

(1971) 12 PAT CK 0008
In the Patna High Court
Case No : A.F.O.D. No. 232 of 1966

Union of India(UOI)

APPELLANT

Vs

Supriya Ghosh and Others

RESPONDENT

Date of Decision : 22-12-1971

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A

Citation : AIR 1973 Patna 129

Hon'ble Judges : Shambhu Prasad Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : Lal Narayan Sinha and P.K. Bose, for the Appellant; L.K. Choudhary and S.K. Choudhary, for the Respondent

Final Decision : Partly Allowed

Judgement

Shambhu Prasad Singh, J.—Subhabrata Ghosh, aged 31, was working as an Inspector under Messrs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and was posted at Chapra in February, 1961 on 17th February, 1961, at about 8.45 P. M., he was returning to Chapra from Sonapur side on a motor car which he himself was driving. While passing through level crossing No. 4 situate in between Sonapur and Parmanandpur Railway Stations of the North Eastern Railway, the car was dashed by 2 Down Awadh Tirhut Mail. The car was smashed and he was seriously injured. While being taken to the Sonapur hospital, he died on the way. His wife, aged 22, daughter (minor) aged about 8 months and mother aged 51 years, at the time of the accident (Respondents Nos. 1, 2 and 3 respectively) brought the suit from which this appeal arises for compensation and damages. The total amounts claimed was Rs. 3,00,000.00 under the following heads:

i)

Loss of support to the family of the plaintiffs. Average support to the family per month at the rate of Rs. 700/- for 25 years

Rs. 2,10,000.00 P.

ii) Provident fund accumulation and pension Rs. 60,000.00 P.

iii) Gratuity Rs. 20,000.00 P.

iv) Bonus etc. Rs. 10,000.00 P.

According to their case, the gates of the said level crossing were kept open and it was not guarded by any gate-man at the material time, as required under law and thereby inviting passers-by to go through and to cross the Railway lines through the said level crossing. The deceased could get no indication of the arrival of the aforesaid train and the occurrence took place due to wrongful act, negligence, default and misconduct or carelessness of the defendant-appellant the Union of India representing the North Eastern Railway or its employee or employees or its agent or agents. The deceased at the time of the occurrence was drawing a salary of Rupees 385/- and allowance of Rupees 525/- per month and other emoluments and facilities with free quarters, free servants and was a member of the Provident Fund Scheme. He could have worked for another 25 years. As a result of the death, the respondents were deprived of means of support which they were getting and could have got from the deceased. He was contributing to the family a sum of Rs. 700/- per month for its expenses. Respondent Nos. 1 to 3 were expected to live for another 35, 65 and 10 years respectively from the date of the accident. Respondent No. 2 was to be educated and married properly. The deceased was of sober habits and of sound physique. He had a vigorous life and was the only earning member of the family consisting of himself and the respondents. He left no Will and the respondents were the only beneficiaries and representatives of the deceased. It was averred in the plaint that necessary notice u/s 80 of the CPC had been served before the institution of the suit.

2. Besides pleading that the respondents had no cause of action and the suit was not maintainable and time barred, the appellant denied that at the time of the accident the gates of the level crossing were kept open and the accident was due to any wrongful act, negligence, default, misconduct or carelessness on the part of it or its employees. According to its case, the said level crossing is at a height of about 14 feet from the ground level on either side and any train moving from Parmanandpur towards Sonapur is always visible from considerable distance to persons approaching it by road. The head light of the engine of the said train and the light of the compartments were burning brightly. The sound of the moving train was also audible from a long distance. The night was clear and starry and visibility quite good. Subhabrata Ghosh died on account of his own negligence and fault and the defendant was not liable for any damages. The deceased could not have contributed Rs. 700/- per month to his family. The claim for damages was incorrect and highly exaggerated. The respondents had received a sum of Rs. 10,000/- from the Life Insurance Corporation of India on account of insurance of the life of the deceased and a handsome amount from the employer

of the deceased as ex gratia payment. These amounts were concealed by them in making the present claim.

3. The main issues in the suit were--Was the accident due to negligence and misconduct of the defendant or its employees and were the plaintiffs entitled to compensation and, if so, to what amount? The court below has held that the accident occurred due to the negligence on the part of the Railway Administration and, as such, the defendant was liable to compensate the plaintiffs. It has passed a decree for Rupees 1,27,000.00 with interest and costs on the findings that the plaintiffs were not entitled to any amount as loss of gratuity, but were entitled to get Rs. 1,20,00000 for loss of support to the family. Rs. 3300.00 for loss of Company's contribution to provident fund and Rs. 3700.00 for loss of pension.

4. Learned Counsel for the appellant submitted in the first place that there was no negligence on the part of the Railway administration and, hence, the respondents were not entitled to any decree for damages and compensation for the accident. Secondly he submitted that, at any rate, the amount for which the decree was passed was highly inflated and ought to be suitably reduced. It was not challenged before us that the accident took place at a manned level crossing which was provided with gates and that the gates were open at the time of the accident and the gate-man was not present there. It was also not challenged that as a result of the accident the car which the deceased was driving was smashed and he was seriously injured and ultimately died soon thereafter. It was contended, however, that but for the contributory negligence on the part of the deceased, the accident could not have taken place. He ought to have noticed the head light of the engine and the light of the compartments of the train and heard its sound before passing through the level crossing, even though the gates were open.

