

(1977) 08 AHC CK 0010
In the Allahabad High Court
Case No : F.A.F.O. No. 226 of 1972

Smt. Devki Devi Tiwari and Others

APPELLANT

Vs

Raghunath Sahai Chatroth and Others

RESPONDENT

Date of Decision : 29-08-1977

Acts Referred:

Central Motor Vehicles Rules, 1989 — Regulation 6, 7
Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2
Motor Vehicles Act, 1939 — Section 110A, 110D, 2, 94, 95

Citation : (1977) AWC 629

Hon'ble Judges : M.N. Shukla, J;K.C. Agrawal, J

Bench : Division Bench

Judgement

K.C. Agrawal, J.—In a collision on the 5-2-1969 at about 9.30 P.M. between a Jeep UPM 1326 and a petrol tanker USK 822, Harish Chandra Tewari, who was going in the former, was killed. Harish Chandra Tewari was going in the aforesaid jeep from Mohatla Rajpura in the town of Haldwani to his house in Baura Estate, Civil Lines, Haldwani.

2. The dependants of the deceased Harish Chandra Tewari lodged before the Claims Tribunal a claim u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") for Rs. 50,000/ against Raghunath Sahai Chatroth, the owner of the petrol tanker, Respondent No. 1, the Oriental Fire and General Insurance Company Ltd. Bombay, the insurer of the petrol tanker, Respondent No. 2, and also against the Hindustan Aluminum Corporation Ltd. Mirzapur, the owner of the Jeep, Respondent No. 3 and Ruby General insurance Company Limited, the insurer of the Jeep, Respondent No 4.

3. The case of the claimants was that at about 9.30 P.M. on the 5th February, 1969, the deceased Harish Chandra Tewari was going with 5-6 others in Jeep No UPM 1326 to his house. They were returning from Mohalla Rajpura and as the jeep took a turn at Tikoniya crossing and proceeded towards Kathgodam along the main road, the aforesaid petrol tanker, USK 822, belonging to Respondent No

1, came from Kathgodam side at a very high speed. Its driver Motilal could not control the tanker and dashed against the jeep as a result of which Harish Chandra Tewari was thrown out on the street and was crushed by the petrol tanker. Harish Chandra Tewari succumbed to the injuries at the spot. The claimants asserted that the monthly income of the deceased was Rs. 400/- per month and, therefore, they were entitled to receive the compensation of Rs. 50,000/ from the owners of the petrol tanker, the jeep and the insurance companies with which these vehicles were insured. According to the claimants, the accident in which the death of Harish Chandra Tewari took place was the result of recklessness and negligence of the drivers of the two vehicles, referred to above.

4. The application made by the claimants u/s 110-A of the Act was contested by the four Respondents. Each one of these Respondents filed a separate written statement. According to the written statement of the Respondent No. 1, the accident did not take place due to any fault of the driver of the tanker and hence, he was not liable to pay compensation. He also alleged that, in fact, the driver and the other occupants of the jeep were all drunk and this led to the accident. In the written statement filed on behalf of Respondent No. 2, the averment made was that the vehicle USZ 822 was insured with it under a policy with liability to third party only and the same was limited to Rs. 20,000/ for all claims. The plea that the claim was time barred and was liable to be dismissed summarily was also taken by it. The written statement of Respondent No. 3 was that the aforesaid jeep car was not with or under the control of the said Respondent at the time when the accident took place as the same had been taken from the answering Respondent by the Uttar Pradesh Congress Committee for its use. It also asserted that the jeep car was at the time of the alleged accident moving in normal speed towards Bhutiya Padaw in Haldwani when the petrol tanker came rushing towards the jeep car at a high speed and dashed against it with the result that Harish Chandra Tewari fell down from the jeep and was run over by the tanker. It also pleaded that the jeep car was not responsible for the accident. In the alternative, the plea taken was that there was no cause of action against the said Respondent. Hence, no liability could be fastened on it. Ruby General Insurance Company, which was the insurer of the jeep car in question also refuted the claim on various grounds, including that the terms of the policy did not cover the liability of the claim made in the instant case.

