

(1969) 05 PAT CK 0016
In the Patna High Court
Case No : A.F.O.D. No. 334 of 1964

The Bihar Co-operative Motor Vehicles Insurance Society Ltd.	APPELLANT
Vs	
Rameshwar Raut and Others	RESPONDENT

Date of Decision : 16-05-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17
Motor Vehicles Act, 1939 — Section 110, 110A, 110C, 110D, 110F

Citation : (1969) ACJ 405 : AIR 1970 Patna 172 : (1969) 17 BLJR 919 : (1970) 40 CompCas 534

Hon'ble Judges : Tarkeshwar Nath, J; K.K. Dutta, J

Bench : Division Bench

Advocate : Sunit Kumar Choudhuri, for the Appellant; Brajeshwar Mallik, (for Nos. 1 to 5), L.K. Choudhuri and Bimal Bhusan Sen, (for No. 6), for the Respondent

Final Decision : Partly Allowed

Judgement

Tarkeshwar Nath, J.—This appeal by the insurer u/s 110D of the Motor Vehicles Act, 1939, is directed against the judgment and award of the Claims Tribunal (District Judge),

2. Respondent No. 1 filed an application u/s 110-A of the aforesaid Act for compensation on account of the death of his mother, Kalawati Rautine aged about 55 years, and his daughter, Bimla Rautine aged about 4 years, which took place in an accident on 1-9-1959 at 4.30 p.m. The said respondent stated in that application that the jeep bearing No. BRR 2222 owned by Shyama Prasad Singh (respondent No. 6) was being driven by Brajendra Prasad Singh on 1-9-1959. The said jeep was coming from Dhanbad and was going to Deoghar, but when it reached Sarsa More near Palajori it dashed against Kalawati Rautine and Bimla Rautine who were standing by the side of the Jamtara Dumka Road and grazing a cow. They sustained injuries and both of them died at the spot. He alleged that the jeep was coming in speed and the driver did not blow the horn. The cow

which was pregnant lost her back puttha and she also died after a few days. It was due to the rash and negligent act of Braiendra Prasad Singh that those lives were lost. The said jeep was insured with the appellant which was responsible for risk to the third party. The claim for compensation was to the extent of Rs. 6000. The said petition was filed on 30-9-1959. No action was taken for a period of about two years on this petition, but on 17-7-1961 the Tribunal registered that application and noted that the said application was not in the form prescribed by the Bihar Motor Vehicles Accidents Claims Tribunals Rules, 1961, and hence it directed the applicant (respondent No. 1) to file a fresh application in proper form accompanied by the requisite fee by 17-8-1961. In compliance with that order a fresh petition for compensation was filed by respondent No. 1 on 17-8-1961, and he was examined on solemn affirmation on the following day. In that petition respondent No. 1 claimed Rs. 3000 in respect of the death of his mother and the same amount in respect of the death of his daughter.

3. On 18-5-1963 the claimant (respondent No. 1) filed an application for the amendment of the claim petition and increased the amount of compensation to the extent of Rs. 10,000 in respect of the death of his mother and the same amount In respect of the death of his daughter) in other words, he claimed Rs. 20,000 in all He stated that the amount of compensation claimed previously was very low. The tribunal passed an order on the same date allowing the amendment asked for subject to limitation. On the same date respondent No. 1 filed a petition for adding his two brothers, Babulal Raut and Kodo Raut (respondents 2 and 3, respectively) as parties to the claim petition. The Tribunal acceded to this prayer and added them as petitioners Nos. 2 and 3. They also filed an application that the amount of compensation might be paid to respondent No, 1. On 26-8-1963 Rudi Rautine and Jamani Rautine (respondents 4 and 5, respectively) filed an application for being added as parties to the said claim petition as they were the daughters of Kalawati Rautine and were entitled to compensation. On the same date they filed another application stating that they had no objection if the entire amount of compensation be given to their brother (respondent No. 1). On this date the Tribunal passed an order adding them as applicants subject to limitation if any.

