

(1965) 02 PAT CK 0007
In the Patna High Court
Case No : A.F.O.D. No. 29 of 1960

Union of India (UOI)

APPELLANT

Vs

Satyabati and Others

RESPONDENT

Date of Decision : 17-02-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, Order 33 Rule 5, Order 33 Rule 8
Fatal Accidents Act, 1855 — Section 1A, 2, 3
Workmens Compensation Act, 1923 — Section 3

Citation : AIR 1966 Patna 130

Hon'ble Judges : Ramratna Singh, J; R.J. Bahadur, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; Balbhadra Pd. Singh, Ramanand Sinha and Ram Nandan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ramratna Singh, J.—The facts giving rise to this appeal are these. One Tribhuan Singh, aged about 21 years, who was employed by the Eastern Railway as a cleaner, was deputed on the 18th April, 1956, to clean the smoke-box of engine No. 1076, which was standing on line No. 1 at the loco-shed at Gaya. As the smoke-box could not be opened without the help of some instruments, Tribhuan went to fetch the same from the gunti beyond line No. 3, on which engines Nos. 2012 and 2030 were standing. Engine No. 2012 moved suddenly without any signal, whistle or other precautions and consequently Tribhuan came within the buffers of the two engines and severely injured at 11.15 hours that day. Thereafter engine No. 2012 was moved forward to release Tribhuan, who was then taken to the railway hospital at Gaya. But he died as a result of the injuries at 13.45 hours the same day. Tribhuan was then drawing Rs. 30 per month as salary and Rs. 40 per month as dearness allowance. The widow, minor daughter, mother and grandmother of Tribhuan instituted a suit in forma pauperis to recover Rs. 28,550 as compensation under the Indian Fatal Accidents Act, 1855, as they claimed to be the only beneficiaries.

2. According to the plaintiffs respondents the above accident was due to the negligence of some employees of the railway, namely, Kamala Pd., R. N. Sharma, Jagdish Pd., and Khowa Lal. The defendant appellant denied the alleged negligence on the part of its servants " and asserted that the accident took place on account of negligence, misadventure and violation of safety rules by Tribhuan. It was further asserted that, in any case, Tribhuan was entitled to compensation under proviso (b) to Section 3 of the Workmen's Compensation Act, and the appellant was prepared to pay to the plaintiffs Rs. 2,100 as compensation. The last plea was that the claim under the Indian Fatal Accidents Act was not maintainable, particularly because all the beneficiaries were not made parties.

3. The Learned Subordinate Judge who tried the suit rejected the defence on all the points and granted a decree for Rs. 14,000 as compensation to the plaintiffs.

4. Mr. P. K. Bose who appeared for the appellant did not dispute the facts; but he submitted that Tribuhan was at least guilty of contributory negligence. He also questioned the quantum of compensation and pressed all the legal objections which were taken in the Court below.

5. The first question to be considered is whether the Workmen's Compensation Act, 1923 or the Fatal Accidents Act applies to this case. Mr. Bose referred to the preamble of the Workmen's Compensation Act, according to which the Act was enacted to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident; and he read this preamble with Section 3, which provides for payment of compensation in accordance with certain provisions of the Act, if personal injury was caused to the workman by accident arising out of and in the course of his employment, and Section 8 which contains the procedure for distribution of compensation. He submitted that this Special Act must apply to the instant case, inasmuch as the Fatal Accidents Act is meant to cover the case of an injured person when there is no relationship of servant and master between him and the person responsible for the injury. In support of his contention, he relied on a decision of the Allahabad High Court in Works Manager, Carriage and Wagon Shop, E.I. Rly. Vs. Mahabir, . But there is nothing in this decision which supports his contention. The only questions decided in that case were the meaning of the expression " arising out of or in the course of employment" as also the nature of the liability under the "Workmen's Compensation Act. On the other hand, this decision goes against the appellant, inasmuch as it was held there that the liability under the Workmen's Compensation Act was not a liability which arose out of tort. It was held that the liability under this Act springs out of the relationship of master and servant; but it did not lay down that the liability arising out of the relationship of master and servant is not covered by any other enactment. In fact, Section 3(5) of the Act itself contemplates a civil suit for damages by workman against master. This subsection reads as follows :

"(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil

Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of Law in respect of any injury -

(a) If he has instituted a claim to compensation in respect of the injury before a commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act."

