
(1975) 03 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 296 of 1971

The State of Punjab

APPELLANT

Vs

Mr. Brij Mohan Singh and others

RESPONDENT

Date of Decision : 21-03-1975

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (1975) 03 P&H CK 0031

Hon'ble Judges : Muni Lal Verma, J

Bench : Single Bench

Advocate : J.S. Wasu, A.G., Punjab and Mr. S.K. Sayal, for the Appellant; L.M. Suri, for the Respondent

Final Decision : Dismissed

Judgement

Muni Lal Verma, J.—The material facts, which gave rise to this appeal and F.A.O. Nos. 297, 298 and 299 of 1971, may be briefly stated as under :--

2. Dewan Ranbir Singh was proceeding in his car No. PNE-8052 (hereinafter called the car) to Delhi on March 31, 1965. His driver-Parkash Chand was at ill starring wheel. When the car had proceeded about 4 miles away from Karnal towards Delhi, Milk Tanker No. BMK-72-A (hereinafter called the tanker) appeared from the opposite direction. It was being driven by Bhag Singh, The tanker went on the wrong side of the road and dashed into the car, as a result of which the car was driven towards the extreme left side of the road towards the culvert of the bridge and the tanker stopped after covering a distance of 20 feet on the wrong side of the road. A result of the collision of the tanker with the car, the latter was smashed and Dewan Ranbir Singh as well as Parkash Chand driver sustained fatal injuries and died at the spot. Prem Parkash, one of the three eye-witnesses, carried information about the aforesaid accident to Police Station Sadar Karnal. Head Constable Chanan Singh hurried to the scene of accident. He recorded the evidence of the other two eye-witnesses at the spot, took the tanker and the car into his possession, despatched the dead-bodies to Civil

Hospital, Karnal, for post-mortem examination and arrested Bhag Singh, who was later on prosecuted and was ultimately convicted and sentenced u/s 304-A, Indian Penal Code, by the High Court. Brij Mohan Singh and Manmohan Singh, who are appellants in F.A.O. No. 299 of 1971, claiming themselves to be the sons of Dewan Ranbir Singh, and Smt. Dwarka Devi claiming herself to be the widow of Dewan Ranbir Singh, moved application on May 5, 1965, before the Motor Accident Claims Tribunal (hereinafter called the Tribunal), claiming Rs. 2.18.000 as compensation for the death of Dewan Ranbir Singh. It was averred by them that the accident resulting in his death was due to rash and negligent driving of the tanker by Bhag Singh, that the tanker belonged to the State of Punjab and that it was insured with the Indian Insurance Companies Association Pool, Bombay Thereinafter to as the Insurance Company).

3. Smt. Kaushalya Devi claiming to be the widow, Raj Kumari claiming to be the minor daughter, and Sandesh Chander claiming to be the minor son of Parkash Chand, who are appellants in F.A.O. 298 of 1971, and Geeta Devi claiming to be minor daughter of Parkash Chand, moved application on May 5, 1965, before the Tribunal, claiming Rs. 1 lakh as compensation for the death of Parkash Chand on the identical averments as made by Brij Mohan Singh and others in their claim application, referred to above. Both these claim petitions were contested by the Punjab State and the other respondents.

4. The factum of the accident was admitted. The facts that Dewan Ranbir Singh and Parkash Chand had died in the accident ; that Brij Mohan Singh and Manmohan Singh were the sons and Smt. Dwarka Devi was the widow of Dewan Ranbir Singh ; and that Smt. Kaushalya Devi was the widow. Raj Kumari and Geeta Devi were the minor daughters and Sandesh Chander was the minor son of Parkash Chand, were not specifically denied.

5. The State of Punjab and other respondents in the claim petitions contested the same with the pleas that the accident had taken place due to the negligent driving of the car by Parkash Chand, that the amounts of compensation claimed were exorbitant and none of the respondent was liable to pay the same and that the claim petitions were not maintainable. Hence, both the claim petitions were tried on the following issues :--

1. Whether the accident took place due to the negligence of the driver of the tanker or that of the driver of the car or that of both and if so, with what effect ?

2. To what amount of compensation are the applicants entitled to and from whom ?

3. Whether the respondent Insurance Company is not liable for the pleas taken in the written statement ?

4. Whether M/s. New India Insurance Company Ltd, is not liable for the pleas taken in the written statement ?

5. Whether the applicants writing the words claiming compensation under

sections 1-A and 2 of the Fatal Accidents Act has barred the jurisdiction of the Tribunal to try this claim ?