5. On the pleadings of the parties, the claims Tribunal framed a number of issues. But as the argument made before us in the appeal centred round only some of the issues decided against the claimants, by the Tribunal, we would like to reproduce only those issues. These issues are:

3. Was the tanker of O.P. No. 1 being driven rashly and negligently when the accident took place?

4. Whether the accident took place because of the driver of the jeep was drunk and responsible for the accident?

5. Whether the jeep belonging to opposite party No. 3 was under the control of U.P.C.C. and had been given to the U.P.C.C. in connection with elections? If so, is the O.P. No. 3 liable at all?

6. Whether the tanker was insured for 3rd party risk and for this reason the O.P. No. 1 is not liable?

7. Whether under the policy given by O.P. No. 4 no risk of death was covered to a passenger in the vehicle? If so, whether O.P. No. 4 is at all liable?

6. Being not satisfied with the evidence adduced by the claimants, the claims Tribunal held that as the claimants failed to prove that the accident took place because of any negligence or rashness of the driver of the petrol tanker, the owner of the tanker and its insurer could not be held liable. It, however, found that the accident was the result of the negligence of the driver of the jeep but as the jeep was not under the control of the Hindustan Aluminium Corporation Ltd., Mirzapur, which owned the vehicle, but was being driven by an employee of the Uttar Pradesh Congress Committee, therefore, the said corporation could not be held liable for the accident. In the view of the Tribunal, as the insurance policy given by the Ruby General Insurance Company Ltd. for the jeep had not been proved, the claim could not be decreed against the aforesaid insurance company as well. On these findings the petition filed by the claimants was dismissed.

7. Feeling aggrieved by the dismissal of the claim, the claimants filed the present appeal u/s 110-D of the Act.

8. Now, the question which arises for determination in the instant case is whether the accident took place on account of the negligence of the driver of the petrol tanker or that of the jeep. In this connection, the further question that would arise is if the accident was not the result of individual negligence of either of the two, can it be said that the same was the combined effect of the negligence of the drivers of the aforesaid two vehicles.

9. It is true that in an action for negligence the burden of proof rests on the claimant. To prove the same, the claimants produced as many as six witnesses. Out of these six witnesses, the Claims Tribunal doubted the presence of Chandra Ballabh (PW 3), and Mahesh Chandra Tewari (PW 4), respectively on the scene of occurrence at the time when the accident took place. Thus, it discarded their testimony. Bhagwat Prasad (PW 1) and Indramani (PW 5) were found to be formal witnesses. The remaining two witnesses were Prakash Chand Pant (PW 2), and Krishna Chandra Nautiyal (PW 6). These two witnesses were also going in the jeep with the deceased Harish Chandra Tewari. Moti Lal (DW 1), who was driving the petrol tanker in the night of the occurrence was produced by Respondent No. 1.

10. We were taken through the statements of these witnesses by the learned Counsel for the claimants. It is in the evidence of Prakash Chand Pant (PW 2), that he was going in that very jeep when it met with the accident. This witness

stated that as the jeep had gone 5 or 10 steps ahead the crossing along the main road, the petrol tanker dashed against it. He stated that he did not see the tanker coming from the Kathgodam side as he was engaged in talking to the other passengers of the jeep. Keshav Chand Naifhani (PW 6) stated that a petrol tanker was running at a fast speed and that the right side of the jeep struck against the left side of the tanker as a result of which Harish Chandra Tewari was thrown out of the jeep car and crushed.

11. Counsel for the Appellants attempted to argue that the statements of the two witnesses, who were going in the jeep, proved that the accident took place after the jeep had negotiated the Tikoniya crossing. We are, however, unable to accept this submission. As stated by Krishna Chandra Naithani, the jeep collided with the left side of the tanker which was coming from north and going towards south. This would show that the jeep was not expected to cross the main road and was yet on the road while going to railway bazar when the accident took place. We are in complete agreement with the view of the Claims Tribunal that the evidence of the claimants failed to establish that the jeep had crossed the Tikoniya and that the accident took place on the Kathgodam road. When Motilal (DW 1) stated that the jeep had come 10 paces ahead of the crossing he obviously meant that it had come 10 paces inside the inter-section of these two roads. The finding of the learned Judge further to the effect that the jeep driver could see the light of the petrol tanker coming from the Kathgodam side and bring it to a halt and avoid the accident is perfectly correct. According to Rule 7 of Schedule X appended to the Motor Vehicles Act also, the driver of a motor vehicle when entering on a road inter-section, if the road to be entered is a main road must give way to the vehicle proceeding along the main road. The driver of the jeep having not done so was guilty of the negligence.

