
(2009) 09 KL CK 0072
In the High Court Of Kerala
Case No : A.S. No. 918 of 1997

Marakkar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 174
Motor Vehicles Act, 1939 — Section 110B

Citation : (2011) ACJ 1795 : (2011) 7 RCR(Civil) 1250

Hon'ble Judges : P.R. Raman, J;P. Bhavadasan, J

Bench : Division Bench

Advocate : S.K. Brahmanandan, for the Appellant; R. Lakshmi Narayan, for the Respondent

Judgement

P. Bhavadasan, J.—Are the legal heirs of a person, who died as a result of an injury suffered due to the fall in the pot hole on a main road, entitled to receive compensation? If so, who is liable? These are some of the interesting questions thrown up for consideration in this appeal. First on to the facts:

Little did the members of the family of late Rafeeq realise what was in store for them on 18-7-1991, when Rafeeq as usual set out on his bicycle to the parallel college to attend classes. On the way back he fell into a pot hole on the road. He suffered a head injury. He was taken to Anwar Memorial Hospital, from where he was referred to Medical Trust Hospital, Ernakulam. He left for the heavenly abode on 20-7-1991 at 6.45 p.m. According to the Plaintiffs, the cause of injury was the fall in the pot hole on Kodungallur-Kongorppilly road maintained by the P.W.D. It is pointed out that on several occasions complaints had been preferred to the P.W.D. by the people regarding the pot holes on the road, but that did not yield any result. Had the road been properly maintained, according to the Plaintiffs, this mishap could have been avoided. They also pointed out that P.W.D. and the State were under an obligation and duty to maintain the road in proper condition and keep it safe. Their failure to do so has resulted in the accident.

2. Rafeeq, who was a school drop out was studying in a parallel college. He was aged 17 years at the time of the accident. It is claimed that he used to help his father in running a teashop and by his death his parents have suffered a loss of Rs. 30 per day as his services are no more available. They would also say that they had to borrow Rs. 25,000 for the treatment of Rafeeq. They also claimed amounts towards transportation to hospital, funeral expenses etc. Even though compensation due, is much more than Rs. 2 Lakhs, the Plaintiffs limited their claim to Rs. 2 Lakhs with future interest at 12%.

3. The Defendants resisted the suit. They denied that there was a pot hole as alleged in the plaint. According to them the road takes a sharp turn at the place of accident and the lower portion near the super elevation, which is at lower level. It was so aligned for the purpose of smooth negotiation of the vehicle. That is described as a pot hole. The accident occurred due to the carelessness on the part of Rafeeq himself. The road had been properly maintained. The allegation that the people had complained about the pot holes on the road is incorrect. There was no such complaint, nor were there any pot holes on the road. The second Defendant had taken timely steps to maintain the road properly. There was collection of some rain water on the road. It was unnecessary to provide any sign of caution as there was no danger posed. They denied the quantum of compensation claimed by the Plaintiffs. Pointing out that the Defendants were not responsible for the accident and that they were not liable to pay compensation, they prayed for dismissal of the suit.

4. The Court below raised necessary issues for consideration. The evidence consists of the testimony of P.Ws. 1 to 4 and Exts. A-1 to A-12 marked on the side of the Plaintiffs. The Defendants had D.W. 1 examined and Ext. B-1 marked. The Court below came to the following findings:

(i) Exts. A-8 (a) to (d) were not properly proved.

(ii) There was no evidence to show how Rafeeq had fallen in the pot hole on the road.

(iii) The person, who accompanied Rafeeq and who was the eye-witness is not examined.

(iv) Plaintiffs were not able to prove how exactly the accident had occurred and that there was a pot hole as alleged.

5. Based on the above conclusions, the suit was dismissed. The said judgment and decree are assailed in this appeal.

6. Both sides were elaborately heard.

7. The following issues arise for consideration:

(i) Was the death of Rafeeq as a result of the injury suffered in the fall in the pot hole on the road as alleged by the Plaintiffs?

(ii) Are the Defendants responsible for the unfortunate incident?

(iii) What, if any, is the compensation due to the Plaintiffs?

8. Issue No. 1: This is the main issue in this case. The Court below found that the Plaintiffs have miserably failed to establish that the injury was caused to Rafeeq consequent on the fall in the pot hole on the road. The Court below refused to accept Exts. A-8(a) to A-8(d) stating that those documents are not proved and also did not find the evidence of P.Ws. 1 to 3 acceptable. The lower Court accepted the evidence of D.W. 1 to the effect that the road was fit for traffic and there were no pot holes on the road. The statement by D.W. 1 that inner curve is constructed in a lower level and the outer curve is on a higher level for safety of the vehicles was also accepted by the Court below.

9. Learned Counsel appearing for the Appellant pointed out that the Court below has not appreciated the evidence in the proper perspective and has overlooked many of the vital aspects. Exts. A-8(a) to A-8(d) were marked by the Plaintiff without any demur from the Defendants' side and there is no justification in ignoring those documents. Those documents were prepared by police in relation to the crime registered with respect to the incident in question and the Court below could not have ignored the same. The evidence of P.Ws. 2 and 3 ought not to have been discarded. According to learned Counsel the evidence shows that it was P.W. 2, who had taken Rafeeq to the hospital and there were no reasons as to why his testimony should not have been accepted. According to learned Counsel there is no dispute in this case that Rafeeq had fallen on the road and has suffered a head injury. There is also no dispute regarding the fact that Rafeeq died due to the injury sustained in the fall. The only dispute was regarding the question whether the fall was due to the pot hole on the road. Learned Counsel for the Appellants drew attention of this Court, that it is admitted even by the Defendants that there was stagnation of rain water on the road. The documents produced by the Defendants have also not been properly considered. Learned Counsel also pointed out that even assuming that what the Defendants say are true, they ought to have taken sufficient precautions to see that no untoward incident happens. According to learned Counsel, the finding of the Court below has resulted in serious miscarriage of justice.

