

(1975) 01 AP CK 0013

In the Andhra Pradesh High Court

Case No : A.A.O. No's. 86 and 251 of 1972

K. Narayana Reddiar

APPELLANT

Vs

P. Venugopala Reddiar

RESPONDENT

Date of Decision : 16-01-1975

Acts Referred:

Fatal Accidents Act, 1855 — Section 1
Motor Vehicles Act, 1939 — Section 110

Citation : AIR 1976 AP 184

Hon'ble Judges : Madhava Rao, J; Alladi Kuppuswami, J

Bench : Division Bench

Advocate : R. Venugopala Reddy, for the Appellant; B. Srinivasa Rao, for the Respondent

Judgement

Alladi Kuppuswami, J.—Kamalammal was one of the passengers travelling in the bus APC 4347 which was proceeding from Kona Road to Tirupati on the 8th February 1969. The bus met with an accident to the breakage of the front left stub axle, and Kamalammal sustained severe injuries. She was taken to the hospital at Tirupati where she succumbed to the injuries. Her husband filed an application u/s 110-A of the Motor Vehicles Act before the Motor Accidents Claims Tribunal (District Judge), Chittoor, on behalf of himself and his children, namely two sons and four daughters claiming a compensation of Rs.50,000. In the petition he alleged that owing to rash and negligent driving, the front left stub axle broke, resulting in the accident, and he and his children were entitled to compensation for the death of his wife in the accident. The owner of the vehicle filed a counter denying that there was any rash and negligent driving of the bus. He contended that the accident was due to the sudden and unexpected breakage of the front left stub axle which could not be avoided by any amount of care. The accident was due to reasons beyond anybody's control and was not due to rashness or negligence on the part of the driver. He further, contended that the deceased was herself unhealthy and sickly and the death was due to that and not due to the seriousness of the injuries caused. It was further stated that the claim

of Rupees 50,000/- as compensation was excessive.

2. The bus was insured with the Madras Motor and General Insurance Company Limited. The insurance company also resisted the claim and further contended that in any event their liability would be limited to a sum of Rupees 2,000/- having regard to the terms of the contract of insurance.

3. The tribunal held that the accident was due to the negligence of the driver and the claimant was entitled to compensation. It fixed the compensation at Rs.10,000/- made up of Rs.4,000/- payable to the claimant for the loss of consortium and Rs.6,000/- payable to the claimant and his children for pecuniary loss suffered by them due to the death of Kamalammal. It however held that the liability of the Insurance Company was limited to Rs.2,000/- according to the contract of insurance. In the result, the tribunal directed that the owner of the vehicle should pay Rs.8,000/- and the Insurance Company should pay Rs.2,000/- with interest at 5 1/2% p.a. from the date of the order. The owner of the vehicle has preferred C.M.A. No. 86 of 1972 against the said order and the claimant has preferred an independent appeal. C.M.A. No. 251 of 1972. In C.M.A. No. 86 of 1972 the appellant contends that the findings of the tribunal that the accident was due to the negligence on the part of the driver is incorrect. The appellant also questioned the reasonableness of the amount of compensation awarded. In C.M.A. No. 251 of 1972 the claimant urges that the tribunal ought to have awarded the entire amount of Rs.50,000/- claimed as compensation. The appeals have been heard together and are disposed of by this common judgment.

4. The array of parties is referred to as in C.M.A. No. 86 of 1972.

5. It is submitted that the front left stub axle suddenly broke resulting in the accident. In the counter to the petition before the Tribunal it was sought to be contended that Kamalammal did not die as a result of accident but the death was due to the fact that she was already sick and unhealthy. We have no hesitation in rejecting this contention in view of the evidence of the doctor, P.W. 1 who examined the dead-body of Kamalammal. He stated that she was otherwise quite hale and healthy and during the post-mortem examination he could not find that she was suffering from any disease. Except the averments in the counter there is absolutely no evidence that Kamalammal was suffering from any disease. There is absolutely no doubt that the death was the direct result of the accident.