12. The question, however, still is whether the accident was the result of the negligence of the driver of the jeep exclusively, as held by the Claims Tribunal or that the same was the combined effect of the negligence of the driver of the jeep and that of the petrol tanker. As observed above, the tanker was coming on the main road from Kathgodam side and was going to Bareilly. Motilal (DW 1) stated that he had slowed down the speed of the petrol tanker when he was approaching the Tikoniya and that the tanker was running at the speed of 20 k.m. per hour. The testimony of this witness was challenged by the learned Counsel for the Appellant and it was shown from the evidence of the witnesses produced by the claimants that as a result of the severe jerck received by the jeep from the tanker, the jeep turned turtle. This clearly shows that both the tanker and the jeep must have been in high speed; otherwise, there was no possibility of the jeep over turning on account of the impact of the tanker. It is impossible to believe that the tanker was not running at a fast speed and had been slowed down when the jeep dashed against it. If the tanker had really been slowed down by Motilal (DW 1) near the crossing, there was no reason as to why he could not bring it to a halt and avoid the accident. It is true that DW 1, Motilal stated that he was running the tanker at a speed of 20 Kilo meter per hour, but

we do not feel safe to rely on his testimony on grounds more than one. He, being the driver himself had every motive to make a statement before the Court which could save his master from the liability of damages and other consequences. He also gave no reason for noting the speed of the tanker at that time. To the contrary, the statements of Krishna Chandra Naithani (PW 6), who was in the jeep at the time of the accident, clearly proves that the tanker was running at a fast speed.

13. Apart from the evidence discussed above, another circumstance, which is worthy of being noted in this connection is that Motilal (DW 1) the driver of the tanker had not taken his dinner uptil the accident took place and since he knew that all the shops where he could get food in Mangal Padaw in Haldwani Bazar used to close at 10 P.M. he must have been going at a fast speed so as to reach the market in time for getting food. He further admitted that if he had not found food in Mangal Padaw he would have been required to go to Lal Kuwan and that would have taken him an hour. This, therefore, leads us to hold that Motilal (DW 1) must have been driving the vehicle at a speed faster than stated by him in the court. The accident was also due to the fast driving of the tanker by him. Had he been not so fast, he could possibly avoid the accident.

14. Apart from the above, even if it be assumed that the tanker was not running at a speed higher than 20 kilo meter per hour, it appears to us that the driver of the tanker could still be held guilty of negligence for the accident as much as the driver of the jeep. As a matter of fact, the running of a heavy vehicle like a petrol tanker at a crossing of a town at the speed of 20 kilo meters per hour was itself a careless act on the part of the driver of the tanker. It has already been noted that the place where the accident took place was a crossing where three roads join. At a place like this, the duty cast on a driver was to slow down the vehicle and not to enter the inter-section or junction until he has become aware that he could do so without endangering the safety of persons thereon. Reference in this connection may be made to Regulation No. 6 of the X Schedule which lays down:

The driver of a motor vehicle shall slow down when approaching a road inter-section, a road junction or a road corner and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

In the instant case, the duty of the driver of the tanker was to find out whether he could go across the crossing without endangering the safety of any other vehicle or person. According to the statement of Motilal (DW 1) himself, he was looking to the traffic towards the Bareilly road which he was facing. He admitted that he saw the jeep car only when it was 2 or 3 paces away from the tanker, Had he been careful, he could see the light of the jeep coming from the Rajpura road and stop his vehicle. Really speaking, as said in *Mangilal v. Parasram* AIR 1971 MP 5 F.B. speed is always not the test of negligence. So also the criteria is not merely whether the vehicle was on its left side. The test is whether the accident could have been averted if the driver had exercised that care and

deligence, which an ordinary cautious person, put in similar circumstances, would have done.

