

(1974) 11 PAT CK 0010
In the Patna High Court
Case No : A.F.O.D. No. 265 of 1966

The State of Bihar

APPELLANT

Vs

Sishir Kumar Mukherji

RESPONDENT

Date of Decision : 20-11-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35
Fatal Accidents Act, 1855 — Section 1A

Citation : AIR 1976 Patna 24

Hon'ble Judges : Lalit Mohan Sharma, J; K.B.N. Singh, J

Bench : Division Bench

Advocate : Birendra Prasad Sinha, Govt. Pleader and Prabhunath Roy, Jr.
Counsel to G.P, for the Appellant; S.K. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

K.B.N. Singh, J.—This appeal by the State of Bihar arises out of a suit for compensation, in which a decree for Rs. 14,040/- has been awarded as compensation to the plaintiff-respondent and his wife.

2. The plaintiff-respondent filed a suit claiming compensation and damages to the tune of Rs. 2,19,301/- on account of fatal accident met by his son, Raghu Nath Mukharji, due to wrongful act and utter negligence on behalf of the appellant, under whom he was employed as an Assistant Engineer. The suit was filed by the plaintiff for his own benefit as also for the benefit of Sulekha Mukherji, widow of the deceased, and the minor daughter of the deceased, as also his own wife, the mother of the deceased, under Fatal Accidents Act, 1855 (hereinafter referred to as the Act).

3. The deceased, Raghunath Mukharji, was appointed as an Assistant Engineer in the Irrigation Department of the State of Bihar and, at the relevant time, was posted in the Kosi Project and was working as Subdivisional Officer, Incharge of Vardah Quarry sub-division, under the Barrage Division of Birpur. It is the common case of the parties that the deceased, while returning from Birpur,

where he had gone on the 25th June, 1960 to his headquarters at Vardah on the 26th June, 1960, died of drowning, as the boat of the Kosi Project Department, in which he was travelling capsized in the Kosi river. His dead body was recovered on the 28th June, 1960. The plaintiff's case is that the death of his son was due to the negligent act of officers of the defendant-appellant in the Kosi Project Department in not providing the boat with any life saving device and that the boat was also old and worn out. As the death of the plaintiff's son took place while he was in course of his employment and duty, the plaintiff was entitled to compensation from the State of Bihar. The plaintiff has averred that the deceased at the time of his death was drawing a total emolument of Rs. 481/- per month and was expected to be promoted as Executive Engineer by July, 1962, and as Superintending Engineer by July, 1972. On that basis, fifty per cent, of his total earning up to the period of his superannuation, has been claimed as compensation, as mentioned in Schedule A to the plaint, besides gratuity.

4. The suit has been contested by the State of Bihar. The case of the State, in short, is that the boat was in a sound condition and was not worn out or rickety, and that the death was not caused on account of any negligent act on the part of the employees of the Defendant, but it was a case of pure accident in which the deceased Raghunath Mukharji and two others, namely, Pahari Lal. Mechanic, and Gauri Shankar Gupta, Overseer, were drowned. The duty of the deceased consisted of supervision work of collection and transportation of sand from a place named Gangaiali to the headquarters at Vardah, both the places being on the western bank of Kosi, and his official duty did not require him to cross river Kosi on the east of which is Birpur. He had not received any order for going to Birpur from his superior authorities and he had gone to Birpur on the 25th June, 1960 of his own accord. Therefore, the death did not take place in course of his official duty or employment. It is also pleaded that there was an alternative land route via Nirmali and Bathnaha for going to Birpur from Vardah, which did not involve crossing of the Kosi river. The amount of compensation claimed was also said to be imaginary and without any basis. The suit was also said to be not maintainable for non-compliance of the provision of Section 80 of the CPC (hereinafter referred to as the Code).

5. After the written statement was filed, the plaint was amended plating therein that notice u/s 80 of the Code had duly been served on the defendant.

6. The trial Court decreed the suit in part, as mentioned above, and held as follows:--

(a) The notice u/s 80 of the Code was duly served on the defendant.

(b) The suit was not barred by limitation.

(c) The plaintiff filed the suit in the representative capacity as provided under the Act for the benefit of the widow, child and parents of the deceased, and the suit as framed was maintainable.

(d) The death of the deceased was caused due to the negligent act on the part of the employees of the defendant, while the deceased was acting in course of his duty and employment under the defendant.