6. The further contention on behalf of the appellant who is the owner of the vehicle is that the breakage of stub axle cannot be attributed to any negligence in maintaining the vehicle or due to any rashness or negligence in driving the vehicle. It was submitted that it was either due to a manufacturing defect or it was, at any rate, an inevitable accident which could not be foreseen and which could not be attributed to any negligence on the part of the owner or the driver. The Motor Vehicles Inspector was examined as P.W. 3. He stated that the accident took place because the front left stub axle was broken. Though in the cross-examination he did not refer to any defect in the manufacture of the stub

axle, he stated in the cross-examination (sic) that the failure of the stub axle was due to manufacturer's defect. He could see blow holes in the casting of stub axis. He stated that the vehicle was involved in an accident on 21-1-1969 due to over speed, that he cancelled the fitness certificate and again after inspection gave the fitness certificate and that at that time he examined all the parts and submitted a report. Ex. A-8 about the appearance of the air holes and did not say in that report that the defect was a manufacturer's defect. It is also to be seen that the broken stub axle was not preserved or produced before the Court. If really the breakage was due to the manufacturer's defect, the owner would have complained to the manufacturer, namely Ashok Leyland, but no such complaint was made. P.W. 3 submitted that the stub axle can also be broken if it comes into contact with a hard object but stated that it will not break if the vehicle is merely run with speed on a road having pits unless there is a manufacturer's defect.

7. The Chief Metallurgist of Ashok Leyland Company was also examined by the complainant as P.W. 7. He stated that the stub axle is forged out of steel billet by their sub-contractors and machine tested and released for sale by the company. The company did not receive any complaint by way of manufacturer's defect till now. He stated that stub axle will break due to improper maintenance, overloading the vehicle and finally under fatigue.

8. Having regard to the evidence of P.W. 7 taken along with the circumstances that no complaint was made to the manufacturer about any defect in the stub axle after the accident, that the broken stub axle was not preserved and produced and that when P.W. 3 gave a fitness certificate on an earlier occasion he did not note any defect in the stub axle by way of presence of air holes etc. We are unable to accept the contention of the appellant that the breakage was due to any defect in manufacture.

9. The next question for consideration is whether the breakage is due to any negligence on the part of the owner or the driver. It is contented on behalf of the claimant that once we arrive at the conclusion that there was no defect in the manufacture of the stub axle it would follow that the accident was due to the negligence of the owner or the driver having regard to the principle *Res Ipsa Loquitur* in the absence of any other explanation on the part of the appellant. It was submitted that as the vehicle was under the sole control of the appellant and its driver and as the accident admittedly took place due to the breakage of the stub axle and as there is no other explanation for that breakage it has to be concluded that the breakage of the axle was due to the negligence of the appellant and the driver.

10. The classic statement of the circumstances in which the doctrine of *Res Ipsa Loquitur* is involved is that of Erle, C.J. in *Scott v. London & St. Katherine Docks* (1865) 3 H & C 596.

"There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident

is such as in the ordinary course of things does not happen if those who have to management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants that the accident arose for want of care."

This rule is no more than a rule of evidence and states no principles of law. As Morris L.J. observed in *Roe v. M.O.H.* 2 QB 66; this convenient and succinct formula possesses no magic qualities, nor has it any added virtue other than that of brevity merely because it is expressed in Latin. In a recent decision the Supreme Court pointed out that this principle cannot be safely applied where the facts before the Court are not whole facts. It was further pointed out that it is not a principle which dispenses with proof of negligence. Further it shifts the onus from one party to another. It is a rule of evidence and not of liability. (Vide *State of Punjab Vs. Modern Cultivators, Ladwa*,). In *Duncan v. Cammel Laird & Co. Ltd.* 1946 AC 401 it was held that the principle only shifts the onus of proof, in that a prima facie case is assumed to be made out, throwing on the defendant the task of proving that he was not negligent. This does not mean that he must prove how and why the accident happened. It is sufficient if he satisfied the Court that he personally was not negligent. Applying the principles enunciated in the above decisions to the present case it is seen that the vehicle was in the complete control of the appellant and as the accident of this nature does not happen in the ordinary course, it affords reasonable evidence in the absence of explanation by the defendant that it arose for want of care. The appellant herein sought to explain it by stating that the defect was due to manufacture, but as we have already observed that explanation cannot be accepted. Hence having regard to the principle of the *Res Ipsa Loquitur* it would follow that the accident was due to the negligence of the appellant or his driver.

11. It would have been sufficient for the claimant to have relied upon this doctrine, but having regard to warning expressed by Supreme Court in *State of Punjab Vs. Modern Cultivators, Ladwa*, that principle should not be indiscriminately applied, we do not wish to rest our decision merely on the appreciation of the doctrine. We proceed to consider the evidence adduced in this case which is sufficient to show that the breakage of the axle was a result of the negligence on the part of the appellant and his driver.

