
(1973) 01 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No's. 67, 68, 69, 76, 87 to 91, 101 to 104 and 105 of 1971

Subash Chander and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-01-1973

Acts Referred:

Fatal Accidents Act, 1855 — Section 1
Motor Vehicles Act, 1939 — Section 110, 110, 95(1), 96(1)
Penal Code, 1860 (IPC) — Section 304

Citation : AIR 1974 P&H 54

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Judgement

1. Fourteen appeals F. A. O. Nos. 67, 68, 69, 76, 87, 89, 99, 91, 101, 102, 103, 104 and 105 of 1971 have been filed against an award dated 4-1-1971 of the Motor Accident Claims Tribunal, Rohtak. By the said award, the learned Tribunal had disposed of five claim applications arising out of the same motor accident u/s 110-A of the Motor Vehicles Act, 1939. The reasons which had led the Tribunal to consolidate proceedings in these five cases and to dispose them of by one judgment would enable me to hear and dispose of all these fourteen appeals together.

2. The undisputed facts are that on the morning of 17-6-1968. Haryana Government Roadways Bus No. HRA-1246 and Jeep No. PNC-1557 happened to be travelling in opposite directions on Kaithal Narwana road. At about 9 A. M. the bus started from the Bus stand at village Kalayat and had gone hardly a furlong or two when the two vehicles collided on or near a road culvert. The jeep could make hardly a dent in the bus which had a full complement of passengers, all of whom are said to have escaped any injury. The jeep and its eight occupants, however, came in for a good deal of damage. The jeep had been battered out of shape and all its occupants sustained extensive injuries. Two of them succumbed to their injuries at the spot while three others died while they were being removed to the hospital at village Kalayat situated about two furlongs from the

scene of the accident. One of the persons who died was Amar Singh, the jeep driver. but there is no claim for compensation in respect of his death. The jeep-owner's father Gore Lal R.W. and his partner in business Dugar Mal A.W. have also not claimed any compensation even though they had sustained extensive injuries in the accident.

3. The owner of the jeep. Shri Raj Kumar. who had been impleaded as respondent No. 4 in the Court below. was the luckily not in the vehicle at the time and the evidence is that he had lent it gratis out of friendship to Shri Chiranji Lal Bansal (deceased) who was a Superintendent in the Punjab and Haryana High Court. It is left to one's imagination as to how for the office that Shri Bansal held has affected the decision of the learned Tribunal. Shri Chiranji Lal Bansal. his wife smt. Bhagwanti and two out of his four sons namely Suresh Chander aged 13 years and Subhash Chander aged 17 years, were amongst the eight occupants who were out for a joy ride in the jeep that morning. Shri Prem Chand. another business partner of the jeep-owner's father Shri Gore Lal was also amongst these eight occupants of the jeep. The accident had proved fatal for Shri Chiranji Lal Bansal his wife Smt. Bhagwanti and his son Suresh Chander. aged 13 years. The driver of the jeep had also died at the spot as stated earlier. Prem Chand had also died before he could be attended to in the nearby hospital. Subhash Chander son of Shri Chiranji Lal Bansal had sustained injuries and he figures as a claimant in four out of the five claim applications arising out of this motor accident. Three claims were filed by Subhash Chander. aged 17 years. along with his brothers Mangat Ram. aged 23 years. and Romesh. aged 19 years. separately in respect of the deaths of their father, mother and brother Suresh Chander, aged 13 years. The fourth claim application was by Subhash Chander alone in respect of his own injuries. A sum of rupees two lakhs was claimed in each application for compensation in respect of the deaths of Chiranji Lal Bansal and Bhagwanti while a sum of Rs. 50,000/- was claimed in respect of death of Master Suresh, a school student. Subhash had claimed a sum of Rs. 20,000/- in respect of the simple injuries sustained by him except for a fracture of the nasal bone which had kept him in the hospital for less than a week. The fifth claim was by Smt. Parsani Devi, mother of Prem Chand deceased and she had also claimed compensation in the sum of rupees two lakhs for the death of her bachelor son. aged about 25 years, Smt. Parasani's husband, the father of the deceased, is alive and has not joined her in filing a claim presumably because he was possessed of his own means and was not dependent on his son. The learned Tribunal has granted a sum of Rs. 73,873/- as compensation to the three surviving sons in respect of the death of the male head of the Bansal family. A sum of Rs. 14,280/- has been allowed as compensation in respect of the death of Mrs. Bansal. The three brothers of Suresh deceased have been awarded a sum of Rs. 10,000/- for the death of a minor member of the family who may not have started earning anything in the near future. Subhash Chander has been granted a sum of Rs. 8,300/- as compensation for expenses on treatment and medicines and mental pain and agony in respect of his personal injuries. The fact that there