The only bar to a civil suit is contained in Sub-clauses (a) and (b) of this sub-section; and it is admitted that in the instant case there is no material to bring the case within these two sub-clauses.

6. The Indian Fatal Accidents Act, 1855, provides for compensation to families for loss occasioned by the death of a person by actionable wrong; and Section 1A thereof enacts as follows :

" Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

" 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 ; and in every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from [be defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct. "

7. Section 2 of the Act contains a proviso to the effect that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint. Section 3 provides that the plaint of a suit shall give a full particular of the person or persons for whom or on whose behalf such suit is brought, and the nature of the claim in respect of which damages are sought to be recovered. Section 4 is an interpretation clause, and the word "parent" is to include both the parents and grand-parents, while the word "child" is to include children and grand-children. In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, which was in respect of a case under the Fata] Accidents Act, 1855, their Lordships said that section 1 (now renumbered as Section 1A) is in

substance a reproduction of the English Fatal Accidents Acts, 9 and 10 Victoria Ch. 93, known as the Lord Campbell's Acts, and Section 2 of the Indian Act corresponds to a provision enacted in England by the Law Reform (Miscellaneous Provision) Act, 1934. The cause of action u/s 1A provides for damages recoverable for the benefit of the persons mentioned therein. In *Seward v. Vera Cruz* (1884) 10 AC 59, the question was whether the Admiralty Court Act, 1861, took away the jurisdiction of Lord Campbell's Act over claims for damages for loss of life. The following observation of the House of Lords in this case is significant :

"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. "

It was further observed that a special statute does not derogate from another special statute without express words of abrogation, and their Lordships held that the Admiralty Court Act, 1961 should be construed in the sense in which they are quite inapplicable to a case coming under Lord Campbell's Act. In view of these observations of the House of Lords, Mr. Balbhadra Prasad Singh appearing for the respondents has rightly submitted that the special provisions made under the Workmen's Compensation Act did not abrogate the rights arising under the Fatal Accidents Act. It must, therefore, be held that a workman who makes a claim under the Workmen's Compensation Act has an alternative remedy in the Civil Court under the Fatal Accidents Act. This view is supported by an observation of a bench decision of the Rangoon High Court in *Bryan Hoe v. Narayana* AIR 1937 Rang 451. That case was one under the Workmen's Compensation Act and, while discussing the question of inadequacy of compensation permissible under that Act, their Lordships observed :

" In cases of this kind it is not for us to criticize the scale of damages which is laid down, but it may be useful to observe in the interests of those who may receive injuries in the future that when negligence and a breach of duty are proved against the employer there are other remedies which may be found by a Workman, and in pursuing them a degree of compensation may be reached which is more commensurate with the actual loss and injury involved."

The first contention of Mr. Bose, therefore, fails.

8. Then, Mr. Bose submitted that no relief could be granted under the Fatal Accidents Act, because the father of Tribhuan, who is alive was not impleaded in the suit. In support of this contention he relied on the provisions of the Act, reproduced and summarised earlier. It is true that the father of the deceased was not impleaded at all, rather in paragraph 7 of the plaint it is clearly stated that there is no other dependant of the deceased except the plaintiffs themselves; but

it is remarkable that, though Tribhuan died in April, 1955 and the present suit was instituted in 1956, the father has not as yet made any claim anywhere for compensation as a beneficiary or otherwise. Mr. Singh, on the other hand, submitted that the remedy given by Section 1A of the Fatal Accidents Act is not given to a class but to individuals ; and he relied on an English decision in *Pym v. The Great Northern Ry. Co.* (1863) 122 ER 508 with reference to Section 2 of the Lord Campbell's Acts, the relevant portion of which reads thus :