15. In the instant case, it was quite possible for Motilal to avert the accident had he been keeping a vigil while approaching the crossing. He did not say that it was not possible to see the jeep approaching the inter-section. Experience shows that sometimes vehicles suddenly drag in from a side although it is not proper for their drivers to do so. However, so far as Rajpura road, from which the jeep was coming, is concerned, it was an important road and, therefore, Motilal (DW 1) had absolutely no justification for thinking that he could go straight to the Bareilly road without being careful of the side road. He himself stated that he passed about 200 times earlier through that road. Hence, he was fully acquainted with the locality and ought to have taken full precautions to guard himself as well as others from any mishap, if it were to happen. This was more so as he was driving a petrol tanker where the risk involved was a serious one and the threatened likelihood of the harm could be great. The more serious the consequences, the greater the degree of care which must be exercised. (See Clark and Lind-sell on Torts, 12th Edition, at pp. 358 to 361, and 381 to 385, and Salmond on Torts, 13th Edition, pp. 303 to 306, 429 and 433).

16. Further, it is not due care to depend upon the exercise of care by another when such reliance is accompanied by obvious danger. Thus, an automobile driver should not bindly attempt to cross an inter-sectibn in the confidence that other vehicles would take care of themselves. In *Nace v. British Colimbia Electric Railway Co.* (1951) 2 All. ER 448 the view taken was that a reasonably careful driver does not always assume that other users of the road, whether drivers or others, will behave with reasonable care and guard against the negligence of others, when experience shows such negligence to be common. In this connection observations made by Lord Utha Watt in *London Passenger Transport v. Upson* (1949) AC 155 (173) is:

A driver is not, of course, bound to anticipate folly in all its forms, but he is not, in my opinion, entitled to put out of consideration the teachings of experience as to the form those follies commonly take.

17. Considering the entire evidence on record and the circumstances, we find it difficult to say that only the driver of the jeep was negligent while that of the tanker was not. In our opinion, the accident could not have happened if either of the two drivers was vigilant and careful to his duty. If the driver of the tanker had not been negligent, the negligence of the jeep driver would not have occasioned the accident. It is not possible to accept that the tanker was not at fault. We, accordingly, find that the drivers of both the vehicles were negligent and the accident was a result of the combined negligence of these two persons.

18. In these circumstances, the question which arises for consideration is whether the present was a case of contributory negligence, as was urged by the learned Counsel for the Appellants. In our opinion the question of contributory

negligence arises only where the deceased or the injured had himself contributed to the accident. As said by Professor William L. Prosser in his treatise on law of torts:

Contributory negligence is the conduct on the part of the Plaintiff, contributing as a legal cause to the harm he has suffered which falls below the standard to which he is required to conform for his protection.

In the present case, such a position does not arise, inasmuch as it is not a case of any of the parties that any act of Harish Chandra Tewari amounting to negligence had led to the accident. Accordingly, the question of contributory negligence does not arise.

19. The question, however, still is about the type or kind of the negligence which was committed by the two drivers of the vehicles mentioned above. Dealing with this kind of negligence, Pollock says in his book on Tort (page 362):

Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is entitled, of course, within the limits set by the general rules as to remoteness of damage to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between those persons though in any case he cannot recover in the whole more than his whole damage.

We will follow and apply this rule to the present case. Pollock has further remarked:

The phrase "contributory negligence of a third person" which has sometimes been used, must therefore, be rejected as misleading.

This rule has been applied in *Mangula Devi Bhutuai v. Manjushri Raha* 1968 ACT 1 and in *United India Fire and General Insurance Co. Ltd. v. Sayar Kanwar* 1976 ACJ 426.

20. Applying the rule in the instant case, we find that the negligence was that of both the drivers. Consequently, Respondent No. 1, being the owner of the petrol tanker, which was being driven by Motilal, (DW 1) would be vicariously liable. The Oriental Fire and General Insurance Company being the insurer of the tanker would also be liable.