was a dislocation in his studies has also been taken into account and the damages assessed on this account run into five figures. Allowance has, however, been given for the fact that Subhash Chander had been granted some maintenance in the three other cases filed by him jointly with his elder brothers Mangt Ram and Ramesh Chander. Smt Parsani Devi, the mother of Prem Chand deceased (a bachelor of about 25 years of age), was granted a sum of Rs. 19,200/- as compensation for the death of her son. The blame for the accident was apportioned over the drivers of the bus and the jeep in the ratio of 60:40 on the basis of the relative weights or sizes of the two vehicles and the Haryana Government Roadways was ordered to pay sixty per cent of the compensation amounts mentioned above in each case which the Life Insurance Corporation of India, with which the jeep was insured was ordered to pay the balance forty per cent of these compensation amounts. The finding was that the drivers of both these vehicles involved in the accident had been guilty of rash and negligent driving.

4. The Tribunal's award has given rise to fourteen appeals. Smt. Parsani Devi, the mother of Prem Chand deceased, feels satisfied with the amount awarded as compensation for her son's death and has not filed any appeal. The claimants in the other four cases have filed appeals Nos. 67, 68, 69 and 76 for the enhancement of the compensation amounts. Appeals Nos. 87 to 91 have been filed by the Life Insurance Corporation of India. The plea is that in view of the provisions of Sections 95 and 96 of the Motor Vehicles Act and the express terms of the insurance policy, the Corporation had not covered the risk of personal injury or death of the passengers of the jeep. The occupants of the jeep were not being carried for hire or reward and the vehicle had been insured as a private car. It was out on the road that morning for social or domestic pleasure and the insurance policy expressly excluded Corporation's liability in respect of the passengers of the vehicle insured. The Tribunal was described to have misread the terms and conditions of the insurance policy. Exhibit R. W. 11/1, and to have made out a case which had not even been pleaded by the claimants. The Tribunal's finding that the jeep driver was rash or negligent was described as perverse and arbitrary. A rule of thumb was said to have been adopted in striking up the 60:40 ratio for the sharing of the liability. The Corporation's liability as the insurers was only to indemnify the insured. As the jeep-owner who was the principal party had not been saddled with any liability there was no question of the Corporation having any liability as the indemnifiers. The compensation amounts were then said to have been assessed at arbitrarily high figures without adopting the recognised principles of law involved. In some of these cases, the claimants' dependency on the deceased was described not to have been taken into account.

5. The remaining five appeals Nos. 101 to 105 of 1971 have been filed by the State of Haryana. The finding that the Haryana Roadways Bus Driver was in any way guilty of rash or negligent driving has been hotly contested. The accident is described to have been due to entirely the careless and negligent driving of the

jeep-driver who met with his death in the accident. The bus driver was described to have stopped his vehicle as he noticed that the jeep was advancing towards him in a very unsteady and erratic manner. The assessment of the compensation amounts is described to be much too excessive in all these cases.

6. The version given by the claimants as to how the accident had taken place is given in paragraph 24 of their claim applications and runs as follows:--

"Shri Chiranji Lal along with his wife and Suresh Chander were travelling, in Jeep No. PNC-1557 from Kaithal to Narwana. When the Jeep reached a Bridge near village Kalayat accident took place. Both the vehicles collided head on. The accident took place due to the rash, negligent, careless and fast driving of both the vehicles, who bid not give way to each other on a small road."

7. The counter version as given in the written statements filed by the driver and the General Manager of the Haryana Roadways is as follows:--

"Para, No. 24 is denied vehemently. It was the jeep which was being driven recklessly and negligently by the jeep driver without appreciating the road situation. As a result of which the ill-fated Jeep collided against the stationary bus. As a matter of fact the accident was caused by the jeep driver who drove the vehicle at a terrific speed over which he could have no control. The respondent No. 3 on noticing the wavering operation of the jeep coming from the opposite direction apprehended trouble and halted his vehicle to avoid any ugly situation, though the jeep driver thrust the same against the bus. It is also denied that there was a head on collision, for the bus in question was at halt."