6. Whether this Tribunal can award compensation for damages to the car ?

7. Whether the claim application is not maintainable ?

8. Relief.

The claim petition moved by Smt. Kaushalya Devi and others was consolidated with the claim petition moved by Brij Mohan Singh and others and evidence was recorded in that petition, i.e., the one moved by Brij Mohan Singh and others. The Tribunal held under issue No. 1 that the accident had taken place due to the negligent driving of the tanker by Shag Singh. It found under issue No. 2 that Smt. Kaushalya Devi, her son and two daughters were entitled to Rs. 26,000/- as compensation and Smt. Dwarka Devi was also entitled to the same amount i.e., Rs. 26,000/- as compensation, but Brij Mohan Singh and Manmohan Singh were not entitled to any compensation. The Tribunal decided issues No. 4 and 6 against the claimants. It held under issue No. 7 that the claim petitions were maintainable and found issues No. 3 and 5 in favour of the claimants. As a result of the said findings, it granted Rs. 26,000/- to Smt. Kaushalya Devi, her son and daughters as compensation and similar amounts, i.e., Rs. 26,000/- was allowed as compensation to Smt. Dwarka Devi, with the direction that the Insurance Company would be liable to pay Rs. 20,000/- out of the aforesaid compensation amount and it directed that the aforesaid compensation amount would carry interest at the rate of 6 per cent from the date of accident. Aggrieved by the awards given by the Tribunal, the State of Punjab has preferred appeals in both the claim petitions. This appeal is against the award recorded by the Tribunal in the claim petition preferred by Brij Mohan Singh and others and F.A.O No. 297 has been preferred against the award given by the Tribunal in the claim petition moved by Smt. Kaushalya Devi, her son and daughters. Dissatisfied with the award, Smt. Kaushalya Devi on her own behalf and on behalf of her minor son and daughter Raj Kumari preferred F.A.O. No. 298 for enhancement of the quantum of compensation. Brij Mohan Singh and Manmohan Singh too preferred F.A.O. No. 299 for grant of compensation and enhancement of compensation allowed to their mother Smt. Dwarka Devi. Since all these four appeals are outcome of one accident, the same are being disposed of by one judgment.

6. The first contention raised by Shri J.S. Wasu, Advocate-General, Punjab and Shri Munishwar Puri, Learned Counsel for the Insurance Company, was that the award rendered by the Tribunal did not reflect the decision or conclusions arrived at by it. Elaborating their contention, it was submitted that Shri L.M. Suri, who appeared for both the claimants in the claim petitions before the Tribunal and now represents them in the appeals, furnished written arguments to the Tribunal and the latter without applying its mind to the evidence recorded in both the cases or to the law, copied the contents of the aforesaid written arguments in the award. A carbon copy of the written arguments, which had been supplied by Shri

L.M. Suri to Shri Munishwar Puri, was produced and the same was placed on the record of this appeal. A comparison of the contents of the aforesaid copy of the written arguments with the award discloses that the narration of the events and discussion on issues No. 1, 3, 4, 5, 6 and 7 are identical. The discussion and approach of the Tribunal respecting the question which is subject of issue No. 2, are, however, different from what has been stated under the said issue in the copy of the written arguments. The remarks of the Tribunal under issue No. 6 are not exactly the same as are recorded in the copy of the written arguments under that issue. On comparison of the contents and discussion recorded in the award with the same recorded in the copy of the written arguments, referred to above, does give an impression that the Tribunal avoided the labour to dictate the award in his own way and language and it had dictated the award practically in the terms and the words recorded in [he written arguments, especially while deciding the issues other than issue No. 2. The question, therefore, that arises for decision is as to whether the award is vitiated by the aforesaid act of the Tribunal in dictating the same in the language and words used in the written arguments furnished by the Learned Counsel for the claimants respecting issues. NO. 1, 3, 4, 5, 6 and 7, or as to whether the said act of the Tribunal constitutes an irregularity. The answer to the said question depends on the consideration of the matter as to whether it can be said that the Tribunal did not apply its mind while recording the award or as to whether it adopted an easy course of dictating the award from the written arguments furnished to it. There is nothing on the record to show, much less with certainty, that the Tribunal did not apply its mind to the evidence and law in coming to the conclusions which were recorded by it in the award. I feel no reluctance in saying that the course adopted by the Tribunal in dictating its findings on issues No. 1, 2, 3, 4, 5, 6 and 7 by borrowing the language and words recorded in the written arguments, referred to above, is highly unsatisfactory and deplorable. Such a practice invites unhealthy criticism and has to be condemned in strong words and must be stopped if it exists anywhere. In the absence of any indication that the Tribunal did not apply its mind to the conclusion which were recorded by it in the award, it cannot be said, much less safely, that the award is vitiated simply because of the aforesaid act of the Tribunal in dictating its findings from the language and words used in the written arguments on the issues other than issue No. 2. The said act of the Tribunal, in my opinion, amounts to an error or irregularity, may be of grave nature, in dictating the award, which of course had been committed in the proceedings of the case. The said error or irregularity committed by the Tribunal does not, however, in my opinion affect the merits of the case. It is provided in section 99 of the CPC that no decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court. Applying the principle enunciated in section 99, Civil Procedure Code, I would say that the award cannot be set aside because of the aforesaid error and irregularity committed by the Tribunal in dictating its findings on issues other than issue No.