4. The owner of the car (respondent No. 6) showed cause stating that the petition was barred by time and the jeep in question was running in normal speed and the driver, Brajendra Prasad Singh was blowing the horn. At that time it was drizzling and the road was slippery. The driver, in order to save Kalawati and the child, tried to stop the jeep, but it was so close to them that the accident could not be avoided. According to him there was no negligence on the part of the driver and, in any event, he was not liable at all to pay any compensation, inasmuch as the said vehicle was insured with the appellant. The appellant also filed an objection stating that the claim was barred by limitation and the amount claimed was exaggerated. There was a further plea that the insured himself being liable to pay the compensation, the insurer was not liable at all

5. The main issues framed by the Tribunal were whether the claim was barred by limitation (issue No. 2) and whether the petitioners were entitled to claim damages and, if so, "for what amount?" (issue No. 3). Respondent No. 1 examined himself to support his case, but the appellant as well as the owner did not adduce any oral evidence. The Tribunal held that the application was not barred by limitation and the appellant was liable to pay a sum of Rs. 10,000 as total compensation, including costs, to the applicants (respondents 1 to 5). It directed that each of the five respondents would be entitled to get Rs. 1000 as compensation on account of the death of Kalawati and respondent No. 1 alone would get a sum of Rs. 5000 on account of the death of his daughter, Bimla. In other words, respondent No. 1 would get a sum of Rs. 6000 and respondents 2 to 5 would get Rs. 1000 each. In this manner, the application was allowed in part against the appellant, but the claim against the owner (respondent No. 6) was disallowed without costs. Being aggrieved by the said judgment and award, the insurer has filed this appeal

6. The first point urged by learned counsel for the appellant was that the Tribunal had no jurisdiction to entertain the petition dated 30-9-1959, inasmuch as the Motor Accidents Claims Tribunal was constituted much later on 28-5-1960 u/s 110 of the Motor Vehicles Act. The rules u/s 111A of the said Act were framed still later, on 5-4-1961, and the publication thereof was on 7-4-1961. He thus pointed out that there was no Tribunal at all on 30-9-1959, and the only remedy of the claimants (respondents 1 to 5) was to institute a suit in case they wanted to claim any compensation. This objection was not taken before the Tribunal and as such this could not be the subject-matter of discussion. But learned counsel placed reliance on the provisions of Section 57(7) of the Evidence Act which provides that the Court shall take judicial notice of the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette. Learned counsel referred to the provisions of Section 110F of the Motor Vehicles Act which reads thus:

"Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court".

He submitted that, according to Section 110F, the Civil Court will not have jurisdiction to entertain any question referred to in that section after the constitution of the Claims Tribunal, but prior to the constitution of the Claims Tribunal the Civil Court alone had the jurisdiction to entertain Claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of Motor Vehicles.

7. Learned counsel relied on *Kumari Sushma Mehta Vs. Central Provinces*

Transport Services Ltd. and Others, to support his contention referred to above. In the decision relied upon four cases were dealt with together, and the case numbers, the dates of accidents and the dates of filing the claims were as follows:

"Case No. Date of accident. Date of filing claim

M. A. No. 59/61 & M. A. No. 60/61 13-9-1959 12-11-1959

M. A. No. 58/61 12-8-1959 29-9-1959

M. A. No. 86/81 24-1-1959 28-1-1959".

Sections 110, 110A to 110F were introduced in the Motor Vehicles Act, 1939, by the Motor Vehicles (Amendment) Act, 1956 (100 of 1956) providing for the constitution of one, or more Motor Accidents Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving death or bodily injury. On 18-9-1959 a notification was published in the Madhya Pradesh Gazette bearing the date 7-8-1959 under which a Tribunal was constituted at Jabalpur for several districts including the places where the accidents in the four cases occurred. In the first two cases the accident had occurred after the date of the notification but before its publication, and in the other two cases the accidents occurred before the constitution of the Tribunal. The question arose, whether the petitions lay before the Tribunal. The Claims Tribunal had held that the petitions were not maintainable and as such they were returned for presentation to the Civil Court, and four appeals were filed against those orders. Their Lordships considered the provisions of Section 110F as well and observed that the sentence "no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area" made it clear that the two remedies could not exist side by side, and the moment the Claims Tribunal had jurisdiction to entertain the claim, necessarily the jurisdiction of the Civil Court was ousted. Moreover, the Civil Court having jurisdiction to try claims in respect of causes of action which accrued earlier to the publication of the notification, it was not possible to hold that the Tribunal also had jurisdiction to try the claims relating to those causes of action in view of the express provision of that section. The view taken by the Tribunal was affirmed: In the same volume there is another decision. See Dr. Omprakash Mishra Vs. National Fire and General Insurance Co. Ltd. and Others, . Relying on the case of Kumari Sushma Mehta Vs. Central Provinces Transport Services Ltd. and Others, , it was held if the cause of action for compensation arose prior to the constitution of the Tribunal the party injured had the remedy of filing a suit, and the Tribunal had no jurisdiction to entertain an application for granting compensation.

8. There cannot be any dispute about the proposition of law that if the Claims Tribunal was not constituted when the cause of action arose, the remedy of the aggrieved party was to Institute a suit for compensation. But the question as to when the Claims Tribunal was constituted has to be decided on the facts and circumstances of each case. Learned counsel has referred to Notification No.

A2-301/60 T-22 dated 28th May, 1960 (published in the Extraordinary issue of the Bihar Gazette dated 30-5-1960), according to which a Motor Accidents Claims Tribunal consisting of the District Judge, Bhagalpur, was constituted for the area comprised within the limits of the jurisdiction of Bhagalpur Division for the purpose of adjudicating upon the claims for compensation in respect of persons arising out of the use of Motor Vehicles. This notification, however, itself refers to the earlier Notification No. A2-301/59 T 38 dated 12th August, 1959, in respect of the same subject and points out clearly that the notification dated 12th August, 1959, was not published in the Gazette. The notification dated 12th August, 1959, (a copy of which is available in the Court's office) also refers to still another earlier Notification No. A2-301/59 T. 19 dated 28-4-1959 and says that that notification may be treated as cancelled. The said notification of 28th April, 1959 (a copy of which is in the Court's office) reads thus:

"In exercise of the powers conferred by Sub-section (1) of Section 110 of the Motor Vehicles Act, 1939 (IV of 1939), the Governor of Bihar is pleased to constitute for each of the areas comprised within the limits of the jurisdictions of the Patna, Bhagalpur, Ranchi and Muzaffarpur divisions, a Motor Accidents Claims Tribunal consisting of the District Judge posted at the Headquarters station of the Division, for the purpose of adjudicating upon the claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of Motor Vehicles".

Copies of this notification were forwarded to the various departments of the Government, other officers and also to all District and Sessions Judges, including the Judicial Commissioner of Chota Nagpur. The position thus was that there was a notification u/s 110 of the Motor Vehicles Act, 1939, even on 28-4-1959. The accident in question took place on 1-9-1959 and the claim petition was filed by respondent No. 1 on 30-9-1959. It is thus clear that a Motor Accidents Claims Tribunal was already constituted prior to the filing of the said claim petition. This notification having been pointed out to learned counsel for the appellant he submitted that this notification as well might have remained unpublished and as such it could not be deemed to be in force. It is, however, not at all sufficient for the learned counsel to suggest that an inference of non-publication should be drawn in favour of the appellant, inasmuch as the burden lay on the appellant to establish satisfactorily that the Claims Tribunal had no jurisdiction to entertain the claim petition. I have already indicated that this objection was not taken before the Tribunal. It is true that the notification dated 28-4-1959 was cancelled by the notification dated 12-8-1959, but the latter notification not having been published, the cancellation itself had no effect and the notification dated 28-4-1959 must be deemed to be in force. The onus was on the appellant to establish that the notification dated 28-4-1959 had no effect and that it was not published, but that burden had not been discharged. I am thus of the opinion that the claim petition was rightly filed by respondent No. 1 on 30-9-1959 before the Motor Accidents Claims Tribunal, Bhagalpur Division (District Judge, Bhagalpur). It is true that that application came to be dealt with long after, but