10. Per contra, learned Government Pleader pointed out that the Court below has considered the evidence in great detail and has come to the conclusion that the Plaintiffs have miserably failed to establish their case. May be that Exts. A-8(a) to A-8(d) were marked from the side of the Plaintiffs without objection. But marking is no substitute for proof. The documents have not been properly proved in accordance with law. The learned Government Pleader also pointed out that the evidence is clear to the effect that there were no pot holes as alleged by the Plaintiffs and that the mishap had occurred solely due to the indifference, carelessness and negligence on the part of the deceased himself. There is nothing to indicate that the road was in a bad condition posing threat to the vehicles and passengers using the road. Learned Government Pleader pointed

out that the Defendants have adduced evidence to show that at the place of the accident the road takes a curve and in order to enable the vehicles to take a smooth turn, the inner curve is constructed at a lower level and the outer curve is on a higher level. According to the Defendants the deceased had come at a tremendous speed and had invited trouble. Learned Government Pleader concluded by pointing out that no grounds are made out to interfere with the judgment and decree of the Court below.

11. P.W. 1 is none other than the father of the deceased. He runs a tea shop. The deceased is his youngest son. He would say that his son suffered an injury by falling into the pot hole on the road on 18-7-1991 and suffered a head injury. He was hospitalised and he passed away on 20-7-1991 consequent to the injury suffered by him. He says that the pot hole was on the eastern side of the road and that while his son was coming along the road as the pot hole was filled with rain water, Rafeeq fell into the pot hole and was thrown off his bicycle. In the fall his head hit the ground and he suffered injuries. He was studying in the X standard. P.W. 1 stated that the deceased used to help him in the running of the tea shop and now he has to engage an employee paying a sum of Rs. 40 per day. He spoke about the expenses incurred by him for the treatment of his late son in the hospital. According to him the pot hole was present for the last two years and several complaints have been preferred to P.W.D. If the road had been properly maintained, the accident would not have occurred. The documents Exts. A-1 to A-12 were marked through him.

12. P.W. 1 had no case that he had seen the incident. He came to know about the incident when he received a call from the hospital. He is unable to say that whether anybody else was accompanying his son at the time of the incident. He denied the suggestion that the accident was due to the negligence of this son.

13. P.W. 2 is a fish vendor by profession. The Plaintiffs are familiar to him and he knew the deceased. He would say that he had seen Rafeeq lying in the pot hole on the road with the bicycle beside him. He was returning home after his business. He would say that he along with a person by name Abdul Khader had fetched a vehicle and taken the injured to the hospital. The pot hole was on the eastern side of the road. This witness would depose that even as on date the pot hole remained at the site. The pot hole had been there for a long time and several complaints had been preferred to the P.W.D. by the people of the locality. According to him, Rafeeq was coming at a normal speed and he fell into the pot hole. In cross-examination he had stated that he saw Rafeeq lying on the road. He denied that he had actually seen the cycle falling into the pot hole. However, he would depose that he reached the place first. He accepted that there was a level difference between the road and the adjoining land at the relevant place. He also stated that there was stagnation of rain water at the place. As a result of that, a person coming from a distance will not be able to recognise the level difference. He would also depose that there were other pot holes on the road.

14. P.W. 3, Abdul Khader claims to have seen the incident. He resides near the

place of incident. He would depose that the deceased was coming from north towards south and in the process his cycle fell into the pot hole on the road. Rafeeq was thrown off from his bicycle and he fell on the road. P.W.3 claims to have rushed to the place. He would state that he saw the deceased bleeding through his ears. He would say that soon thereafter P.W. 2 also reached the place. He had also accompanied the deceased to the hospital. In cross-examination he deposed that at the relevant time he was standing in the veranda of a nearby shop. He also stated in cross-examination that no sooner than he reached the place, P.W. 2 had also come there.

15. P.W. 4 is an employee of the tea shop of P.W. 1. He would say that he was employed after Rafeeq had passed away and he was being paid Rs. 40 per day.

16. From the side of the Defendants D.W. 1 was examined and Ext. B-1 file was produced. He was the Assistant Engineer, P.W.D. Roads at the relevant time. In his chief examination, he would assert that the road was smooth and perfect at the relevant time. Since there was a sharp curve at the site of the incident, in order to provide safety for the vehicles, the inner curve was slightly lower than the outer curve. He would say that there was some stagnation of rain water. According to him, the carelessness on the part of the deceased was the cause for the accident.

17. However, in cross-examination he conceded that the file produced by him will not show that he had gone to the spot on 19-7-1991 as asserted by him in the chief examination. It is also to be noted that the file will not disclose the source of information of the accident. It is surprising to note that he also says that he had not seen the Mahazar prepared by the police in the case. It is also conceded by him that there was a separate file regarding the maintenance of roads, which would show when maintenance of the road involved in this case was carried out. It is significant to note that an estimate for repair of road on which the accident occurred, according to D.W. 1, was submitted a few days after the incident and on that basis the repairs were carried out. It is also shocking to notice that this witness at the time of his first inspection did not prepare a report since he felt that it was unnecessary. More shocking is the subsequent statement that he felt the necessity for filing a report only when the media published the accident.

18. Ext. B-1 is the file produced by the Defendants. Page 21 of Ext. B-1 contains a reply sent by the Executive Engineer to the petition sent by the Plaintiffs to P.W.D. Therein it is denied that there was any pot hole on the road and according to the Engineer the road was in a good condition. One needs to notice the statement, which reads as follows:

To repair the damages due to heavy rain and heavy intensity of traffic, for which nobody can be blamed, the Department has taken all possible measures then and there.

Page 15 of Ext. B-1 contains a report sent by the Assistant Engineer to the Assistant Executive Engineer, P.W.D. Division. Therein also it is denied by them

that there is any pot hole at the relevant place. It is also stated that the road is owned and maintained by the P.W.D. But, the significant fact is that the report says that the pot holes in certain portions of the road were formed due to heavy rains.