2 from the written arguments The accident had taken place as back as on March 31, 1965. The award was recorded on May 31, 1971 and the appeals were preferred in the year 1971. It would, therefore, result into hardship to the parties and would be a sheer waste of time by setting aside the award and remitting the same to be recorded by the Tribunal without copying the contents of the written arguments on certain issues. Neither the law nor equity would tolerate it. The aforesaid error or irregularity committed by the Tribunal has, however, necessitated the scrutiny of the evidence and application of law with utmost care and attention and that is what I am going to do.

7. Assailing the finding of the Tribunal recorded on issue No. 1, Shri J.S. Wasu, Advocate-General, contended that the accident had taken place due to negligent driving of the car by Parkash Chand and it was not the result of negligent driving of the tanker by Bhag Singh. Prem Parkash (A.W. 3), Rajbir Singh (A.W. 4) and Raghbir Singh (A.W. 5) have unanimously deposed that the car was proceeding on the correct side (i.e., on the left side of its driver) of the road when it was hit against by the tanker driven by Bhag Singh Prem Parkash maintained that its speed at that time was normal, while Rajbir Singh and Raghbir Singh maintained that it was moving at a slow speed. Since I feel that it is difficult for any person standing on the roadside to assess the exact speed of a car, therefore, the estimate of the aforesaid witnesses with regard to the speed at which the car was proceeding may not be readily accepted. Two things are, however, evident from their statements and these are that the car was proceeding on the correct side (i.e., on the left side of its driver) of the road and it was not being driven rashly, i.e., at a fast speed It was suggested to Prem Parkash during cross-examination that he was a sub-dealer of Dewan Ranbir Singh, who was running the business of tractors. He did not admit the said fact. There is nothing on the record or in his statement to warrant a finding that he (Prem Parkash) was under the domination of Dewan Ranbir Singh. It is pertinent to note that he reported the accident at Police Station, Karnal, which is at a distance of 4 miles from the scene of accident, at 6 P.M., i.e. within about an hour after the accident. So, Exhibit A.W. 3/1, which is copy of the report made by him at the Police Station, contains the earliest, version of the accident and the version stated therein is exactly the same which was related by the aforesaid three eye-witnesses As such, it corroborates the statement of Prom Parkash and reads consistent with the case of the claimants. The name of Rajbir Singh is clearly mentioned in the said report (Exhibit A.W. 3/1) as an eye-witness of the accident. Though the name of Raghbir Singh was not recited therein, yet it is stated in it that several other persons had arrived at the scene of accident. All the aforesaid three witnesses were subjected to strict and lengthy cross-examination, but nothing could be elicited from them which could make their presence at the time and scene of accident suspicious. Their statements read consistent inter se and do not suffer from any infirmity or contradiction which would render their credibility doubtful. There is absolutely nothing on the record or in the statements of the aforesaid witnesses which could show that they, especially Rajbir Singh and