12. P.W. 7 the Chief Metallurgist deposed that the stub axle will break due to improper maintenance, overloading the vehicle and finally under fatigue. In this case there is evidence to show that the bus was overloaded at the time of the accident. It appears from the evidence that the next day after the accident Smt. Indira Gandhi was visiting Tirupati and therefore, there was a rush of visitors to that place. Consequently, the bus was overloaded with too many passengers. There is also further evidence that considerable quantity of tamarind was taken in the bus.

13. P.W. 5, one of the passengers who travelled that day deposed that the bus was stopped for 15 minutes at Chinnagottigallu for loading some tamarind on the top of the bus. She also stated that the bus was overloaded and there were some

standing passengers. She herself was travelling with three children and paid fare only for one child who was standing. It was suggested to her that she did not travel in the bus and that she was deposing falsely. She denied the suggestion. P.W. 6 is another passenger. He also deposed that the bus was overloaded and there were 15 or 20 persons beyond the seating capacity. He denied the suggestion that he did not travel by that bus. P.W. 9 is a merchant whose tamarind was carried in that bus on that day. He stated that he had 7 bags of tamarind with him, each bag weighed 70 Kgs and they were put on the top of the bus. He also stated that the bus was overloaded and there were 15 or 20 excess passengers. In cross-examination he admitted that he had receipt for purchase of tamarind. Though he paid Rs.1-50 per bag he did not possess luggage ticket. He stated that by the time the bus reached Chinnagottigallu there were 5 or 6 passengers in excess. There a number of passengers got into the bus. There is no reason why these persons should depose falsely against the appellant. The mere fact that P.W. 9 did not possess the luggage receipt or did not produce a receipt for the purchase of tamarind is no ground for discrediting his evidence. We are of the view that the evidence referred to above is sufficient to hold that the bus was carrying 15 or 20 excess passengers and also that it carried about 7 bags of tamarind each weighing 70 Kgs.

14. Sri Venugopal Reddy contented that even assuming that the bus carried some excess passengers and also large quantity of tamarind, it does not follow that the bus was overloaded to such an extent that it would have caused breakage of the axle. He drew our attention to the evidence of R.W. 1 the Superintendent of Claims of the Insurance Company who deposed that a Leyland Lorry can carry roughly 15 tons (5 tons weight of lorry and 10 tons weight of load) and the weight of Leyland bus with full capacity will be 9 tons. He submitted there is evidence to show that the bus carried load in excess of the load which it could carry and therefore it cannot be stated categorically that the breakage of the axle was due to overloading. The proper permissible weight which the bus could carry the actual number of passengers that travelled and the approximate weight of the passengers and the articles carried by the bus are matters which are peculiarly within the knowledge of the owner of the bus. He has not chosen to place any evidence with regard to the same. The Conductor of the bus would have been a material witness but he has not been examined. He would have been of assistance to the Court not only on the above matter but even the question whether some of the persons who deposed actually travelled in the bus or not. Instead of examining the conductor the appellant chose merely to make suggestions to the witnesses concerned which they denied. In these circumstances we have to proceed only on the evidence of these witnesses and hold that the bus was overloaded and 7 bags of tamarind were carried. In the absence of any other explanation (the explanation that there was manufacturers' defect having been rejected), it is reasonable to conclude that the breakage of the stub axle was due to overloading of the bus. It is therefore, established that the accident was due to the negligence of the owner and his driver in overloading

the bus.

15. Some evidence was also let in to show that the bus was going at high speed. But having gone through the evidence we are unable to say that is established that the bus was going at an unreasonable speed. Further, it has also been brought out in the evidence that going at speed will not result in the breakage of axle. Hence, it is not quite relevant to consider whether the bus was going at a high speed or not.

16. In the view we have taken it is also unnecessary for us to consider whether breakage of the stub axle was due to the improper maintenance of the bus by the owner.

17. We agree with the tribunal that the accident which occurred due to the breakage of the stub axle was due to the negligence of the owner of the bus and his driver.