21. Before determining the amount of liability of these Respondents, we wish to deal with the question of the liability of the Oriental Fire and General Insurance Company Limited. Shri S.N. Verma, counsel appearing for the said company contended that under the terms of the policy, the insurer was under no obligation to pay compensation to Harish Chandra Tewari who was travelling in the jeep car as a passenger. We are unable to agree with his submission. Paragraph 2 of the policy deals with liability to third parties. The first paragraph provides that the insurer shall indemnify the insured against all sums including claim, cost and

expenses that the insured shall become legally liable to pay in respect of death or bodily injury to any person. The expression used in the first paragraph to Section 2 is "any person". There is no reason not to include a passenger sitting in the jeep in the definition of the said expression. The expression any person is of wide and unrestricted import and, therefore, a person travelling in the jeep would also be included therein. While construing an identical term of an insurance policy it was held in *Madras Mohan and General Insurance Co. v. Katanreddi Subbareddy* 1975 ACJ 95 that a policy of the nature, as was given in the instant case, was wide enough to cover occupants of the car. It is of course true, as emphasised by the learned Counsel for the Respondent No. 2, that the liability of the Oriental Fire and General Insurance Company to indemnify the Respondent No. 1 for any liability in an accident is restricted to the amount of Rs. 20,000/- mentioned in the policy. In the clause dealing with the limits of liability, it is clearly mentioned that the amount of the company's liability in respect of any one claim arising out of one event is limited to Rs. 20,000/-. It may also be pointed out that u/s 95(2)(a) of the Act, as it stood before its amendment, given effect to in March 1970, the total liability of the insurance for such an accident was limited only to Rs. 20,000/- and the insurer could not be made liable to pay any amount more than its total liability to the above extent. We accordingly find that Respondent No. 2 as insurer has only to pay Rs. 20,000/- in all.

22. The question now is about the liability of Hindustan Aluminium Corporation Ltd, Mirzapur, Respondent No. 3. Dealing with this controversy the court below found that the jeep had been taken by the Uttar Pradesh Congress Committee for their use and at the time when this accident took place the vehicle was not in the control of the Corporation. It was further stated by Shri H.P. Garg, Advocate, appearing for the Appellants under Order X Rule 2 CPC that when this accident took place one Gopal Ram was driving the vehicle. On this finding the court below found that the Hindustan Aluminium Corporation could not be held liable for this accident. The finding of the court below on the liability of Respondent No. 3 appears to be correct. Shri Vinod Swaropp, learned Counsel appearing for the Respondent No. 3 supported the findings of the Claims Tribunal on this question and urged that as the driver of the jeep was not the agent of the Respondent No. 3, and since he was not driving the vehicle for its purposes, the claim of compensation of the Appellants could not be decreed against the said Respondents. The submission of the learned Counsel is well founded. It is in the evidence of the witnesses, produced by the Appellants themselves that the jeep had been taken by the Uttar Pradesh Congress Committee for the electioneering purposes and was being driven by Gopal Ram at the time when it met the accident. The evidence thus establishes that the jeep was not under the control of Respondent No. 3 and Gopal Ram, who was driving the same was not its agent. In *Motilal Kalal v. Santanuprasad Jaishanker Bhatt* 1966 ACJ 89, Hidayat Ullah, J. (as he then was) speaking for the majority stated that an agent will make the principal responsible so long as the agent does the act within the scope of his authority or does so under the actual control of the principal. As we have

found in the instant case, neither the driver of the jeep was an agent of Respondent No. 3 nor was he working under its control and as such, the Respondent No. 3 could not be held responsible.

23. Counsel for the Appellant, however, submitted that since the Respondent No. 3 had permitted the use of the vehicle by the Uttar Pradesh Congress Committee, the said Respondent would be liable to pay the damages for the negligence of the driver of the jeep irrespective of the fact that the Respondent No. 3 did not have its control on the driver at the relevant time. He also contended that the driver would be deemed to have implied authority of the Respondent No. 3 and on that basis the Respondent No. 3 would be liable to pay the damages. Recently this question came up for consideration before the House of Lords in *Margans v. Launch Bury* 1972 (2) WLR 1217. Lord Wilberforce dealing with this question stated that it had never been held that mere permission was enough to establish vicarious liability. He observed:

I accept entirely that "agency" in contexts such as these are merely a concept, the meaning and purpose of which is to say is vicariously liable, and that either expression reflects a judgment of value. Respondent superior is the law saying that the owner ought to pay. It is this imperative which the common law has endeavoured to work out through the case. The owner ought to pay, it says, because he has authorised the act, or requested it, or because the actor is carrying out a task or duty delegated, or because he is in control of the actor's conduct. He ought not to pay (on accepted rules) if he has no control over the actor, has not authorised or requested the act, or if the actor is acting wholly for his own purposes. These rules have stood the test of time remarkably well.