Raghubir Singh, were in any way interested in Dewan Ranbir Singh or Parkash Chand or that they or any one of them had any cause of hostility against Bhag Singh. So, they had no cause or reason to make false statements. Head Constable Didar Singh (A.W. 8) took the photographs (Exhibits A.W. 8/1 to A.W. 8/5) from different angles of the car and the tanker at the scene of accident on April 1, 1965. One glance at the said photographs, especially A.W. 8/1 and A.W. 8/3 reveals that the car had been hit when it was proceeding on the correct side, i.e., on the left side of its driver, of the road and the tanker after hitting it then proceeded further and went on the wrong side of the road where it halted. Therefore, the conditions existing at the scene of accident as seen in those photographs go a long way to confirm the version deposed to by the aforesaid three witnesses. True, Jagjit Singh Randhawa (R.W. 2), Bhag Singh (R.W. 3) and Risal Singh (R.W. 4) maintained in rebuttal that Bhag Singh had stopped the tanker on left and kutcha side of the road and it was then that the car had hit against it when it was parked there. But their statements are contrary to the plea taken in the written statement filed by the State of Punjab and Milk Commissioner, Punjab. It was pleaded by them in the said written statement that the accident had taken place when the car was being driven, at a high speed and the tanker was coming from the opposite direction. So, the said plea is incompatible with the statements of the aforesaid witnesses examined on behalf of the respondents that the tanker had been stopped on the left and kutcha portion of the road and the car had struck against it when it was so parked there. It cannot be gainsaid that evidence which is contrary to the plea taken in the written statement cannot be accepted. Neither Bhag Singh nor Jagjit Singh who were Government servants, reported the accident to their authorities and they did not make any complaint in the Court of the Magistrate. So, their failure to make report about the accident at least to their authorities is a ground for contending that they wanted to keep the scope open to them to would their stand as they liked and it does furnish a ground for contention that they did not furnish any writing about the earliest version of the accident and, as such, no credence can be safely placed on their oral testimony. Further, the photographs, referred to above do not depict the situation consistent with the statements made by the aforesaid witnesses of the respondents. Therefore, on a careful scrutiny of the evidence present on record, I am satisfied that Prem Parkash, Rajbir Singh and Raghubir Singh are witnesses of credence and the version narrated by them sounds true. As such, I accept the same to be correct. The version told by the aforesaid witnesses, examined by the respondents, reads inconsistent with the plea taken in the written statement and also does not appear true to me as the same reads inconsistent with the circumstances found at the spot as revealed by the photographs. So, I reject the version given OUT BY the aforesaid witnesses of the respondents as creation of an after thought and false.

8. "Negligence" would mean breach of duty caused by the omission to do something which a reasonable man, guided by those considerations which

ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. Since no absolute rule can be laid down by which negligence or its absence can be judged in a given case, "negligence" would necessarily vary in different cases and for judging the same all the attending and surrounding facts and circumstances of a particular case have to be taken into account. The test of negligence is the exercise of ordinary care and caution which is expected from a prudent man in the circumstances of a given case. It is expected of drivers of automobiles, including cars and tankers, moving in opposite directions to see that they drive the same on correct side of the road and at a speed which they can control so as to stop the vehicle or vehicles in the event of necessity. In the instant case, as discussed in the preceding paragraph, the sworn testimonies of Prem Parkash, Rajbir Singh and Raghbir Singh A.Ws., which have been accepted as reliable, point out unmistakably that Parkash Chand was driving the car on correct side of the road and the tanker driven by Bhag Singh went on the wrong side of the road and struck against the car as a result of which the car was smashed and its occupants, viz., Parkash Chand and Dewan Ranbir Singh died at the spot and the tanker after hitting the car moved ahead and stopped after covering a distance of 20 feet on the wrong side of the road. The maxim "*res ipsa loquitur*", which is a rule of evidence, means that an accident by its nature is more consistent with its having been caused by negligence of one or the other person than by any other cause. When the evidence referred to above is read in the light of the aforesaid maxim and the circumstances of the case and the indications available in the photographs, Exhibits A.W.8/1, to A.W.8/5, there can be no escape from the conclusion that Bhag Singh must have driven the tanker at a terrific speed because had been driven at a low speed he could pull it up when it had gone on the wrong side of the road, and avoided the accident. Further, the circumstance that after hitting the car it had gone ahead and stopped after covering a distance of about 20 feet on the wrong side of the road also reads consistent with the conclusion that it was being driven by Bhag Singh rashly at a fast speed when it struck against the car. Admittedly, it was the duty of Bhag Singh to drive the tanker on the correct side (on his left side) of the road and to leave sufficient space for the car which, as indicated above, was proceeding on the correct side of the road, to pass. He did not control the tanker and the same had moved on the wrong side of the road and hit against the car which was moving on the correct side of the road. So, all these circumstances are indubitably evidence of negligence on his (Bhag Singh's) part in driving the tanker at the time of the accident. I find no merit in the contention raised by Shri J.S. Wasu, and repelling the same have no hesitation in finding that the accident had taken place due to negligent driving of the tanker by Bhag Singh, and on the state of evidence and circumstances of the case no fault can possibly be found on the part of Parkash Chand in driving the car and I decide issue No. 1 accordingly.

