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**(1970) 09 MP CK 0009**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous (First) Appeal No. 134 of 1968**

Smt. Gulab Devi Sohaney

APPELLANT

Vs

Govt. of Madhya Pradesh and Another

RESPONDENT

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**Date of Decision : 29-09-1970**

**Acts Referred:**

Fatal Accidents Act, 1855 — Section 1A, 2  
Motor Vehicles Act, 1939 — Section 110B, 110D

**Citation :** (1971) ACJ 214 : AIR 1971 MP 113 : (1974) ILR (MP) 677 : (1971) JLJ 203 : (1971) MPLJ 184

**Hon'ble Judges :** S.P. Bahrgava, J;A.P. Sen, J

**Bench :** Division Bench

**Advocate :** B.B.L. Shrivastava, for the Appellant; K.P. Munshi, Government Advocate for the State and A.S. Usmani, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

A.P. Sen, J.

This appeal u/s 110-D of the Motor Vehicles Act. 1939, filed by the claimant, is directed against an award of the Claims Tribunal. Jabalpur, dated 17th April 1968, seeking an enhancement of the compensation amount.

The material facts, shortly stated, are as follows. The claim for compensation arose out of an accident involving the death of the claimant's son, Sureshchandra Sohaney, who was a temporary Junior Engineer in the Public Works Department (Irrigation), Government of Madhya Pradesh, arising out of the use of the Government jeep --M. P. R. 7045. He was travelling in the jeep along with Shri R. J. Agrawal. Assistant Engineer. P. W. D. Seoni (N. A. W. 1) and the jeep was driven by the driver, Abdul Bashir (N. A. W. 2) They had come to Jabalpur in connection with Government work and had been to the M.P. E.B. office on 25th October. 1964, to reach one Shri Aiyangar. Superintending Engineer, P. W. D., on their way back to Seoni. While the jeep was negotiating a curve on the M. P. E. B. private road for taking the Jabalpur-Nagpur road, it

skidded and went out of control and fell into a khud. The deceased received head injuries and was removed to the Medical College, Jabalpur, in an unconscious condition where he died on 27th October, 1964.

The Claims Tribunal has found, as a fact, that the accident was the result of rash and negligent driving of Abdul Bashir (N. A. W. 3), and as he was a servant of the State Government, the Government was vicariously liable to pay damages for the loss suffered by the claimant. She had claimed Rs. 9,00,000/- as compensation for the loss of her son. The Claims Tribunal has, however, assessed the damages recoverable by her to be Rs. 18,000/-, worked out at Rs. 100/- per month for a period of 15 years, as the claimant was 45 years of age, on the date of the death of her son and, therefore, her normal expectancy of life was for another 15 years. The State Government has not preferred any appeal against the award and, therefore, its liability to pay damages is undisputed.

Only question involved in the appeal is whether the assessment of damages by the Claims Tribunal at Rs. 18,000/- was contrary to law or was so inordinately low that it must be held as erroneous.

The claimant had sought the recovery of Rs. 9,00,000/- on the allegation that her son was a Junior Engineer in the time-scale of Rs. 240--12 1/2-- 315--E. B. 12 /12--340--15--370--20--450, that he had a brilliant career and was 25 years of age at the time of his death and, therefore, she had great expectations about his earnings, as he was expected to live a long life of about 80 years, since there was longevity in his family, that he had received an offer for the post of an Assistant Engineer (Civil) on a starting salary of Rs. 450/- per month from M/s. Continental Construction (Pvt.) Ltd, New Delhi, and, that it was expected that her son would have risen to great heights and rendered useful service for at least 40 years, and would have amassed area" wealth, by his earnings as an Engineer in service and in Industry. The claimant accordingly claimed Rs. 9,00,000/- under the following heads--

(i) The net savings @ Rs. 10,000/- per year for 30 years in Government service would amount to Rs. 3,00,000/-.

(ii) The remaining 10 years devoted to Industrial business. Net saving of Rs. 60,000/- per year for 10 years.....

