

(1995) 09 GUJ CK 0033
In the Gujarat High Court
Case No : F.A. No. 1192 of 1986

Manubhai Punamchand Upadhyia and Another	APPELLANT
Vs	
Indian Railways and Another	RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Railways Act, 1989 — Section 114, 123, 124, 124A

Citation : (1997) ACJ 1270 : (1997) 1 GLR 243

Hon'ble Judges : R.M. Doshit, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : P.V. Nanavati, for the Appellant; J.C. Sheth, for R.P. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—A cry for justice of dejected and disheartened, unsuccessful and unfortunate parents, is echoed in this appeal, who lost only young earning son, in a fatal railway accident, on ill-fated day of 18.7.1981 and who also lost the legal battle for compensation for the untimely and premature demise of their beloved only son.

A conspectus of few relevant and material facts leading to the rise of this appeal, needs narration, at the outset, which would unfold the untold tragic scenario,

2. The appellants are the original plaintiffs, who instituted Special Civil Suit No. 57 of 1983, in the Court of Civil Judge (S.D.), Mehsana, for compensation for the unfortunate and untimely demise of their only earning son, aged about 20, in a cruel railway accident. Deceased Shailesh was travelling in a Delhi Mail train, proceeding from Ahmedabad towards Mehsana, on the ill-fated day as a bona fide passenger.

3. The train accident occurred on account of a derailment of train between Dangarva and Ambaliyasan villages, in Mehsana District, wherein the deceased along with many other victims sustained serious injuries and succumbed to the

same on the spot. Appellant No. 1 is the father and appellant No. 2 is the mother of the deceased Shailesh, who claimed an amount of Rs. 2,00,000/-, by way of compensation, by invoking the aid of the provisions of Section 80 of the Indian Railways Act, 1890 (as then applied).

4. Deceased was an earning member of the family. He was unmarried. He was hale and hearty. Earlier, a claim petition u/s 82-A of the Indian Railways Act, 1890 was preferred before the Claims Commissioner at Baroda, restricting the claim at Rs. 50,000/-. However, the plaintiffs desired to claim more than Rs. 50,000 by way of compensation with the result the said Claim Petition No. 9 of 1982, under the Indian Railways Act, 1890, came to be withdrawn and a suit came to be filed in the civil court.

5. The respondent, who is the original defendant railway authority, appeared and resisted the suit by filing written statement at Exh. 23, inter alia, contending that the suit was not maintainable and that there was no negligence on the part of the Railways. The railway authorities also disputed the claim amount of Rs. 2,00,000/-.

6. The trial court raised the issue at Exh. 25. Plaintiffs relied on the evidence of plaintiff No. 1, Manubhai Punamchand, Exh. 1, father of the deceased and the evidence of the Medical Officer and one witness from Oil and Natural Gas Commission (O.N.G.C.), to prove the record of service of the deceased. The original defendant relied on the report of the Claims Commissioner, Exh. 54, without leading any oral evidence.

7. Upon an assessment and appraisal of the evidence on record, the trial court dismissed the suit with costs on 24.3.1986. Hence, this appeal at the instance of unsuccessful, original plaintiffs, who are also the unfortunate parents of deceased son, whose life was cut short by the cruel hands of providence.

8. The trial court has taken the view that the accident did not take place on account of exclusive negligence on the part of the defendant railway administration. Placing reliance on the report of the Claims Commissioner, Exh. 54, the trial court reached the conclusion that the railway accident due to derailment, on 18.7.81, was not proved by the plaintiffs, because of the negligence of the defendant Railways. Therefore, the claim made by the parents, by filing the aforesaid suit, came to be dismissed.

9. After having examined the facts and circumstances and the evidence on record, this Court has no hesitation in finding that the impugned judgment and decree, dismissing the suit of the plaintiffs, are not only unreasonable, unjust, but are also perverse and illegal.