8. I may first deal with the evidence on record with regard to issue No. 1 which deals with the question as to whose rash or negligent driving had caused the accident. The surviving occupants of the jeep would naturally try to lay the entire blame on the bus driver and most of them have been examined as claimants' witnesses except for the jeep owner's father Shri Gore Lal who had been summoned by the respondents to produce the insurance policy. He and his business partner Dogar Mal had sustained extensive injuries and it may appear significant that both these persons had chosen not to file any claim. The jeep driver had also died in the accident and there is no claim by his heirs. Claims by these persons would have invited a closer scrutiny into the driving skill or experience of the jeep driver and there is no satisfactory evidence on record that Shri Amar Singh had passed any driving test or had any driver's licence. There is also no satisfactory evidence at all that he was in the regular employment of the jeep owner. If the vehicle had been borrowed for a holiday jaunt, the services of a person not in the regular employment of the jeep owner could have been temporarily requisitioned for just that trip. It should have been easily possible for Gore Lal or his son to produce Shri Amar Singh's driving licence or the account-books and receipts to show that he was in their employment. In any case, it should have been possible for the claimants to examine better evidence on these points. The bus driver's contention that he had brought his vehicle to a dead halt

on seeing the unsteady and erratic advance of the jeep may be hard to believe but there is ample circumstantial evidence to show that the bus was not travelling at a very fast speed when the two vehicles collided. The bus passengers had recorded their reports about the accident in the complaint book but these documents have not been produced in original. The bus driver and the officers of the Haryana Roadways had also submitted some reports about the accident to the higher authorities the same day. These reports have also not been produced. The bus driver had been challenged for rash and negligent driving u/s 304A of the Indian Penal Code and the case was pending in the criminal Court when the evidence was recorded by the learned Motor Accidents Claims Tribunal. I am told that the bus driver has since been convicted but there is nothing on record to show whether any appeal was filed and with what result. In view of these circumstances. it may not be very safe to rely on the testimony of the bus passengers alone. Two residents of village Kalayat, namely Sham Lal A.W. 4 and Karan Singh A. W. 7 claim to have witnessed the accident. Both these witnesses had accompanied the injured persons to the hospital at Kalayat and had appeared before the Investigating Officer later the same day. Both of them are disinterested witnesses and Sham Lal was studying for his Master of Arts degree in those days. Both these witnesses are definite that the bus was not going at a fast speed. The photographs, Exhibits R. W. 8/1 to R.W. 8/8 may further show that both the vehicles had come to a stop at the scene of the accident. The bus which was a very much heavier vehicle could not have come to a sudden stop if it had been going at a very fast speed. The bus passengers loaded to the maximum permissible capacity of the vehicle would have spilled over each other or to have struck against the fixtures inside the bus and thereby to have sustained some injuries if the vehicle had been travelling at a very fast speed and had come to a dead halt. The circumstances may, therefore, seem to support the bus driver's version that he was not driving his vehicle at a very fast speed. The two left-side wheels of the bus were still on the kacha portion of the road and this may further show that the bus driver had tried to give a wide berth for the jeep to pass. The culvert had not appreciably narrowed down the road at that point and the jeep driver may appear to have come into the middle of the road in order to avoid the brick stricture of the culvert. In such fast moving vehicles, a little miscalculation on the part of one of the drivers could lead to disastrous results not only for the driver at fault but also for the other who may not have been really so guilty. Before the Courts try to shift the blame for the calamity from where it has fallen they must pick out as the scapegoat a party that can be held to blame for the accident in some appreciable degree. The sympathies would however, naturally be won over to the side that has sustained the greater damage. This coupled with the fact that the reports made to the higher authorities by the bus driver and the Roadways staff have not been produced and that the bus driver had also been found guilty by the criminal Court may lead me to sustain the finding of the learned Tribunal that drivers of both the vehicles could be held to blame in this case. The relative weights or sizes of the two vehicles would not however, furnish us with any sound criterion

for apportioning the liability over two drivers. I would not be far wrong if I were to say that a jeep would have only a one-third or one-fourth of the weight or size of a bus. If this criterion were to be adopted, the ratio in which the liability should have been apportioned should have been 20:80 or 25:75. I however, feel that the weights and sizes of the vehicles should not determine the respective liabilities of the drivers of the two vehicles and that in the absence of any safer indications to go by the two drivers could be held equally guilty. If the bus driver had seen the jeep taking a weavy course, he should not have stopped his bus right at the culvert. The bus and the jeep drivers could, therefore, be made to share the responsibility for the accident on 50:50 basis.