9. Challenging the finding of the Tribunal on issue No. 2, Shri J.S. Wasu, Advocate-General, Punjab, contended that the compensation amounts, assessed

by the Tribunal in both the cases were excessive Determination of quantum of compensation in death cases like the one in hand has always been problematic Section 110-B of the Motor Vehicles Act (hereinafter called the Act), provides that "the tribunal would determine the amount of compensation which appears to it to be Just", "Just" would mean appropriate, equitable or proper It signifies that the compensation amount should be so assessed as to make provision for the legal representatives to receive or earn such pecuniary benefits as they could have obtained from the deceased if he had lived his normal life. The grant of compensation amount which would enable the legal representatives of the deceased to earn more pecuniary benefit than the one that had been available to them from the deceased during his life time would not be proper and grant of compensation amount which would not enable such legal representatives to earn as much pecuniary benefit as was available to them from the deceased during his life time would not be equitable. Therefore, the compensation to be assessed which can be termed "just" as contemplated by section 110-B of the Act, in my opinion, should i.e. such that if the same is prudently invested in some scheduled Bank, it would earn interest which would be equal to the pecuniary benefit which had been available to the legal representatives from the deceased had he not died due to the accident which resulted from the negligent user of the motor vehicle. The earning capacity of the deceased, normal expectancy of his life, status of his family and the estimate of the financial assistance which he could be expected to give to his legal representatives had he lived his normal age, are some of the relevant factors which can render assistance in the determination of a fair or just compensation. Ordinary expectancy of life is 70 years. Parkash Chand was aged about 40 years at the time of the accident. He was getting Rs. 200/- per month as his pay. Such are the statements of Smt. Kaushalya Devi and Brij Mohan Singh A.Ws, Smt. Kaushalya Devi maintained that Parkash Chand had been giving Rs. 150/- per month out of his salary for maintenance of the family and he used to retain Rs. 50/- out of his pay with him. Although allowance can be made for the expenses of food which Parkash Chand had been taking with his family to whom he was contributing only Rs. 150/- per month, yet in view of the rise in the prices of the essential commodities and the circumstance that there had been delay in awarding the compensation I am not inclined to grant the same and take it that Smt. Kaushalya Devi, her two daughters and son must have been getting monetary help to the extent of Rs. 145/- per month from Parkash Chand. Out of the said amount, if divided amongst them, it may not be unreasonable to say that Smt. Kaushalya Devi was getting the benefit to the extent of Rs. 40/- per month and her two daughters and son were getting monetary benefit of Rs. 35/- per month each from Parkash Chand. So, in my opinion, such compensation amounts should be allowed to them so as to enable Kaushalya Devi to earn interest extending to Rs. 40/- per month, that is Rs. 480/- per year, and each of her two daughters and son to earn interest up to Rs. 35/- per month, that is, Rs. 420/- per year. It cannot be gain said that the amount if deposited for a fixed term in a scheduled Bank can earn interest at the rate of 10 per cent per annum. The said rate of interest may be even 14 to 15

per cent if the amount is invested with a sound and limited concern. But I feel that it would be proper if the said interest is calculated at the Bank rate. Therefore, Rs. 4,800/-, if allowed to Smt. Kaushalya Devi as compensation, when deposited in the Bank would earn Rs. 480/- per year as interest, that is Rs. 40/- per month Rs. 4, 00/- if allowed to each of her two daughters and son as compensation, when deposited in the Bank, would earn Rs. 420/- per year, that is Rs. 35/- per month as interest for each of them. It, thus follows that the aforesaid amounts would be just compensation which can be allowed to Smt. Kaushalya Devi, her two daughters and son on account of the death of Parkash Chand The Tribunal had allowed the then (Smt. Kaushalya Devi, her two daughters and son) Rs. 26,000/- by capitalising the amount at the rate of Rs. 105/- per month for 30 years and after making deduction on account of payment of the amount in lump sum. That would mean that the said amount Rs. 26,000/- if prudently invested would earn interest at the rate of Rs. 2600/- per year, that is, Rs. 216.66 per month. Thus, the amount of compensation allowed by the Tribunal to Smt. Kaushalya Devi, her two daughters and son would earn pecuniary benefit in the form of interest, more than the pay which Parkash Chand had been getting, and far more than the amount which he had been sparing for them out of his salary and this, as pointed out above, would be improper and unjust. As such, the same cannot be upheld. It may be pointed out that so long as the two daughters and the son of Parkash Chand do not marry they can earn interest on the amounts of compensation allowed to them for their maintenance and they would utilise the said amounts on the expenses of their marriages when they attain the marriageable ages and decide to marry.

