

(1976) 09 KL CK 0001
In the High Court Of Kerala
Case No : A.S. No. 518 of 1973

Kerala State Road Transport Corporation	APPELLANT
Vs	
Madhavi Anuna and Another	RESPONDENT

Date of Decision : 16-09-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 175

Citation : (1976) 09 KL CK 0001

Hon'ble Judges : T. Chandrasekhara Menon, J;K. Bhaskaran, J

Bench : Division Bench

Advocate : M.P. Menon and M. Ramachandran, for the Appellant; P.K. Kesavan Nair, K.N.N. Pillai, T.K. Venugopalan and N.R. Nair, for the Respondent

Judgement

Chandrasekhara Menon, J.—The husband of the first Respondent in the appeal and the father of the second Respondent who is a minor, deceased Parameswara Menon went on Sabarimala pilgrimage in January, 1967. On his return journey he had got into bus T. 315 belonging to the Kerala State Road Transport Corporation (hereinafter referred to as the "Corporation") the Appellant in this appeal, at Chalakkayam. On the way at about 0.45 hours at night on the Chalakkayam-Ranni route, when the bus was passing another bus standing on the left side of the road, whether on account of part of his body brushing against that bus or because of his falling down in the bus" due to collision between the buses, Parameswara Menon got himself injured. The bus was stopped and Parameswara Menon was taken to the hospital at Kottayam. On the way he succumbed to his injuries. A case is seen to have been registered at Kottayam West Police Station but it was referred subsequently after investigation.

2. Parameswara Menon's wife and son who is a minor then instituted a suit in the Subordinate Judge's Court of Irinjalakuda (proceedings instituted in forma pauperis) claiming damages to the tune of Rs. 25,000/-against the Kerala State Road Transport Corporation, the driver of the vehicle concerned and also its conductor. The Plaintiffs attributed negligence to the driver and conductor,

consequently holding the Corporation liable. It was alleged that the bus was being driven at excessive speed and without taking due care and attention. The Plaintiffs contended that the deceased at the time was only about 38 years and he could reasonably be expected to have lived for another 20 years. If the deceased had thus a normal life span, the Plaintiffs would have been benefited by getting Rs. 1,200/- per year and on that ground they have suffered damages to the extent of Rs. 24,000/-. A further claim for damages to the tune of Rs. 1,000/- was made on account of the mental pain suffered by them because of the accident. The deceased was employed in Pharm Chem Distributors, Kandiveli, Bombay. It is alleged in the plaint that the monthly salary he was getting was Rs. 200/- per month besides allowances. He was entitled to an annual increment of Rs. 25/-. It is also alleged that the Plaintiffs were being given Rs. 100/- per month by the deceased for their maintenance. The calculation of the damages of Rs. 24,000/- was on this basis.

3. The Corporation, the first Defendant in its written statement denied the plaint claim. According to it, there was no negligence or want of due care and attention on the part of its driver and conductor, the second and third Defendants in the suit respectively. On the other hand, the sole cause of the accident was the contributory negligence of the deceased. It is alleged that deceased Parameswara Menon was sitting in such a manner with portion of his body protruding outside the side sill of the bus near the driver's cabin. He had been warned by the conductor as well as by other passengers not to sit in that particular posture, but this was not heeded to. When the vehicle passed another bus in a stationary position at Perinad the projected portion of the body of the deceased dashed against it and the accident had occurred in this manner. There was no carelessness or negligence on the part of the driver. The bus was immediately stopped and the deceased was taken to the hospital. As per the written statement the accident would not have occurred had the deceased changed his sitting position as required by the conductor and the other passengers. It is alleged that the bus was being driven only at a moderate speed. In regard to the damages claimed it is contended by the Corporation that the claim is excessive. The salary which the deceased was getting at Bombay was not even sufficient for maintenance of himself. It is doubtful whether the deceased could have made provision for the Plaintiffs. It is also pleaded that the Plaintiffs are not entitled to the damages for mental pain, alleged to be suffered by them. The Corporation also pointed out in the written statement that the Plaintiffs were offered an ex-gratia compensation of Rs. 2,000/- notwithstanding the non-liability for any damages consequent to the death of Parameswara Menon but the Plaintiffs did not receive the same.

4. The learned Sub-Judge after a detailed review of the evidence in the case held that the death of Parameswara Menon occurred due to the rash and negligent driving of the bus by the driver and that there was no contributory negligence of the deceased in the matter. He fixed the compensation due to the Plaintiffs at Rs. 17,280/- on the basis that Plaintiffs would have got Rs. 80/- from the

deceased every month with multiple of 18 years taking into account factors like the deceased dying earlier, his chance of losing his employment which was a private one and also the fact that the Plaintiffs are getting a lump sum payment in place of the monthly payments they would have got from the deceased. The court held out against the claim for damages for mental pain.