the reason for the delay seems to be that the rules had not been framed till then. The rules were ultimately framed in April. 1961, and then the Tribunal passed an order on 17-7-1961 (referred to above). In this view of the matter, the Claims Tribunal had the jurisdiction to entertain the petition dated 30-9-1959 and the award given by it cannot be said to be without jurisdiction.

9. The second point of learned counsel for the appellant was that the fresh petition for compensation filed on 17-8-1961 was barred by time, inasmuch as, according to Section 110A(3) of the Motor Vehicles Act, no application for compensation u/s 110A could be entertained unless it was made within sixty days of the occurrence of the accident. There is, however, no merit in this contention, inasmuch as the Tribunal itself has pointed out that the application for compensation was filed on 30-9-1959, i.e., within 30 days of the date of the occurrence, but no action was taken on that petition because the rules to be framed u/s 111A were not published. The application filed on 30-9-1959 must be deemed to be an application for compensation, and the "fresh application" was filed on 17-8-1961 only with a view to comply with certain rules which came to be framed long after the filing of the original application. In other words, by the filing of the "fresh application", the original application must be deemed to have been amended, but the compensation was claimed on 30-9-1959 and not on 17-8-1961. The position thus is that the petition for compensation was not barred by limitation.

10. The third point raised by learned counsel for the appellant was that the Tribunal had grossly erred in allowing the amendment of the claim petition so far as the amount of compensation was increased from Rs. 6000 to Rs. 20,000. His main objection was that after the expiry of the period of limitation it was not open to the claimants to amend the petition and make a claim for a higher amount. In the petition filed on 30-9-1959 respondent No. 1 claimed a sum of Rupees 6000 only as compensation and the same amount was claimed by him in the petition filed on 17-8-1961 as well. The petition to amend the claim and increase the amount of compensation was filed on 18-5-1963. There can thus be no doubt that the claim for a sum in excess of Rs. 6000 was a very belated one and by that time the period of limitation for the making of the claim had expired. It is true that in certain circumstances the Court or the Tribunal has the power to allow the amendment of the pleadings, but amendment should not be allowed if a valuable right has accrued in favour of the opposite party on account of the expiry of the period of limitation. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time. This latter observation was made by Sarkar, J., in *A.K. Gupta and Sons Vs. Damodar Valley Corporation*, . For instance, if a person institutes a suit for recovery of money based on a handnote, but he does not claim in the plaint the entire amount to which he is entitled and gives up his claim to a certain extent, it would not be open to him to make a further claim in respect of the amount already given up after the expiry of the period of limitation. The same would be the position in the case of a suit instituted for the recovery of the dues based on

a mortgage bond. These matters have not been carefully considered by the Tribunal, and at the hearing of the claim case the Tribunal held the amendment already allowed to be proper on the ground that it was required in the interest of justice. The prejudice caused to the other side has been completely ignored. In the circumstances of the present case, the claimant (respondent No. 1) ought not to have been allowed to amend the claim petition. The discretion has been wrongly exercised by the Tribunal and the claim must be limited to Rs. 6000.