10. Relying on *Parsani Devi v. The State of Haryana* AIR 1973 ACJ 531 *M/s Punjab Transport Cooperative Society Ltd. v. Kuldip Singh* L.P.A. 586 of 1971 decided on September 25, 1972, and *Smt. Ind Kaur v. Mohinder Singh* L.P.A. 345 of 1971 decided on May 9, 1973, Shri L.M. Suri, Learned Counsel for Smt. Kaushalya Devi and others, contended that she, her daughter and son should be allowed compensation for the loss of company and affection of Parkash Chand On the other hand, Mr. Wasu relying on *C.K. Subramonia Iyer & Other v. T Kunhikuttan Nair* 1970 ACJ 110 argued that while awarding compensation to the legal representatives of the deceased damages are not to be given to them as solatium but are to be given with reference to the pecuniary loss resulting to them on account of the death of the deceased. The said judgment of the Supreme Court in *C.K. Subramonia Iyer's* case (supra) was cited before the Division Bench of this Court in *Ind Kaur's* case (supra), in support of the contention that in ascertaining pecuniary loss mentioned in section 1-A of the Fatal Accidents Act it must be borne in mind that these damages are not to be given as solatium but are to be given with reference to the pecuniary loss. The Division Bench of this Court while deciding *Ind Kaur's* case distinguished the said *C.K. Subramonia Iyer's* case by observing that that was a case under the Fatal Accidents Act, 1855, and held that there was no reason why the (tortfeasor should not be liable to compensate the person who had suffered loss of company

and affection of the deceased on account of the wrongful act committed by him tortfeasor). All the three judgments relied upon by Shri L.M. Suri are of the Division Benches of this Court and support his contention. I am bound by the said judgments. Assessment of quantum of damages for the loss of company and affection of the deceased is again not free from difficulty. The age of the deceased and the ages of his legal representatives may be of some help in determining such damages. Kaushalya Devi was aged about 38 years at the time of the accident. So, in my opinion she can be easily granted Rs. 2,000/- for the loss of company and affection of her husband Parkash Chand. Smt. Raj Kumari was aged 9 years at the time of the Accident and she could also feel the pain of loss of affection and company of her father an, in my opinion, Rs. 1,000/- may be awarded as compensation for the said loss. Geeta Devi was aged 5 years and Sandesh Chander was aged 2 years at the time of the accident. So, having regard to their tender ages, it would not be unreasonable to say that they could not feel the pain of loss of the company and affection of Parkash Chand. It is in that view that I think that both of them are not entitled to any compensation for loss of the company and affection of their father. It, thus, follows from the above that Smt. Kaushalya Devi, is entitled to Rs. 6,800/- (Rs. 4,800/- as pecuniary loss and Rs. 2,000/- as compensation for loss of company and affection of her husband and Raj Kumari is entitled to Rs. 5,200/- Rs. 4,200/- as pecuniary loss and Rs. 1,000/- for loss of company and affection of her father) and Geeta Devi and Sandesh Chander are entitled to Rs. 4,200/- as compensation for the pecuniary loss. So varying the award of the Tribunal, I, hold that Kaushalya Devi and her two daughters and son were entitled to the compensation amounts mentioned above. So is my finding on issue No. 2.

11. Smt. Dwarka Devi died on May 24, 1971. The award was announced on May 31, 1971 Arguments had been heard by the Tribunal on March 27, 1971 and arguments were again heard on April 20, 1971 and then the judgment was reserved. It is, thus, clear that Smt. Dwarka Devi died after the conclusion of the arguments but before the announcement of the award. According to ruled of Order XXII, CPC the death of a party after the conclusion of arguments but before pronouncement of judgment does not result in abatement of the cause and does not affect the judgment. The principle embodied in the said rule would also be applicable to the proceedings under the Act before the Tribunal. It is on account of the said principle that I find that the proceedings before the Tribunal did not abate on account of the death of Smt. Dwarka Devi and the award is not vitiated on account of her death. In that view of the matter, the contention of Shri J.S. Wasu, Advocate-General, that the award granting Rs. 26,000/- as compensation to Smt. Dwarka Devi has become unsustainable on account of her death, is not in my opinion, well-founded, for the reason that the cause of action available to her had merged into the award and her death cannot nullify it. The claims of Brij Mohan Singh and Manmohan Singh who are appellants in F.A.O No. 299 of 1971 for enhancement of compensation payable to their mother (Smt. Dwarka Devi) cannot be entertained for the simple reason that the said relief