9. I may then deal with the liability of the Life Insurance Corporation with which the jeep was insured. The owner had lent the vehicle free of any charge out of his friendship with Shri Chiranji Lal deceased. The Tribunal has not held the owner liable for the accident and the Corporation was only supposed to indemnify the insured. The insurance policy, Exhibit R. W. 11/1 may then show that the jeep was insured only against third party risks, The printed form for a comprehensive policy has no doubt been used but it is mentioned in the last column of the schedule that only third party risk had been covered. Shri Subhash Chander Bindra R. W. 12, an Assistant in the Life Insurance Corporation. had further proved that passenger risk was not covered by this policy and that if such a risk was to be covered, extra premium was chargeable. No such extra premium had been paid by the insured. The provisions of Section 95(1)(b) and 96(1) of the Motor Vehicles Act had been interpreted in a number of rulings and it has been held that in the case of death of a gratuitous passenger travelling in a private car. it is essential before we can hold the insurers liable that firstly there should be a judgment against the insured and secondly that the judgment must be in respect of a liability which is required to be covered by a policy under the provisions of Section 95(1)(b) and thirdly that the liability was in fact covered by the terms of the policy. The insurance company is not liable for the death or injury to any gratuitous passengers in a private car or vehicle. The jeep in this case had been insured as a private car. Shri Maneshwar Puri, the learned counsel for the Corporation, has cited before me a number of rulings in this connection. Reference could in this connection be made to K.N.P. Patel v. K. L. Kesar 1966 ACJ 284, Chander Mohan v. D. C. Kapur 1970 ACJ 121; Clive Life Insurance Co. Ltd. v. Jogendra Singh 1972 ACJ 295 and National Insurance Company Ltd. Vs. Rani Rai Bajaj and Others, Shri Suri the learned counsel for the claimants frankly conceded that he could not find any authority or decision taking the contrary view. The Life Insurance Corporation has therefore, been wrongly held liable by the Tribunal for the payment of any part of the compensation amount. F.A.O. Nos. 87 to 91 of 1971 filed by the Life Insurance Corporation must, therefore, succeed.

10. This brings me then to the question of quantum of damages. As I have said earlier in this judgment, sympathies are naturally won over to the side which suffers the greater damage. The punishment to be awarded to the wrongdoer

has. however, to be determined separately by the criminal Court and the approach of the civil Court or the Claims Tribunal has to be on altogether different lines. Sections 110, 110-A and 110-B of the Motor Vehicles Act speak of claims or applications for compensations. The word "compensation" is of wide import and legal tomes like "Corpus Juris Secundum" and "Words and Phrases" have devoted pages to the explanation of the meaning of this word. According to Black's Law Dictionary, "compensation" implies indemnification reparation, making amends or balancing of loss and gain and so on. In *Shanti Devi Vs. General Manager, Punjab Roadways and Others*, , I had observed amongst other things that the Courts are not supposed to convert a calamity into a windfall and that the expectancy of life of the deceased may cease to have any meaning after a stage has been reached where the amount awarded, if safely invested. could have yielded an income in the shape of interest which could compensate the heirs to the extent of their dependency on the deceased. A Letters Patent appeal filed against this judgment had been dismissed by a Division Bench of this Court in *Damyanti Devi v. Sita Devi*. 1972 ACJ 334 and the mode of assessment of damages adopted by me had been approved. Different modes were adopted by the Letters Patent Bench while disposing of some other appeals by the same judgment and this may only illustrate, as observed by their Lordships, that the Tribunal has to take into consideration all relevant factors in determining the compensations in a just manner. The extent of dependency of each legal representative or heir has also to be separately determined. in *Mallett v. Mcmonagle*. 1969 ACJ 312 which is a case from the House of Lords in England, it was observed that an assessment of damages had to be made not only with sympathy but also with fairness to all concerned and with a sense of proportion. In that case, a claimant with a dependency of ? 10 per week on the deceased had been awarded damages in the sum of ? 21,500. It was held by their Lordships that the award was too excessive because the amount, if properly invested could have yielded an income which would be more than double the amount of the dependency and yet leave the capital intact. The award was accordingly set aside and a reassessment of the damages was ordered. In that case the deceased was a person in his twenties and his normal life expectancy, which is much higher in England than in India, was not taken into consideration and damages were ordered to be assessed over a period of 16 years only. This decision from the House of Lords may seem to fully resorted to the mode of assessment adopted by me in *Smt. Shanti Devi's* case (supra). The Supreme Court had also held in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, . that all pecuniary advantages accruing from whatever source to the heirs have to be taken into consideration and that a balance of loss and gain to a dependent by the death must be struck. The burden is always on the claimants to establish the extent of their loss. In another Supreme Court case *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, their Lordships had held that the claimants must show that they had lost a reasonable probability of pecuniary advantage. In that case a young boy of about eight years of age was hit by a bus. He was a brilliant student who used to top his class in

