the Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, case supra it was held as below :

"In calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained".

42. In the case of AIR 1959 Punj. 297 case supra, the following observations were made :

"There is no quantitative scale of computing compensation for damages resulting from death and Courts of law must in the circumstances of each case exercise their discretion to arrive at a reasonable and fair figure. This task of the Court is to estimate as best it can a capital sum which will represent a fair compensation for the loss of the actual pecuniary benefit which the dependants might reasonably have expected to enjoy if the deceased had not been killed."

43. In Dr. Ram Saran and Another Vs. Shrimati Shakuntala Rai and Others, it was held that the pecuniary loss suffered by the widow and the minor children of the deceased may legitimately include reasonable expectation of pecuniary benefit in the future.

44. In *K.M. Krishna Gounder Vs. P.N. Narasingam Pillai and Others*, the following observations were made :

"In awarding damages for accident under the-head of loss of expectation of life, the tender age of the victim is not the only basis. Several factors like the prospect of a predominantly happy life, the ups and downs of life, its pains and sorrows as well as its joys and pleasures--all that makes up "life"s fitful fever have to be allowed for in the estimate".

45. In the case of *Mt. Manjulagoari v. Gowardhandas Harjiwandas*, (S) AIR 1956 Nag 86 the following observations were made :

"It is not a condition precedent to the maintenance of an action under the Act (Fatal Accidents Act) for damages proportionate to the loss resulting to the claimants that the deceased should have been actually earning money or money"s worth or contributing to the support of the plaintiff at or before the date of death, provided that the plaintiff had a reasonable expectation of pecuniary benefit from the continuance of the life."

46. It will have been noticed that according to the aforesaid cases the expectation of the accrual of benefit in future is a relevant consideration and that a claim for compensation cannot be thrown out merely because the deceased was not earning any money at the time of the death.

47. On behalf of the appellant reliance has been placed upon the case of "the Secretary of State v. Gopal Singh, 112 Pun Re 1913 p. 434 in support of the contention that a reasonable expectation of pecuniary benefit from the continued life of the deceased cannot be based on mere speculation in the future and with reference to that case suffice it to say that the proposition of law laid down therein has not been followed even by the Punjab High Court in subsequent cases, e. g., the case of *Dr. Ram Saran and Another Vs. Shrimati Shakuntala Rai and Others*,

48. There is overwhelming and reliable evidence in support of the allegation that the deceased was a student of 9th class at the time of the accident, was good at studies, had a good physique and bore a good character and was a promising boy vide the statements made by Dhian Singh (P. W. 9), teacher in the Sundernagar school, Brij Lal (P. W. 10), teacher in the Dehar school, Cha-ranji Lal (P. W. 20), Headmaster Dehar school, Tapaswi Ram (P. W. 17), President of Dehar Panchayat and Congress Committee, Jiwanu Ram (P. W. 16), Vice-President of Dehar Panchayat and Dehar Congress Committee, Gopalu Ram (P. W. 15), Member Dehar Panchayat. It is also in evidence that in his spare hours the deceased used to help his father in running the tea stall and augment the daily income by a sum varying from Rs. 1/- to Rs. 2/8/- per day. The case of the respondents is that they intended to educate the deceased upto B. A. There can, however, be no doubt that the deceased would have been educated upto the matriculation standard and in all probability would have been successful at the examination. His age at the time of the accident was about 16 or 17 years. The

learned Subordinate Judge estimated that if the deceased had not died as a result of the accident his parents would have derived from him pecuniary benefit to the tune of Rs. 40/- p. m. for a period of 16 years and keeping in view the principles governing the assessment of compensation in such cases no legitimate exception can be taken against that estimate. The finding recorded by him as to the quantum of damages is confirmed and the questions are answered against the appellant.

49. In conclusion, the appeal fails and is hereby dismissed with costs.