5. It appears from the record that the Presiding Officer of the court below had a local inspection of the place of accident in presence of lawyers of the parties. He found four trees near the Railway crossing and some Narkat bushes by the side of the road which had been recently cut. According to him, this was probably done by the Railway Administration to show that there was nothing to obstruct the view of the Railway line from the road. He also found Pipal tree at a short distance from the Railway crossing the branches of which were hanging low and could have obstructed the view of the Railway line from the road along which the deceased was coming. While in the car with its engine started and wind screen closed, he could not hear the sound of coming mail train. On the day of the local inspection, the train had no head light but there were lights in the compartments of the train which were visible.

6. Of the witnesses examined on behalf of the respondents, P. W. 2 Dinanath Singh is a man of village Sonapur. He claimed that he was present at the place of accident and had seen it. In his examination-in-chief, he said that a big Pipal tree stood 30 to 32 steps east of the gate and as the tree was a big one and its

branches and leaves hung considerably down, they obstructed the view. He further said that Narkat bushes which were very high and extended from the Pipal tree up to the gate on the northern side of the road also obstructed the view. In his cross-examination, he stated that he did not notice if there was any searchlight at the head of the engine of the train, though he remembered that the compartments were somewhat lighted and some light was coming through the windows. P. W. 3 Vishwanath Prasad, the only other witness of the accident examined on behalf of the plaintiffs was a passenger in the mail train. When the train stopped on account of the accident, he got down and saw a car lying in a broken condition. He is not a witness on the point whether the deceased could have noticed the train before passing through the level crossing. P. W. 8 the father-in-law of the deceased visited the place of accident a few days after it. He also saw big Pipal tree and Narket bushes there. In his evidence he said that on account of those, one could not see the Railway line from the road.

7. D. W. 2 Bithal Das, Assistant Loco Foreman at Gorakhpur at the relevant time said that the head light etc. of the engine which was attached to 2 Down Mail were in good condition. D. W. 3 Mehdi Hasan at the relevant time was posted as Headlight fitter in Gorakhpur Loco-shed. In his evidence, he said that on 17th February, 1961, the engine which was taken out of the Loco-shed for 2 Down Mail, was thoroughly checked by him and he had found its headlight, dynamo and cab-light in good condition. D. W. 4 Gorakhnath Bishwakarma was the driver of the mail train. According to his evidence, there was no defect in the lights of the engine and on that evening he had lighted cab-light and head light both. D. W. 6 Harihar Prasad is another employee of the Railways. He had checked the lights etc., of the 2 Down Mail when it arrived at Chapra on 17th February, 1961. He did not find any defect in the same. D. W. 7 Ram Prasad Rai, who too is an employee of the Railways, said that on that date when the 2 Down Mail arrived at Chapra, the light was in perfect order and the train departed also in good condition. D. W. 9 Satrughna Singh is also an employee of the Railways who checked the lights of the 2 Down Mail on its arrival at Sonapur on the 17th February, 1961. He said that the train arrived and departed with lights in perfect order. D.W. 12 Shaligram Singh is the permanent Way Inspector of the North Eastern Railway, According to his evidence, any man coming from the side of Sonapur either on foot or by car or by any other vehicle would see the Railway line from a distance of 476 feet from the gate. One could also see the light of the train and hear its sound if it was moving. According to him, there were no Narkat bushes by the side of the road which could have obstructed the view of a passenger. The Pipal tree, according to him, was small and only 5 to 7 years old, and thus it did not obstruct the view. P.W. 13 Vincent Patrick Lawrence was the guard of 2 Down Mail on that day. According to his evidence, the head light of the engine was burning well. The witnesses on behalf of the defendant are Interested as they are all employees of the Railways, On their evidence, it cannot be definitely held that the head light of the engine of the mail train was burning at the time of the accident, but there is also no positive evidence on the part of

the plaintiffs to prove that the head light of the engine of that train was not burning at the time of the accident. In the circumstances, 1 would assume that the head light was on.

8. On the question whether there was obstruction or not due to Narkat bushes and Pipal tree in seeing the train coming from Parmanandpur side, I would prefer the evidence of P.W. 2 to that of D.W. 12 as the evidence of P.W. 2 is supported by the findings of the court below at local inspection.

9. The court below has referred to a large number of decisions in support of the proposition that where gates of a level Railway crossing are open and one is thereby misled into thinking the line safe for crossing, the Railway Company or Railway Administration, as the case may be, is liable for damages and cannot take advantage of the plea of contributory negligence. It is not necessary to refer to all those decisions. Two of these decisions, namely, Bengal North Western Railway Co. Ltd. Vs. Matukdhari Singh and Others, and Ramesh Chandra Dutt Vs. Union of India(UOI), are of this court. In Bengal North Western Railway Company Ltd., it was observed that where there is a level crossing and more particularly where there is a level crossing in the neighbourhood of a place where a considerable population assembles from time to time, the duty to guard that level crossing by means of gates and the duty of closing gates in sufficient time before the approach of a train is cast on the Railway Company and if the Railway Company leaves the gates open, it is an invitation on the part of the Railway Company for passengers and traffic to approach the line. In Ramesh Chandra Dutta's case, the plea of contributory negligence on the part of a truck driver which met with an accident at a level crossing was not accepted, even though that crossing was not provided with gates. Where gates are provided at a level crossing and it is manned, if the gates are left open, any pedestrian or vehicle driver would think that even if a train was coming, it would take time in reaching the crossing and, therefore, the gates were left open and, in the circumstances, if he meets with an accident, he cannot be held guilty of contributory negligence. As observed by the court below, the deceased must have been attentive to the driving of the car itself and could not have noticed the light of the train or heard its sound. If he would have noticed the light of the train and heard its sound, it was not likely that he would have endangered his own life. Even if he noticed the headlight of the engine, perhaps, he could not assess correctly the distance of the train and finding the gates open must have thought that the train was at considerable distance. On the evidence on record, therefore, the court below has rightly held that the accident took place due to negligence on the part of the Railway Administration and, as such, is liable to compensate the respondents.