(e) The defendant having granted ex gratia help to the deceased's widow and minor daughter, as is the evidence of Sulekha Mukharji (D. W. I-examined on commission), no amount could be decreed or apportioned for the widow and the minor daughter of the deceased.

(f) The loss suffered by the plaintiff and his wife was held to be Rs. 75/- per month for each of them and on that basis, the compensation has been calculated at Rs. 14,040/- for both of them, each getting half and half.

7. Against the above decree, the defendant-appellant has filed the present appeal. The plaintiff-respondent has also filed a cross-objection, claiming higher compensation.

8. The learned Government Pleader has urged that on the basis of the notice dated the 5th June, 1961, u/s 80 of the Code, the learned trial Court has added the notice period of two months and held that the suit was filed in time, without any finding that the notice dated the 5th June, 1961, had duly been served. He has also submitted that on the basis of an earlier notice dated the 14th December, 1960, u/s 80 of the Code having been served, the plaintiff was not entitled to any extension of the time for the period of two months. There is no substance in this submission of the learned counsel. The death took place on the 26th June, 1960, and the suit has been filed on the 21st August, 1961. The limitation for filing a suit under the Act was one year from the date of the death of the person killed under Article 21 of the Old Limitation Act, which applied to this case. This suit was filed beyond one year but within two months of the expiry of the period of limitation. The trial Court has found that the plaintiff was entitled to exclusion of two months period of notice u/s 80 of the Code of Civil Procedure, as provided by Section 15(2) of the Limitation Act. The plaintiff has produced the office copy of the notice dated the 5th June, 1961, which has been marked as Exhibit 1. This notice was sent under registered post to the Secretary, Kosi Project Department, now River Valley Department, the same day, as it appears from the postal receipt Exhibit 3. In the written statement, all that the defendant has averred in paragraph 3 is that the suit is liable to be dismissed for non-compliance of the provisions of Section 80 of the Code. As already mentioned the plaint was thereafter amended asserting that the notice u/s 80 of the Code was served on the defendant. The plaintiff (P. W. 1), who proved the office copy of the notice dated the 5th June, 1961, as Exhibit 1, has stated that he sent the notice u/s 80 of the Code through Shree Anant Kumar Bose, Advocate, and that Exhibit 1 was its office copy and the corrections in the said notice were in the pen of Shree Rameshwar Prasad, Advocate. The cross-examination of the plaintiff on the point is in para. 18 (which should have been paragraph 14 instead of 18, as it follows paragraph 13 and all paragraphs after 13 have been wrongly numbered). In this paragraph, there is no suggestion to

the witness that the notice was not served. There is not a word in the evidence of any of the defence witnesses about the non-service of the notice u/s 80 of the Code. On the other hand, there was a suggestion to P. W. 1 that his daughter-in-law (widow of the deceased) did not authorise him to give any notice u/s 80 and she was opposed to the service of notice u/s 80 of the Code by the Plaintiff and that she had written to the plaintiff that he made a mistake by giving a notice u/s 80 of the Code. From this suggestion the service of notice is in a way accepted. Not only that, a letter written by the daughter-in-law of the plaintiff to the State Government to the above effect has been produced and marked as Exhibit D (4). This letter is in reply to a letter dated the 21st December, 1960, written by the P. A. to the Chief Engineer, River Valley projects Department (Kosi Wing). Government of Bihar, Patna, in which the widow of the deceased was informed about the notice by Shree S.K. Roy. Choudhary, Advocate, on her behalf as also on behalf of her daughter. This obviously refers to an earlier notice dated the 14th December, 1960, sent by registered post under postal receipt Exhibit 3 (Ka), which receipt was exhibited on the 16th November, 1964, even before the application for amendment of the plaintiff dated the 12th August, 1964, was allowed on that date. The notice dated the 5th June, 1961, having been sent by registered post, as is evident from Exhibit 3, well within time, must be presumed to have been delivered in the ordinary course. This must be so, in absence of any denial on the part of the defendant's witnesses about the non-service of notice. It is true that no office copy of the earlier notice dated the 14th December, 1960, has been brought on the record, but from the suggestion in cross-examination of P. W. 1 and Exhibit D/4, it appears that the notice was also served. Once it is held that the notice u/s 80 of the Code has been duly served in time, the plaintiff is entitled to exclusion of the notice period of two months in computing the period of limitation under Sub-section (2) of Section 15 of the Limitation Act. It is, therefore, manifest that the trial Court was not in error in holding that the notice was duly served and the suit was filed within time.