5. Aggrieved by this decision the Corporation has come up to this Court with this appeal. The contentions that were advanced before us by Mr. M.P. Menon, learned Counsel for the Appellant were (1) from the facts disclosed from the evidence, the court could have only come to the conclusion that the deceased got injured because of his own negligence and the driver of the vehicle could not have prevented the accident and that he would not have been injured at all but for his own negligence, (2) even assuming there were some laches on the part of the driver which could make the Corporation liable for some damages, the contributory negligence of the deceased which could be evident from the records should go in reduction of the damages, and (3) the trial court has fixed the damages on an entirely wrong basis, that the Plaintiffs would now be getting as per the decree something much above what they could have expected to get from the deceased had he lived the full span of his life. We will consider these questions separately under convenient headings.

The Defendant's liability for damages:

It cannot be controverted that the initial burden is on the Plaintiffs to establish that there had been negligence on the part of the employees, Defendants 2 and 3 or any one of them before the liability could be fastened vicariously on the Corporation for damages on account of Parameswara Menon's death. In the plaint the allegation regarding negligence are:

As the driver was not driving the vehicle with the utmost care on its way from Chalakkayam, it collided with another bus and several passengers were injured.

In para 3 "What has been stated above is that the incident happened due to the carelessness and overspeed of the 2nd and 3rd Defendants.

No doubt these pleadings would, to an extent, indicate that even at the time of their preparation the Plaintiff's idea of how the accident happened and in what manner the driver or conductor or both of them were liable was rather hazy and not at all positive. The witness the Plaintiffs have examined to prove how the accident happened is PW-2. He was a passenger in the bus at the time of the accident. In the chief-examination he stated:

The bus in which I was travelling on that day after 120" clock, was being driven at a high speed and therefore collided with another bus parked on the road. There were more than 200 passengers in bus the in which I was travelling.

Further he stated:

The above bus was being driven at a high speed and overtaking many vehicles.

In the cross-examination he concedes that he does not know in what manner the deceased was sitting in the bus and whether portion of his body was outside. He again stated (also in cross-examination):

The bus in which I was travelling came to a stop after the collision.

It is true as the lower court states that there is no evidence to show either bus T. 315 or the bus stationed at the place of occurrence had any damages on account of the accident or whether there are any indication to show that accident happened in the manner stated by PW-2. But then though one cannot form a positive opinion as to the nature of collision, there was a noisy impact is clear from the evidence of DW-2, examined on behalf of the defence. DW-2 was another passenger in the bus who was sitting near the deceased. He states:

After a long distance was covered. I heard a sound. Immediately the deceased fell into my lap. He was immediately laid on the floor of the bus. The bus stopped a furlong away. I did not know what happened we did not go to see what had happened at the place. Did you hear the sound of the collision between the buses? No, I heard the sound of collision faintly and saw the deceased falling down.

How the impact happened is explained by DW-1 who was the conductor of the bus. In the light of the evidence we are not prepared to hold that the trial court committed any error in concluding that "under these circumstances the evidence of PW-2 that there was a collision when the bus T. 315 passed the stationary bus rubbing against it, appears to be more or less correct.

6. We find from the evidence that the driver and conductor had allowed 112 passengers to crowd into the bus the capacity of which was 53. Ext BI dated 15-1-1967, the accident report prepared by the conductor shows that there were 112 passengers. The road from Chalakkaym to Ranni is a ghat road through the estates. The road was not tarred and was coming down an incline, though the passenger DW2 would not agree with the evidence of the other passenger PW-2 that the bus was being driven at a high speed, even according to him the bus was being driven at a speed usual in the planes.

It cannot be said that the vehicle was being driver at a high speed. That was the normal speed at which the vehicles were being driven. It was not more.

7. In the nature of the road, extra care and caution were required on the part of the driver when he passes a stationary bus on the road. In such circumstances it is the duty of the driver to take reasonable care that the passengers do not come to any harm during the journey. If such reasonable care is taken usually such accidents do not happen in the usual course of things. It might be noted that evidence of DW-1 is that the road at the place had a width of 20 to 25 feet. The width of the vehicle was Si feet, again according to DW-1. The other bus was stationed on the left tern extremity. Thus there was sufficient space in the road for the bus T. 315 to pass through without touching the other bus. There is no

evidence that there was any obstruction on the other side of the road.

8. In the circumstances we do not think that the trial court has gone wrong in its assessment of evidence for coming to the conclusion that there was negligence on the part of the driver of the bus which resulted in the accident.

9. Whether there was any contributory negligence on the part of the deceased which should go in for mitigation of damages due from the first Defendant.