10. I now propose to address myself on the question of quantum of damages. The respondents have claimed damages under the Indian Fatal Accidents Act, 1855 (Act XIII of 1855) (hereinafter to be referred to as "the Act"). Section 1-A of the Act runs as follows:--

"Suit for compensation to the family of a person for loss occasioned to it by his

death by actionable wrong-- 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 persons 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 proportionate 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 the 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."

Section 2 of the Act reads as follows:

"Not more than one suit to be brought.--Provided that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint:

Claim for loss to estate may be added.--Provided that in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased."

The respondents have claimed damages under both Sections 1-A and 2 of the Act, individually u/s 1-A and for the estate of the deceased u/s 2.

11. In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, their Lordships of the Supreme Court with reference to the provisions of Section 1 (as it stood before amendment by Act III of 1951 corresponding to present Section 1-A) and Section 2 laid down the principles for determining the damages under the Act as follows:

".....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 lifetime, 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 remarrying 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."

Dealing with the point whether there could be duplication of damages under Sections 1 and 2 of the Act, their Lordships observed:

"The rights of action under Sections 1 and 2 of the Act are quite distinct and independent. If a person taking benefit under both the sections is the same, he cannot be permitted to recover twice over for the same loss. In awarding damages under both the heads, there shall not be duplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into the calculation of the personal loss u/s 1 of the Act, that portion shall be excluded in giving compensation u/s 2 and vice versa."

Learned counsel for both the parties conceded that damages in the instant case were to be determined in accordance with the principles laid down in the aforesaid case.

12. Learned counsel for the appellant submitted that the court below did not follow the aforesaid principles in determining the damages. On the other hand, learned counsel for the respondents submitted that the damages were determined by the court below in accordance with the principles aforesaid. These contentions of learned counsel for the parties shall have to be examined with reference to the facts of the instant case. As observed by the Supreme Court in the case of Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, the first question which has to be determined in such cases is the expectation of life of the deceased. It is stated in the plaint that the deceased could have worked for another 25 years but from that it cannot be inferred that the case of the respondents was that the expectation of the life of the deceased was only another 25 years; rather, the plaint read as a whole shows that according to the respondents, he was expected to live and support the respondents throughout their lives. The daughter was only aged about 6 to 8 months at the time of the accident and, according to the plaint, she was expected to live up to 65 years. Ordinarily, it cannot be expected that the father,

that is, the deceased, would have outlived his daughter who was about 30 years younger to him and supported her throughout her life. According to the custom prevailing in this country, as soon as a daughter is married, the responsibility of supporting her passes on from her father to her husband. Even in cases where the husband may not be earning himself, it passes on to the family of the husband. The widow of the deceased, that is respondent No. 1, according to the plaint, was expected to live for another 35 years and the court below appears to have awarded damages on the assumption that the deceased could have ordinarily lived and supported her for that period. It was contended by learned counsel for the appellant that the court below has erred in accepting the case of the respondents in that respect and has completely ignored the chances of later accident. No doubt, the job of the deceased was touring one and he died on account of an accident while on tour, but on that basis it cannot be held that the nature of work which the deceased was doing was hazardous. In modern days no one who is active in life is expected to sit idle at one place and not to take up any tour and in spite of that it is well known that the average expectation of life in this country has gone up. The brother of the deceased who has been examined as P.W. 4 has said that the deceased was a man of sound health, good physique and sober habits. The father-in-law of the deceased (P.W. 8) has also said that the deceased was a man of sober habits and he did not use any intoxicant. He has further said that the deceased was healthy and fit to work when he died. Exts. 7 (b) and 8 are medical certificates of the deceased of the years 1955 and 1956 respectively. Ext. 7 (a) is the X-ray report of the deceased of the year 1956 taken at the time of granting the medical certificate (Ext. 7). These documents do not show any abnormality in the deceased. No evidence has been led on behalf of the appellant to contradict the statements of the brother and father-in-law of the deceased regarding his health. On the materials on the record, therefore, it is not possible for me to differ from the court below that ordinarily the deceased would have lived for another 35 years after his death.