19. Ext. B-1 at page 6 says that the Executive Engineer had written to the Superintending Engineer about the incident on the basis of the report said to have been given to him by the Assistant Executive Engineer, Roads, North Paravur. However, going by the evidence of D.W. 1, it is seen that though he claims to have visited on the two occasions, no report was prepared by him on the first occasion. Later, only after coming to know about the accident through the media, he felt it necessary to prepare a report.

20. No explanation whatsoever is offered by D.W. 1 regarding the documents produced by the Plaintiffs as Exts. A-8(a) to A-8(d). Ext. B-1 can only be a self serving document.

21. Coming back to Exts. A-8(a) to A-8(d), may be that the Court below is technically correct in saying that the documents have not been proved as required under law. But no objection as such was taken to the marking of those documents and one should also note that these documents have been drawn up for the crime registered by the police in relation to the accident. There is nothing to indicate that the statements contained in these documents are either false or that they were made with ulterior motive. It is significant to notice that the crime was registered on 20-7-1991 as Crime No. 80 of 1991 of Binanipuram Police Station obviously under the caption unnatural death u/s 174 of the Code of Criminal Procedure. Ext. 8(a) is the scene mahazar prepared by the officer concerned. Ext. A-8(c) is the copy of the mahazar of the cycle which Rafeeq was riding. A look at Ext. A-8(d) shows that the road at the site has a width of three meters.

This document was prepared on 21-7-1991. It is true that the Defendants have stated otherwise, that is there were no pot holes on the road. But however, at the risk of repetition Ext. B-1 file contains documents drawn up by the officers of the department. Exts. A-8(a) to A-8(d) are documents prepared by an independent body and there is no allegation that those documents were concocted for the purpose of the case. If one is to accept Exts. A-8(a) to (d), it follows that there were pot holes on the road as alleged by the Plaintiffs. It has already been noticed that in Ext. B-1 file also there is a report that there were pot holes on the road though in that communication it was stated that at the site of the accident there was no pot hole.

22. It is not possible to accept the reasons given by the lower Court for rejecting the evidence of P.Ws. 2 and 3. As far as P.W. 2 is concerned, as already noticed, he had taken the injured to the hospital and his name can be seen in the wound certificate, namely Ext. A-10 dated 20-1-1991. True in the said document it is only stated that the injury was caused due to a fall. But the fact remains that

P.W. 2 was at the spot at the relevant time and he could have seen the accident. It is also true that he had stated that he had not seen the cycle actually falling into the pot hole, but had only seen the deceased lying in the pot hole with the cycle beside him. The Court below chose to disbelieve him on the ground that P.W. 2 was unable to say about the speed at which the deceased had come on his bicycle and also whether somebody else was also riding along with him. The testimony of P.W. 3 is disbelieved on the ground that he had claimed that he alone was there at the spot of the accident. Recalling the evidence of P.W. 3 it could be seen that what he says is that he saw the deceased coming on his bicycle and falling into the pot hole. Then he rushed to the place. By the time he reached the place, P.W. 2 was already there. He also claims that he had accompanied the injured to the hospital.

23. The Court below says that there is no evidence shows as to how Rafeeq had fallen down on the road. Lower Court relied on the evidence of D.W. 1 and Ext. B-1 to come to the conclusion that the claim of the Plaintiffs that there were pot holes on the road and that Rafeeq had fallen into one of them is incorrect. Further the Court below goes on to say that the evidence clearly says that there was a person accompanying the deceased. He was the best person to speak about the accident and he had not been examined. That according to the Court below is fatal.

24. The Court below has omitted to notice the evidence of P.W. 1 in this regard. There is no dispute regarding the fact that the person who was coming along with deceased Rafeeq was his friend Shihab on his bicycle. P.W. 1 in re-examination has clearly stated that Shihab is at present in the Middle East. It could thus be seen that the failure to examine the said person was not deliberate or wilful. The claim of P.W. 1 that Shihab is abroad on employment is not challenged by the Defendants. There is nothing to indicate that the said statement of P.W. 1 is incorrect or false. The Defendants have no case that he was deliberately withheld. Thus it would be seen that the reasons given for disbelieving the testimonies of P.Ws. 1 to 3 are not acceptable and justifiable.

25. Coming back to the documents produced by the parties, Ext. A-7 is the inquest report prepared on 20-7-1991. A reading of column 10 in the inquest report shows that one Raghu had told the Investigating Officer that he had seen Rafeeq being helped by another person to sit by the side of the road while he was coming in his car. He has specifically stated that the road takes a curve at the relevant place and there was a pot hole filled with water. True that the said person had not been examined. But it is a statutory document prepared by a responsible officer.

26. It is too much to imagine that the documents produced by the Plaintiffs, namely Exts. A-6 to A-12 were all cooked up and manipulated influencing the police. Ext. A-9 is the post-mortem report, which says that Rafeeq died due to head injury. A-12 which is the final report in Crime No. 90 of 1991 of Binanipuram Police Station submitted by the investigating officer after due

investigation before Court also shows that the cycle had fallen into the pot hole on the road and that Rafeeq suffered an injury on his head.

27. Apart from the fact that there is no discussion of the documents by the Court below, it is rather inconceivable that all these documents have been got prepared by the Plaintiffs for the purpose of this case. It has to be noticed that these documents came into force soon after the incident. The Plaintiffs could not have concocted the same so soon.

28. For the above reasons, we are unable to concur with the finding of the Court below that the Plaintiffs have not been able to establish how the accident had occurred. It is clear that death of Rafeeq was caused due to the injury suffered by him as a result of the fall in the pot hole on the road as alleged by the Plaintiffs.

29. Issue No. (ii): The next issue that arises for consideration is whether the Defendants can be made liable for the accident. The accident had occurred on the Kodungallur-Kongorppilly Road. The road is maintained by P.W.D., a department of the first Defendant. The allegation is that P.W.D. was thoroughly negligent in not properly maintaining the road and let the pot holes remain on the road. It was due to the pot hole on the road that the accident had occurred. It is also pointed out that the pot hole involved in this case was filled with rain water and Rafeeq while coming on his bicycle had fallen into the pot hole. But the Defendants would deny this allegation. According to them the road was maintained properly and there were no pot holes on the road.