18. The next point that has to be considered is whether the compensation that has been awarded by the tribunal is proper. The Tribunal has awarded Rupees 4,000/- towards loss of consortium and another sum of Rs.6,000/- as reasonable compensation. Though it is not stated in the order under appeal as to what the sum represents, having regard to the discussion in paragraph 17 of the order, it would appear that this sum was given as compensation to the husband and the children for the pecuniary loss suffered by them due to the death of Kamalammal.

19. Sri Venugopal Reddy, learned counsel for the appellant contends that as the deceased is a woman and as admittedly she was doing only household duties and was not an earning member of the family, no pecuniary loss was suffered by the other members of the family by reason of her death and so damages cannot be awarded under this head. He further, contended that the husband is not entitled to damages for loss of consortium if the wife dies, either under the ordinary law of tort or even under the statute law, namely, the Fatal Accidents Act.

20. Before dealing with these submissions it is necessary to deal with the liability of a person in tort for the death of another, caused by the negligence of the former. Under the English common law, the general rule, applicable to torts is that a personal action dies with the person--*Actio Personalis Moritur Cum Persona*. No executor, administrator or a legal representative could sue or be sued for any tort committed against or by the deceased in his lifetime. In the words of Viscount Simon L.C. this maxim is both obscure in origin and inaccurate in expression. Anyhow, this common law rule was in effect swept away by the Law Reforms (Miscellaneous Provisions) Act, 1934 which provided, subject to important exceptions, that on the death of any person, all causes of action vested in him shall survive for the benefit of his estate. Accordingly if an individual is injured by accident due to the negligence of another person, the claim for damages does not abate at his death, but survives for the benefit of his estate and can be enforced in an action brought by his personal representative.

21. Similarly, the representative of the deceased could not under the common law sue in their own right for loss resultant to them from his death. This was the rule propounded by Lord Earl Loreburn in *Baker v. Bolton* (1808) 1 Camp 493. This was based not on the principle *Actio Personalis Moritur Cum Persona* but on the principle that in a civil Court the death of a human being could not be complained as an injury. This rule was upheld in subsequent cases. A determined attempt was made before the House of Lords in *Admiralty Commissioners v. S.S. Amerika* 1917 AC 38 to depart from this rule. But the House of Lords after a review of the cases came to the conclusion that there was no reason to disturb the rule of law which had been so long recognised in the English Courts, though it may appear anomalous to the scientific jurist.

22. This rule has however, been greatly modified by the Fatal Accidents Act of 1846 which provided that whenever the death of a person is caused by the wrongful act, neglect or default of another, such as would (if death had not ensued) have entitled the injured person to sue and recover damages in respect thereof, then the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount to a felony. Though the Act is silent as to what is recoverable, it has been held that under this Act the damages must be awarded with reference to a reasonable expectation of pecuniary benefit which would result from the continuance of the life. The relations can recover nothing in the nature of solatium for mental suffering and anguish for the loss of the deceased.

22. As a well known subject to certain exceptions, the law of tort as administered in India is the same as the law of tort in England. Hence the position in India at first was the same as the ordinary law of tort in England. Subsequently, as in England the law was modified by the Fatal Accidents Act (1855). Section 1-A of the Fatal Accidents Act is in the same terms as the provisions of the Fatal Accidents Act in England. Section 2 of the Act corresponds to the Law of Reforms (Miscellaneous Provisions) Act in England. The damages to be awarded to the relations of the deceased are therefore, governed by Section 1-A of the Fatal Accidents Act and the damages awarded to the estate of the deceased are governed by Section 2. As far as the estate of the deceased is concerned under the corresponding provisions of the Law Reforms (Miscellaneous Provisions) Act, it has been held that the personal representative is entitled to damages for loss of expectation of the life of the deceased. In *Flint v. Lovell* (1935) 1 KB 354 the Court of Appeal recognised the validity of a claim made by a living person, for damages in respect of prospective shortening of his own life due to the defendant's negligence. This decision was approved by the House of Lords in *Rose v. Ford* (1937) AC 826. This latter case arose out of an accident, which terminated fatally, after the commencement of Law Reforms (Miscellaneous Provisions) Act. It was held that the element of damages which is often described as "loss of expectation of life could not be confined to the case where the injured person was alive at the date of the action, but must be equally admissible if the

action is brought by his personal representatives. In *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, it was pointed that u/s 1-A of the Fatal Accidents Act damages are made payable to the relations enumerated therein; whereas Section 2 provides for the recoupment of any pecuniary loss to the estate of the deceased.