9-10. The learned Government pleader has next contended that it was no part of the duty of the deceased to go to Birpur, which is on the eastern side of Kosi river, and the accident did not occur in course of the duty and employment under the defendant, and so the defendant was not liable to pay any compensation.

[After considering the evidence, the judgment proceeded.]

11. On an analysis of the evidence, it is manifest that the deceased being admittedly in charge of Vardah Sub-division and having supervision and control over that sub-division, having gone to Birpur on the 25th June. 1960, and having actually collected some cash for payment to the labourers and for purchase of spare parts and repairs of some machineries working at Vardah, as, admitted in the written statement cannot but be said to have gone to Birpur, in discharge of his duties and in course of employment. Simply, because his subordinate, the cashier, had also accompanied him or for the reason that the Cashier had stated that as he was going it was not necessary for the deceased to go, will not be

sufficient to hold that he had not gone to Birpur in discharge of his duties and in course of his employment. From the suggestions made to the Superintending Engineer, D.W. 5, it appears that perhaps the authority slip for drawing the cash was not renewed. Relevant document regarding withdrawal of cash has also not been produced by the State to show that his going in this connection was wholly uncalled for. The distribution of cash ultimately was the responsibility of the deceased. Besides that, no duty chart has been produced and even the Superintending Engineer could not say whether the deceased had gone to Birpur on official duty or not. Some of the duties of the deceased, as stated in the plaint, have not been controverted in the written statement. From the evidence of D. W. 3, it appears that the barrage was being constructed a mile away from the main current of Kosi river towards the east. The journey of the Sub-divisional Officer of Vardah Sub-division to the Divisional Headquarters at Birpur for drawing cash for payment to labourers and purchase of spare parts obviously must be in discharge of his official duty. It lay within his discretion, whether he should go himself for that purpose or leave it to his subordinates. Even if he had erred in exercise of his discretion, nonetheless it will be in discharge of his duties.

12. The learned Government Pleader has next contended that the finding of the trial Court about negligence on the part of the defendant is based merely on absence of life saving device in the illfated boat. He has submitted that it was not practice to provide life saving device in such country boat. The test of negligence in such cases is a test of a prudent man. The evidence indicated that the boat was in sood condition and the accident took place because of a very swift current and increase in volume of water in river Kosi. Therefore, merely on account of absence of life saving device on the boat, it cannot be held that the death took place on account of the negligence on the part of the defendant" employees.

13. It is true that no rule or circular has been pointed out to us on behalf of the respondent that these country boats should be provided with life saving device. u/ s 22 of the Bengal Ferries Act, the Commissioner has been given power to make rules for maintenance and safety of passengers and properties on private ferries situated in his Division, The Rules framed under this section make it obligatory for the private ferries to be registered. The application for the purpose has to state particulars as required in the rules in this regard. The plaintiff has averred in paragraph 5 of the plaint that this ferry was not registered under the said Act which has not been denied by the defendant. There is no specific mention in those rules about the provision of life saying device. The liability of the master is not limited to failure to perform statutory obligations so as to make him liable for negligence. The master owes a duty to his servants to see that reasonable care is taken for the latter"s safety. He may delegate his own functions to his officers, but he cannot delegate or avoid his own responsibility for their proper performance, as observed by Lord Reid in *Winter v. Cardiff R. D. C.* (1950) 1 All ER 819 825). The standard of care which a master is required to take about the safety of his employee would, no doubt, be what would, be observed by a prudent and reasonable man and this again will depend upon the facts of each