30. Evidence of D.W. 1 will clearly show that the road is in fact being maintained by the P.W.D. Defendants' contention is that at the relevant place the road takes a curve and in order to provide safe negotiation of the curve, the inner curve is placed low and the outer curve is higher than the inner curve. The Defendants would concede that there was stagnation of rain water, but they would deny the existence of any pot hole.

31. The finding on issue No. (i) is that there was a pot hole on the road as alleged by the Plaintiffs and that Rafeeq had fallen into that pot hole and had suffered head injury, to which he succumbed. Therefore, the claim of the Defendants that there were no pot holes on the road cannot be accepted. As already noticed, one of the records already referred to contained in Ext. B-1 file will clearly show that there were in fact pot holes on the road. But the claim of the Defendants is that there were no pot holes at the relevant place. The evidence of D.W. 1 shows that a few days after the incident an estimate was furnished for maintenance of the road. On the basis of that estimate the road was later repaired. If there is nothing wrong with the road, it was unnecessary to do maintenance immediately. This also to certain extent belies the claim of the Defendants that there were no pot holes on the road as alleged by the Plaintiffs.

32. The mere fact that the Plaintiffs were unable to produce and prove the complaint said to have been filed before the P.W.D. pointing out the condition of

the road, cannot be taken as a ground to non-suit them. Usually when such representations are given, no copies are retained. Even assuming that no such representation was given, one fails to see how it could affect the claim of the Plaintiffs. If as a matter of fact the Defendants were duty-bound to maintain the road in a proper condition, fit for traffic, then they are responsible for the accident if it was due to the bad condition of the road.

33. Neither side pointed out any statute governing the matter. No provision was pointed out to show the statutory obligation of the P.W.D. in relation to the laying and maintenance of the roads. However, as already noticed, there is no dispute regarding the fact that the road was being maintained by the P.W.D. The principle of *res ipsa loquitur* may be attracted. The principle applies in a case where the Plaintiff proves the accident and the reason for the same is within the knowledge of the Defendant. Where a 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 were in management use proper care, it affords reasonable evidence, in the absence of explanation by the Defendants that the accident arose from want of care by the Defendants. By proving the accident the Plaintiff is deemed to have discharged his burden and it is for the Defendants to say that they have taken precaution and care.

34. In the decision reported in *Darshan and Others (Smt.) Vs. Union of India and Others*, the said principle was invoked. That was a case in which the deceased had fallen into a man-hole left uncovered by the authority concerned and the authority was held responsible. In the said case it was observed as follows:

Coming to the instant case, it is one of *res ipsa loquitur*, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the Red Fort in leaving the man-hole uncovered. The dereliction of duty on their part in leaving a death trap on a public road led to the untimely death of Skattar Singh. It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and far reaching. It would, undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Accordingly, Article 21 of the Constitution is attracted and the Petitioners are entitled to invoke Article 226 to claim monetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights.

In the decision reported in *Klaus Mittelbachert Vs. East India Hotels Ltd.*, it was held that three conditions must be satisfied to attract the doctrine. They are (i) the accident must be of a kind which does not ordinarily occur in the absence of someone's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the Defendant; (iii) it must not have been due to any voluntary action or contribution on the part of the victim.

35. Though it might appear to be difficult to accept it, considering the principles

laid down by the decisions referred to, the above doctrine will apply to the facts of the present case also.

36. It can be seen from the evidence adduced by the Defendants that their stand seems to be that even if due to incessant rains some damage is caused to the road, they may not be responsible for the accident. This cannot be accepted. P.W.D. ought to have known that damages could be caused to the road due to rain and therefore they should have been taken sufficient precautions. It is idle for them to simply say that since continuous rain might have caused damage to the road, they are not responsible or liable. P.W.D., which is a department of Government is bound to maintain the road in a proper condition so as to make it motorable at all times.

37. The decision reported in *S. Vedantacharya and Another Vs. Highways Department of South Arcot and Others*, may have some help in this regard. That was a case where in a culvert gave way due to continuous rain and flood and a vehicle plunged into the river and a person died. Damages were sought for. The department came forwards with contention that rain had caused the damage. Rejecting the claim, the Apex Court held as follows:

We think that merely because the cause of the accident was heavy rain and flood, Highways Department cannot on that account alone claim to be absolved unless there is something further to indicate that necessary preventive measures had been taken anticipating such rain and flood.

38. It is not therefore possible to accept the claim of the Defendants that even assuming that there were some damages caused to the road due to heavy rains, they are not responsible.

39. The claim obviously falls under the head of Law of Torts. It has already been noticed that neither side brought to the notice of this Court any statutory provision governing the matter. In England Highway is covered by the Highway Act, 1980. It is well-settled by now that in the absence of any statutory provision the common law principle can be applied. In the decision reported in *Rajkot Municipal Corporation Vs. Manjulben Jayantilal Nakum and Others*, it was observed as follows:

In the absence of statutory law or established principles of law laid by this Court or High Courts consistent with Indian conditions and circumstances, this Court selectedly applied the common law principles evolved by the Courts in England on grounds of justice, equity and good conscience. Common law principles of tort evolved by the Courts in England may be applied in India to the extent of suitability and applicability to the Indian conditions.

40. It is true that initially the Courts were very reluctant to mulct public authorities with liability in cases of tortious act apprehensive of the consequences. Normally, the Courts would try to find out if there is any statutory provision in that regard. As far as tortious acts are concerned, it may be the

result of mis-feasance or non-feasance or mal-feasance, i.e., unlawful act, improper performance or negligence, omission to perform duty when there is an obligation respectively. A civil wrong committed by a person resulting in injury or loss to another person gives the latter a cause of action against the former. It may be a tort or from a contract. Tort involves a breach of a duty independent of contract give rise to a civil cause of action for which compensation is recoverable. Usually, the remedy is action by way of liquidated damages.

41. It has been noticed in the decision reported in *Rajkot Municipal Corporation Vs. Manjulben Jayantilal Nakum and Others*, that normally the public authorities are held liable only for positive action (mis-feasance) and not for omission (nonfeasance). However, it is held that the ordinary principle of law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. It is also pointed out in the said decision that where a public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence.