10. The following facts are no longer in controversy. Therefore, they are highlighted first. That-

(i) Deceased Shailesh was almost in his teens who died on account of serious injuries sustained by him in a railway accident, due to derailment of the train, on

18.7.1981;

(ii) Deceased was travelling as a bona fide passenger, holding seasonal railway pass for commuting from Ahmedabad to Mehsana and back;

(iii) Deceased was working as an Assistant Mechanic in O.N.G.C. at Mehsana and he was residing with his parents at Ahmedabad;

(iv) Deceased was commuting from Ahmedabad to Mehsana and back home for his employment with the O.N.G.C;

(v) On 18.7.1981, deceased had boarded Delhi Mail train from Ahmedabad for going to Mehsana and the said train had an accident on account of derailment between Dangarva and Ambaliyasan, near Mehsana;

(vi) Several passengers had sustained injuries and some of them had sustained fatal injuries and deceased Shailesh was one of the unfortunate victims, who succumbed to the serious injuries sustained on the spot;

(vii) Deceased Shailesh was an earning member of the family, who was earning a consolidated salary of Rs. 760/- per month, at the relevant time, as an Assistant Mechanic in O.N.G.C;

(viii) Deceased was literate and technical hand, who had passed Diploma in Engineering, a certificate whereof is produced on record.

(ix) The dead body of the deceased was searched and brought home by the parents, almost 48 hours after the accident, from Civil Hospital, Ahmedabad.

11. It is an incontrovertible fact that, due to the railway accident, on account of derailment, on 18.7.1981, wherein several persons had sustained injuries of varying gravity and also fatal injuries and the deceased was one of them. The question which requires adjudication, at this juncture, is as to whether the rail accident in question was attributable or referable to the negligence of the defendant railway administration? The learned trial court Judge answered this pointed question in the negative and, in our opinion, this answer is absolutely unjustified and perverse.

12. First of all, the learned trial court Judge ought to have considered that, when a bona fide passenger, travelling in the railway compartment, sustains injuries in a railway accident on account of one or other reasons, much less the derailment, prima facie, there will be a presumption of negligence on the part of the railway administration. It cannot be said even for a moment that in the happening of the said tragic railway accident on account of derailment, the deceased was, in any way, contributory or compositely negligent.

13. At times, the negligence is required to be presumed as it would not be possible for a victim of the accident or for that purpose, the heir of the deceased victim to precisely and positively lead the direct evidence with regard to the negligence on the part of the defendant railway or any other reason and that is

why a doctrine of *res ipsa loquitur* is evolved. It is designed so as to obviate the situation which was, precisely, in the mind of the learned trial court Judge.

14. Undoubtedly, the onus of proof of any action for compensation based on tort is, initially, on the claimant. It is for the claimant, *prima facie*, to satisfy the court, Tribunal or the authority concerned, that the accident in question had occurred on account of negligence on the part of the defendant or the opponent, as the case may be. However, the degree of proof or the extent of the evidence varies from facts to facts and forum to forum. How could the helpless victims or their dependants of road or railway accident are expected to lead direct and positive evidence about negligence? That is the reason why, to obviate such a hardship, a presumption is required to be made about the factum of negligence in the happening of an unfortunate accident in view of the evolution of the doctrine of *res ipsa loquitur*, which has a definite purpose and policy behind it. *Res ipsa loquitur* means that an inference of negligence is raised against the defendant by reason of the happening of certain events. In the case of *Pillars v. R.J. Reynolds Tobacco Co.* 78 SO 365, an American Judge, laconically, remarked in a bizarre early product liability action:

We can imagine no reason why, with ordinary care, human toes could not be left out of chewing tobacco, and if toes are found in chewing tobacco, it seems to us that somebody has been very careless.

It is commonly said that two conditions ought to be satisfied to qualify the plaintiff to rely upon the maxim. Firstly, the thing causing the damage must be under the control of the defendant or his servants. The second requirement is that the accident must be such as, in the ordinary course of things, could not happen without negligence. Both these conditions are certainly satisfied in the present case. The burden of proof of negligence is ordinarily upon the plaintiff who must prove what the defendant did or did not do and that this caused the plaintiff's loss and that it amounted to negligence in law. The real difficulties of *res ipsa loquitur* arise when we try to determine its procedural effect. Logically, once it has been brought into play by satisfaction of the above conditions, it may have one of three effects, bearing in mind that the civil standard of proof is the balance of probabilities, "more likely than not" as it may justify the finder of fact in coming to a decision in favour of the plaintiff but in no way compel him to do so; the maxim merely expresses the inference that may be drawn from certain sorts of circumstantial evidence and the strength of that inference is one for the fact finder's judgment.