24. In the case no claim for damages was made on behalf of the estate of the deceased and it is therefore not necessary to consider the quantum of damages, if any, that would have been awarded under this head. As has been already observed, damages are claimed firstly for pecuniary loss suffered by the relations due to the death of the person injured and secondly by the husband for the loss of consortium.

25. Dealing with the first item, it is seen that such a claim is justified by reason of Section 1-A of the Fatal Accidents Act. Sri Venugopal Reddy, however, argued that in fact, having regard to the circumstances of the case, the relations did not suffer any pecuniary loss by the death of Kamalammal. He contented that Kamalammal was an ordinary housewife and was not an earning member. Therefore, by her death it cannot be said that her relations suffered any pecuniary loss. We are unable to agree with this contention.

26. In order that there may be a reasonable expectation of pecuniary benefit, it is not necessary that the relations should have been supported by the deceased or should have a legal claim to be supported by the deceased. It is not necessary that the deceased should have been earning anything. In *Berry v. Humm and Co.* (1915) 1 KB 627 the plaintiff's wife was knocked down by a motor taxi-cab and instantly killed. The wife had performed the ordinary household duties of a woman in her position and in consequence of her death the plaintiff had to employ a housekeeper and to incur extra expenses of management by the housekeeper instead of by his deceased wife. It was held that under the Fatal Accidents Act, the damages recoverable in such an action are not limited to the value of money lost, or the money value of things lost, but included the monetary loss incurred by replacing the services rendered gratuitously by the deceased where there was a reasonable prospect of their being rendered freely in future but for the death. The position in this case is practically the same as in the above case. The husband has deposed that he was constrained to engage a cook at Rs.80 P.M. with free boarding and lodging. He and his children are therefore, suffering the loss of pecuniary benefit by the death of his wife. In *Abdulkader v. Kashinath* AIR 1966 Bom 267 also it was held that a husband is entitled to compensation representing the money value for the services which his wife rendered and in order to obtain which he has to engage servants though in that particular case having regard to the facts of that case, no damages were awarded under that head.

27. Before computing damages under this head it has also to be remembered that the pecuniary loss can be ascertained only by balancing the loss on one hand to the claimants of the future pecuniary benefit, with any pecuniary

advantage which comes to them by reason of the death. In other words, the balance of loss and gain by the dependent by the death must be ascertained. In *Abdulkadar Ebrahim Sura and Another Vs. Kashinath Moreshwar Chandani and Others*, it was found that though on the death of his wife the husband had to engage servants, it was in evidence that he was spending about Rs. 50/- or Rs.60/- on the clothes of the deceased and about Rs.100/- for her food. Taking into account the fact that he need not incur this expenditure on account of the death of his wife it was held that the Court below was right in declining to give any damages.

28. In this case therefore, we have to take into account also what the husband would have spent on the wife if she had been alive. There can be no doubt that he would have spent some amount on her clothes. As far as food is concerned, in his evidence he says that he has to provide also free boarding and lodging for the cook. Deducting the sum which the husband would have to spend for the clothes and other necessities for his wife, Rs. 50/- per month may be regarded as a reasonable additional expenditure which he is incurring on the cook whom he has engaged in the place of his wife. Taking that figure into account and having regard to the fact that the wife was aged about 50 years on the date of her death, it cannot be said that Rs.6,000/- which was fixed by the Tribunal under this head (which would be roughly equivalent to the amount to be spent by him for a period of about ten years at Rs.600/- p.a.) is in any way unreasonable. No doubt, the tribunal directed that this amount has to be paid to the husband and the children. We do not see how the learned Judge held that the married daughters will be entitled to this amount. But the husband has not questioned the direction that this amount should be for the benefit of himself and the other children. We therefore, see no reason to interfere with the findings of the Court below that Rs.6,000/- is a proper amount to be paid as damages under this head though as we have observed earlier the Court below had not expressly stated under what head this amount is being awarded and has not given adequate reasons as to how it has arrived at this figure.