the tests and his parents were quite affluent. The parents had claimed a sum of Rs. 30,000/- as damages under Sections 1A and 2 of the Fatal Accidents Act but the District Judge had granted them a sum of Rs. 6,000/- only. The appeal had been dismissed by their Lordships of the Supreme Court and a number of rulings from the House of Lords in England had been cited. It was observed that damages were not to be awarded as a solatium but are to be given with reference to the actual pecuniary loss suffered. In assessing the damages, all circumstances which may be legitimately pleaded in diminution must be considered. The speculative possibilities or imaginary damages were not to be taken into consideration. The fact that the bringing up and education of a child would also be a substantial burden on the parents or guardians had to be kept in mind.

11. Heirs like the widow, an infant child or a destitute parent may have had a life long dependency on the deceased but there can be another type of heirs like a grown-up child, brother or sister whose claim for compensation could be limited over a term of a few years or by their actual need and dependency on the deceased. We can come across cases not only under the Fatal Accidents Act but also u/s 110-A of the Motor Vehicles Act where a parent or brother or sister had been denied compensations because they were not dependent on the deceased. In *Government of India v. Jeevaraja Alva*, 1970 ACJ 221 : AIR 1970 Mys 13 a Division Bench of the Mysore High Court had denied the parents any compensation in respect of their sons who had died in a motor accident at the age of ten years only. It was observed that the education and maintenance of a boy for about fifteen years would have been a substantial burden and the parents might or might not have survived until the son was in a position to be of any financial assistance to them. The fact that the boy was subject to all the risks of life such as illness, accident and death was also taken into account. In *Bishen Das v. Ram Labhava*, AIR 1916 Lah 133 a brother was found not entitled to any compensations even though he was living jointly with the deceased. The same view was taken by a Single Bench of Delhi High Court in *Dewan Hari Chand and Others Vs. Municipal Corporation of Delhi and Another*, which was a case relating to a claim u/s 110-A of the Motor Vehicles Act. In the Division Bench ruling of this Court in *Damyanti Devi's case* 1972 ACJ 334(supra), it has been held that the basic principles of law with regard to assessment of damages under the two Acts are complementary to each other and that there is really no conflict between the two. The principles for determining compensation which have been evolved under the provisions of Fatal Accidents Act can be applied to the claim applications under the Motor Vehicles Act while determining the amount of compensation on just grounds. No separate amounts need be determined for the legal representatives and the estate of the deceased. The provisions of the Motor Vehicles Act had a wider scope as regards the heirs who could file a claim and the right to be compensated was not necessarily restricted to the heirs mentioned in Section 1A of the Fatal Accidents Act. Even if the Motor Vehicles Act can be given a wider scope on just grounds in certain matters, the basic