15. The trial court dismissed the claim only on the basis of the report of the Commissioner, with regard to the accident in question, produced at Exh. 54. In our opinion, the trial court has committed, with due respect, serious error of law in placing reliance on the Commissioner's report, at Exh. 54. On various grounds, this finding of the trial court is vulnerable; we would, therefore, like to highlight the following aspects:

- (i) The report of the Commissioner, with regard to the accident, produced at Exh. 54, is not duly proved in accordance with the provisions of the Evidence Act.
- (ii) The railway administration has not examined any witness to prove the report of the Commissioner, Exh. 54.
- (iii) The report of the Commissioner at Exh. 54, under the old Indian Railways Act, 1890, was prepared u/s 4 (c) which provided that an Inspector of the Railways will make inquiry into the cause of any accident on the railway. The expression "Inspector" in the old Act, the expression "Commissioner" is employed in the new Act.
- (iv) Under the new Act, an inquiry is required to be held by the Commissioner u/s 114. The causes of railway accident, earlier were required to be inquired, by the Inspector of Railways. It appears that, since the Commissioner has now taken the place of Inspector, the trial court has used the expression "report of the Commissioner".
- (v) Even if such a report is held to be duly proved, then also, it ipso facto does not constitute an evidence against the claimant.
- (vi) Even if it is held to be a piece of evidence, then also it would pale into insignificance, in view of the doctrine of *res ipsa loquitur* and also in view of the provisions of Section 82-A of the old Act, for a claim of Rs. 50,000/-.

Having regard to the facts and circumstances, the finding of the trial court that the claimants have failed to prove that the accident occurred on account of exclusive negligence of defendant railway administration, is not only unjust, perverse, but is illegal. The report of the Commissioner, Exh. 54, does not constitute any adverse evidence against the rightful claim of the claimants. Apart from that, in a case of railway accident, like the one on hand, there cannot be attribution of composite or contributory negligence. Deceased Shailesh was a bonafide passenger, travelling in Delhi Mail train, who sustained fatal injuries on account of derailment. How could the deceased be a party or a contributory in a happening of an accident of Railways due to derailment?

16. The learned trial court Judge, with due respect, ought to have considered above aspects in its proper perspective. Undoubtedly, the derailment could not be said to be a normal feature. The factum of derailment itself would give rise to presumption of negligence on the part of the railway administration though the normal rule is, it is for the claimant or the plaintiff to prove the negligence when the claim is not founded upon no fault liability. However, in some cases this rule causes serious and considerable inconvenience and hardship to the claimant or the plaintiff because, it may be that the true cause of accident lies, solely, within the special knowledge of the defendant or the opponent, who caused it. The hardship, therefore, is sought to be avoided to a considerable extent by the principle of *res ipsa loquitur*, which means that an accident may be an accident by its nature, but by implication, it being an accident of negligence for which the

defendant is, wholly, responsible, than by any other cause, and in such a case, mere fact of derailment or any railway accident would constitute, prima facie, evidence of negligence and it will be for the defendant to rebut it.

Most generally, in case of accident, the definition of "negligence" is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human being would do; or doing something which he being a prudent and reasonable man would avoid or would not do. The derailment on a railway is nothing, but an accident, for which, prima facie the negligence could be attributed to the defendant railway administration, in view of the doctrine of *res ipsa loquitur*.

17. In fact, the attention of the trial court is not drawn to the provision of Section 82-A of the Indian Railways Act, 1890, which reads as under:

82-A. (1) When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then, whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in Sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods owned by the passenger and accompany the passenger in his compartment or on the train, sustained as a result of such accident.

(2) The liability of a railway administration under this section shall, in no case, exceed Rupees one lakh in respect of any one person.

18. It could very well be seen from the aforesaid provision of Section 82-A that the same is ended providing liability of a railway administration to the extent of Rs. 1,00,000/- and the railway is liable to pay compensation in the case of death irrespective of whether death is caused by wrongful act, neglect or default on the part of railway administration or its servant. In the new Railways Act, 1989, a similar provision is made in Section 124-A. This provision in the new Act has been inserted by Amendment Act, 1994. Section 124 of the Railways Act, 1989 reads as under:

124. Extent of liability.-When in the course of working of a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall,

notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

It may also be mentioned that by virtue of the amendment in the new Act in 1994, Section 124-A is also added.