(a) This covers an aspect of the case which was strongly put before the court by the learned Counsel for the Appellant. He pointed out that there is an unfortunate tendency not to take note of contributory negligence of which a deceased in a Fatal Accidents Act case could have been or a Plaintiff in an ordinary tortious action for damages might himself be guilty of which should in any event go in for reduction of the damages due from the Defendant in the action. Certainly this is an important question which every court trying such an action will have to take due note of.

(b) At common law though the Defendant has been negligent, if the Plaintiff has also been negligent, he could not recover damages if his own negligence was either (a) the decisive cause of the accident, or (b) so closely implicated with the negligence of the Defendant so as to make it impossible to determine whose negligence was the decisive cause. The principle behind this, as put by Lord Ellenborough L.J. in *Butterfield v. Forster* (1809) 2 East 60 is "one person being at fault will not dispense with another's using ordinary care of himself". The common law rule produced hardships when one of the two negligent parties suffered the greater loss although his negligence was not the major cause of the accident. Therefore, Winfield says, in his well known book on Torts, the courts modified the defence of contributory negligence by the so called rule of "last opportunity". This enabled the Plaintiff to recover, notwithstanding his own negligence, if upon the occasion of the accident, the Defendant could have avoided the accident which the Plaintiff could not. The rule was extended, which according to Winfield made confusion in this sphere of law more confounded, to cases of "constructive last opportunity" which means that if the Defendant Would have had the last opportunity but for his own negligence, he was in the same position as if he had actually had it, and the Plaintiff recovered in full. Really in the ultimate analysis the question was "who caused the accident". As the same learned author (Winfield) points out if the rule of last opportunity meant that in every case the person whose negligence came last in time is solely responsible for damage, the rule is clearly illogical. It was in such circumstances the House of Lords said in *Admiralty Commissioner's v. S.S. Volute* (1922) 1 A.C. 129 at p. 144-145 "Upon the whole I think that the question of contributory negligence must be dealt with somewhat broadly and upon common-sense principles as a jury would probably deal with. And while no doubt, where a clear line can be drawn, the subsequent negligence is the only one to look to, there are cases in which the two acts come so closely together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that

the party secondly negligent, while not held free from blame...might, on the other hand invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution".

(c) In that case the damages were apportionable under the Maritime Conventions Act, 1911 but in a subsequent decision *Swadling v. Cooper* (1931) A.C. 1 at p. 10 the House of Lords regarded the decision in "*The Volute*" as of general application. In 1945, in England the Law Reform (Contributory Negligence) Act, 1945 came into force which gave a statutory basis for apportioning the damages making the damages recoverable in an action reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for damages.

(d) In some of the post 1945 cases, the law on the point has been stated with clarity and precision, if we may say so with respect, by some of the distinguished, English Judges. In *Davies v. Swan Motor Company (Swansea) Ltd.* (1949) 2 K.B. 291 James, Third Party (Court of Appeal), Buckhill L.J. said at pages 308 to 310:

In addition to that answer to the point made by Mr. Glyn Jones, there is another answer viz., that when one is considering the question of contributory negligence, it is not necessary to show that the negligence constituted a breach of duty to the Defendant. It is sufficient to show lack of reasonable care by the Plaintiff for his own safety. That is set out clearly in the speech of Lord Atkin in *Caswell v. Powell Duffryn Associated Collieries Ltd.* (1940). A.C 152 as follows: "But the injury may be the result of two causes operating at the same time, a breach of duty by the Defendant and the omission on the part of the Plaintiff to use the ordinary care for the protection of himself or his property that is used by the ordinary reasonable man in those circumstances. In that case the Plaintiff cannot recover because the injury is partly caused by what is imputed to him as his own default. On the other hand, if the Plaintiff were negligent, but his negligence was not a cause operating to produce the damage there would be no defence." Mr. Beney also drew our attention to a passage in Dr. Charlesworth's book on the Law of Negligence (2nd ed.) at p. 464, which he adopted as part of his argument. It reads as follows: "The word 'negligence,' however, is not used in its usual meaning. Negligence ordinarily means breach of a legal duty to take care, but as used in the expression 'contributory negligence,' it does not mean breach of duty. It means the failure by a person to use" reasonable care for the safety of himself or his property, so that he becomes "the author of his own wrong." For example, if a railway train draws up at a platform which is too short for the train, a passenger in a carriage which is short of the platform owes no duty to the railway company not to alight, but if he gets out without looking where he is going, it is contributory negligence on his part. A workman on a ship owes no duty to the shipowner not to fall down an open hatchway negligently left unfenced by the shipowner, but if his fall is due to his own carelessness, he is guilty of contributory negligence. A member of the public owes no duty to a

railway company to look out for approaching trains when he crosses the railway by means of a public level crossing, but if he omits to do and is injured, his conduct amounts to contributory negligence. This difference in the meaning of "negligence" as applied to a Plaintiff and a Defendant is pointed out by Atkin L.J. in *Ellerman Lines Ltd. v. H. & G. Grayson Ltd.* (1919) 2 K.B. 514 at p. 535-536 where he says: "The doctrine of contributory negligence cannot, I think, be based upon a breach of duty to the negligent Defendant. It is difficult to suppose that a person owes a duty to anyone to preserve his own property. He may not recover if he could reasonably have avoided the consequences of the Defendant's negligence.