13. The second question which is required to be considered is having regard to the amount the deceased used to spend on the respondents during his lifetime and other circumstances, what amount he would have spent for the future provisions of the respondents. The evidence of P.W. 4 is that the monthly expenditure of the family of the deceased was Rs. 700/- at the time of his death. The evidence of P.W. 8 is that it was Rs. 700/- to Rs. 800/- per month. The deceased was getting salary of Rs. 385/-, dearness allowance of Rs. 234/-, house rent assistance of Rs. 35/- and car allowance of Rs. 250/- per month at the time of his death. This was not disputed during the arguments. He was getting car allowance as he was maintaining a car and he must be spending that amount of allowance on his car. Thus leaving the car allowance out of consideration, I find that the amount which the deceased was getting per month at the time of his death was Rs. 654/- only. As it appears from Ext. 14 (b) Income Tax assessment form for the 1961-62, the deceased was assessed to pay a tax of Rs. 172.44 P. for the year. He did not receive his salary of the entire

assessment year. It may safely be assumed that if he would have received the entire salary during that year, he would have paid tax of Rs. 180/- that is, Rs. 15/-per month. From the materials on the record, it further appears, which is not disputed, that the deceased was contributing 5 per cent of his basic salary towards the provident fund, that is, he was contributing to the provident fund at the rate of Rupees 19.25 P. per month. Exts. B-1 and C show that he was paying premiums of Rupees 102.73 P. per month on two insurance policies. Thus he was spending Rs. 136.98 P. per month on payment of Income Tax, contribution to provident fund and premium of two life insurance policies. If this amount is deducted from the monthly income of Rs. 654/-, the balance was Rs. 517/- only. Part of this amount he must be spending over himself. Assuming that some of the common items of expenditure, such as, house rent, could not go down on account of the death of the deceased, it may safely be presumed that the expenditure per month on the respondents was Rs. 400/- only. It could not have been more than that. In making necessary estimate in a case of this nature, some conjecture has to be made and, in my opinion, it can safely be held in the circumstances of the case that of the said amount of Rs. 400/- he was spending Rupees 200/- on his wife (respondent No. 1) and Rs. 100/- each on his daughter and mother (respondents 2 and 3 respectively).

14. It was contended by learned counsel for the appellant that as the deceased had another brother, who has been examined in this case as P.W. 4, he too was liable to contribute towards the expenses on the mother (respondent No. 3) and the entire expenses of the mother cannot be awarded to her as compensation. It is not in dispute that the mother (respondent No. 3) was living with the deceased at the time of his death. It has been brought out in the cross-examination of P.W. 4 that the family has had no residential house or landed property of its own. It has also not been brought out in his evidence that he was in a position to contribute towards the expenses on his mother. In a case of this nature, a person is entitled to have compensation for the loss occasioned to her on account of the accident and the mother, in my opinion, is entitled to get compensation determined on the basis of the amount spent over her maintenance per month by the deceased.

15. Learned counsel for the appellant further contended that the deceased, if alive, was likely to have more children and, in that event, the expenditure on the respondents must have gone down. The deceased, as it appears from Ext. 4 (d) was appointed at a monthly salary of Rs. 225/-only with effect from 1st of February, 1956. Ext. 4 (e) shows that when he was confirmed in service with effect from 1st November, 1956, his salary was Rs. 250/- per month. At the time of the accident, that is, four years three months from his confirmation, he was getting Rs. 385/- per month That shows that his salary had increased at the rate of Rs. 28.75 P. per year. According to the court below, the deceased was getting increment at the rate of Rs. 15/-per year and after some years he was likely to get increment at the rate of Rs. 25/- per year. The observation of the court below with regard to the increments is on the basis of Ext. 4, a letter from P.W. 5 to Mr.

S. C. Mitter (P.W. 8), father-in-law of the deceased. The account books or other relevant papers of Messrs. Burmah Shell Oil Storage and Distributing Co. of India Limited were not produced in the court below. It was contended by learned counsel for the appellant that in the circumstances the statements made in the letter (Ext. 4) are inadmissible, especially when P.W. 5 has not made even any oral statement as to the contents of that letter. I am inclined to agree with the contention of learned counsel for the appellant that the letter (Ext. 4) is inadmissible in evidence, but there are materials on the record which do show that the deceased was getting increments. According to Ext. 14, the Income Tax assessment form for the year 1959-60, the annual income of the deceased was Rs. 6649/-. According to Ext. 14 (a), the Income Tax assessment form for the following year 1960-61, the annual income of the deceased was Rs. 6974/-. These two documents, therefore, show that the income of the deceased had gone up by Rs. 325/- in one year. It works out at Rs. 28.75 P. per month. Therefore, there appears no difficulty in accepting the case of the respondents that the rate of annual increment of the deceased at the time of death was Rs. 15/- per year. From the aforesaid documents, it further appears that the deceased was doing his job satisfactorily and, therefore, the increment in his pay was more than the rate of increment he was entitled to. It is not, however, possible to hold that the deceased after some year would have been entitled to an increment of Rs. 25/- per year as there is no basis for that except Ext. 4. However, it can safely be assumed that the deceased would have got more emoluments in years to come and the expenditure on the respondents would not have gone down on account of new arrivals in the family.