principles for granting compensation would however remain unaffected. This aspect of the principles of law involved came up for consideration of the Courts in two other cases where the married sisters of the deceased had filed claims for compensation under the Motor Vehicles Act. A Division Bench of the Madras High Court in Mohammed Habibullah and Another Vs. Seethammal, took the view that a married sister of the deceased who had died a bachelor was a legal representative of the deceased and was entitled to claim compensation in terms of Section 110-A of the Motor Vehicles Act. The amount awarded to her as compensation has not been mentioned and does not appear to have been mentioned and does not appear to have been so high as to have rankled in the mind of the appellant, who had pressed his appeal only on the question of law, that such a claim for compensation was to be confined to the relatives mentioned in Section 1A of the Fatal Accidents Act. In Chinnaponnu Ammal v. T.N. Mooka Pillai 1968 ACJ 24, a Single Bench of the same Court had followed the Division Bench ruling in Mohd. Habibullah's case (supra). The provisions of Section 110-A of the Motor Vehicles Act were found to exclude the provisions of Section 1A of the general enactment, namely the Fatal Accidents Act, 1855, and a married sister was taken to be a legal representative of the deceased in view of Rule 2(c) of the Rules framed under the Motor Vehicles Act read with the provisions of the Madras Motor Accidents Claims Tribunal's Rules, 1961. The sister was, however, found to be entitled to a sum of Rs. 500/- only as compensation in respect of the death of her brother and the Tribunal had elected to decline her even this paltry amount. The main consideration appears to have been the dependency of the married sister on the deceased and the token amount appears to have been awarded to her more to assuage her feelings than to compensate her for any actual loss.

12. Even in the case of grown-up children, compensation is generally allowed only over a period which would enable these dependents to stand on their feet and to get settled in life. In Parkash Vati v. The Delhi Dayal Bagh Dairy Ltd. 1967 ACJ 82, the Tribunal had while apportioning damages amongst the widow and the children of the deceased. allowed compensations to the son up to the age of eighteen years and to the daughters up to the age of sixteen years on the ground that the sons would be major on attaining the age of eighteen years and the daughters would generally get married by the time they reach the age of sixteen years. A Divisional Bench of the Court was, however, of the view that the girls get married these days at a later age and that it was reasonable that even in the case of daughters, the age for the matter of calculation of loss should be taken as eighteen years. In Kumari Swarnalata Kapoor and Others Vs. Jogendrapal Ramrakha Punjabi and Others, the children were claiming damages from the respondents for the death of their parents resulting in a motor accident u/s 110-A of the Motor Vehicles Act. The deceased father was aged only thirty-six years and was earned Rs. 500/- per month at the time of his death. It was held that the four minor children would have received financial support until they had completed their educations and the girls had been married. The following

observations of their Lordships could be reproduced here with advantage:--

"The plaintiffs are thus two brothers and two sisters. their ages being 9 years, 6 years. 4 years and 6 months respectively. In this accident they lost both their parents. There is evidence of Bansilal that Rawel Chand was in healthy state of body and that he would have lived at least for 30 to 35 years more. In our opinion, this was a fair estimate of the span of Rawel Chand's life. But we need not go to that extent and it would be sufficient to calculate the loss of the plaintiffs owing to the death of their father on the basis that each of them would have had the benefit of financial support from him till each of them completed education and the girls were married. Roughly we will put the age of 22 for this purpose. Now, it will be only a reasonable and modest estimate that having regard to his standard of living Rawel Chand would have spent and would have continued to spend Rs. 50/- per month on each child. Thus, the loss to the plaintiffs could be calculated to a sum of Rs. 40,800/-.

Calculating this at Rs. 40/- per month per child, it comes of Rs. 32, 640/-. In this mode of calculation, we have ignored that the deceased would have spent more on the marriage of the children and that they would have continued to get something from him even after attaining the age of 22 years."

In this present appeal, the appellants have claimed Rs. 24,000/- only. Even after taking into consideration the fact that by depositing the lump sum amount, they would get interest, we are of the opinion that the amount claimed is from every angle, reasonable compensation."

13. In *Amarjit Kaur v. Vanguard Insurance Co. Ltd.* 1969 ACJ 286 a Single Bench of the Delhi High Court had allowed the daughters compensation up to the age of twenty years and to the son up to the age of twenty four years. The deceased had met with fatal accident at the age of forty years and was earning at that time Rs. 750/- per month. His widow and five children were granted compensations by the High Court u/s 110-A of the Motor Vehicles Act in a sum of less than Rs. 24,000/-. The Tribunal had granted them compensation in the sum of Rs. 3,620/- only. A deduction of 33 1/3 per cent, on account of the lump sum payment had also been made in that case.

14. In the present case, I have found that the drivers of both the motor vehicles involved could be held equally to blame for the accident. The discussion whether this was a case of composite liability or contributory negligence assumes only an academic character in view of my finding that the owners or insurers of the jeep cannot be held responsible for the death of the gratuitous passengers who were out for a joy ride that morning in a vehicle borrowed from a friend without any payment. Shri Suri, the learned counsel for the claimants had cited a Single Bench decision of this Court in *National Insurance Company Ltd. Vs. Rani Rai Bajaj and Others*, but the ruling has no application to the facts of the present case moreover, paragraph 16 of that judgment may also show that the discussion was more or less academic and was not necessary for disposing of that case.