case and the attending circumstances. Analysing the facts in the instant case, it is admitted position in the case that the Kosi Project Department had provided the boat in question for plying across Kosi river for use of its employees during the construction of barrage. It appears from the evidence of D. W. 1 that the Department had a number of boats and none of which was provided with any life saving device. The witness also admitted that river Kosi is turbulent during the time of flood. From the evidence of D. W. 2 it appears that the boat capsized due to swift current in the river. D. W. 3, who was also an occupant of the boat, stated that the boat capsized because of the on-rush of flood water. The river Kosi is well known for its furious and turbid current, especially in the rainy season, as observed by the trial Court. It is thus obvious that the danger involved in crossing river Kosi is of greater magnitude than involved in crossing comparatively tame rivers. In my considered opinion, a prudent or reasonable man, while providing a boat for carrying its employees in such a river during rainy season and flood, would be required to provide life saving device, in view of the hazardous nature of journey involving greater amount of risk than an ordinary river crossing. Mere provision of a boat having no leakage, painted and in proper working condition is not enough to ensure safe journey in such a perilous river, but provision for some life saving device becomes necessary in view of the magnitude of the risk to minimise it. The provision for transport means provision for a safe transport, which, in terms, implies provision for safety in case of hazards in such a river. The imminence of risk and perilous nature of journey by boat at that point in river Kosi, especially during rainy season, as in the instant case, made it obligatory on the part of the defendant to provide life saving device on the boat in question and its failure showed lack of reasonable care and precaution, which a master was expected to take in a situation like this and it amounted to an act of negligence on the part of the defendant on the facts and in the circumstances of the case. Negligence after all in any given circumstance is failure to exercise that care which circumstances demand. Even if excess of flood water was due to heavy rains, it will not constitute an act of vis maior, as contended. This gains support from a decision of the House of Lords in the case of Corporation of Greenock v. Caledonian Railway. 1917 AC 556 where rain fall of extraordinary violence was not considered by the House of Lords to constitute an act of God. In that case, the definition of "Vis Major" as given by Lord Westbury, in Tennent v. Earl of Glasgow (1864) 2 Macph (HL) 22 was quoted with approval, which runs as follows :--

".....Circumstances which no human foresight can provide against, and of which human prudence is not bound to recognise the possibility, and which when they do occur, therefore, are calamities which do not involve the obligation of paying for the consequences that may result from them."

Lord Finlay, L. C., also quoted the same idea conveyed by Lord Cockburn in a picturesque phrase in Samuel v. Edinburgh and Glasgow Railway Company. (1850) 13 Durl 312:--

"I think he is bound to provide against the ordinary operation of nature, but not against her miracles." Thus, there is no substance in this submission of the learned Counsel as well.

14. The learned Government Pleader also contended that if the boat had no life saving device, the deceased should not have gone by the ill fated boat, but could have taken the alternative route. It has come in evidence that on the west bank of Kosi is Vardah and on the east of it is Birpur at a short distance. D. W. 4 has spoken about the alternative route from Vardah to Birpur via Nirmal up to Bathnaha by rail and thereafter up to Birpur by road. The route obviously seems to be a long and circuitous one and time consuming, although the distance has not been given by the witness. A transport having been provided by the Department and the two places being across the river, the existence of an alternative route could be no answer to the plaintiff's claim for compensation and damages against the defendant. The deceased having utilised the boat, without any life saving device, will also be no answer to the claim for damages, where a transport is provided by the employer for the journey in question. No evidence has been led in the case that the deceased was entitled to his expenses via a circuitous route in case of his refusal to go by the conveyance provided by the employer. This submission of the learned counsel also, therefore, fails.

15. The learned Government Pleader has also challenged the maintainability of the suit on the ground that the claim being u/s 1A of the Act, in which the wife of the deceased is disclaiming, the plaintiff alone could not maintain the suit. He has urged that in the copy of the plaint attached to the notice the name of the plaintiff alone appears and the names of others have been scored through. There is no substance in this submission also of the learned Counsel. The first part of Section 1A of the Act provides for suit for compensation to the family of a person for the loss occasioned to it by his death, by actionable wrong. The second part lays down that such action or suit can be brought in the name of an executor, administrator or representative of the person deceased. The representative of the deceased in this part of the action includes parent of the deceased. The relevant portion may usefully be reproduced in this connection :--

"Every such action or suit shall be for the benefit of the wife, husband, parent, and, child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased."

Section 2 only lays down that not more than one action shall be brought for such claim, and claims in respect of loss to the estate of the deceased may be added in the suit that may be filed u/s 1A of the Act. As already mentioned, the claim being on behalf of the widow and daughter of the deceased also, it cannot fail merely on account of the disclaimer on the part of the widow or her daughter. Merely because the widow and the daughter have not been impleaded in the suit, their omission will not be fatal to the maintainability of suit, as urged by the learned counsel, as any one of the persons mentioned in Section 1A, namely,

wife, child or Parent, could maintain a suit for benefit of all, as held in the case of Jeet Kumari Poddar and Others Vs. Chittagong Engineering and Electric Supply Co. Ltd. and Another, .