29. Sri Venugopal Reddy further contended that under the ordinary law of Tort, a person is not entitled to damages for loss of consortium, if the wife dies as a result of a tort, though he is entitled to such sum if the wife is injured and he is unable to have her society as result thereof. The position is the same according to him under the Fatal Accidents Act. In *Abdulkadar Ebrahim Sura and Another Vs. Kashinath Moreshwar Chandani and Others*, however, it was held that under the Fatal Accidents Act, a husband is entitled to damages for the loss of consortium also. While pointing out that under the common law he could not claim damages on this ground if death ensued, the learned Judges pointed out that the common law was modified by the Fatal Accidents Act. The section as worded clearly entitled all those for whose benefit the action is brought to an award of damages for the injury suffered by any one of the claimants. The word "injury" is a word of large import and cannot be restricted to mean monetary injury only. If this is so, apart from claiming monetary damages that the claimant

has suffered, the claimant would also be entitled to compensation in respect of any other injury suffered and one of the head of such injury would be the loss of society of the deceased. We are inclined to take the same view and to hold that under Fatal Accidents Act, the husband would be entitled to damages for loss of consortium also even though under common law he may not be entitled to damages under this head if death ensues. In *Oriental Fire & General Insurance Co., v. Chuni Lal* 1969 ACJ 237 compensation was awarded for loss of consortium though there is no discussion or decision on the question whether such compensation can be awarded. It was however pointed out that in *Municipal Corporation, Delhi Vs. Sobhag Wanti etc.*, no damages was awarded for loss consortium. But in this case it is seen that the learned Judges did not consider whether damages could be awarded under that head or not and there was no decision that damages could not be awarded under that head. We see no reason why having regard to the wide terms used in the Fatal Accidents Act, damages cannot be awarded for the loss of consortium in the case of death of the spouse in the accident.

30. The learned counsel for the respondent contended that even assuming that damages under this head could not be awarded under the Fatal Accidents Act, compensation for loss of consortium can be awarded under the Motor Vehicles Act. He relied on Section 110-B of the Act which provides that the Claims Tribunal shall determine the amount of compensation which appears to it to be just. He therefore submitted firstly that the amount awarded by the Tribunal as compensation is distinct from damages and secondly, the tribunal is entitled to award such compensation which appears to it to be just and so whatever may be position under the ordinary law of tort or under the Fatal Accidents Act, the Tribunal is free to award such compensation which appears to it to be just, untrammelled by the provisions of the Fatal Accidents Act or the ordinary law of tort. He also drew our attention to the fact that the expression which is used in Section 110 which deals with the establishment of Claims Tribunals. Section 110-A which deals with the application for compensation to be made in the case of the accident, as well as Section 110-B which deals with the award of Tribunal, is "compensation" and not "damages". If it appears to be just to the Tribunal to award compensation for the loss consortium, it was free to do so. On the other hand, it was pointed out by Sri Venugopal Reddy that the Tribunal has to apply the ordinary law just like any other Civil Court. In assessing the compensation it has to be guided by the principles which the Civil Court will follow in a similar case. The provisions relating to claims arising out of the accidents involving motor vehicles are only intended for providing an easy and summary remedy for obtaining relief in the case of an accident. Instead of filing a regular suit in a Civil Court, the relations or other persons referred to in Section 110-A are entitled to approach the Tribunal for relief. The substantive law of tort as amended by statute is not altered or intended to be altered by the above provisions of the Motor Vehicles Act. We are inclined to agree with the submission. The object of introducing these provisions was to provide a speedy remedy to accidents

involving motor vehicles. We do not think that the legislature intended that a different law of tort should be applicable to persons injured in motor vehicles accidents from those injured in other accidents. We do not think that it was intended by the use of the expression "compensation" that the persons injured should be entitled to more than damages which they would be entitled under the law of tort. The expression "just" in our view does not have any added significance, as compensation would by itself mean a proper recompense for the injuries. Even without the addition of the word "just" there can be no doubt that the compensation awarded must be what is considered "just" by the Court in the circumstances of the case. The learned counsel for the respondent relied upon the decision in *Ishwar Devi Malik and Others Vs. Union of India and Others*, in which it was observed that the Fatal Accidents Act is a general law providing for compensation to the representatives of a deceased person or to his estate for the loss occasioned by his death as a result of an accident. On the other hand, the Motor Vehicles Act is a special law which by Sections 110 to 110-F provides for adjudication upon claims for compensation in respect of accidents involving the death of, or injury to, persons arising out of the use of motor vehicles. The decisions under the Fatal Accidents Act are not directly applicable to a claim made under the Motor Vehicles Act. The Claims Tribunal is empowered to determine the amount of compensation which appears to it to be just. The word "just" has wider ambit than the word used in Sections 1-A and 2 of the Fatal Accidents Act. The Tribunal need not strictly follow and apply the basis of the assessment of compensation indicated in the various decisions under the Fatal Accidents Act or under English law. It is, however, to be noted, on a perusal of detention, that ultimately compensation was awarded under the head namely compensation for pecuniary or material loss caused by the death of a person. It was stated that this principle provides a sound and reasonable basis in assessing just compensation under the Motor Vehicles Act. The principle enunciated by the Supreme Court in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, which was a case arising out of the Fatal Accidents was applied in this case also. It was observed that no other head of claim was canvassed before them. It is thus seen that the observations that the Tribunal under the Motor Vehicles Act is not bound by the provisions of the Fatal Accidents Act or by the ordinary law of tort are only in the nature of obiter.