claimed by them cannot be enjoyed by her on account of her death and the granting of the same would be nugatory. Brij Mohan Singh was aged about 51 years and Manmohan Singh, who is his younger brother, was aged about 38 years and their father Dewan Ranbir Singh was aged 70 years at the time of the accident. Such is the statement of Brij Mohan Singh. He also admitted that he had been living separately from his father since 1949 and was Director of the Saraswati Sugar Mills, Yamunangar, and also had a farm there, and his income from the said farm and from the said employment was Rs. 1000/- per month. He added that he was further getting Rs. 2,000/- a year as income from shares in some companies. He stated that his brother Manmohan Singh was employed in Burmah Shell at Bombay and admitted candidly that neither he nor his brother Manmohan Singh was dependent on their father Dewan Ranbir Singh. It is, thus, evident from his statement that he and Manmohan Singh were grown up and they had been living away and separately for long from Dewan Ranbir Singh, and neither of them was dependent on his (Dewan Ranbir Singh). So, having regard to the aforesaid circumstances and especially that they were well fixed up in life and had not been living with Dewan Ranbir Singh for sufficiently long time before the accident, I am not inclined to grant them any compensation for the loss of the company and affection of Dewan Ranbir Singh especially when the latter was not expected to live for more than five years.

At one stage of the arguments, Shri Wasu argued that Smt. Dwarka Devi should not have been allowed Rs. 10,000/- on account of loss to the estate of Dewan Ranbir Singh. I do not agree with him. Such compensation is permissible u/s 2 of the Fatal Accidents Act and the same had been allowed by this Court in some judgments, Having regard to the circumstances that Dewan Ranbir Singh was in affluent circumstances, that his income for the purposes of income tax had been assessed at Rs. 32,000/- per annum, that his two sons, as indicated above, had been well fixed up and he was supporting Smt. Dwarka Devi only, I think it will be reasonable and fair to assume that he must have saved and contributed Rs. 10,000/- to his estate, during five years, had he not died in the accident. Thus, grant of Rs. 10,000/- as compensation for pecuniary loss to the estate of Dewan Ranbir Singh to Smt. Dwarka Devi, as allowed by the Tribunal, appears to be justified and I would find under issue No. 5 that claim in that respect is not barred. It, therefore, follows from the discussion above that the award granting Rs. 26,000/- as compensation to Smt. Dwarka Devi cannot be interfered with and there is no substance in F.A.O. 299 of 1971.

Bhag Singh was liable to pay the amount of compensation because, as pointed out above, it was due to his negligent driving of the tanker that the accident which resulted in the death of Parkash Chand and Dewan Ranbir Singh, had taken place. It is well-settled principle and has always been accepted that the master is liable for the wrongful act committed by his servant in the course of his employment. Admittedly, Bhag Singh had been in the employment of the State of Punjab as driver of the tanker which was its property. He was driving it (the tanker) in the course of his employment on the date and time of the accident.