19. By virtue of this section, if any untoward incident occurs, then whether or not the railway administration defaults, they are liable to pay compensation as prescribed except in certain cases, viz., where the passenger commits suicide, attempt to suicide, self-inflicted injury, his own criminal act, or he is intoxicated or insane. The meaning of "untoward incident" is also defined in Section 123 of the new Act. The extent of liability in the new Act is provided in Section 124.

Unfortunately, attention of the learned trial court Judge, it appeals, was not drawn to the provisions of Section 82-A of the old Act (section 124, new Act).

20. In the light of the aforesaid facts and circumstances and the relevant provisions of law, we have no hesitation in finding that the trial court has committed serious error of law in dismissing the rightful claim of the unfortunate parents by holding that the plaintiffs have failed to prove that the derailment or accident occurred on account of exclusive negligence on the part of the railway administration.

21. Next, the question which would call for consideration is the quantum of damages suffered by the claimants on account of untimely death of deceased caused due to a railway accident. Old Section 82-A provided the liability of the railway administration on no fault basis to an extent of Rs. 50,000/-. Thereafter, it is raised to Rs. 1,00,000/-. Thus, the railway was liable to pay compensation in the case of death, irrespective of whether the death is caused by wrongful act, negligence or default on the part of the railway administration or its servant to the extent of Rs. 50,000/-. The compensation claims under the old Act were to be settled by the Claims Commissioners to an extent of Rs. 50,000/- which was raised later on to Rs. 1,00,000/- in respect of one person. However, the claimants had also optional remedy for claiming compensation for more than Rs. 50,000/- by filing suit u/s 80 of the old Act. Compensation was claimed by the parents by filing a suit, taking resort to the provisions of Section 80 of the old Act, as it then stood. Thus, there was optional, alternative statutory remedy available, which was pursued. No doubt, under the new Act, provisions are made in Chapter 13 for making claims and settlement before the Railways Claims Tribunal. Section 123 of the new Act provides definition of "untoward incident" and Section 124 provides extent of the liability. The new provisions prescribe the liability of the railway administration to pay the compensation to such an extent as may be prescribed. The present case is governed by the old Act.

22. The assessment of damages is required to be made in a case of fatal accident, considering the various aspects. The main anxiety of the court, in such a situation is to see that, as far as possible, the victims or the dependants or the legal heirs of the victims are placed in the same financial position, as they would have been, had there been no accident. No doubt, the loss of a limb or the effect on the integrity of the anatomy, or for that purpose, a loss of life, could never truly be compensated, as they are invaluable. However, what is required to be decided is to award financial compensation to the victims or their heirs, as far as possible, by keeping in mind that the loss occasioned in terms of money is to be compensated. This is the basic premise on which the amount of compensation is required to be awarded.

The court is also required to consider the existing income of the injured, or of the deceased and his future prospects, together with the existing liability and the prospective liability. The court is, therefore, obliged to go into all the relevant factors and has to, as far as possible, strike a balance so that the victim or his dependant is placed in the same financial position, had there been no accident. We are conscious of the fact that compensation arising out of such accident is not a profit making one. Therefore, it should not be a windfall or a compensation which could be branded as inadequate or insufficient. The celebrated principles applicable for the assessment and determination of the damages to the victims of road or railway accident, or in case of fatal accident to their dependants are extensively examined, explained and explored, by catena of judicial pronouncements and, therefore, we do not propose to discuss them in greater details.

23. It is an admitted fact that the deceased Shailesh had just completed 19 years. He was a promising Mechanic, who was working as an Assistant Mechanic in the O.N.G.C. at Mehsana, at the relevant time and who had an experience of a Mechanic in the S.L.M. Maneklal Co. at Ahmedabad. It is found from the record that the deceased was earning a consolidated salary of Rs. 760/- per month, at the relevant time. No doubt, he would have earned more than that amount on advancement of his age. It is equally true that the deceased would have got married and would have incurred his more liability in future. The annual utility of the deceased, in terms of money, to a family and to the parents, or in other words, the dependency of the parents on the income of the deceased, is required to be ascertained at the first instance, which is required to be multiplied by appropriate multiplier.