In the same case Denning L.J. (as he then was) said at pages 324-325:

Another test of contributory negligence, as fallacious as that of "last opportunity", is the test of duty. It has sometimes been suggested that an injured Plaintiff is not guilty of contributory negligence unless he was under a duty of care towards the Defendant. Mr. Glyn-Jones, with characteristic frankness, did not himself contend that this was a correct approach, but drew our attention to *Joseph Eva Ltd. v. Reeves* (1938) 2 KB. 393 which was said to support the proposition. In my opinion, it is not a correct approach. When a man steps into the road he owes a duty to himself to take care for his own safety, but he does not owe any duty to a motorist who is going at an excessive speed to avoid being run down. Nevertheless, if he does not keep a good lookout, he is guilty of contributory negligence. The real question is not whether the Plaintiff was neglecting some legal duty, but whether he was acting as a reasonable man and with reasonable care. See *Ellerman Lines Ltd. v. H. & G. Grayson Ltd.* (1919) 2 KB. 514 per Lord Atkin approved in *Caswell v. Powell Duffryn Associated Collieries Ltd.* (1940) AC. 152 per Lord Atkin.

Denning L.J. said in *Jones v. Livox Quarries Ltd.* (1952) 2 Q.B. 608 at page 615:

Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless.

Once negligence is proved, then no matter whether it is actionable negligence or contributory negligence, the person who is guilty of it must bear his proper share of responsibility for the consequence. The consequence do not depend on foreseeability, but on causation. The question in every case is: What faults were there which caused the damage? Was his fault one of them? The necessity of causation is shown by the word "result" in Section 1(1) of the Act of 1945, and it was accepted by this Court in *Davies v. Swan Motor Co. (Swansea) Ltd.* (1949) 2 K.B. 291 There is no clear guidance to be found in the books about causation. All

that can be said is that causes are different from the circumstances in which, or on which, they operate. The line between the two depends on the facts of each case. It is a matter of common sense more than anything else.

Viscount Simon said in *Nance v. British Columbia Electric Rly.* (1951) A.C. 601 "The statement that, when negligence is alleged as the basis of an actionable wrong, a necessary ingredient in the conception is the existence of a duty owed by the Defendant to the Plaintiff to take due care, is, of course, indubitably correct. But when contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove to the satisfaction of the jury that the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury. For when contributory negligence is set up as a claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full.

(e) As Lord Denning pointed out in the case *Davies v. Swan Motor Co* (Swansea), (1949) 2 K.B. 291 the legal effect of the Act of 1945 as far as English Law is concerned "is simple enough. If the Plaintiff's negligence was one of the causes of his damage, he is no longer defeated altogether. He gets reduced damages. But the practical effect of the Act is wider than its legal effect. Previously, in order to mitigate the harshness of the doctrine of contributory negligence, the courts in practice sought to select,, from a number of competing cause, which was the cause?the effective or predominant cause?of the damage and to reject the rest. Now the (English) Courts have regard to all the causes and apportion the damages accordingly. This is not a change in the law as to what constitutes contributory negligence. The search in theory was always for all the causes. But it is a change in the practical application of it."

(f) The law in India should not be different in spite of the absence of an enactment like the Law Reform (Contributory Negligence) Act 1945. In one case *Union of India v. Lachman Badri Prasad* AIR 1954 V.P. 17 Krishnan J. C. said, when the learned Judge thought it necessary to apportion on account of the relative share of negligent conduct of the parties involved?""No doubt there is no corresponding statute in our country but the basic principle is one of equity, and has to be applied to cases like the present one. It is dangerous to lay down the rule of all-or-nothing in cases where responsibility is divided and can be correctly apportioned."

(g) In Ramaswamy Iyer's *Law of Torts*, Seventh Edn. 1975 it is pointed out?page 451?(Chapter XVII?para 24)?"Legislation similar to the English Act of 1945 appears to be urgently required in India. It is submitted that even without it courts in India are at liberty to apply a similar rule in the exercise of their power to decide in accordance with equity, justice and good conscience. An additional reason for this course is that the Maritime Conventions Act, 1911 is applicable to India and if the rule of division of loss is in law applicable to maritime collisions,

there is far less reason for following a different rule in land collisions or in other cases of contributory negligence. The difficulties experienced by English Courts in applying the above four rules in cases of contributory negligence and the conflict and confusion in the case-law on the subject are sufficient ground for rejecting them and adopting the simpler course of division of loss among the parties according to their respective fault."