31. It is however, unnecessary to consider this question further as we have already held that even under the provisions of the Fatal Accidents Act, the husband is entitled to damages for the loss of consortium. In this case, the Tribunal has fixed damages under this head at Rs.4,000/-. Though the Tribunal has not given any basis for arriving at this amount, it has not been shown as to how this amount is excessive. The wife was aged about 50 years and was said to be hale and healthy. The husband has given his age as 56 years. We cannot say that Rs.4,000/- under this head is excessive so as to require interference in appeal.

32. Sri Venugopal Reddy argued that having given damages under the head of

loss of pecuniary benefit sustained by the death of the deceased, it is not permissible again to award damages under the head "loss of consortium". He relied upon the decision in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, where it was held that in awarding damages under Sections 1 and 2 of the Fatal Accidents Act, there shall not be duplication of the same claims, and that if any part of the compensation representing the loss to the estate goes into the calculation of the personal loss u/s 1, that portion shall be excluded in giving compensation u/s 2 and vice versa. But in that very case they pointed that u/s 2 the Court awarded damages to the loss to the estate in a sum of Rs.5,000 which represented the damages for the mental agony, suffering and loss of expectation of life, whereas u/s 1 the Court gave compensation for the loss of pecuniary benefit. It was held that there was no duplication in awarding damages under both the heads. In this case also, the damages for loss of society of the spouse has no relation to the loss of pecuniary benefit suffered by the death of the spouse for even in case where there is no loss of pecuniary benefit, the husband would still be entitled to contend that he lost the society of the wife. We are therefore, inclined to agree with the respondent's contention that the Tribunal was right in awarding compensation under this head in addition to the compensation for loss of pecuniary benefit.

33. The respondent in C.M.A. No. 86 of 1972 has preferred C.M.A. No. 251 of 1972 contending that the entire amount of Rs.50,000/- as compensation ought to have been awarded. In the application before the Tribunal in Co. 25 under the head "Amount of Compensation claimed" the figure of Rs.50,000/- is mentioned. No particulars are given as to how this amount is arrived at. In evidence as P.W. 2 the husband deposed that he engaged a cook and he had to pay him Rs.50/- p.m. with free boarding and lodging. He stated that one daughter, Kalyani who was doing her 10th standard failed because her mother died. His son Anandan also failed because of his mother's death. In cross-examination he stated he claimed Rs.10,000/- because of his son failed and Rs.10,000/- because of his last daughter who is motherless. He claimed Rs.20,000/- for the loss of his wife and claimed Rs.10,000/- because his three married daughters have lost the comfort of their mother.

34. It is well settled that neither under the ordinary law nor under the Fatal Accidents Act a person is entitled to compensation for mental anguish and suffering in case of accident resulting in death. The claim for Rs.10,000/- on behalf of his married daughters who lost the comfort of their mother is untenable. Except the claimant's bare statement that his son and daughter failed because of their mother's death there is absolutely no proof that the failure was due to the death. Further, no compensation can be awarded on that ground. He has claimed Rs.20,000/- for the loss of his wife. We have already held that Rs.4,000/- represents the reasonable amount for the loss of consortium. Though he has not stated how much he claims for the loss of pecuniary benefit in his deposition he has spoken to the fact of engaging a cook at Rs.50/- per month and providing him free boarding and residence. We have already held that the

Court below was therefore, justified in awarding Rs.6,000/- under this head.

35. In the result, we see no reason to interfere with the order of the Tribunal.

36. Both the appeals are dismissed but in the circumstances without costs.

37. Appeals dismissed.