24. In the light of the above facts and circumstances the average income of the deceased could safely be assessed, keeping in mind his potential future earning, at not less than Rs. 1,000/- per month. He would have spent some amount for his pocket expenses and for his livelihood. The contribution of the deceased to the parents, even while taking a very conservative view in the matter, in any case, would not be less than Rs. 400 per month. So, the annual utility or the dependency could safely be assessed at Rs. 400 x 12 = Rs. 4,800/-. Here,

instead of considering the age of the deceased, the age of the parents must be taken into account, and the fact that the deceased was unmarried. Considering the approximate age of the parents at 50, we are inclined to adopt a multiplier of 10. Therefore, the datum figure is required to be multiplied by 10, i.e., Rs. 4,800 x 10 = Rs. 48,000/-.

25. The claimant would also be entitled to damages under the head "loss of expectation of life". Therefore, the question would arise, as to what reasonable amount should be awarded to the claimant under the loss of expectation of life. In this connection, it is submitted that the claimant would be entitled to an amount of Rs. 20,000/- under this head. In support of this submission, reliance is placed on a Division Bench decision of this Court, in the case of Bhanuben P. Joshi and Others Vs. Kantilal B. Parmar and Another, , (wherein one of us, J.N. Bhatt, J. was a party). It is contended, relying on the said decision of the Division Bench of this Court that the parents would be entitled to a conventional amount of Rs. 20,000/-, under the loss of expectation of life. It is true that this Court, in the aforesaid Division Bench decision, has held that the conventional amount of Rs. 20,000/- is required to be awarded under the head "loss of expectation of life". We find no reason not to award an amount of Rs. 20,000/-, under the aforesaid head in view of the binding decision of the Division Bench of this Court.

26. In Bhanuben P. Joshi and Others Vs. Kantilal B. Parmar and Another, , this Court had dealt with this aspect, in para 14, which is very important. Therefore, it would be expedient to reproduce the entire para 14, which reads as under:

The next question which arises is that what reasonable amount should be awarded to the claimants, under the head of loss of expectation of life. In this connection, it may be mentioned that the conventional amount under the head of loss of expectation of life is being revised from time to time. Initially, an amount of Rs. 3,000/- used to be awarded under this head. Subsequently, it was revised to Rs. 5,000/- following the decision of this Court, rendered in First Appeal No. 524 of 1976; decided on 21.8.1978, by Division Bench consisting of M.P. Thakkar (as he then was), and N.H. Bhatt, JJ. Later on, this amount came to be upwardly revised to Rs. 10,000/-, in a decision rendered by this Court in the case of Rafia Sultan v. Oil & Natural Gas Commission 1986 ACJ 616 (Guj). The conventional figure, which was being taken to be Rs. 5,000/-, under this head thus came to be revised to Rs. 10,000, in the aforesaid case. This court has laid down in two decisions, i.e., in the case of Chaturji Amarji and Others Vs. Ahmad Rahimbux and Others, and in the case of Khodabhai Bhagwanbhai and Others Vs. Hirji Tapu and Another, and later on, in the aforesaid Rafia Sultan's case (supra), that proper damages to be assessed on different heads are required to be revised from time to time, depending upon the changing time and extent of fall of purchasing power of rupee. The figure of Rs. 5,000/- was upwardly revised to Rs. 10,000/- in Rafia Sultan's case (supra), which was decided on 1.8.1985. Thereafter, the purchasing power of rupee is substantially affected. It is an admitted fact that the value of rupee is substantially eroded in the last five

years. The sky-rocketing price and the fall in the value of rupee have, materially, affected the consumer price index. Therefore, the amount of Rs. 10,000/- is required to be upwardly revised to Rs. 20,000/-, under the head of loss of expectation of life. There is no dispute about the fact that the consumer price index is doubled during the period between 1984-85 and 1991-92. It is not disputed that urban non-manual workers' price index shows 197 in July, 1992, whereas it was 100 points in 1984-85. Apart from that, the runaway inflation and substantial erosion of the value of rupee are required to be considered and, therefore, the conventional figure of Rs. 10,000/- is required to be upwardly revised to Rs. 20,000/-, under the head of "loss of expectation of life".