15. As observed in *Statesman v. Des Moines City Railway Company* 180 Iowa 524 : 163 NW 580, "compensation" is a misleading term, and is used merely for lack of a word more nearly expressing the thought of the law which permits recovery for an imponderable and intangible thing for which there is no money equivalent. However hard the Courts may strive, they can at best provide themselves with a yardstick for assessment of damages which will have no standard length or accurate marks of graduation. That does not however mean that some well recognised principles cannot be laid down for the guidance of the Courts or as a well known Punjabi saying goes, we may allow an outlaw's staff to be used as a measure in such cases. The Courts have to see what is a just and fair award to be made on the facts and circumstances of each case.

16. In spite of the cases cited above, I am inclined to take a liberal view in the matter. Competition in this world is getting keener from year to year and the necessity for higher education of the children would be felt in any middle class family. It would not be wrong to say that a boy does not get well settled in life up to the age of twenty-five years. A provision for the marriage of the girls or the higher education of the children has, however to be made from the savings effected over a number of years and not from the monthly income of a salaried man. Shri C.L. Bansal deceased in the present case had made certain savings in the form of life insurance, general provident fund and gratuity etc. and the total amount that he had saved may appear to be between the sums of Rs. 15,000/- to Rs. 20,000/-. He was getting total emoluments of about Rs. 675/- per month at the time of his death. He was due to retire in about four years time. If the savings effected by him over a period of more than two decades are kept in kind. he could have saved another sum not exceeding Rs. 5,000/- by the time he was due to retire. After his retirement, he would have lost perquisites like the Government residence at reasonable rent and medical reimbursement etc. His pension of about Rs. 270/- per month would have been only sufficient for a reasonably comfortable living for himself and his wife. His grown-up sons would be expected to have supported their parents or their younger brothers Suresh who could not have completed his education by the time of superannuation of his father. It is doubtful whether the deceased could have spared anything for the financial assistance or support of his major sons after his retirement. The savings that the deceased had effected up to the time of his death are still available to his dependents for meeting the expenses of higher education and marriages etc. The Haryana Government Roadways or the Life Insurance Corporation could not. therefore, have been held liable for making a provision for such marriages or higher education. The deceased have five dependents to support while he was alive. A part of his salary was being set aside as savings in the form of life insurance and provident fund. The deceased could be taken to have been spending about one-third of the balance on himself. He could not therefore, have spared more than Rs. 400/- per month for the support of his five family members. This would mean that he was sparing only about Rs. 80/- per month on the education and bringing up of each of his four sons. The dependency of

each surviving son has to be assessed at this rate for the next two or three years only. Mangat Ram would have attained the age of twenty-five years within two years after his father's death while Ramesh Chander would have attained that age after five or six years. Subhash Chander's dependency would have lasted for a longer term of years. The total amount that can be awarded to the three surviving sons for the death of their father would not work out to more than sum of Rs. 30,000/- in any case. We have also to keep in mind the fact that the jeep driver has also been held liable for contributory or composite negligence and that one-half of the amount that can be awarded as compensation would be irrecoverable. The Haryana Government Roadways cannot, therefore, be held liable for more than a sum of Rs. 15,000/- in respect of the death of Shri C.L. Bansal. The cut that is generally imposed for a lumpsum payment is not being effected in the present case in view of the hardship involved.

17. As regards the claims in respect of Smt. Bhagwanti's death, there was no financial dependency of the claimants on the deceased. The claimants have, however, been deprived of the care and affection that the deceased was devoting in the bringing up of her sons. Some of the claimants are expected to get married in the near future and there would be someone to look after the home. Keeping in mind the fact that compensations are not to be awarded as a mere solatium a sum of Rs. 5,000/- as damages for Smt. Bhagwanti's death may appear to be a very liberal assessment. The Haryana Government Roadways would be liable for payment of only half this amount. I may again emphasise here that we are not trying to determine the monetary value of a human life or to punish its loss in the accident.