(h) Thus, in endorsing the plea of the learned Counsel for the Appellant that in appropriate cases, on proof of contributory negligence the courts are bound to apportion the liability and on that basis effect a reduction in the damages payable by the Defendant in such cases, let us consider whether in this case the deceased is guilty of contributing negligence. In regard to the contributory negligence of the deceased, the Appellant is relying on the evidence of D Ws 1 and 2. Their evidence is to the effect that the deceased was sitting on the "left-side body sill" of the bus with portion of his body protruding outside by about a feet which part dashed against the stationary bus while bus T. 315 was passing the same and that it was in that manner the accident occurred. The lower court has chosen not to accept this evidence in view of the recitals in Ext. A 7 which is the copy of the First Information given by DW1 and recorded by PW-3 who was a Head Constable at Kolta-yam West Police Station and also in Ext. B-I the report made by DW-1 to the Kerala State Road Transport Corporation. It is stated in Ext. A7 that when Bus T. 315 was passing another bus stationed, one passenger fell down from the bus from the left side. Then the bus was stopped immediately and the passenger was asked what had happened. He is said to have replied that he got up from his seat and looked outside and while doing so dashed against the bus stationed there and fell down. It is stated in Ext. A-7:

Putting his body outside and trying to look outside, his body collided with the bus parked on the side. Due to the shock he died. His body had struck against the bus belonging to the Kerala State Road Transport Corporation.

The lower court also makes some reference to some recital in the document marked as Ext. B1 which is said to be the report made by DW-I to the Kerala State Road Transport Corporation. There is some mistake here because we find from the file that the document marked as Ext. B1 is the copy of the letter dated 18-4-1967 by the General Manager of the Corporation to Mr. T.K. Menon and Mr. K.K. Thampan, Advocate. The report made by DW-1 to the Kerala State Road Transport Corporation is seen to be filed in the case. As the parties have referred to the same and as the lower court has treated it as the document marked as Ext. B1 in the case, we would take note of the following recitals therein has been extracted in its judgment by the lower court:

Then a devotee of Swamy Ayyappa put his body outside the bus to have a look outside and at that moment his backside collided against another bus and was injured.

It is stated in another place therein:

The deceased was sitting behind the drivers cabin. At intervals he used to put his body outside to, have a look outside. Then the other passengers and myself warned him of the danger. At the time of the incident the deceased suddenly put his body outside and his backside dashed against the parked bus.

We think the lower court is correct in pointing out that in these earlier statements, the present case that the deceased was sitting on the side sill projecting a portion of his body outside is not put forward. In Ext. B3 the certified copy of the final report u/s 175 Code of Criminal Procedure filed before the District Magistrate on the basis of which the court accorded sanction to stop all further investigation and the information wherein was gathered by the investigating officer after questioning the conductor and the driver of the bus, what is stated is that the deceased was seated in his seat and not on the side sill of the bus and the occurrence took place while the deceased suddenly got up from his seat and looked outside. In the light of the records we do not think that the lower court was in error in rejecting the case of contributory negligence on the part of the deceased. Therefore, we do not think, sitting in appeal, there is any necessity for us to interfere with that part of the finding. It is true, as put-forward forcibly by the learned Counsel for the Corporation that cases of contributory negligence should not be ignored by the courts in the matter of assessment of damages. Sometimes it may be material even in the matter of grant of any damages at all. This is not. however, a case where the question of contributory negligence comes in.

Quantum of damages:

10. Now we come to the most vexed question in such "accident cases",, What should be the quantum of damages to which the Plaintiffs are entitled; was the lower court right in fixing it at the figure, as it had done. The case advanced by the learned Counsel for the Appellant, Mr. M.P. Menon is that though the court below has stated that it has taken into consideration all the relevant circumstances, in fact the important factor that should play a part in such a fixation has not been duly considered. On the other hand, Mr. K. N. Narayana Pillai, the learned Counsel for the Respondents contended that due consideration has been given to all material factors by the Subordinate Judge. We might state here that more or less the entire case law on the matter has been fairly placed before us by the counsel on both sides.

(a) The principles governing the matter are really those laid down by the English Courts. No doubt, in particular cases these will have to be trimmed so as to make it applicable to Indian conditions. As Sir Taj Bahadur Sapru points out in his foreword to the Second Edn. of Ramaswami Iyer's Law of Torts, Torts is a difficult branch of English Law and many suits are fought every day in the lower courts in India without it being clearly realised that they are really actions in Torts and are governed by rules of the common law which have now been crystallised, except where statutory law has stepped in. Therefore, for clear understanding of the principles, one will have to refer to English decision and

English authors on the subject.