..... Rs. 6,00,000/- Rs. 9,00,000/-

The Claims Tribunal, while determining the quantum of damages payable, observed as follows:--

"The deceased Sureshchandra, had he lived would have been spending at least Rs. 150/- per month over himself, as long as he was a bachelor. After his marriage, and birth of his children, his expenses would have kept on increasing, and the increase in pay would have been neutralized by the increase in family of the deceased Sureshchandra. It is not a case of a widow, or of a son or daughter of the deceased claiming compensation.. Hence is a mother of the deceased, who

is claiming compensation. In case of a widow and children of the deceased, by the death of the deceased, they are permanently deprived of the earnings of the deceased, for their whole lifetime. But in the case of a mother, she only gets some help from her son. In the case of a mother, whose husband is alive, this help cannot be claimed to that extent which can be claimed in case of a mother whose husband is not alive, and who is wholly dependent upon her son. The applicant, belongs to a rich family. She was not dependent on her deceased son."

We find no error in principle in ascertainment of Rs. 18,000/- as the quantum of damages.

Under Section 110-B of the Motor Vehicles Act, 1939, the Claims Tribunal is required to determine an amount of compensation which appears to it to be just. What amount of compensation would be just has necessarily to depend upon the facts and circumstances of each case. The expression "just" has a wider ambit than the words used in Sections 1A and 2 of the Fatal Accidents Act and, therefore, though a Claims Tribunal, while dealing with a claim under the Motor Vehicles Act, has only to consider what appears to it to be "just compensation", on the facts and circumstances of the case before it, need not strictly follow and apply the basis of the assessment of compensation indicated in the various decisions under the Fatal Accidents Act, such decisions. Indian or English, are of general guidance in cases of claim for compensation. The Claims Tribunal must, therefore, in claims arising from death in road accidents from the use of motor vehicles, while deciding the "just compensation in a case, bear in mind and apply any general principle or principles laid down in the Indian or English decisions under the Fatal Accidents Act as far as they may be applicable, and in so far as they may promote the interests of justice, on the facts and the circumstances of each particular case. In other words, the principles laid down in the decisions have to be applied, if they, in the opinion of the Claims Tribunal, would serve as a proper measure of what is "just compensation", on the facts and circumstances of the case in hand. See, *Ishwar Devi Malik and Others Vs. Union of India and Others*, .

There are three decisions in which the Supreme Court had occasion to deal with a claim under the Fatal Accidents Act and to interpret Sections 1A and 2. The principles governing the assessment of damages under Sections 1A and 2 are, therefore, well settled. See, *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, ; *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, and *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, . The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered. The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand, the loss to him of the future pecuniary benefit, and, on the other, any pecuniary advantage which from whatever source comes to him, by reason of the death.

In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , their Lordships of the Supreme Court quoted with approval the principles laid down by Viscount Simon in Nance v. British Columbia Electric Railway Co. Ltd, 1951 AC 601. 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;

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 lastly, in case of a claimant who is the widow, it should also be taken into account that there is the possibility of her remarrying much to the improvement of her financial position."

Their Lordships, while adopting the mode of estimating the damages, indicated by Viscount Simon, stated as follows:--

"It would be seen from the said mode of estimation that many imponderable 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. Shortly stated, the general principle is that the 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 dependant by the death must be ascertained."

Their Lordships of the Supreme Court in the Municipal Corporation of Delhi Vs. Subhagwanti and Others, received with approval the following dictum, of Lord Wright in Davies v. Powell Duffryn Associated Collieries Ltd, 1942 AC 601

"It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his 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 law on the subject was re-stated by their Lordships of the Supreme Court in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, , in the following words:--

"The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matters which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the appellate Court should be slow in disturbing the findings reached by the Courts below, if they have taken all the relevant facts into consideration."