18. As regards Suresh Chander's death, there was no prospective or pecuniary loss suffered by his elder brothers. After the retirement of their father, the elder brothers may have been charged to a certain extent with the responsibility of educating and bringing up of this minor child. Here again, a token amount could be awarded to assuage the feelings of loss of a close relation. A sum of Rs. 5,000/- as damages for this loss of life would be ample compensation and the Haryana Government Roadways would be liable to pay only half this amount.

19. As regards the injuries sustained by Subhash Chander, he is shown to have spent only a sum of Rs. 1,108/- on medicines and treatment. The injuries had kept him in the hospital for less than a week and the dislocation in his studies and the poor performance in the examination which was held eight or nine months later were apparently due to the emotional upheaval caused by the death of three family members including the bread winner and the house-keeper. For this loss by death of three family members, Subhash Chander has been separately compensated. He is not entitled to more than what he has spent on his treatment and medicines besides small amount for his pain and agony. A total sum of Rs. 2,000/- in respect of these injuries would be ample compensation and the Haryana Government Roadways would be liable for payment of only half this amount.

20. I then come to claim No. 99 of 1968 filed by Smt. Parsani Devi mother of Shri Prem Chand deceased. There is no reliable evidence on record with regard to the monthly income of the deceased who was a bachelor of about twenty-five years of age. He was said to have been carrying on business as liquor contractor with Shri Gore Lal R. W. 11, the father of the jeep-owner. The witness has said that the deceased was his partner in 1967 only and that he had a one-fourth share in the business. The total income for that year is said to have been Rs. 4000/- only. This means that the deceased had earned only a sum of Rs. 1,000/- in that liquor business during the year 1966-67. This would give him a monthly income which was hardly enough for his own support. The deceased could not have spared much for his mother from this income. Shri Gore Lal then tells us that the deceased had ceased to be his partner at the time of the occurrence. The witness had denied the suggestion that the account-books were being withheld for the purposes of Income Tax evasion. It does not appear that he had at all been summoned with the account-books of the firm. He had been summoned as a witness by the respondents and not by the claimants. It is true that an unskilled labourer could have earned a higher wage but educated persons may not find it so easy to find lucrative white-collar jobs. They would not in any case stoop to taking up employment as unskilled or semiskilled labourers. Moreover, the deceased was a bachelor of a marriageable age. He was likely to have married in the near future. The reason that he had remained a bachelor untill the time of his death could be that he was not well settled in life and was not earning much. The mother could not have expected any great financial assistance from his son after he had his own wife and children to support. The deceased's father is alive and has not claimed any compensation. That would imply that he had an income of his own and the mother of the deceased was apparently dependent on her husband for a living. Under the circumstances, an award of Rs. 19,200/- as compensation to her may appear to be rather fanciful. Under almost similar circumstances, a mother had filed a claim in the case of Satya Wati Devi Vs. Union of India and Others, . A Division Bench of the Delhi High Court had observed that the claimant must show that she had lost a reasonable probability of pecuniary advantage and that a mere speculative possibility could not be taken into consideration. In that case, the deceased was an Air Force Officer with an income of more than Rs. 500/- per month. He was holding a permanent Commission. He was twenty-two years of age at the time of his death in the accident. There was evidence on record to show that he was paying his mother a sum of Rs. 200/- per month. The mother was awarded a sum of Rs. 25,000/- as damages. In the case now before me, there is no evidence of any dependency of the mother on the deceased or the amount that he was making available to his mother. Under the circumstances, an award of Rs. 5,000/- may appear to be ample compensation. As the jeep driver was equally at fault. the driver and the owners of the Haryana Government Roadways Bus can be held liable for the payment of only fifty per cent of this amount.

21. No cuts are being imposed for lump sum payments as assessment of

damages has not been made on the basis of accumulations of piece-meal payments which would have fallen due in the future years.

22. For reasons given above. appeals Nos. 67, 68, 69 and 76 filed by the claimants for the enhancement of the compensation amounts are dismissed. Appeals Nos. 87, 88, 89, 90 and 91 filed by the Life Insurance Corporation are accepted and the Corporation is absolved of all liability.

23. Appeals Nos. 101 to 105 of 1971 filed by the State of Haryana etc. partly succeed and the compensation amounts are reduced to the extent mentioned above. The appellants in these five cases are held liable for one-half of the compensation amounts assessed on general principles. In view of the peculiar circumstances. the parties are left to bear their own costs throughout.

24. Order accordingly.