"The jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought. "

It will be noticed that the last paragraph of Section 1A of the Fatal Accidents Act also makes a provision to the similar effect except that, "Court" has been substituted for "jury". It was clearly held in the English decision that the remedy given by the statute was not given to a class but to individuals; and there is no reason to make a different interpretation of the relevant provision in the Indian Act.

9. There are Indian decisions too which support the view that non-joinder of the father of the deceased, as in the instant case, or the omission to name him as a beneficiary is not fatal. The decision in *Jeet Kumari Poddar and Others Vs. Chittagong Engineering and Electric Supply Co. Ltd. and Another*, was in an appeal arising out of a suit in forma pauperis which had been decreed in part. The widow and children of the deceased brought the suit without mentioning his father among the beneficiaries, and although sufficient time had elapsed, the father did not come forward to claim any damages. The father was fairly well off and not dependant on the son. It was held by their Lordships of the Calcutta High Court that, as only one suit could be brought for damages under the Fatal Accidents Act and the father could not sue the defendant employer over again, there was no disadvantage to the defendant by reason of the omission to mention the father among the beneficiaries and the omission was not a good reason for dismissing the suit at the appellate stage. It was further held that, inasmuch as a suit u/s 1 (now Section 1A) must give full particulars of all the persons for whose benefit the suit is filed and must state the nature of the claim in respect of which damage is sought to be recovered, the omission to mention the father among the beneficiaries in a pauper application would have been a good ground for dismissing the application. The only distinction between that case and the instant case is that the father of the deceased in the instant case is not well off, but this distinction does not matter in view of the fact that the deceased, while employed in the railway, did not send any money to his father. *Satyabati* (plaintiff No. 1), P. W. 4, the widow of the deceased in the instant case, has said that that the deceased used to send Rs. 40 per month for her maintenance and the rest of his salary he used to spend over himself. This statement of *Satyabati* in cross-examination was not challenged on behalf of the defendant appellant. That is probably why the father had not made any claim

anywhere for damages on account of his son's death by accident, though about ten years have elapsed since the accident. Mr. Bose conceded that no objection in respect of the omission of the name of the father as a beneficiary was taken in the instant case, when the application for permission to sue as a pauper was considered and admitted; but he submitted that he could challenge the order of the trial court admitting the application in view of certain provisions of Order 33 of the Code of Civil Procedure. Rule 5, on which Mr. Bose relied, contains only the conditions and circumstances in which the Court shall reject the application for permission to sue as a pauper; and the relevant circumstances read thus; "where the suit is not framed and presented in the manner prescribed by Rules 2 and 3." Rule 2 lays down that every such application shall contain the particulars in regard to plaintiffs in suits; and Rule 3 requires the application to be presented in court by the applicant in person, in the instant case, Rule 2 was not strictly complied with on account of the omission to name the father of the deceased amongst the beneficiaries. But these provisions could have been of assistance to the applicant only at the time the application for permission was considered by the Court below. In the aforesaid *Jeet Kumari Poddar and Others Vs. Chittagong Engineering and Electric Supply Co. Ltd. and Another*, it was held that, though the omission to name the father as a beneficiary might be a good ground for rejecting the application to sue as a pauper, it was not such a ground for dismissing the suit. This view is strengthened by Rule 8 of this Order, read with Order 9, Rule 1. Rule 8 lays down that where the application for permission is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner except in regard to payment of court-fees on the plaint. When an application for permission to sue as a pauper is ultimately converted into a plaint and it becomes a suit, Rule 9 of Order 1 of the Code will apply. This rule provides that no suit shall be defeated by reason of the misjoinder or non-joinder of parties; and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Hence the circumstances that would be fatal to the application for permission to sue as a pauper cannot affect the suit; and Mr. Bose's contention fails.