11. Learned counsel for the appellant further urged that the Tribunal ought not to have added respondents 2, 3, 4 and 5, inasmuch as the petition to add respondents 2 and 3 as petitioners 2 and 3 was filed on 18-5-1963 and the petition of respondents 4 and 5 for being added was filed still later, on 26-8-1963, There is no doubt that these petitions were filed long after the expiry of the period of limitation prescribed for the making of a claim, and the legal representatives of the deceased must seek their remedies within 60 days of the occurrence of the accident, according to Section 110A(3) of the Motor Vehicles Act. Respondent No. 1 filed a petition on 18-5-1963 for adding Babulal Raut and Kodo Raut (respondents 2 and 3) as parties stating that they also were the sons of Kalawati Rautine and it was necessary that proceedings should be carried on in their presence to avoid any objection. He further stated that those two persons also were entitled to a share in the amount of compensation; but apart "from it, he mentioned that he had made the application as legal representative and Karta of the Joint Hindu family consisting of himself and his two brothers and there was no clash of interest. The ground given for adding those two persons as parties at that stage is not at all cogent and sufficient and they ought to have made the claim themselves at the earliest stage within the prescribed period of limitation. It was open to respondent No 1 to ask them to join in the pttition filed on 30-9-1959, but that step was not taken, and there is absolutely no satisfactory explanation for that omission. The same is the position with regard to the petition filed by respondents 4 and 5 for being added as parties. These respondents (2 to 5), however, filed petitions before the Tribunal that the entire amount of compensation might be paid to Rameshwar Raut, respondent No. 1 (peti-lioner No. 1 in the claim case) and they would have no objection to that course being adopted. In fact, it was noted by the Tribunal itself in the orders dated 18-5-1963 and 26-8-1963. I am of the opinion that respondents 2 to 5 ought not to have been added as parties in the claim case and as such they are not entitled to get any share in the amount of compensation; but that would not stand in the way of respondent No. 1's getting the entire amount of compensation which would be determined in this appeal.

12. The fourth point urged by learned counsel for the appellant was that the claimants had failed to prove that there was any negligence on the part of the chauffeur who was driving the said jeep and as such they were not entitled to claim any compensation. He relied on *Shri Ram Pertap v. General Manager, Punjab Roadways, Ambala*, AIR 1962 Punj 540 and *Nand Singh Viridi, Chandigarh v. Punjab Roadways, Amritsar*, AIR 1963 Punjab 214. He submitted that the

evidence of the solitary witness, Rameshwar Raut, respondent No. 1 (witness No. 1 for the petitioners) that the said jeep was coming at a great speed should not be believed, inasmuch as he frankly admitted in cross-examination that he was at his house at the time of the occurrence and that he went to the place of occurrence 10 minutes after the occurrence. This witness was examined thrice before the Tribunal, firstly, on 18th April, 1963, secondly, on 10th August, 1963, and, thirdly, on 3rd September, 1963. It is quite clear that he was not present at the time of the occurrence and hence he was not at all competent to say about the speed of the said jeep at the time of the accident. In these circumstances, the contention was that there was no evidence of negligent driving, if any, and there was no finding that the jeep was being driven rashly and negligently. A question arose in course of the argument as to whether such a defence was open to the insurer in view of the provisions of Section 96(2) of the Motor Vehicles Act. Learned Counsel for respondents 1 to 5 relied on *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, to support his contention that it was not open to the insurer to urge that there was no negligence on the part of the driver. It was held by their Lordships that an insurer was entitled to oppose the claim for compensation only on the grounds enumerated in Section 96(2) and not on others. Learned counsel for the appellant, however, pointed out that the appeals before the Supreme Court arose out of the two suits which were filed for recovery of damages and there was no appeal arising out of a proceeding under the Motor Vehicles Act. In other words, according to him, Section 96(2) was not a bar to the insurer, so far as the above-mentioned defence was concerned, if a notice to the insurer was given to appear in a proceeding under the said Act. He relied on a Division Bench decision of the Madras High Court in *K. Gopalakrishnan Vs. Sankara Narayanan and Others*, . The decision of the Supreme Court referred to above was considered and their Lordships observed as follows:

"It should be noted that Section 96 of the Act was introduced several years before the constitution of the Claims Tribunal by the present Section 110 of the Act. At the time when Section 96 of the Act first came into force there was no claims tribunal. Section 96 was introduced in order to enforce the duty of insurers to satisfy judgments against persons insured in respect of third party risk by giving them notice after judgment obtained by third party against persons insured in respect of third party risk. It is only in such cases the defences open to the insurer are restricted to the grounds mentioned in Section 96(2) of the Act. A reading of Section 96 would clearly show that it was not intended to govern enquiry before a claims tribunal. Section 96 contemplates proceedings in a Court and not a proceeding before a Tribunal. It contemplates notice being given to the insurer which may be before or after judgment is obtained against the person who had effected insurance for third party risk. The insurer is no doubt entitled to be made a party and defend the action on the grounds mentioned in that Section. But in the proceedings before a Claims Tribunal the insurer is a party. The decision in *Vanguard Fire and General Insurance Co. Ltd.*

Vs. Sarla Devi and Others, and British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, holding that an insurer is not entitled to take any defence which is not mentioned in Sub-section (2) of Section 96 of the Act are all decisions in which the insurers were given notice in proceedings by way of suit as contemplated under the provisions of Section 96 of the Act. It has been rightly pointed out in those decisions that apart from the statute, an insurer has no right to be made a party to the action by the injured person against the insured causing the injury and that the rights open to the insurer are therefore governed by those provided in the section. The decisions do not relate to proceedings before a Claims Tribunal where the insurers are made parties and the scope of the defences which they were to put forward has not in any way been, restricted."

13. In my opinion, it is not at all necessary to go into the question as to whether the provisions of Section 96(2) are attracted and there is any bar to the insurer taking the plea that there was no negligence on the part of the driver, inasmuch as this defence had not been at all taken by the insurer in the objection or the show cause filed before the Tribunal. On the other hand, it was stated in the objection filed by the insurer (Opposite Party) that "since the insured is liable for the accident, if any, this opposite party is not liable to pay the claim". In these circumstances, the question raised is only academic and it is not necessary to deal with it in the present appeal. It is true that the owner (respondent No. 6) stated in his show cause that the Jeep was running in a normal speed, but he had not raised that plea before us as the Tribunal has directed the insurer (appellant) to pay the amount of compensation. Moreover, the claimant (respondent No. 1) had alleged in the petition filed on 30-9-1959 that there was a rash and negligent act on the part of the driver, Brajendra Prasad Singh, but this version was not denied by the appellant. I would further point out that the appellant has not called for the policy of insurance issued by it in respect of the aforesaid jeep and as such the terms of that policy are not known. In case the appellant could be liable, according to the terms of the policy, to pay the compensation only on the proof of negligence on the part of the chauffeur, it was incumbent on the appellant to prove those terms.

14. The fifth point urged by learned counsel for the appellant was that the Tribunal having disallowed the claim against the owner, Shyama Prasad Singh, there could be no liability on the appellant, and in this respect also the award of the Tribunal was erroneous in law. Section 110B of the Motor Vehicles Act provides that on receipt of an application for compensation made u/s 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an enquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer. The Tribunal seems to have the provisions of this section in view while directing the insurer (appellant) to pay the amount of compensation to the applicants. Rule 6 of the

Bihar Motor Vehicles Accidents Claims Tribunals Rules, 1961, provides that if the application is not dismissed under Rule 5, the Claims Tribunal shall send to the owner of the motor vehicle involved in the accident and its insurer, a copy of the application together with a notice of the date on which it will hear the application and may call upon the parties to produce on that date any evidence which they may wish to tender. Thereafter, there is a further provision even for the insurer to file a written statement (see Rule 7). The position thus is that the insurer (appellant) was a party to the claim case, and, after the conclusion of the proceeding, the award in question was given by the Tribunal. The expression "disallowing the claim against the owner" used by the Tribunal must be held to mean that the actual payment has to be made by the insurer, as if it were the judgment-debtor, as the jeep was insured at the time of the accident on 1-9-1959. A similar contention was raised in *The Vanguard Insurance Co. Ltd. Vs. Foolchand Mandal and Others*, but it was overruled.