The law laid down by the House of Lords in the above case decides the controversy in favour of Respondent No. 3. It may be pointed out at this place that nothing could be shown by the learned Counsel for the Appellants which could establish that the vehicle was being driven at the time when it met the accident for the purposes of Respondent No. 3. The evidence of the Appellants itself was that the same was under the control and management of the Uttar Pradesh Congress Committee, and that the driver was also not the agent of the said Respondent No. 3.

24. Now the question of the liability of Respondent No. 4 need not detain us long. The policy which was issued by the Respondent No. 4 to Respondent No. 3 would show that the contract entered into by the Respondent No. 4 as an insurer was to indemnify the insured to the extent of liability covered by the policy if the latter was found liable to pay damages to the claimants on account of any tortious liability. But where, as here, since the insured is not liable, the insurer is also not liable. Our view is supported by a Full Bench decision of the Madhya Pradesh High Court reported in *Mangilal v. Parasram* (supra). A reading of Sections 94 to 96 of the Motor Vehicles Act also leads to the same conclusion. We accordingly hold that the Respondent No. 4 was not liable to pay any damages.

25. Counsel for the Respondent No. 2 urged that in view of our finding that the present being a case of joint tortfeasors, the said Respondent could be held liable only to the extent of his share. He accordingly contended that the amount is liable to be apportioned as between the Respondent No. 1 and the Uttar Pradesh Congress Committee. In this connection counsel also suggested that the liability of the Respondent No. 3 having not been established and further the one who was liable not being impleaded the claim was liable to fail. Although the present case is not actually one of joint tortfeasors yet the principle is well settled that where more than one person is concerned in the commission of a wrong, the person, who is wronged, has his remedy against all or any one or more of them at his choice, hence the Plaintiff is entitled to sue all or any of the negligent person. Every wrong doer is liable for the whole of the damages. We are supported in our view by a decision of the Madras High Court in the case of Palghat Combatoor Co. Ltd. v. N. Krishnaswami Naidu AIR 1939 Mad 261, where it has been held-

Subject to the rules as to remoteness of damage, the Plaintiff is entitled to use all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons though in any case he cannot recover in the whole more than his whole damage. This principle was applied by the majority of the Court of Appeal in Ireland in (1923) Ir. R. 112 M. Kenna v. Steppens - see also Beven on Negligence.

26. Dealing with a similar question in Hira Devi v. Bheba Kanti Das 1977 ACJ 303 (FB), the Assam and Nagaland High Court held that:

This is a case of joint tortfeasors and hence the claimants are entitled to a decree against both the tortfeasors. But in the present case, the liability of the owner of the car has not been established. The claimants are therefore entitled to recover the entire amount of the claim from the owner of the bus, namely the State of Assam. Even though it is a case of joint liability, under the circumstances of the case we have come to the conclusion for the reasons stated already that the owner of the car is not liable to pay any part of the compensation to the claimants. We should not be understood as saying anything which will affect the right of the State, if any, to recover part of the compensation paid by them by virtue of decision from the owner of the car if they are so entitled.

We are in respectful agreement with this view and find that the Respondent No. 1 must be held liable for the entire loss sustained by the Appellants, even though his act was combined with that of the another.

27. The only other question that remains to be considered is about the damages to be awarded to the Appellants. Before dealing with this question, we wish to mention the principles laid down by the Supreme Court in the case of Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, regarding the determination of damages. It says:

Viscount Simon then proceeded to lay down the mode of estimating the damages

under the first head. According to him, at first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by later accidents; secondly, the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his lifetime and other circumstances; thirdly the estimated annual sum is multiplied by the number of years of the man's estimated span of life, and the said amount must be discounted so as to arrive at the equivalent in the form of a lump sum payable on his death; fourthly, further deductions must be made for the benefit accruing to the widow from the acceleration of her interest in his estate ; and, fifthly, further amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life and it should also be taken into account that there is the possibility of the widow remarrying much to the improvement of her financial position. It would be seen from the said mode of estimation that many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the Respondents may depend upon data which cannot be ascertained accurately but must necessarily be an estimate, or even partly a conjecture.