10. As stated earlier, the remedy u/s 1A of the Fatal Accidents Act is not given to a class but to individuals; and, therefore, the plaintiffs as individuals could get their remedy in the suit. No fault can, therefore, be found in the judgment and decree of the Court below on the ground that the father was not mentioned in the plaint as a beneficiary; and, inasmuch as the father did not get any money from the deceased and was thus not dependent on him, the Court below was justified in granting a decree to the plaintiffs alone. It is also clear that the appellant will not be at a disadvantage at all on account of the omission to name the father as beneficiary, as the father cannot now institute any suit for damages under the Fatal Accidents Act, in view of the provision contained in Section 2 thereof.

11. The third contention of Mr. Bose was that the accident was due to the

contributory negligence of the deceased. But the materials on the record do not support this contention either. A junior officers' joint enquiry board was constituted by the railway authorities to make enquiries in respect of this accident, and the board submitted a confidential report on the 19th April 1956. The procedure to be adopted before an engine is put on the fire-dropping pit for cleaning by a cleaner is this :

" A shunter from Front Yard brings the engine on the Fire Dropping Pit. He is supposed to place the engine in midgear, shut off the Regulator, open the drain cocks and secure the tender hand brakes. Then he enters it on the placement Register and hand it over to the shunter on the Fire Dropping Pit who is supposed to check up all these points before taking over the engine."

The deceased was required to clean engine No. 1076 at the fire dropping pit. According to the report, Jagdish Prasad III and R. N. Sharma were the two shunters working at the pit and each of them had got a brakesman attached to him. It is stated that the shunters could not take charge of engines Nos. 2012 and 2030, because they were working somewhere else with their brakesmen, and, therefore, it was alleged that some unauthorised railway employee had moved the engine and Tribhuan was crushed between the buffers of the two engines. In the report of the board as well as in the evidence of D. W. Jagjit Lal Verma, one of the members of the board, it is said that Tribhuan got into the accident due to non-observance of the safety rules. But no safety rule in force at the time of the accident was produced. The booklet containing the safety rules printed in 1958 was produced on behalf of the defendant appellant. The instruction in this booklet is that the employees of the railway should read and re-read it from time to time, but there is no evidence to show that Tribhuan was literate enough to read or understand the contents of the rules, even if such rules were in existence when the accident took place; and D. W. Varma has admitted that Tribhuan was an inexperienced man. It cannot, therefore, be urged that Tribhuan deliberately violated the safety rules, if any. It is said on behalf of the appellant that, under the safety rules, Tribhuan have moved under the buffers, but such a precaution could have been taken only if two engines were attached to one another. The evidence is that the two engines were kept apart, and so there could be no question of Crossing the line under the buffers. D. W. Varma also stated that, according to the safety rules, Tribhuan should have crossed the line beyond the engine; but when the engines were kept apart, and under the rules they were in charge of shunters assisted by brakesmen, a railway employee, like Tribhuan, could not have rightly considered it necessary, in the ordinary course of business, to take a round for going to the gumti beyond line No. 3. Any, railway employee crossing the line must have at that time taken for granted that the two engines were not in a position to move, because they would be in mid-gear and the brakes must have been applied. It is remarkable that even in the confidential report the position of the regulator, lever and the hand-brakes of these engines were not examined after the accident by Mr. Haq, the Assistant Loco Foreman on duty. The Court below was, therefore, justified in

drawing an inference that non-examination of the engines after the accident was a deliberate omission to avoid detection of the negligence of the shunters. The facts discussed above give rise to a presumption that the accident was caused by the negligence of the railway employees in charge of the engines. Even if engine No. 2012 had been moved by an unauthorised railway employee, as has been said in the report of the board, the responsibility for the accident must lie with the railway authority.