15. The last point urged by learned counsel for the appellant was with regard to the quantum of damages, and he submitted that there was absolutely no basis for awarding a sum of Rs. 10,000 in all as compensation. He further submitted that the evidence to prove the quantum of compensation was very meagre and the Tribunal was entirely wrong in taking into account only the means and status of the family of the claimants for the purpose of determining the amount of compensation. Ordinarily, the appellate Court is disinclined to reverse the finding of the Claims Tribunal as to the amount of compensation. The relevant observations in this connection are the following in *Flint v. Lovell* (1935) 1 KB 354

"In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled".

These observations were referred to and relied upon in *Champalal Jain and Others Vs. B.P. Venkataraman*, . In *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. Jahiram and Another*, , it was held, relying on *Nance v. British Columbia Electric Rly. Co. Ltd.* 1951 All ER 448 that an appeal upon the quantum of damages will not be allowed unless either (i) the Tribunal had applied a wrong principle of law, or, misdirected itself or (ii) the amount awarded either was so inordinately low or was so inordinately high that it must be held as erroneous. The normal rule, therefore, was that no appeal lay on the quantum of damages unless it involved a matter of principle. The principles and criteria for ascertaining the amount of compensation have not been laid down in the Motor Vehicles Act, but the Claims Tribunal can make an award determining the amount of compensation which appears to it to be just and reasonable, and it has to specify the person or persons who shall be paid and the amount as well which shall be paid by the insurer. Learned counsel for the appellant, while developing

this point, referred to Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, which lays down the principles for determining the amount of damages. The passage relied upon by learned counsel occurs on page 5, and it reads thus:

"The scope of the corresponding provisions of the English Fatal Accidents Acts has been discussed by the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 AC 601. There Lord Russell of Killowen stated the general rule at p. 606 thus:

"The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependent by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependent by the death must be ascertained, the position of each dependant being considered separately."

Lord Wright elaborated the theme further thus at p. 611:

"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 that case their Lordships were dealing with the provisions of the Fatal Accidents Act, 1855 (XIII of 1855), and Section 1 of that Act entitled the party injured to maintain an action and recover damages in certain circumstances. That decision is not of any assistance to the appellant,

16. The guiding principles for fixing a reasonable amount by way of damages have been thoroughly discussed and laid down by the House of Lords in *Benham v. Gambling*, 1941 AC 157. Viscount Simon L. C. observed thus:

"I would rather say that before damages are awarded in respect of the shortened life of a given individual under this head, it is necessary for the Court to be satisfied that the circumstances of the individual life were calculated to lead, on balance, to a positive measure of happiness, of which the victim has been deprived by the defendant's negligence. If the character or habits of the individual were calculated to lead him to a future of unhappiness or despondency, that would be a circumstance justifying a smaller award. It is significant that, at any rate in one case of which we were informed, the jury refused to award any damages under this head at all. As Lord Wright said in *Rose v. Ford* 1937 AC 826 special cases suggest themselves where the termination of a life of constant pain and suffering cannot be regarded as inflicting injury, or at any rate as inflicting the same injury as in more normal cases. I would further

lay it down that, in assessing damages for this purpose, the question is not whether the deceased had the capacity or ability to appreciate that his further life on earth would bring him happiness; the test is not subjective and the right sum to award depends on an objective estimate of what kind of future on earth the victim might have enjoyed, whether he had justly estimated that future or not. Of course, no regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life, not of loss of future pecuniary prospects.