42. Statutory power may not be like a statutory duty. The proper approach, according to the Apex Court is to consider whether a duty of care situation exists in public law tort which the law ought to recognise and whether in that situation the Defendant's conduct was such that he should have for seen the damage that would be inflicted on the Plaintiff. It has been held that public authorities discharge public obligations to the public at large. Therefore, it owes a duty of care at common law to avoid causing present or imminent danger to the safety of the Plaintiff or a class of persons to which the Plaintiff belongs. It is a statutory duty of care under common law which could give rise to actionable claim in the suit of the individual and it is capable of coexistence alongside a statutory duty.

43. Even though as already observed, initially law was shy to mulct public authority with liability for negligence etc., the law did not remain static. The rule of law requires that the wrong should not go unredressed. Law of Tort is founded on the principle that every injury must have a remedy In the decision reported in *Union of India v. United India Insurance Co. Ltd.* AIR 1998 S.C. 640 the common law principle of awarding compensation was applied. Going by the above principle, it is abundantly clear that merely because no statutory duty as such has been pointed out against the Defendant that by itself is no ground to reject the claim of the Plaintiff.

44. In several cases, the question regarding maintenance of Highways had been considered. It has already been noticed that in the case of the collapse of a culvert the Apex Court had occasion to hold that the Highway Department is liable for not maintaining the culvert properly. In the decision reported in *Gorringe v. Calderdale MBC* (2004) 2 All. E.R. 326 it is seen referred to as follows:

In addition, a highway authority may be liable to common law for damage attributable to dangers that it has introduced, or, in the case of dangers introduced by some third party, that it has unreasonably failed to abate. Members of the public who drive cars on the highways of this country are entitled to expect that the highways will be kept properly in repair. They are entitled to complain if damage is caused by some obstruction or condition of the road or its surroundings that constitutes a public nuisance. And they are, of course, entitled to complain if they suffer damage by the negligence of some other user of the highway.

45. In the decision reported in *Stovin v. Wise* (1996) 3 ALL. E.R. 801 also applicability of common law principle with regard to the liability in relation to Public Highway was considered. It is seen referred to as follows:

Built into this question are several features which, in combination, seem to me to point to the conclusion that the existence of such a duty and such a liability would indeed be fair and reasonable. First, the subject-matter is physical injury. The existence of a source of danger exposes road users to a risk of serious, even fatal, injury. Road users, especially those unfamiliar with the stretch of road, are vulnerable. They are dependent on highway authorities fulfilling their statutory responsibilities. Second, the authority knows of the danger. When an authority is aware of a danger it has knowledge road users may not have. It is aware of a risk of which road users may be ignorant. Third, in the present case, had the authority complied with its public law obligations the danger would have been removed and the accident would not have happened. In such a case the authority can properly be regarded as responsible for the accident just as much as if its employees had carried out roadworks carelessly and thereby created a danger. There is no sensible distinction between an authority's liability for its workmen in the former instance and its liability if, in breach of its public law obligations, office staff fail to do their jobs properly and an avoidable road accident takes place in consequence. Fourth, this is an area where Parliament has recognised that public authorities should be liable in damages for omissions as well as actions. In 1961 Parliament abrogated the old rule which exempted the inhabitants at large and their successors from liability for non-repair of highways [Highways (Miscellaneous Provisions) Act 1961]. A highway authority is liable in damages for failing to take reasonable care to keep the highway safe. But no sound distinction can be drawn between dangers on the highway itself, where the authority has a statutory duty to act, and other dangers, where there is a statutory power but not a statutory duty. The distinction would not correspond to the realities of road safety. On the council's argument a highway authority would be liable if it carelessly failed to remove a dead tree fallen onto the road, but not liable if it carelessly failed to act after learning of a diseased overhanging tree liable to fall at any moment. Such a legalistic distinction does not commend itself. It would be at variance with ordinary persons' expectations and perceptions.

46. A Court of law cannot close its eyes and refuse to respond to social requirements and needs. It cannot throw up its hands in despair and say that since there is no statutory duty and specific law, any negligent act or omission on the part of any public authority resulting in any injury should go unredressed. There is obligation on the Court to satisfy the aspirations of the people and social need in such situations and respond since the Courts exist for the people.

47. In the decision reported in *Kishore Lal v. E.S.I. Corporation* 2007 (2) KLT 979 (S.C.) it was held as follows:

This Court has considered the principles of the law on negligence in *Jacob Mathew v. State of Punjab* and Anr. 2005 (3) KLT 965. The jurisprudential concept of negligence defies any precise definition. Eminent jurists and leading judgments have assigned various meanings to negligence. The concept as has been acceptable to Indian jurisprudential thought is well-stated in the *Law of Torts*, Ratanlal and Dhirajlal. It is stated:

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the Defendant owes the duty of observing ordinary care and skill by which neglect the Plaintiff has suffered injury to his person or property the definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) breach of the said duty; (3) consequential damage. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort." Cause of action for negligence arises only when damage occurs and thus the claimant has to satisfy the Court on the evidence that three ingredients of negligence, namely, (a) existence of duty to take care; (b) failure to attain that standard of care; and (c) damage suffered on account of breach of duty, are present for the Defendants to be held liable for negligence.

48. In the light of the above decisions, the Defendants cannot contend that they cannot be held liable. On facts, it has already been found that there was a pot hole on the road and that was the cause for the accident. P.W.D. cannot be heard to say that they are not statutorily liable to maintain the road in a proper condition and if any damage is caused to the road due to the incessant rain, they are not liable. As noticed in *S. Vedantacharya and Another Vs. Highways Department of South Arcot and Others*, the authorities concerned must anticipate and foresee the reasonable dangers and should provide for necessary remedies. Therefore it is evident from the above discussion that the Defendants are liable for the accident both on the principle of *res ipsa loquitur* and common law principle. Had the P.W.D. taken sufficient care and precaution and maintained the road properly, the incident would not have occurred.