16. In calculating the income of the deceased for the purpose of fixing compensation, the court below has worked out his average income on the basis of the amount which he might have got as salary from his employer during 25 years after his death as stated in Ext. 4. It was contended by learned counsel for the respondents that even if Ext. 4 be held inadmissible in evidence, it can safely be conjectured that the deceased would have got as his salary and allowance the amount as found by the court below. It was submitted that in cases of this nature, for the purposes of fixing compensation, some conjecture is permissible. Reliance was placed on the very passage from the judgment of the Supreme Court in the case of Gobald Motor Service Ltd. which has been quoted in paragraph 11 of this judgment. It was observed by the Supreme Court that the actual extent of the pecuniary loss to the heirs of the deceased may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate or even partly a conjecture. In that view of the matter, the estimate of the court below that the monthly average income of the deceased might have been Rupees 927.50 P. cannot be said to be wrong, but it has erred in not taking into consideration the fact that the deceased, if alive, during the years to come might have produced more children and part of his earnings would have been spent on them. There can, however, be no doubt that the deceased, if alive during the years to come, would have been required to spend more on his

daughter (respondent No. 2) for the education till her marriage and also would have saved some money for meeting the expenditure on her marriage. Ext. 5 series, rating-sheets, show that the services of the deceased were rated high. He, therefore, would have got further promotion and thereby higher emoluments in a company like the one where he was employed. In the circumstances, it can safely be held that on the average he would have spent Rs. 200/-per month on his daughter (respondent No. 2) till her marriage without reducing expenses on other family members and could have also saved some amounts for meeting the expenses on her marriage. What amount he was reasonably expected to save for that purpose, I would discuss at a later stage.

17. It has already been held earlier that the deceased would have lived for another 35 years after his death. According to the plaint, as already stated earlier, the deceased's widow (respondent No. 1) who was aged only 22 years at the time of the accident would have lived for another 35 years. The court below has accepted this part of the case and nothing has been pointed out to us for taking a different view in the matter. The mother (respondent No. 3), who was aged 51 years at the time of the accident, according to the respondents' case was expected to live for another 10 years. More than 10 years have elapsed from the date of the accident and she is still alive. The case of the respondents in this regard, therefore, has to be accepted. So far the daughter (respondent No. 2) is concerned, the question to be determined is not as to what age she was expected to live but at what age she was likely to be married. Unfortunately, neither parties have led evidence as to the age on which girls are married in the society to which the deceased belonged. However, respondent No. 1, as it appears from the evidence on the record, was married with the deceased at about the age of 20. The daughter, therefore, cannot be expected to be married before that age; rather with the advancement of civilisation, girls are also receiving College education and married late. In this connection, my attention was drawn to the life insurance policy (Ext. C) which is a policy taken by the deceased for the marriage of respondent No. 2. It is a fixed term policy for 16 years and was taken only a few months after the birth of respondent No. 2. Learned counsel for the appellant contended that this showed that the father, that is the deceased, intended to marry respondent No. 2 at the age of 16 years. Merely because the policy was to mature after 16 years only, it cannot be said that he intended to marry respondent No. 2 at that age. Keeping everything in consideration, I am of the opinion that the expected age of marriage of respondent No. 2 should be fixed at 20-21. From the discussions already made, it follows that the deceased was expected to spend $\text{Rs. } 200 \times 12 \times 35 = \text{Rs. } 84000/-$ over respondent No. 1, $\text{Rs. } 200 \times 12 \times 20 = \text{Rs. } 48000/-$ over respondent No. 2 (excluding expenses on marriage) and $\text{Rs. } 100 \times 12 \times 10 = \text{Rs. } 12000/-$ over respondent No. 3.

18. I now come to the question what amount the deceased was reasonably expected to spend over the marriage of his daughter (respondent No. 2). Ext. C shows that the marriage policy which the deceased took for the purpose was for

Rs. 10,000/-. It is an endowment policy without profit and it was contended by learned counsel for the appellant that from this it may be inferred that the deceased intended to spend only Rs. 10,000/- over the marriage of respondent No. 2. The income of the deceased at the relevant time would not have permitted him to go in for a policy of higher amount for the purpose and, in my opinion, it is not proper to hold that the deceased intended to spend a sum of Rs. 10,000/- only over the marriage of his daughter. In due course, he must have either taken another insurance policy or made savings for that purpose. In these days of high prices, a man of the status of the deceased was not expected to spend less than Rs. 20,000/- over the marriage of his daughter and that sum of Rs. 20,000/-, in my opinion, may be reasonably added to the benefit which respondent No. 2 might have derived from the income of her father if he would have been alive.

19. The deceased had also taken a life insurance policy (Ext. B) for Rs. 10,000 in the year 1958. It appears that when he took the other two insurance policies, evidenced by Exts. B-1 and C, he got insurance policy (Ext. B) converted into a paid-up policy. The letter (Ext. A) shows that P.W. 4, brother of the deceased, had received a sum of Rs. 1492/- on account of the said policy. In his evidence, P.W. 4 has said that he received Rs. 1170/- under a paid up life insurance policy of the deceased as his nominee and made over the amount to the heirs of the deceased, that is the plaintiffs (respondents). The amount stated by P.W. 4 appears to be a mistake. He must have received Rs. 1492/- as stated in Ext. A and made over the amount to the respondents. The insurance policies (Exts. B-1 and C) contained covenants for accident benefit. If the insurer was to die on account of accident, his heirs or nominee became entitled to get extra amount equal to the amount for which the policies were taken. The letters (Exts. A-2 and A-3) show that a sum of Rs. 9993.75 P. was paid to respondent No. 1 on account of insurance policy, evidenced by Ext. C. The policy was to become due after 16 years and it is not in dispute that sum of Rs. 10,000/- will become payable on the maturity of the policy for the marriage of Respondent No. 2. A sum of Rs. 9993.75 P. was paid to respondent No. 1 on account of accident benefit. The letter (Ext. A-1) shows that a sum of Rupees 29756.85 P. was paid to respondent No. 1 on account of insurance policy, evidenced by Ext. B-1. This policy was for Rupees 15,000/-, but almost double amount was paid to her because of the clause for accident benefit. Messrs. Burmah Shell Oil Storage and Distributing Co. of India also paid to respondent No. 1 a sum of Rupees 17759/- ex gratia. It was urged in the court below that the amounts received by the respondents from the said company and on account of insurance policies ought to be deducted from the amount of compensation which the respondents are held entitled to receive. The court below has rejected this contention. Learned counsel for the appellant conceded that the amount which respondent No. 1 received as ex gratia payment from the employer of her husband should not be deducted from the amount of compensation. He contended, however, that the amounts received on account of insurance policies ought to be deducted. In my opinion, the amounts which the respondents have received on the basis of the insurance policies have to be

considered under three different sub heads while considering the question whether they should be deducted or not