(b) What we have stated above will be apparent from the Supreme Court decisions on the question. *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, was a case under the Fatal Accidents Act. There, the Supreme Court said, that the courts below have on relevant material placed before them, ascertained Rs. 25,000/- as damages under the "first head"?that is if the deceased had not been killed but had lived the full span of life he could have looked forward to, what he would have spent out of his income for the maintenance of his wife and family and the Supreme Court in second appeal cannot disturb the finding except for compelling reasons. The court further said at page 6:

Assuming that Rajaratnam had not died, he would have spent, having regard to his means and status in life, a minimum of Rs. 250/- on Respondents 2 to 7; and his income, as indicated by the evidence, would certainly be more than that amount. The yearly expenditure he had to incur on the members of the family would have been about Rs. 3,000/- and the sum of Rs. 25,200/- would represent the said expenditure for just over 8 years. In the circumstances, the balance of loss and gain to the dependants by the death of Rajaratnam in the sense stated by Lord Wright and Viscount Simon, could not be less than Rs. 25,200/-; indeed, having regard to the circumstances of the case, it is a moderate sum; it is rather a conservative estimate. We, therefore, accept that figure as representing the damages for Respondents 2 to 7 in respect of their claim under the head of pecuniary loss to them by the death of Rajaratnam.

We would refer in detail to the observation of Lord Wright and Viscount Simon depended on by the Supreme Court later.

(c) The next decision of the Supreme Court on the question is *Municipal Corporation of Delhi v. Subhagwanti* 1966 A.C.J. 57 where the High Court had estimated that the pecuniary loss caused by the death of the deceased in the case (three persons had died by the collapse of a Municipal Corporation Clock Tower abutting the highway) should be estimated by the capitalising the annual income which would have been received by the Defendants of the deceased for a period of 15 years. The Supreme Court pointed out that the High Court had applied the correct principle in estimation of the damages in all the three appeals dealt therein and the learned Counsel for the Appellants had been unable to show that the judgment of the High Court was vitiated for any reason on the aspect. In this case also we find references being made by the court with approval to the observation of Lord Wright and Viscount Simon respectively in the cases decided by the House of Lords and Privy Council *Davies v. Powell Duffryn Associated Collieries Ltd* (1942) A.C. 601 and *Nance v. British Columbia Electric Rly. Company* (1951) A.C. 601

(d) *C.K. S. Iyer v. T.K. Nair* (1910) A.C.J. 110 is an interesting case. A child aged 8 years, son of the Plaintiff in the suit giving rise to the appeal was hit by a bus

owned by the first Defendant and driven by the second Defendant. The boy died consequent to the injuries. The Plaintiffs filing a suit under the Fatal Accidents Act claimed a sum of Rs. 30,000/- as damages u/s 1-A and 2 of the Act. The District Judge computed the damages under Sections 1-A and 2 at Rs. 5,000/-. In appeal the High Court determined the damages u/s 1-A at Rs. 5,000/- and u/s 2 at Rs. 1,000/-. Thereafter reference to a number of English decisions on the point as well as to the observations of Lord Wright and Lord Simon referred to earlier in the two Appeal Cases before the House of Lords and the Privy Council the, Supreme Court said at page 115:

The law on the point arising for decision may be summed up thus: Compulsory damages u/s 1-A of the Act for wrongful death must be Limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damages is the economic loss sustained by the estate. There can be no exact or uniform rule for measuring the value of the human life and" measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case,. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the appellate Court should be slow in disturbing the findings reached by the Courts below, if they have taken all the relevant facts into consideration.

Now applying the above rule to the facts of the present case, it is seen that the deceased child was only 8 years old at the time of his death. How he would have turned out in life later is at best a guess. But there was a reasonable probability of his becoming a successful man in life as he was a bright boy in the school and his parents could have afforded him a good education. It is not likely that he would have given any financial assistance to his parents till he was at least 20 years old. As seen from the evidence on record, his" father was a substantial person. He was in business and his business was a prosperous one. As things stood he needed no assistance from his son. There is no material on record to find out as to how old were the parents of the deceased at the time of his death. Nor is there any evidence about their state of health. On the basis of the evidence on record, we are unable to come to the conclusion that the damages ordered by the High Court are inadequate.

(e) The last decision of the Supreme Court, we would refer to, is that in

Sheikhupura Transport Co. v. N.I.T. Ins. Co. 1971 A.C.J. 206 There, in a bus accident two persons aged about 42 and 43 years died. The High Court computed the compensation on the basis of 15 years purchase of the benefits that were accruing to the family of the deceased. In dismissing the appeals to the Supteme Court, the Court said at page 209:

The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. If the assessment made by the High Court cannot be considered to be unreasonable?and we do not think it to be unreasonable?it will not be proper for this Court to interfere with the same. Taking an overall assessment of the facts and circumstances of this case, we are unable to agree with the contention of Appellant's Counsel that the compensation awarded to the legal representative of the deceased persons is excessive.