49. Issue No. 3: The next issue that arises for consideration is regarding the quantum of compensation. There are always elements of speculation in the matter of assessing damages and compensation. It is not possible to arrive at the quantum of compensation with mathematical precision. While precedence have some relevance as regards the principle of law to be applied, the quantum of compensation and its assessment has to depend upon the facts of each case. Normally, there cannot be any binding precedent regarding the quantum of damages, though precedence could be of some guide. In assessing the damages or compensation, all relevant materials placed before Court, which will enable the Court to come to a conclusion in the matter of computing the pecuniary benefits due to a person will have to be considered.

50. When damages are claimed, it is essentially financial in character. It is intended to be compensatory. Several factors and imponderables will have to be considered. The principle is that the compensation which is granted by way of money damages should be a remedy as possible to put him in the same position as he would have been, had he not sustained the wrong for which he is compensated. It is intended only to compensate and not to enrich him.

51. In the decision reported in Kerala State Electricity Board v. Kamalakshy Amma 1986 KLT 1124 it was held as follows:

Courts have pointed out, time and again, that some degree of guess work is inevitable in assessing the quantum of general damages. This is due to practical difficulties in chalking out precise data or yardsticks in assessing the amount of damages. Decided cases provide some light in this field. In C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, , the Supreme Court held:

There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case ...In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable... 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".

In British Transport Commission v. Gourley 9 H.L. (1955) 3 All. ER. 796 at P. 808 Lord Reidsaid:

The general principle on which damages are assessment is not in doubt. A successful Plaintiff is entitled to have awarded to him such a sum as will, make good to him the financial loss which he has suffered, and will probably suffer, as a result of the wrong done to him for which the Defendant is responsible such damages can only be an estimate, after a very rough estimate, of the present value of his prospective loss.

A review of the decided cases points out that in fixing the quantum of

compensation in accident cases there is bound to be some element of arbitrariness. The matter would normally be left to the primary Court or Tribunal to take a reasonable, overall view of the salient features of the facts and then to fix the quantum of compensation bearing in mind the relevant factors and guidelines. When once such an amount is determined, unless it is shown to be patently wrong or perverse or a positive basis is indicated to refute such quantum, it will not be proper for an appellate Court to interfere with it. It cannot be denied that it is the duty of the primary Court or Tribunal, on a total view of the matter, to award what it considers, under all the circumstances, a "fair" compensation. The compensation awarded may not be "full", but at the same time it should be fair, and just or reasonable and not "illusory". In the very nature of things, it is not possible to formulate precisely the principles to be applied in all cases, but it may be possible in a majority of cases, for one to feel that the compensation awarded is fair and just or reasonable. We are reminded of the speech of Lord Devlin in *H. West and Son. Ltd. v. Shephard* (1963) 2 All. E.R. 625 at P. 638 (H.L.) to the following effect: "What is meant by compensation that is fair and not full? I think it means this. What would a fair-minded man not a millionaire, but one with a sufficiency of means to discharge all his moral obligations, feel called on to do for a Plaintiff whom by his careless act he had reduced to so pitiable a condition? Let me assume for this purpose that there is normal consciousness and all the mental suffering that would go with it. It will not be a sum to plumb the depths of his contrition, but one that will enable him to say that he has done whatever money can do. He has ex hypothesi already provided for all the expenses to which the Plaintiff has been put and he has replaced all the income which she has lost. What more should he do, so that he can hold up his head among his neighbours and say with their approval, that he has done the fair thing?" We concur with the above test and would respectfully adopt the above passage as our own. We should add that what is "fair" and just is that which is reasonable and real compensation.

* * * * * Learned Counsel contended that the Court below ought to have made deductions considering factors such as future imponderables which would have visited the deceased, and the advantage of getting a lump sum amount. If we have to find that deductions should have been made on account of the aforesaid factors, we cannot overlook or ignore other considerations which may further add to the assessment. It is of course, a recent development that Courts are inclined to recognise the fall in value or estimating the unliquidated damages. Earlier, Courts were hesitant in doing so eg. Denning L.J. (as he then was) expressed his view that "a man who stipulates for a pound must take a pound when payment is made, whatever the pound is worth at that time". But a Division Bench of this Court in a recent decision, *State of Kerala v. Thomas* ILR 1985 Ker. 228 took note of the deviation made by Browne-Wilkinson, J. in *Multiservice Bookbinding v. Morden* (1972) 2 All. E.R. 489 two decades later. Their Lordships in the aforesaid case, left the point for deeper consideration in future. In 1977, Lord Denning M.R. felt that his own earlier view needs change. Hence in *Cookson v. Knowles*

(1977) 2 All. E.R. 820 he urged his point thus:

In *Jefford v. Gee*, in 1970, we said that, in personal injury cases, when a lump sum is awarded for pain and suffering and loss of amenities, interest should run from the date of service of the writ to the date of trial. At that time inflation did not stare us in the face. We had not in mind continuing inflation and its effect on awards. It is obvious now that that guideline should be changed. The Courts invariably assess the lump sum on the "scale" for figures current at the date of trial, which is much higher than the figure current at the date of injury or at the date of writ. The Plaintiff thus stands to gain by the delay in bringing the case to trial.

In *American Jurisprudence (Second Edition) (Vol. 22)* at page 125 para. 87, it is stated:

Many cases have considered the effect which changes in the cost of living or the purchasing power of money should have on the amount of damages awarded in actions for personal injuries or wrongful death. The problem is presented because often the trial of the case is held several months or years after the injury, and further, the award-at least where the injury is permanent compensates for injuries which will continue many years into the future. The rule is now well-settled that a Court, in determining whether an award of damages for personal injuries is proper, can consider the changes in the cost of living or, in its alternative expression, in the purchasing power of money. The Court may also take account of future prospects of inflation or deflation, in fixing personal injury damages. The basis of this rule is that compensation means compensation in money, and the value of money lies not in intrinsic worth but in what it will buy. Thus reviewing Courts state that changes in the value of money are considered in determining whether a particular award of damages is excessive or inadequate.