16. The learned "Government Pleader has lastly contended that the plaintiff is not entitled to any compensation. He was not so far receiving anything from his son. He has not said a word as to what were his expectations and there is no evidence also in this regard. He has relied on paragraph 9 of the plaint in this regard, which refers to a large amount being required for education, bringing up and marriage of the minor daughter of the deceased, who was then only 9 months old, besides the maintenance of the mother and widow of the deceased which the deceased was legally and morally bound to meet. The submission based on paragraph 9 of the plaint overlooks the averments made in paragraph 8 of the plaint, in which it is stated that the plaintiff, along with his wife, Pannarani Devi, his daughter-in-law Sulekha Mukharji, and his minor grand-daughter, Dolla, are the persons who answer the term "representative" of the deceased u/s 1 of the Act and it was for their benefit that the present petition was filed claiming compensation, and the suit was filed for the benefit of all and the amount of compensation can be easily adjusted amongst themselves, to which they are legally entitled. Thus the claim is made on behalf of the plaintiff and his wife as well, in conjunction with the widow and the minor daughter of the deceased, for whom a lump sum compensation was claimed, which was to be distributed amongst themselves. It is true that the plaintiff, in his evidence, has not stated a word that he received any amount from the deceased prior to his death, nor it is mentioned as to what assistance and help he expected from his son. The plaintiff himself was in service from 1928 in the Public Works Department and he retired as an Accountant in 1959. At the time of his retirement, he was drawing a salary of Rs. 120/-, per month, besides dearness allowance, etc., and was then living in Government quarters. It is common knowledge that the rent payable for such quarters would be a nominal amount and he might not have been in need of any assistance from his son, so long he was in service. After retirement, he would have got his gratuity etc. and might not have been in need of setting any amount from his son for the few months that he lived after the plaintiff's retirement. The plaintiff has stated that till 1964 his pension has not been fixed. The pension amount which he would draw would be a small fraction of the salary drawn by him and would be a paltry sum, with which it would be difficult for the plaintiff to maintain himself and his wife in these hard days. There is no evidence that he had any other source of assistance. His son would naturally have come to his assistance and he must have been expecting a substantial help from his son for his maintenance and that of his wife. The deceased wider the Hindu Law also was under an obligation to maintain his aged parents. Provision has been made by the Government for the pension to the deceased's widow and for the maintenance and education of the minor daughter, but that would not defeat the claim of the plaintiff and his wife on account of one lump sum compensation having been claimed in respect of all and the claim for compensation of each of

the dependants within the meaning of Section 1A of the Act, namely, wife, husband, parent and child, of the deceased has to be considered separately. The position in this regard is beyond dispute in view of the decision of the Supreme Court in the case of Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , where a decision of the House of Lords while considering similar provisions of the English Fatal Accidents Act in the case of Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601 has been referred to with approval. Their Lordships of the Supreme Court have also Quoted the following observations of Lord Russell of Killowen :--

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

"The same principle was restated with force and clarity by Viscount Simon in Nance v. British Columbia Electric Railways Co. Ltd. 1951 AC 601. There, the learned Lord was considering the analogous provisions of the British Columbia Legislation, and he put the principle thus at page 614:

"The claim for damages in the present case falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of accident he could reasonably have looked forward, what sums during that period would he probably have applied out of his income to the maintenance of his wife and family ?"

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

Applying the aforesaid principle, the trial Court has estimated the amount which the deceased would have saved out of his earnings had he not met with the accident and lived till the date of his retirement, which is much below the normal expectancy of his life, and has observed that his net earning would have been about one lac of rupees. No compensation has been claimed on behalf of the widow and the minor daughter of 1" deceased, as they have got ex-gratia grant from the Government. The Court below has calculated the expectancy of life of the plaintiff and his wife up to 75 years, that is for a period of 13 years from the time of plaintiff's evidence in 1964, when he was aged 62 years. Applying the aforesaid principle and taking everything into account, the trial Court has determined the loss sustained by the plaintiff and his wife at Rs. 75/- Per month, each to be just and proper- Assessing the expectancy of life of the plaintiff and his wife to be 13 years, up to the maximum estimated age, the trial Court has come to the conclusion that the total amount would come to Rs. 23,400/-. On that basis, out of this amount, it has deducted forty per cent in consideration of risk of life, benefit of lump and immediate payment, etc., and determined the net amount payable to the plaintiff and his wife as compensation at Rs. 14,040/- to be shared half and half by each of them. The learned Government pleader has fairly not challenged the apportionment and general expectancy of life. There is no evidence of any other benefit having accrued to the plaintiff or his wife on account of the death of his son. In my considered opinion, the plaintiff, after his retirement, for himself and his wife would be naturally expecting not less than the amount assessed by the Court below for their maintenance. Failure on the part of the plaintiff to mention as to what amount he was expecting from his son, will not be fatal to the claim, as it is open to the Court to make a fair estimate as to the assistance or help that the plaintiff would be expecting from his son on the relevant materials on the record.