12. It is well settled that in such cases, the onus is upon the employer to prove that there was contributory negligence on the part of the deceased. The House of Lords said in *Caswell v. Powell Duffryn Associated Collieries, Ltd.* 1940 AC 152 :

" If the defendants' negligence or breach of duty is established as causing the death, the onus is on the defendants to establish that the plaintiff's contributory negligence was a substantial or material co-operating cause. "

Again, in *Boy Andrew v. St. Rognvald (Owenrs)*, 1948 AC 140 , at p. 149, Viscount Simon said :

. , . the question, as in all questions of liability for a tortious act, is, not who had the last opportunity of avoiding the mischief, but whose act caused the wrong ? "

13. In the aforesaid Supreme Court case of *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, , their Lordships quoted with approval the following passage from Halsbury's Laws of England, Volume 23, at page 671, paragraph 956:

"An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendants' negligence."

14. From the evidence discussed earlier, it is evident that the appellant has failed to discharge the onus, and the court below rightly held that there was no negligence on the part of Tribhuan Singh.

15. The only question now for consideration is the quantum of damages to be allowed in the instant case. The principles for determination of compensation are well settled. In *Bishop v. Cunard White Star Co. Ltd.* (1950) P 240 at pp. 247 to 250, it was held:

"The calculation is made by taking the amount of the wages which the deceased was earning at the date of death from which must be deducted an estimated sum for his own personal and living expenses, the balance then being multiplied by a certain number of Year's purchase, which number should not be materially reduced in the present cases by reason of the hazardous nature of the occupation of the two men in question. The basic result should be subjected to

the element of reasonable future probabilities, as, for instance, that the widow might marry again and cease to be dependant."

In *Nance v. British Columbia Electric Rly. Co. Ltd.* (1951) AC 601, Viscount Simon said:

"It is necessary first to estimate what was the deceased man's expectation of life if he had not been killed when he was; (let this be "x" years) and next what sums during these x years he would probably have applied to the support of his wife. In fixing x, regard must be had not only to his age and bodily health, hut to the possibility of a premature determination of his life by a later accident. In estimating future provision for his wife, the amounts he usually applied in this way before his death are obviously relevant, and often the best evidence available; though not conclusive, since if he had survived, his means might have expanded or shrunk, and his liberality might have grown or wilted."

"Even if the tribunal of first instance was a judge sitting alone, then, before the appellate court can properly intervene, it must be satisfied either that the Judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

In *Davies v. Powell Duffryn Associated Collieries, Ltd.* 1942 AC 601, the following observations from the judgment of Lord Wright are relevant:

"..... In effect the court, before it interferes with an award of damages, should be satisfied that the Judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion of preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency.....

There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt."

In the aforesaid case of *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, , their Lordships quoted with approval the relevant

passages from the judgments of Lord Russell and Lord Wright in the case of 1942 AC 601 and the Judgment of Viscount Simon in 1951 AC 601. Their Lordships further observed:

"When the courts below have, on relevant material placed before them, ascertained the said amount as damages under the first head we cannot in second appeal disturb the said finding except for compelling reasons."

Two other Indian decisions were cited at the bar, viz., *Bir Singh and Another Vs. Sm. Hashi Rashi Banerjee and Others*, and *Mrs. Wells v. Governor- General of India* AIR 1946 Lah 50. But it is not necessary to discuss them, as they are based on the aforesaid well settled principles.