In working out the compensation, the Court or Tribunal has wide discretion in the matter and in so doing, and in awarding a "fair" and "Just" compensation, or a "reasonable" one, it may take into consideration the prevailing purchasing power of rupee in order to see that the awards must keep pace with the growing inflation. This is one of the factors to be borne in mind to enable the Tribunal or Court, to be just, real and reasonable in all the circumstances of this case.... The Delhi High Court in *Jaimal Singh Vs. Jawla Devi etc.*, pointed out that "in assessing damages in fatal accident cases, compensation should be calculated so as to allow for...the increasing cost in a depreciating currency and Judge cannot shut his eyes to the inflationary trend and the fact that the rupee has considerably gone down in value".... We are of the view that fall in the rupee value is a factor which Courts can justifiably take into account in assessing damages in fatal accident cases. If that be so, the Appellant cannot possibly have a grievance that the amount should have been further reduced on account of consideration of future imponderables and lump sum payment, because there are other considerations which may off set the former, if not override them.

In the decision reported in *Tamil Nadu State Transport Corporation Ltd. v. Rajapriya* 2005 (2) KLT 848 (S.C.), it was held as follows:

The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of year's purchase.

Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case it is the overall picture that matters, and the Court must try to assess as best as it can the loss suffered.

There were two methods adopted to determine and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in *Davies*" case (supra) and the second in *Nance v. British Columbia Electric Railway Co. Ltd.* 1951 (2) All. E.R. 448.

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last.

The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in *Mallett v. Mc Mongle* 1969 (2) All. E.R. 178, where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

The starting point in any estimate of the amount of the "dependency" is the annual value of the material benefits provided for the dependents out of the

earnings of the deceased at the date of his death. But there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependents. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4-1/2% the present value of an annuity for 20 years of which the first ten years are at \$100 per annum and the second ten years at \$200 per annum is about 12 years' purchase of the arithmetical average annuity of \$ 150 per annum, whereas if the first ten years are at \$200 per annum and the second ten years at \$100 per annum the present value is about 14 years' purchase of the arithmetical mean of \$ 150 per annum. If therefore the chances of variations in the "dependency" are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the "dependency" used for the purpose of assessing the damages.

In the decision reported in *Klaus Mittelbachert Vs. East India Hotels Ltd.*, it was held as follows:

Personal injury may cause non-pecuniary as well as pecuniary loss to the Plaintiff. Non-pecuniary loss includes damages on the heads of: (i) pain and suffering; (ii) loss of amenities; and (iii) loss of expectation of life. Pecuniary loss may cover damages calculable on the heads of: (i) consequential expenses, (ii) cost of care and (iii) loss of earnings. The earlier practice was to make a global award without indicating the sums under different heads but the current practice as witnesses in 60s is to itemise the award at least broadly. Having done so, at the end a total figure in the round shall have to be arrived at so as to eliminate the deficiency in the process of calculative adjudication caused by overlapping or otherwise.

Pain and suffering consequential to an injury inflicted on the Plaintiff would include paid attributable to medical treatment for the injury. The amount of compensation will vary with the intensity of pain and suffering of the Plaintiff. Loss of amenities has a separate head of injuries and covers deprivation of ordinary experience and enjoyment of life. It is customary to award a lump sum as damages covering both the heads. Loss of expectation of life has a separate head of damages when a normal expectation of life is shortened as a result of

injury. However, suffering experienced by the Plaintiff from the awareness that his life expectancy has been shortened will fall under the head pain and suffering and not under the head loss of expectation of life. Quantification of damages for non-pecuniary damages such as pain and suffering and loss of amenities presents great difficulties. The Court cannot restore a person to the state of health which he enjoyed before he suffered a serious injury to his body or brain. The Court can award only reasonable compensation to the Plaintiff for his suffering, the assessment of which is essentially a guess work. The rules which have been developed by the judicial traditions are (i) amount of compensation awarded must be reasonable and must be assessed with moderation; (ii) regard must be had to awards made in comparable cases, and (iii) the sums awarded must to a considerable extent be conventional.

In *Rehana Rahimbhai Kasambhai Vs. The Transport Manager, Ahmedabad Municipal Transport Service and Others*, , the High Court of Gujarat has held that in cases of personal suffering the general damages can be given under three heads: (i) personal injury and loss of enjoyment of life; (ii) actual pecuniary loss resulting in any expenses reasonably incurred by the Plaintiff; and (iii) the probable future loss of income by reason of incapacity or diminishing capacity of work.

In the decision reported in *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, was held as follows:

As noticed hereinbefore six several judgments have been cited wherein the quantum of compensation varies between Rs. 50,000 to Rs. 1,50,000 but in every decision there was a factual basis for such an assessment and there is no denial of the same. But the adaptability of the multiplier method and its acceptability without any exception cannot just be given a go-by. This Court in a long catena of cases and without mincing words did apply, the multiplier method to decide the question of compensation in the cases arising out of the Motor Vehicles Act. It is in this context the view of the British Law Commission may be noticed and which indicates "the multiplier has been, remains and should continue to remain, the ordinary, the best and the only method of assessing the value of a number of future annual sums". The actuarial method of calculation, strictly speaking, may not have lost its relevance but its applicability cannot be but he said to be extremely restricted, .said the British Commission. Lord Denning's observations in *Hodges v. Harland and Wolff Ltd.* also seem to be rather apposite. Lord Denning observed that the multiplier method cannot but be termed to be universal application and as such it would meet the concept of justice in the event the same method is applied for determining the quantum of compensation. Incidentally in a very recent decision of this Court in the matter of *Lata Wadhwa v. State of Bihar* a Three Judge Bench if this Court has had the occasion to consider an award of a former Chief Justice pertaining to the assessment of compensation by reason of a huge accidental fire. Significantly a writ petition was filed in this Court and this Court thought it expedient to have