20. A sum of Rs. 9993.75 P. on the basis of Ext. C and Rs. 14756.85 P. on the basis of Ext. B-1, total Rs. 24750.60 appears to have been paid to respondent No. 1 because of the clause for accident benefit in the policies. It has conceded by learned counsel for the appellant that had the deceased not died and claimed damages for the accident and also received the aforesaid amount on account of insurance policies for accident, the amount would not have been deducted from the compensation to which he would have been otherwise entitled. It was held in the case of *Bradburn v. Great Western Rly. Co.*, (1874) 10 Ex 1 that in an action for injuries caused by defendants' negligence, a sum received by the plaintiff on an accident insurance policy cannot be taken into account in reduction of damages. This decision has been relied upon by the court below. But it was contended by learned counsel for the appellant that the principle laid down in the aforesaid case did not apply to suits brought by the members of the family. He relied on the following passage in the said decision of Bramwell, B, not referred to in the judgment of the court below:

"As to the case of *Hicks v. Newport & C, Ry. Co.*, (1857) 4 B & S 403 n that was an action brought under Lord Campbell's Act, and the ruling is quite correct. The statute had laid down no rule as to the mode of calculating the damages to be given in respect of the right of action which it created. The rule was first laid down in this court [*Franklin v. South Eastern Rly. Co.* (1858) 3 HN 211, followed in *Dalton v. South Eastern Rly. Co.* (1858) 4 CB (NS) 296 : 27 LJ (CP) 227, and *Pym v. Great Northern Rly. Co.* (1863) 4 BS 396 : 32 LJ (QB) 377] and that rule was, that the damages were to be a compensation to the family of the deceased equivalent to the pecuniary benefits which they might have reasonably expected from the continuance of his life. If, therefore, the person claiming damages was put by the death of his relative into possession of large estate, there was no loss; he was a gainer by the event; and similarly, whatever comes into the possession of the family who have suffered by the death of their relative by reason of his death must be taken into account. But that has no bearing on the case of a person suing upon his common law right for injuries caused to him by the defendants' negligence."

The position has also been explained in the judgment of Pigott, B. in the same case which is as follows:

"I am of the same opinion. The plaintiff is entitled to recover the damages caused to him by the negligence of the defendants, and there is no reason or justice in setting off what the plaintiff has entitled himself to under a contract with third persons, by which he has bargained for the payment of a sum of money in the event of an accident happening to him. He does not receive that sum of money because of the accident, but because he has made a contract providing for the contingency; an accident must occur to entitle him to it, but it is not the accident, but his contract, which is the cause of his receiving it. This

view is also supported by the observations of the Supreme Court in the case of Gobald Motor Service Ltd. that 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. In my opinion, therefore, the aforesaid amount has to be taken into account in reduction of damages.

21. So far as the sum of Rs. 15000/- on the basis of Ext. B-1 is concerned, that has not been received by respondent No. 1 as a benefit purely by reason of the accident. She is declared nominee under the policy and would have got the amount even if the deceased would have died a natural death. Further, on the maturity of the policy the amount would have come to the deceased, if alive, and inherited by his heirs, such of the respondents who would have been alive on his death. It was contended by learned counsel for the appellant that in that event the deceased would have paid premiums for all the years whereas respondent No. 1 received the amount immediately on the death of her husband without such payments. But the amount which the deceased was paying every month as premium for this policy had also been deducted from his income in determining what he was spending over the respondents. If he would not have to pay premiums in future years on this policy he would have spent that amount over the respondents. The payment or non-payment of the premiums for this insurance policy cannot be taken into account twice over in determining the compensation.

22. It was further contended by learned counsel for the appellant that as the receipt of the aforesaid amount of Rupees 15,000/- to respondent No. 1 was accelerated on account of the accident, the difference between Rs. 15,000/- and its capitalised value after 35 years, at any rate, should be taken into account in reduction of damages. The insurance policy, as it appears, was with profits. Therefore, on maturity the deceased, if alive, would not have received only Rs. 15,000/- but also further profits on it. In the circumstances, I think that the aforesaid amount of Rs. 15,000/- should not be taken into consideration in reduction of damages.

23. So far as the sum of Rs. 1492/- on the basis of the paid up insurance policy, evidenced by Ext. B is concerned, the position is similar as with regard to the sum of Rs. 15,000/- paid under insurance policy evidenced by Ext. B-1 except with this difference that in this case the same amount Without any profit would have been paid to the deceased on maturity of the policy. Therefore, so far as this sum is concerned, the difference between it and its capitalised value after 35 years shall have to be taken into account in reduction of damages.