28. Reverting to the facts, it is in the statement of Mahesh Chandra Tewari (PW 4), that the deceased was 34 years of age at the time of his death and that he left behind his young widow, a minor son aged about 1 year and mother. According to his deposition, the deceased was a forest contractor and earning about Rs. 400/- per month. Counsel for the Respondents, however, raised the question of the admissibility of the statement of this witness on the ground that the same was not based on his personal knowledge and was hearsay, being based on the information received from the mother and wife of the deceased. We are unable to accept this submission.

29. Reading his deposition as a whole, it cannot be said that this witness did not have personal knowledge of the income of the deceased at all. Two facts that Mahesh Chandra Tewari (PW 4) was the brother of the deceased and that he was a forest contractor have not been disputed before us. It is a matter of common knowledge that a brother has some idea of the income of another. Such a knowledge can be presumed in this case also. It is, however, a different thing that the figure of income, given by him, may err on the side of exaggeration, but that would not be sufficient to discard his testimony. As observed above, it is not in dispute that he was a forest contractor. After giving all allowances for exaggeration in this matter of the net income of the deceased, we find that the deceased was earning Rs. 300/- per month, out of which he was spending Rs. 150/- on himself and was contributing to the family Rs. 150/- per month or Rs. 1800/-per annum. The deceased was 34 years of age at the time of his death. Longevity in the family of the deceased Harish Chandra Tewari could be established by evidence brought on record. But Mahesh Chandra Tewari, who appeared as a witness on behalf of the Appellants did not state anything about it. He did not give the family history so as to show the ages of the ancestors at

which the death took place in the family. Consequently the question of determination of compensation has to be decided on the basis of the other circumstances for finding out the number of years the deceased could be expected to survive. In *Buckley v. John Allen & Ford* 1967 ACJ 280, the life expectancy was taken to 15 years, though the deceased was only 35 years of age. Winfield has also in his book "Tort", 8th Edition at page 620, stated that in the case of death of a normal healthy man, the maximum number of years of assuming dependency is likely to be between 12 to 15 years. In *Madhya Pradesh State Road Transport Corporation. Bairugarh, Bhopal v. Sadhakar* 1977 ACJ 290 the question of fixing the multiplier came up for consideration before the Supreme Court and in this case keeping in mind all the relevant facts and contingencies the Supreme Court took 20 as a suitable multiplier. The Supreme Court also approved the decision of the Kerala case reported in *P.B. Kader and Others Vs. Thatchamma and Others*, . In this case it was observed that due regard had to be given to uncertainties, for instance, that the widow might remarry and cease to be the dependant and other like matters of speculation. Applying the principles laid down to the facts of the present case it can be said that the wife of the deceased was a young widow aged about 20 years and it is possible that she may re-marry after some time and that would end her dependency. Similarly, the son may begin to earn and cease to be a dependent. After taking all these factors into account it appears appropriate to us that the correct multiplier which should be applied to the facts of the case is 16. Under these circumstances, we would apply the multiplier 16 and capitalise the loss at Rs. 28,800/-.

30. However, some deduction has to be made from the accentuated capitalised income on account of lump sum payment and uncertainty of life. This High Court in Division Bench authority, *Hinch Narain v. State of U.P.* 1977 ACJ 165 held that the correct deduction to be made was 25 per cent. Applying the same percentage of deduction, we find that the total amount payable to the Appellants would be Rs. 21,600/-.

31. For the reasons stated above, the appeal succeeds in part and is allowed. The award of the Tribunal is modified to the extent that the Appellants would be entitled to get in all a sum of Rs. 21,600/- as compensation out of which Rs. 20,000/- would be payable by the Oriental Fire and General Insurance Company Ltd. the Respondent No. 2. The Appellants would further be entitled to get interest at the rate of 6 per cent per annum on the amount awarded by us with effect from 5-4-1969 till its payment. The claim as against Respondent Nos. 3 and 4 fails and is dismissed. In the circumstances of the case, we direct the parties to bear their own costs.