Therefore, the State of Punjab, being the master of Bhag Singh, was liable for the aforesaid wrongful act committed by Bhag Singh. So, the liability of the State of Punjab to pay compensation to the legal representatives of the two deceased was joint and several with Bhag Singh. Bhag Singh had been given up by Kaushalya Devi and others as well as by Manmohan Singh and others in their respective claim petitions, and as such his name had been deleted from the array of respondents by the Tribunal. No doubt being mainly responsible for causing the accident he was a necessary party but as his liability to pay the compensation was joint and several with the State of Punjab, the act of the claimants in giving him up in their respective petitions has benefited him alone and he could not be required to pay the compensation being no party in the claim, petitions. But his being no party in the claim petitions could not absolve the State of Punjab from the obligation to pay the compensation because its liability, as indicated above, to pay the same was several as well. Bhag Singh was not impleaded by the State of Punjab in this appeal or in F.A.O. No. 297 of 1971, and rightly, because he was not a party in the award recorded by the Tribunal. He was, however, impleaded as a respondent and in my opinion, wrongly, in appeal Nos. 298 and 299 of 1971. Since, he was no longer a party in the claim petitions no relief in the said appeals (F.A.O. Nos. 298 and 299 of 1971) can be granted against him. The tanker was insured with the insurance company by the Milk Commissioner, Punjab. He is an employee of the State of Punjab. The tanker was the property of the State. It is, thus, clear that the tanker was insured with the Insurance Company on behalf of the State of Punjab by the Milk Commissioner. So, as a matter of fact, the State of Punjab was the insured and I am not impressed with the contention of Mr. Pun that the insured was the Milk Commissioner, Punjab, and not the State of Punjab. Since the liability of the Insurance Company was limited to the extent of Rs. 20,000/- and the State has been held to be insured, it (the Insurance Company) is liable to indemnify the State of Punjab upto the extent of Rs. 20,000/- in the matter of payment of compensation to the legal representatives of the deceased persons. The Insurance Company, in my opinion, is also liable to pay interest on the said amount of Rs. 20,000/-. The argument of Mr. Puri that in view of the liability of the Insurance Company being limited upto Rs. 20,000/-, it cannot be burdened to pay interest on the said amount does not carry weight with me because it is the statute, that is section 110 CC of the Act, which makes provision for payment of interest. So, I am of the view that the liability of the Insurance Company to pay compensation upto Rs. 20,000/- is contractual while its liability to pay interest is statutory. The said section 110-CC was inserted by section 62 of Act 56 of 1969 and it came into force from 2nd March, 1970. It provides that simple interest on the amount of compensation could be paid from such date not earlier than the date of making of the claim. Therefore, the Tribunal committed error in directing that interest at the rate of 6 per cent per annum on the compensation amount should be paid from the date of the accident. In the circumstances of the case, I would direct that simple interest at the rate of 6 per cent per annum should be paid on the compensation amount payable to the legal representatives

of the deceased with effect from 1st April, 1970.

12. Shri L.M. Suri conceded, and in my opinion, rightly, that in view of the judgment of this Court no compensation for the loss or damage caused to the car can be allowed and I decide issue No. 6 accordingly. Issues No. 4 and 7 were not agitated before me. So I find that M/s. New India Assurance Company Ltd., were not liable to pay the compensation money and the claim petitions were maintainable.

Consequently, I grant compensation amounts as stated below, to Smt. Kaushalya Devi, her daughters and son and to Smt. Dwarka Devi, with simple interest to be charged at the rate of 6 per cent with effect from April 1, 1978, till the payment against the respective respondents mentioned hereunder:--

Smt. Kaushalya Devi Rs. 2700/- against the Insurance Company.

Rs. 4100/- against the State.

Rs. 6800/-

Raj Kumari Rs. 2300/- against the Insurance Company.

Rs. 2900/- against the State.

Rs. 5200/-

Getta Devi Rs. 2000/- against the Insurance Company.

Rs. 2200/- against the State.

Rs. 4,100/-

Sandesh Chander Rs. 2000/- against the Insurance Company.

Rs. 2200/- against the State.

Rs. 4200/-

Smt. Dwarka Devi Rs. 11,000/- against the Insurance Company.

Rs. 15,000/- against the State.

Rs. 26,000/-

By this time, Raj Kumari must have become adult. So, she and Smt. Kaushalya Devi can recover the respective compensation amounts allowed to them and interest thereon from the respondents. The compensation amounts payable to Geeta Devi and Sandesh Chander with interest thereon can be recovered and realised by their mother Smt. Kaushalya Devi on their behalf. Since Smt. Dwarka Devi has died, the compensation amount of Rs. 26,000/- allowed to her and interest thereon will be recovered by her sons, viz., Brij Mohan Singh and Manmohan Singh, and they will share the same equally. The award is amended to the extent referred to above. This appeal is dismissed except to the

modification of the award directing payment of simple interest with effect from April 1, 1970 and not from the date of accident. F.A.O. No 297 of 1971 is allowed to the extent that the compensation amount, assessed at Rs. 26,000/- by the Tribunal is reduced to Rs, 20,400/-, and also respecting the date from which the simple interest would begin to run. F.A.O. Nos. 298 and 299 of 1971 are dismissed. Having regard to the peculiar circumstances of case, I leave the parties to bear their own costs in the appeals.