17. Coming to the cross-objection filed on behalf of the respondent, Mr. Sarkar has argued that the trial Court having estimated the expectancy of the life of the plaintiff and his wife at 75 years, should have calculated the compensation for the plaintiff and his wife for a period of 16 years, i.e., from the date of the institution of the suit, when the plaintiff was aged 59 years, if not from the date of the death, and not from the date of his deposition in 1964, when he was aged 62 years. I think, there is substance in this submission of the learned counsel. The plaintiff was entitled to compensation, if not from the date of the death of the deceased, at least from the date of the institution of the suit. Mr. Sarkar, however, has not been able to satisfy us that the sum of Rs. 75/- per month awarded by the Court below was low and required enhancement. As a matter of fact, the trial Court has made a correct and fair estimate in this regard, which does not call for any interference.

18. Mr. Sarkar has then contended that the deduction of forty per cent from the total estimated amount of compensation of Rs. 23,400/-, has been deducted twice, without any basis. There is no substance in this submission of the learned counsel. The earlier deduction of 25% out of the net income of the deceased as mentioned in the schedule to the plaint was allowed on account of risk of life, likelihood of premature death, hazardous nature of the service of the deceased, etc., which were not taken into account by the plaintiff. The deduction of 40%, however, besides being in consideration of risk of life, was on account of benefit of lump and immediate payment etc., and is not a case of double deduction, as urged by the learned counsel. The result of my finding will be that the total amount of compensation payable to the plaintiff and his wife at the rate of Rs. 1,800/- per year for both of them for 16 years would be Rs. 28,800/-, and allowing 40 per cent. deduction out of this amount, the net amount will come to Rs. 17,280/-, payable half and half to the plaintiff and his wife. I think that the Government should Pay the amount, if not already paid, within two months from this date, failing which, it would be liable to pay interest at the rate of six per cent per annum on the aforesaid amount till the date of payment.

19. Mr. Sarkar has next contended that the plaintiff has been charged court-fee on the entire amount of claim amounting to Rs. 2,19,301/-, and thus costs should have been assessed over Rupees 1,00,000/-, which has been held to be the net savings of the deceased by the trial Court and not on the amount actually decreed in favour of the plaintiff. He has urged that the plaintiff in the suit could not but claim compensation on behalf of all and reliance is placed on a Bench decision of this Court in the case of Union of India (UOI) Vs. Satyabati and Others, to say that it was necessary in the pauper suit brought by the plaintiff to claim compensation on behalf of all the claimants mentioned in Section 1A of the Act. That may be so, but there is no finding by the Court below decreeing compensation to the tune of Rs. 1,00,000/-, in favour of the representatives of the deceased. What the Court has estimated is the net earnings of the deceased to be Rs. 1,00,000/-. There is no decree for that sum as compensation available to the representatives of the deceased and it could not be so in view of the special feature of this case that the widow has disclaimed all right to compensation on her behalf as well as on behalf of her minor daughter in view of the ex-gratia help and pension granted by the Government for the two dependants. The actual loss adjudged, therefore, in the suit is at the rate of Rs. 75/-per month to the plaintiff and his wife each, for a period of 16 years, and it is to that extent that the suit has succeeded and the plaintiff is entitled to a decree for costs on the amount actually calculated on this basis. There is another lacuna in the cross-objection, which would disentitle the respondent to any relief on this account and that is that no valuation has been put on the cross-objection and no ground has been taken in this regard therein.

20. In the result, the appeal is dismissed with costs and the cross-objection is allowed in part in proportionate costs, as indicated above.

Lalit Mohan Sharma, J.

21. I agree.