(f) Thus it is clear that the decisions of the Supreme Court are only reiterating the guidelines fixed in the two famous English decisions, by Lord Wright in *Davies v. Powell Duffryn Associated Collieries* (1942) A.C. 601 and Viscount Simon in *Nance v. British Columbia Electric Rly. Company* (1951) A.C. 601

(g) In *Davies v. Powell Dufferyn Associated Collieries* (1942) A.C. 601 Lord Wright said at page 611 "The damages are to be based on the reasonable expectation of pecuniary benefit or benefit 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 actual pecuniary benefit, and, on the other hand any pecuniary advantage which from whatever source comes to him by reason of the death."

(h) Again at page 617 "It is a hard matter of pounds, shillings and pence, subject to the element of future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years" purchase. That sum, however, has to be turned down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependant, and other like matters of speculation and doubt."

(i) Viscount Simon said in *Nance's* case (1951) A.C. 601 "it is necessary first to estimate what was the deceased man's expectaion of life if he had not been killed when he was; (let this be "X" years and next what sums during those "X" years he would probably have applied to the support of his wife. In fixing "X", regard must be had not only to his age and bodily health, but to the possibility of a premature determination of his life by a later accident. In estimating future

provision for his wife, the amounts he usually applied in this way before his death are obviously relevant, and often the best evidence available; though not conclusive, since if he had survived, his means might have expanded or shrunk, and his liability might have grown or melted."

(j) "Having arrived at a sum as the estimated annual sum which would have been applied for the benefit of the dependants for "X" more years, the sum to be awarded would not simply be amount of the annual sum multiplied by "X": because as Lord Simon says (at page 615).. . because the sum is a sum spent over a period of years and must be discounted so as to arrive at its equivalent in the form of a lump sum payable at his death as damages."

(k) Viscount Simon also pointed out (at page 616).....and a further allowance must be made for a possibility which might have been realised if he had not been killed but had embarked on his allotted span of "X" years, namely," the possibility that the wife might have died before he did. And there is a further possibility to be allowed for? though in most cases it is incapable of evaluation? namely, the possibility that, in the events which have actually happened, the widow might remarry, in circumstances which would improve her financial position".

(1) A more recent case of the House of Lords is Taylor v. O'Connor. (1970) 1 All E.R 365 There the principles in the earlier cases are referred to and followed. The facts of the case as referred to in the head notes are:

In 1965 the Respondent's husband was killed as a result of a car accident for which the Appellant was wholly liable. The Respondent claimed damages under the Fatal Accidents Act on behalf of herself (aged 52) and her daughter (aged 18). The husband who was 53 at the time of his death had been a partner in a successful firm of architects. His life expectation at the date of his death was 18 years and that of the Respondent was 21 years. His income, after deduction of tax, would have been ₹7,500 per annum up to the date of his retirement if he retired at 65 (although no provision as to retirement was made in the partnership deed). Under the partnership deed, he was required to leave some part of his income in the partnership as working capital j at the time of his death this amounted to ₹10,000 and during the rest of his working life as a partner he would have left ₹1,500 per annum in the firm. In assessing damages, the trial judge, holding that he might have continued as a full partner beyond the age of 65 or might have continued as a consultant, ruled that the husband would have continued to enjoy a net spendable income of ₹6,000 per annum for the rest of his life. The dependency of the Respondent and the daughter was estimated at ₹4,000 from which ₹250 was deducted in respect of the accelerated benefit from the savings of ₹10,000 (erroneously taken to be ₹13,000) ; the dependency for the purposes of the award of damages being reckoned at ₹3,750 per annum. The judge increased the proposed multiplier from 10 to 12 to make allowance for inflation. To the resulting sum (₹45,000) the judge added ₹9,000 as the present value of ₹13,000 (the product of ₹1,500 left in the firm for each of 12 years). The

Court of Appeal refused to disturb the trial judge's award.

(m) In appeal the House of Lords refused to interfere with the amount of damages, awarded by the trial judge. The majority of the court was of the opinion that the prospect of inflation is not a valid reason for increasing the multiplier. We would just quote the following passage from Lord Quest's judgment:

I return then to the "multiplier". The aim of this exercise is to provide a figure which is proportional to the injury resulting from the death. It is not to provide such a sum as would, at current rates of interest, leave the widow with the income she has lost. This would put her into a better position than she would have been apart from the death because at the end of the day she would still have the capital sum left. It is anticipated that the capital will be gradually reduced over the years to provide for her support. In my opinion, the multiplier is intended to provide in a rough measure adequate compensation for the loss sustained. No precise method can be expected. It is well followed in practice, and depends in some measure on the expertise of judges accustomed to try these cases

(n) The general method of assessment of damages in respect of claims for benefit of deceased's dependants adopted by English Courts (which as will be evident from the Supreme Court's decisions, has been accepted in India also) is summarised in McGregor on Damages at pp. 812-813 as follows:?