The main reason, I think, why the appropriate figure of damages should be reduced in the case of a very young child is that there is necessarily so much uncertainty about the child's future that no confident estimate of prospective happiness can be made. When an individual has reached an age to have settled prospects--having passed the risks and uncertainties of childhood and having in some degree attained to an established character and to firmer hopes --his or her future becomes more definite and the extent to which good fortune may probably attend him at any rate becomes less incalculable. I would add that, in the case of a child, as in the case of an adult. I see no reason why the proper sum to be awarded should be greater because the social position or prospects of worldly possessions are greater in one case than another. Lawyers and Judges may here join hands with moralists and philosophers and declare that the degree of happiness to be attained by a human being does not depend on wealth or status".

In that case a sum of Pounds 200 was considered as proper by way of damages in respect of the shortening of the life of an infant who was 21/2 years old at the time of the accident.

This decision of the House of Lords was relied upon in K.M. Krishna Gounder Vs. P.N. Narasingam Pillai and Others, . In the Madras Case the boy (since deceased) was seven years old at the time of the occurrence and was studying in the second class in an elementary school. He was healthy, clever and enthusiastic and had never fallen ill. According to his father, he would have at least earned Rs. 50 to Rs. 60 per month as a clerk. It was held that the award of Rs. 5000 as damages for the loss of expectation of life was not in any way excessive or extravagant. In T.V. Gnanavelu and Another Vs. D.P. Kannayya and Others, the award of Rs. 4000 as damages for the death of a person at the age of 60 was not held to be excessive, inasmuch as that amount was reasonable under the head "loss of expectancy of life".

17. Turning to the facts of the present case, it appears that Rameshwar Raut (respondent No. 1) stated in his evidence that his mother was aged 55 years and she was looking after the domestic affairs of the family and on the date of the accident she along with the child had gone to tend cattle. The witness further stated that he had about 70 bighas of land and he was paying Rs. 30 or Rs. 35 as rent. The Claims Tribunal, while dealing with the quantum of damages, referred to this evidence and came to the conclusion that the insurer was liable

to pay a sum of Rs. 10,000 as total compensation. To begin with, it was determining the quantum of compensation on the footing that the total claim made by respondents 1 to 5 was Rs. 20,000. I have already indicated that the claim must be limited to Rs. 6000, as the amendment was wrongly allowed. The Tribunal has not indicated the basis on which it arrived at the figure of Rs. 10,000 as total compensation. It is thus necessary to interfere with the award given by the Tribunal, and the total sum determined by it has to be reduced. The evidence, however, adduced by the claimants was ex parte and the appellant did not adduce any oral evidence in the instant case. The loss accrued on account of the shortening of the life of the mother and the child has to be taken into account. The mother, Kalawati Rautine, could be reasonably expected to have lived comfortably for a further period of 10 or 15 years, as her son had about 70 bighas of land. In other words, the circumstances for leading that kind of life were favourable, and there is nothing to suggest that the family was in wants. Having regard to these facts Rameshwar Raut (respondent No. 1) is entitled to a sum of Rupees 3000 as compensation on account of the death of his mother, Kalawati Rautine. So far as the child, Bimla Rautine, is concerned, she was aged about 4 years and there was a lot of uncertainty about her future. There cannot be any reliable estimate of her prospects and good fortune. She belonged to Kurmi Community and her father has not said in his evidence that he intended to send her to any school for being educated. I am of the opinion that on account of the shortening of her life by reason of the accident. Rameshwar Raut (respondent No. 1) is entitled to a sum of Rs. 2000 as compensation.

18. In the result, the appeal is allowed in part and the judgment and award of the Claims Tribunal are modified to this extent that Rameshwar Raut (respondent No. 1) alone is entitled to a sum of Rs. 3000 as compensation on account of the death of his mother, Kalawati Rautine, and a further sum of Rs. 2000 as compensation on account of the death of his daughter, Bimla Rautine. The appellant (insurer) is directed to pay these sums to Rameshwar Raut (respondent No. 1). The other claimants, respondents 2 to 5, are not entitled to get any sum as compensation. In view of the partial success of both the parties, they will bear their own costs throughout.

Dutta, J.

19. I agree.