the claims examined by a former Chief Justice of the country and the latter duly and upon adaptation of the multiplier method finalised the quantum of compensation which more or less, barring some exceptions stands accepted by this Court in the decision noticed above. In Lata Wadhwa decision the factual score records that while the 150th birth anniversary of Sir Jamshedji Tata was being celebrated on 3-3-1989 within the factory premises at Jamshedpur and a large number of employees, their families including small children had been invited, a devastating fire suddenly engulfed the pandal and the area surrounding and by the time the fire was extinguished, a number of persons lay dead and many were suffering with burn injuries. The death toll reached 60 and the total number of persons injured was 113. The factual score in Lata Wadhwa's case further depicts that amongst the persons dead, there were 26 children, 25 women and 9 men and Smt. Lata Wadhwa, the Petitioner in the matter lost her two children, a boy and a girl as also her parents. It is on this score that the learned arbitrator fixed in the absence of any material a uniform amount of Rs. 50,000 to which again a conventional figure of Rs. 25,000 had been added for determining the total amount of compensation payable. While dealing with the matter this Court (Pattanaik, J. speaking for the Bench) observed:

So far as the determination of compensation in death cases are concerned, apart from the three decisions of the Andhra Pradesh High Court, which had been mentioned in the order of this Court dated 15-12-1993, this Court in the case of G.M., Kerala SRTC v. Susamma Thomas exhaustively dealt with the question. It has been held in the aforesaid case that for assessment of damages to compensate the dependants, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The Court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self- maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependents, and thereafter it should be capitalised by multiplying it by a figure representing the proper number of year's purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, "it is the overall picture that matters", and the Court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed: "The multiplier method is logically sound and legally well established method of ensuring a

"just" compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases".

In the decision of Sushamma Thomas's case this Court in paras 7 and 8 of the Report observed:

7. In a fatal accident action, the accepted measure of damages awarded to the dependents is the pecuniary loss suffered by them as a result of the death. "How much has the widow and family lost by the father's death?" The answer to this lies in the of quoted passage from the opinion of Lord Wright in *Daview v. Powell Duffryn Associated Collieries Ltd.* which says:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own 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 taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent. Thus "except where there is express statutory direction to the contrary, the damages to be awarded to a dependent of a deceased person under the Fatal Accidents Act must take into account any pecuniary benefit accruing to that dependent in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages". Lord Wright in the same case said, "the actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death". These words of Lord Wright we adopted as the principle applicable also under the Indian Act in *Gobald Motor Service Ltd. v. R.M.K. Veluswami* where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependent by the death, must be ascertained.

Needless to say that the multiplier method stands accepted by this Court in the decision last noticed and on the acceptability of the multiplier method this Court in para 16 had the following to State:

16. It is necessary to reiterate that the multiplier method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future

earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years virtually adopting a multiplier of 45-and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be "just", the statutory determination of a "just" compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a "just" compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases.

In Lata Wadhwa's case however, this Court came to a conclusion that upon acceptability of the multiplier method and depending upon the fact situation, namely, the involvement of TISCO in its tradition that every employee can get one of his children employed in the Company and having regard to the multiplier 15 the compensation was calculated at Rs. 3.60 lakhs with an additional sum of Rs. 50,000 as a conventional figure making the total amount payable at Rs. 4.10 lakhs for each of the claimants of the deceased children.

The decision in Lata Wadhwa's case thus, is definitely a guiding factor in the matter of award of compensation wherein children died due to an unfortunate incident as noticed more fully hereinbefore in this judgment.

Going by the principles laid down, the multiplier method is the safe method. What is paid actually is present value of future needs. Basic rule is that the Plaintiff cannot receive more by way of damages than the amount of his loss. It is compensation only. Though assessment of compensation involves hypothetical consideration and speculative elements, it should nevertheless be objective. It has always been emphasised that the amount awarded must be just compensation. The compensation must be just and fair.

52. Basically only three factors need to be established by the claimant for

assessing compensation in case of death, ie., (a) age of the deceased, (b) income of the deceased and (c) number of dependents.

53. Going by the evidence of P.W. 1, according to him, late Rafeeq was working in the tea shop and on his death he had to engage P.W.4 on a daily wages of Rs. 40. He would also say that had Rafeeq attended the tea shop he would have saved Rs. 30 per day. Considering the age of Rafeeq, i.e., 17 years, and in the absence of acceptable evidence regarding the age of the parents of Rafeeq, the multiplier which can be taken is 16. Of course, he could have earned more as time passed. Normally the age of the parents will have to be taken into consideration. So also the probability of the income of the parents being reduced consequent on the marriage of Rafeeq by about the age of 24 or 25 and the expenses of Rafeeq will also have to be deducted. Considering the above aspects including that one third has to be deducted, it is felt that Rs. 30 per day can be the multiplicand. Assuming that he worked for 25 days, the monthly income would be 750 and the total income for 16 years would be $750 \times 12 \times 16 = 1,44,000$ Rafeeq suffered injuries on 18-7-1991 and died on 20-7-1991. He died only after two days of the incident. Therefore a sum of Rs. 10,000 is given towards pain and suffering. His parents must have incurred at least Rs. 5,000 for the treatment and that amount is given on that account. For funeral expenses a sum of Rs. 2,500 is granted. For the loss of estate Rs. 10,000 is granted. Totally a sum of Rs. 1,71,500 is granted.

54. The matter has been so elaborately considered with a view to sound a note of caution to the public authorities. They seem to remain under the impression that they cannot be made liable for their culpable acts and omissions. Things have gone to such a state that it has become necessary to issue orders from Courts to the authorities concerned to repair the roads. In such a state of affairs the Court has to invoke its jurisdiction to come to the rescue of the public. Let the authorities note that they cannot be get away with their culpable acts or omissions with impunity. They may have to pay for their apathy. They are alerted that unless they bestow sufficient care in discharging their social obligations, they may be in peril.

In the result, the judgment and decree of the Court below are set aside and a decree is passed in the following terms:

Plaintiffs shall be entitled to realise Rs. 1,71,500 with 6% interest from the date of suit till realisation from the Defendants jointly and severally. There will be no order as to costs.