27. In view of the aforesaid reasoning and the binding decision of the Division Bench of this Court, the submission that the claimant should be awarded an amount of Rs. 20,000/- under the head of "loss of expectation of life", is accepted and accordingly, the claimants are entitled to and are, hereby, awarded an amount of Rs. 20,000/- under the head of "loss of expectation of life". It is rightly said that one may have different opinion, but, one cannot remain indifferent to the proposition laid down in the binding decisions out of judicial propriety, comity and discipline. In the event of any different view of justified departure, the reference to the larger Bench has to be resorted to. We find no justification to not to follow the said binding decision. In fact, we are in complete agreement with the exposition and proposition laid down therein, in this behalf.

28. The claimants, who are the unfortunate parents, initially claimed an amount of Rs. 2,00,000/- for the death of their only son, in the railway accident in question, have restricted it to an amount of Rs. 70,000/- in this appeal. In the circumstances, in our opinion, the amount of Rs. 70,000/- (Rupees seventy thousand only) claimed by the parents for the death of the only earning adult son, is quite just and reasonable and we need not enter into other aspects in greater details at this juncture, as we have found that the claimants are entitled to an amount of Rs. 48,000/- under the head of pecuniary loss of dependency and utility, and also an amount of Rs. 20,000/- under the head of "loss of expectation of life". In absence of any other evidence with regard to the expenditure, it would be reasonable to award, at least, an amount of Rs. 2,000/- (Rupees two thousand only) under the head of miscellaneous expenses incurred by the parents, occasioned on account of the transport of dead body, etc.

29. In view of the facts and circumstances narrated hereinabove, the binding decision of the Division Bench of this Court and the relevant proposition of law, we have no hesitation in finding that the impugned judgment and award, refusing the claim of the parents in toto is perverse, unjust and illegal and, therefore, the same is quashed and set aside and, in turn, we are inclined to award an amount of Rs. 70,000/- (Rupees seventy thousand only) with interest at the rate of 15 per cent per annum from the date of application till payment, in view of the relevant proposition of law as stated hereinafter. By the decision of Division Bench in Mohanbhai Gemabhai Vs. Balubhai Savjibhai and Others, , the

interest is awarded at the rate of 15 per cent per annum relying on Supreme Court decision in Rukmani Devi and Others Vs. Om Prakash and Others, . It was, thereafter, followed in a Division Bench decision of this Court in Oriental Fire and Genl. Ins. Co. Ltd. Vs. Amarsing Pratapsing Sikliker and Others, . Subsequently, it was also followed in Division Bench decision in Bhanuben P. Joshi and Others Vs. Kantilal B. Parmar and Another, .

30. There is no reason why we should not follow the proposition laid down therein. We are in complete agreement. It would, therefore, be just and reasonable to award the interest at the rate of 15 per cent per annum following the two binding decisions.

31. The question now would arise, as to how the amount of award should be apportioned between the claimants. Having regard to the facts and circumstances, the amount of compensation is apportioned in the ratio of 30 and 70 per cent between the claimant No. 1 father and claimant No. 2 mother of the deceased, respectively.

32. Having regard to the facts and circumstances of the case, and keeping in mind the aspect that the amount of compensation is not being frittered away with a view to provide reasonable amount to the parents, periodically out of interest, since they may not have strict fiscal discipline for the expenditure. In the circumstances, we are inclined to direct the Tribunal to deposit 90 per cent amount of share coming to each claimant in a nationalised bank, in fixed deposit receipt, or in any one scheme of the Unit Trust of India, or in any other scheme as per the choice of the claimant. The period of deposit, in any way, shall not be less than sixty-five months, initially. No doubt, the periodical interest which shall accrue due therefrom, shall be paid to the claimants. However, they shall not be entitled to create any charge, or encumbrance, without the prior approval of the Tribunal and such an endorsement shall be placed on the receipts. The 10 per cent of the amount coming to the share of the respective claimants shall be paid by account payee cheques. The entire amount of cost shall be paid to the father, original plaintiff No. 1, by an account payee cheque.

33. In view of the aforesaid facts and circumstances, the appeal is allowed. The judgment and decree recorded by the trial court are quashed and set aside. The suit filed by the plaintiff is, partly, decreed to the extent of an amount of Rs. 70,000/-(Rupees seventy thousand only), with interest at the rate of 15 per cent per annum from the date of the institution of the suit till the date of payment, with proportionate costs throughout, on the said amount.