24. In the society to which respondent No. 1 belongs, remarriage of a widow is rare. Admittedly, she has not remarried uptill now, that is, 10 years from the date of the accident. Therefore, there appears no possibility of her re-marrying and improvement of her financial position on that account. No reduction in damages can be made on that score.

25. I would now take up for consideration the question of pecuniary loss to the estate of the deceased occasioned by the accident and the amount of compensation which the respondents may be held entitled to recover u/s 2 of the Act. After the death of respondent No. 3, the mother, which according to the respondents' case was expected to take 10 years after the accident and has been accepted, and the marriage of respondent No. 2, the daughter, which as found earlier is expected to take place 20 years after the accident, if not the Whole, part of the amount which the deceased would have spent over respondents 2 and 3, he would have saved for the benefit of his estate. It can safely be conjectured that on his mother's death, the deceased would have spent Rs. 25/- more per month out of Rs. 100/- over himself and saved Rs. 75/- per month for 15 years he was expected to be in active service for his estate. It can also be safely conjectured that on the marriage of the daughter, he would have spent Rs. 50/- more per month over himself and other matters and saved Rs. 150/- per month for 5 years for his estate. Therefore, the pecuniary loss to the estate exclusive of interest on these accounts will be Rs. $(75 \times 12 \times 15)$ + Rs. $(150 \times 12 \times 5)$ = Rs. 13500/- + Rs. 9000/- = Rs. 22500.

26. The court below has awarded Rs. 3700/- as compensation for loss of pension. According to it, the deceased, if alive, would have received a sum of Rupees 34000/- as pension during the period of 10 years after his retirement. In other words, he would have received pension of about Rs. 288/- per month. The amount of Rupees 34000/- as pension for 10 years appears to have been calculated by the court below on the basis of the statements made in Ext. 4 which is not admissible in evidence. It has already been held above that in spite of the fact that the statements made in Ext. 4 cannot be used as they are inadmissible in evidence, the estimate of the court that the monthly average income of the deceased might have been Rs. 927.50 P. cannot be said to be wrong. The estimate of the court below that the monthly pension of the deceased would have been about Rs. 288/- also cannot, in the circumstances, be held to be wrong. However, in my opinion, there could be no extra pecuniary loss to the estate of the deceased on account of non-receipt of pension. Out of the monthly pension of Rs. 288/-, the deceased would have spent Rs. 200/- per month over respondent No. 1 and the remainder over himself and it has already been held that respondent No. 1 is entitled to compensation on the basis that the deceased would have spent over her at the rate of Rs. 200/- per month for the entire period of 35 years after the accident, which according to the respondents, was the expectation of Ms life.

27. The court below has also allowed Rs. 3300/- as compensation for loss of company's contribution to provident fund. According to it, the deceased would have received a sum of Rs. 19500/- as company's contribution to his provident fund including interest out of, which he would have spent about Rs. 7500/- over himself and the balance of Rs. 12000/- would have gone for the benefit of the family. In the opinion of the court below, the value of Rs. 3300/- would be about Rs. 12000/- after 25 years when the deceased would have received the provident

fund amount. Here again the estimate of the court below is based on Ext. 4 which has been held inadmissible in evidence. The total claim of the respondents on account of pension and provident fund was Rs. 60000/- and it has already been held that the deceased would have received a pension of Rs. 34000/- during the period of 10 years he was expected to live after his retirement. The claim of the respondents on account of the provident fund, therefore, gets limited to Rs. 26000/- only. The court below, in my opinion, has erred in ignoring the contribution which the deceased himself might have made to the provident fund in estimating the compensation for the loss of provident fund. As the amount which the deceased was contributing towards provident fund has been excluded in determining the amount which he might have spent over the respondents, his own contribution to the provident fund has also to be taken into account. It has already been noticed that the deceased was contributing Rs. 19.25 P. per month, that is, 231/- per year to the provident fund. With the rise in his pay even at the rate of Rs. 15/- per year, he would have contributed more to the provident fund and his benefit to his estate on account of his contribution to provident fund after 25 years can safely be estimated at Rs. 13000/- because he would have got compound interest on the contribution to provident fund. The same amount he would have received as provident fund on account of contribution made by his employer. I have no hesitation therefore in conjecturing that the deceased would have received a sum of Rupees 26000/- as provident fund.

28. It was submitted by learned counsel for the respondents that during the period of 10 years, the deceased was expected to live after his retirement, he would have received interest on the amount of provident fund and that too should be taken into consideration while estimating the pecuniary loss to the estate of the deceased. So far a sum of Rs. 88/- per month only from the pension has been taken into account as the amount which the deceased, if alive, would have spent over himself per month. It is obvious that he would have spent at least about Rs. 200/- per month over himself, the amount which he would have spent over respondent No. 1. It can, therefore, be safely held that the interest which the deceased would have got over the amount of Rs. 26000/-, he would have spent over his own expenses over and above Rs. 88/- per month. Nothing can, therefore, be added to the compensation on account of interest over the amount of Rs. 26000/- which the deceased might have received as provident fund; but the amount of Rs. 26000/- itself has to be taken as pecuniary loss to the estate of the deceased occasioned by the accident.