As stated in Winfield on Tort. 8th Edn. page 618, the damages that are given under the Fatal Accidents Act are not awarded as solatium for mental suffering and anguish for the loss of the deceased. If, therefore, the relations have suffered only nominal damages, or none at all, they can recover nothing. There is no question here of awarding what may be called the sentimental damages, bereavement or pain and suffering. The damages are given with reference to the pecuniary loss, or as observed by the learned author "in reference to a reasonable expectation of a pecuniary benefit as of right, or otherwise, from the continuance of the life."

It was, therefore, not sufficient for the claimant to prove that she had lost by the death of her son a mere speculated possibility of pecuniary advantage. In order to succeed, it was necessary for her to show that she has lost a reasonable probability of pecuniary advantage. We have, therefore, to see what the just compensation in the present case would be, on applying the above principles to the facts of the present case. The deceased was about 25 years of age at the time of his death and was said to be in good health. It can, therefore, be reasonably assumed that but for the accident, he would have lived for a further period of 35 years, upto the age of 60 years. The deceased was not the bread winner of the family. His father, Panchamlal Sohaney (P. W. 8) is in business and appears to be a man of substantial means. He states that the claimant or the other members of the family were not dependant on the deceased, as he was not contributing anything to the support of either. Panchamlal Sohaney (P. W. 8) further states that the deceased was a fashionable young man and not a spendthrift and that he was contributing Rs. 150/- per month to the deceased

while he was receiving his education. However, it was not necessary that the deceased should have been giving any help, provided there was a reasonable probability, as distinct from a bare possibility, that he would do so. The loss for which the damages are awarded is pecuniary loss which will be sustained in the future.

There is no manner of doubt that due to the untimely death of the deceased, a life which was full of some promise, was cut short. The deceased had entered Government service as a temporary Junior Engineer, just a few months before his death, and it was likely that, in due course of time, he would have reached the higher echelons in the Public Works Department to which he belonged, if he had continued in service. He also had reasonable prospects in life if he left service and joined his father in business or started a business of his own. But it appears to us to be extremely doubtful whether he could have, if he had lived and eventually got married, in view of his own expenses contributed anything more than Rs. 100/- per month to his mother out of his savings. With the increase in salary or income, he would have been required to face greater responsibilities of life. Necessarily, his contribution to his mother would have progressively diminished.

There is evidence that the parents of the claimant were long-lived. In *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, their Lordships of the Supreme Court, however, state that the life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. The claimant was 45 years of age, on the date of her son's death, and in the absence of any evidence of longevity in her parent's family, we take her normal expectancy of life to be 60 years. The Claims Tribunal has more or less kept the relevant principles in view, and the quantum of damages determined by it at Rs. 18,000/- @ Rs. 100/- per month for a period of 15 years, appears to us to be fair and reasonable.

Before us it is urged for the first time, that interest should be allowed on the amount of damages, from the date of death till realisation. The contention can hardly be accepted for a variety of reasons. First of all, no such claim was ever made before the Claims Tribunal. Secondly, no interest can be awarded for the period prior to the institution of the proceedings, as no interest can be had on unliquidated damages. See, *Vinod Kumar Shrivastava Vs. Ved Mitra Vohra and Others*, . As stated in that case, the Claims Tribunal has, however, the power to award interest (a) from the date of the application to the date of the award and (b) from the date of the award to the date of payment, in a proper case. While we would respectfully follow the same view, we do not think that the claim for interest is justified in the circumstances of the present case. The Claims Tribunal has taken a generous view in granting compensation at a flat rate of Rs. 100/- per month for a period of 15 years, without making any deduction. The decided cases under the Fatal Accidents Act show that since the claimant gets a lump sum and because of uncertainties of life, such as the deceased or the claimant might die before the expiry of their normal span of life, a deduction of 10 to 20

per cent from the amount of pecuniary benefit is usually made. The reasons for such deduction are based on justice and fair play between the parties and, therefore, a similar deduction should, in our opinion, also be made even in claims u/s 110-A of the Motor Vehicles Act, 1939. For all these reasons, we do not think it just to award interest on damages.

The appeal fails and is dismissed. There shall however, be no order as to costs.