The courts have evolved a particular method for assessing the value of the dependency, or the pecuniary benefit that the dependant could reasonably expect to have received from the deceased in the future. This amount is calculated by taking the present annual figure of the dependency, whether stemming from money or goods provided or services rendered, and multiplying it by a figure which, while based upon the number of years that the dependency might reasonably be expected to last, is discounted so as to allow for the fact that a lump sum is being given now instead of periodical payments over the years. This latter figure has long been called the multiplier ; the former figure is now coming to be referred to as the multiplicand. Further adjustments, however, may have to be made to multiplicand or multiplier on account of a variety of factors, viz., the probability of future increase or decrease in the annual dependency, the so-called contingencies of life, and incidence of inflation and taxation. Moreover, the value of the dependency can include not only that part of the deceased's earnings which he would have expended annually in maintaining his dependants but also that part of his earnings which he would have saved and which would have come to his dependants by inheritance on his death. The proper method of dealing with such savings has not yet crystallised: either they are to be regarded as comprised in the figure of annual dependency to be multiplied by the multiplier, or they are excluded from the figure of annual dependency and a separate, and additional, sum is calculated and awarded in respect of them.

These various facets of the method of assessment used by the courts are set out concisely by Lord Pearson in his speech in what is now the leading case on this issue, *Taylor v. O'Connor*. (1971) A.C. 115 : (1970) 1 All E.R. 365 He said:

There are three stages in the normal calculation, namely: (1) to estimate the lost earnings, i.e. the sums which the deceased probably would have earned but for the fatal accident; (ii) to estimate the lost benefit, i.e. the pecuniary benefits which the dependants probably would have derived from the lost earnings, and to express the lost benefit as an annual sum over the period of the lost earnings ; and (iii) to choose the appropriate multiplier which, when applied to the lost benefit expressed as an annual sum, gives the amount of the damages which is a lump sum.

(o) The commonly accepted multiplier of the years purchase factor usually ranges from 12 to 15. In exceptional cases it can go up a little or go down a bit. Now, as will be evident from the decisions on the question, there are two methods of calculating the damages in respect of claim for dependants of the deceased. The first method is to multiply the annual dependency amount of what the deceased would have spent on the dependants by a multiplier?usually accepted one being from 12 to 15. This method takes into account not only the discount for arriving at the lump sum amount of the benefit spread over a number of years but also other discount for other contingencies and imponderables which should naturally enter into such calculations. The second method is that the amount of basic dependency should be multiplied by the number of years which might reflect the expected useful life of the deceased. Then a proper discounting be done for (1) the benefit of a lump sum payment and (2) further discount on account of the imponderables. The total deduction will have to be a substantial one. Otherwise there would be over compensation as the lump sum payment would be putting the deceased's future contribution into the dependant's hands long before they would otherwise have received them, and would enable them to enjoy the interest accruing in the intervening period. As Mc Gregor points out, it is the present value of the future contributions that is to be awarded, and while the surest way of ascertaining such present value is by resort to combined annuity and before expectation tables which give the present value of an annuity for life for persons of every age, the courts are somewhat chary of using statistical data.

(p) Naturally in most of the cases controversy rages round fixing the multiplier. Authorities as such might not be of much help in the matter but that is a question which will have to be resolved on the specific facts and circumstances of the particular case. We can take note only of the broad guidelines.

11. In considering the present case on the basis of the guidelines we feel that the court below has not given sufficient weight to the lump sum payment that is being paid in cash. No doubt the court mentions this factor also but in fixing a multiple of 18 years the court below has gone wrong. Not that a multiple of 18 years cannot be given in any case. Taking into account all the relevant factors,

the amount of compensation to be awarded to the Plaintiffs should be at the rate of Rs. 80/- per month with a multiple of 15 years instead of 18 years as fixed by the court below. We certainly bear in mind the principles which should be observed by an appellate court in deciding whether it is justified in disturbing the finding of the court of first instance, as summarised by Viscount Simon in delivering the judgment of the Privy Council in *Nance's* case: "Even if the Tribunal of first instance was a judge sitting alone, then, before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one) ; or short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage *Flint v. Lovell* (1935) 1K.B. 354 : (194) All E.R. Rep. 200 approved by the House of Lords in *Denies v. Powell Duffryn Associated Collieries Ltd.* (1942) 1 All E.R. 657: 1942 A.C. 601 We feel that though the learned Subordinate Judge made recitals of the relevant factors in the judgment, relevant factors were not taken into account leading to an erroneous estimate of damages at a rather too high figure. We therefore modify the decree of the court below, awarding the Plaintiffs a sum of Rs. 14,400/-(Rs. 80x12x15). The amount will carry interest from date of suit till date of recovery at 6%. The parties will take and suffer proportionate costs in both the courts.