16. The quantum of compensation allowed by the Court below has now to be considered, keeping in view the above well settled principles. It is admitted that Tribhuan was aged about 21 years and was appointed temporarily as cleaner on the 2nd May, 1955, in the grade of 30--1/2--35. After being made permanent, he could have been appointed as a second foreman in the grade of Rs. 40 to Rs. 60 after passing departmental examination; and ultimately he could have been a driver of C grade in the time scale of pay of 80--5--135F. B. 10--185 after passing some departmental examination. He could have also drawn dearness allowance at the rate of Rs. 50 to Rs. 55 up to the pay of Rs. 150 and Rs. 60 after the pay of Rs. 150. He had admittedly a good constitution; and in view of his age he could have served the railway for about 35 years until he reached the age of superannuation, viz., the age of 55 years. On the relevant date he was drawing a salary of Rs. 30 per month and dearness allowance of Rs. 40 per month; and the plaintiffs have claimed a sum of Rs. 28,560 as damages. But the learned Subordinate Judge has assessed it at the rate of Rs. 70 per month for a period of 25 years, reduced by one-third on account of probable expenditure which Tribhuan would have made for maintaining himself, i.e., a total sum of Rs. 14,000.

Mr. Bose submitted that some deductions should be made because the plaintiffs would get interest on the capitalised sum. He has further referred to the evidence of Tribhuan's wife that he used to send Rs. 40 per month to her and the rest he used to spend over himself. At this rate, the amount that the plaintiffs would have got would be only Rs. 480 per year and, therefore, only Rs. 12,000 in 25 years. But the learned Subordinate Judge has taken only Rs. 70 per month into consideration. It will be recalled that this amount Tribhuan was getting at the time of the accident; and, in view of the reasonable prospects of promotion at least in the grade of second foreman, Tribhuan would have got much more than Rs. 70 per month, including dearness allowance. The learned Subordinate Judge has assessed the damages at the rate of Rs. 70 per month reduced by one-third, on account of the decision in the case of *Mrs. Wells* AIR 1946 Lah 50. That was a case for damages against the railway, in which the foreman, Mr. Wells, was killed in a collision due to the negligence of the driver of the engine. He was aged about 26 years at the time of his death and was

drawing Rs. 80 per month as salary and Rs. 50 as overtime. It was submitted on behalf of Wells that he could have risen to the post of driver at the time of his retirement and would have drawn Rs. 180 as pay, besides overtime allowance. Their Lordships of the Lahore High Court held that the widow of Wells was entitled to a little more than Rs. 150 per month on account of salary and Rs. 50 as overtime per month as compensation; and one-third of the same was deducted by their Lordships as the probable expenditure which Wells would have spend over his own maintenance. On that basis, compensation was awarded to Wells approximately equal to the saving for a period of twenty years.

Tribhuan was, however, aged 21 years at the time of the accident, and, therefore, the learned Subordinate Judge was justified in calculating the compensation with reference to the earnings for a period of 25 years. But, when he decided to reduce by one-third the monthly income of Tribhuan on the basis of the above decision, he missed the fact that in due course Tribhuan would have received much more than Rs. 70 per month and he would have sent to his wife more than Rs. 40 per month in the same proportion. In view of the reasonable prospects of promotion of Tribhuan, his average earning per month, including dear-ness allowance, may be safely taken as Rs. 90 per month, and if one-third of the same is deducted on account of the probate expenditure over his own maintenance, he would have sent to his wife and other dependants Rs. 60 per month or Rs. 720 a year. The total amount that his wife and other dependants would thus get for 25 years would come to Rs. 18,000. The interest at the rate of 6 per cent per annum on this capitalised amount would come to Rs. 1080. In the circumstances, the amount of Rs. 14,000 allowed by the learned Subordinate Judge is not at all excessive. Moreover, it is well settled that the appellate Court should not interfere with the assessment of damages made by the Court of first instance, unless a wrong principle of law has been applied by it or it has left out some relevant factors in making the estimate. In the instant case, the learned Subordinate Judge has not left out any relevant factor, the consideration of which would reduce the amount of damages allowed by him; rather, if he had taken into consideration the reasonable prospects of Tribhuan's promotion, the amount of damages would have been much higher. Hence, there is no justification for reducing the amount of compensation allowed by the Court below.

17. In the result, the appeal is dismissed with costs.

Bahadur, J.

18. I agree.