29. On account of the death of the deceased, the respondents will receive the amount which they are held entitled to receive as compensation on account of the death of the deceased u/s 1-A or Section 2 of the Act in a lump sum in advance. Therefore, the next question which arises for determination in the appeal is to what extent the amount as found in the preceding paragraphs as individual losses to the respondents and loss to the estate should be reduced on this score. While addressing the Court on this aspect of the matter, learned

counsel for the appellant drew our attention to the valuation tables at page 295 of "Principles and Practice of Valuation" by John A. Parks, 1970 (Fourth Edition). As it appears from Chapter 2 of the same book, at page 15, year's purchase (on the basis of which valuation table at page 295 has been prepared) "is a very arbitrary figure". It further appears that the table has been prepared by a valuer who "is mainly concerned with land and buildings". I do not consider it, therefore, safe to rely entirely upon the said table. I have also examined a good number of decisions in which reductions have been made in the compensation on this score and have found that the basis on which reductions have been made is not entirely free from arbitrariness. In the circumstances, I have myself made some calculations and have found that if a person who is to be paid Rs. 100/- every year for 10 years, but is paid the entire sum in advance and invests Rs. 900/- on simple interest at the rate of 6 per cent per annum and goes on withdrawing Rs. 100/- every year out of it, after 10 years he will get a sum of Rs. 270/- as interest. Similarly, if he is paid Rs. 2000/- for 20 years in advance and makes similar investments and withdrawals, he will get Rs. 1140/- as interest after 20 years. If he gets Rs. 3500/- for 35 years and makes similar investments and withdrawals, he will get Rs. 3570/- as interest after that period. In my opinion, therefore, ends of justice will be met if the amount of compensation which, respondent No. 3 is entitled to get is reduced by one-fifth, that which respondent No. 2 is entitled to get is reduced by one-third and that which respondent No. 1 is and all the respondents, as heirs to the estate of the deceased are entitled to get is reduced by half. It has already been held that respondent No. 3 was to get a benefit of Rs. 12000/- from the deceased during the ten years. She should, therefore, get as compensation u/s 1-A of the Act a sum of Rs. 9600/-. It has also been held that the deceased would have spent a sum of Rupees 48000/- over respondent No. 2 during the period of 20 years, and would have spent Rs. 20000/- over her marriage. Out of the sum of Rs. 68000/- Rs. 10000 plus Rs. 2400/-, interest on it for four years, total Rs. 12400/- has to be reduced because that will be available for the marriage of respondent No. 2 after the maturity of the policy, evidenced by Ext. 3. For the balance of Rs. 55600/-, respondent No. 2 should get Rs. 37066/-. For the sum of Rs. 84000/- which the deceased would have spent over respondent No. 1 during the period of 35 years, she should get Rupees 42000/-. Out of this amount of Rupees 42000/- a sum of Rs. 24750.60, which respondent No. 1 has received under the insurance policies, Exts. B (1) and C and half of Rs. 1492/- that is, Rs. 746/- on account of accelerated payment of the said amount under the paid up insurance policy (Ext. B-1), total Rs. 25496.60 shall have to be deducted. Thus respondent No. 1 is entitled only to a sum of Rs. 16503.40 only. In considering what reduction, if any, should be made out of the sum of Rupees 22500/- which has been held as pecuniary loss to the estate of the deceased for the saving which he might have made, interest which that amount would have earned has also to be taken into account. This amount of Rs. 22500/- is made of two sums of Rupees 13500/- and Rs. 9000/-. Applying the same method of calculation which has been applied earlier in determining compensation u/s 1-A of the Act, these sums of Rs.

13500/- and Rs. 9000/- would have earned interest of Rs. 5670/- and Rupees 1080/-, respectively, at the end of 25 years from the accident. Thus, the amount available to the estate at that point of time would have been Rs. $22500 + 5670 + 1080 = \text{Rs. } 29250/-$. During 10 years thereafter this amount would have further earned Rs. 17550/- as interest at the rate of 6 per cent, per annum. The total loss to the estate of the deceased, therefore, on this score would have been Rs. 46800/- and of this amount only half, that is Rs. 23400/-, can be reduced. Therefore, nothing is to be reduced from Rs. 22500/-, rather the respondents are entitled to Rs. 23400/- on this score. For the sum of Rs. 26000/- which the deceased would have got as provident fund, the respondents would get only half of it, that is, Rs. 13000/-. Thus, the compensation to which the respondents are entitled u/s 2 of the Act ought to be Rs. 36400/-. The total of compensation to which the respondents have been held entitled individually u/s 1-A of the Act is Rs. 63169.40 P. The entire compensation under both the sections, therefore, should be Rs. 63169.40 p. Rupees 36400/- = Rs. 99569.40 p. only and not Rs. 127000.00, as decreed by the Court below. The aforesaid sum of Rs. 99569.40 p. will carry interest at the rate of 6 per cent, per annum from the date of the institution of the suit till its realisation. Each of the respondents is entitled to one-third share in Rs. 36400/-, the compensation u/s 2 of the Act, but respondent No. 1 shall be entitled to get added to her share the amount which she might have spent over the upkeep of respondent No. 3 from her share in this amount by making an application in the court below if both of them are not able to reach a settlement between themselves. The amount of compensation payable to respondent No. 2 will also be paid to respondent No. 1 as guardian of the former. Let a decree be prepared accordingly.

30. In the result, the decree of the court below is modified to the extent indicated in. the foregoing paragraph and the appeal is allowed in part. In the circumstances of the case, parties are directed to bear their own costs so far as this Court is concerned.

Kanhaiyaji, J.

31. I agree.