

(1981) 01 KL CK 0004

In the High Court Of Kerala

Case No : A.S. No's. 194 of 1977 and 64 of 1978

Vasanthi G. Kamath

APPELLANT

Vs

Kerala State Road Transport Corporation

RESPONDENT

Date of Decision : 22-01-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Fatal Accidents Act, 1855 — Section 1A, 2

Motor Vehicles Act, 1988 — Section 110A, 110A(2)

Citation : (1981) ACJ 353

Hon'ble Judges : V. Khalid, J;P. Subramonian Poti, J

Bench : Division Bench

Advocate : P. Ramanujam, for the Appellant; George Mathew Kalapurakkal, for the Respondent

Judgement

V. Khalid, J.—These two appeals arise from the judgment in O.S. No. 267 of 1974, Principal Sub Court, Ernakulam. A.S. No. 64 of 1978 is by the Plaintiffs and Defendants 3 and 4, while A.S. No. 194 of 1977 is by the 1st Defendant, the Kerala State Road Transport Corporation, for short, K.S.R.T.C. The suit was originally filed in forma pauperis. It related to the compensation payable to the Plaintiffs and Defendant 3 and 4, who claimed it as the legal representatives of deceased Sri Gopalakrishna Kamath. The 1st Plaintiff is his widow, Plaintiffs 2 to 4 are his minor children, 3rd Defendant is his mother and 4th Defendant is his grand mother The 1st Defendant is the Corporation and the 2nd Defendant, a driver employed by it.

2. The facts of the case relevant to these appeals are as below: Sri Kamath was an Upper Primary School Assistant in the St. Augustine's High School. On 16.3.72, at 8.30 a.m. he was proceeding along Alleppey-Ernakulam National Highway. When he reached in front of the St. Mary's Chapel in Chandiroor on his way to the bus stop to catch the bus to his school, a bus belonging to the 1st Respondent, No. R. 39.5, came from behind and knocked him down. The left front wheel of the bus ran over the right leg of Sri Kamath and thereby inflicted

fatal injuries on him. He was taken to the Ernakulam General Hospital, where he died at 9.30 p.m. The bus was driven by the 2nd Defendant. According to the Plaintiffs, the bus was being driven carelessly and at high speed. Sri Kamath was aged 30 years and 9 months and was receiving at the time of his death an amount of Rs. 249/- per month as salary and other allowances. In the Education Department he had a future service of 29 years 5 months. He was the sole bread winner of his family. The widow and children have no means of sustenance. The children have no means or other sources of income for prosecuting their studies and the daughters to get married. The total claim was for a sum of Rs. 93,852/- under different heads. Notices were sent to Defendants 1 and 2. The K.S.R.T.C. sent a reply denying liability and offering the Plaintiffs a sum of Rs. 5,750/-. Not satisfied with this offer, the suit was filed. In the plaint it is stated that though the 3rd and 4th Defendants are entitled for compensation, they have abandoned their claims in favour of the Plaintiffs. The suit was filed by the Plaintiffs as representative and as beneficiaries to the estate of the deceased as contemplated under Sections 1-A and 2 of the Fatal Accidents Act, 13 of 1855.

3. Defendants 2 to 4 were ex parte. The 1st Defendant contested the suit. The first plea raised related to jurisdiction. According to the 1st Defendant, jurisdiction has to be decided with reference to the suits of the incident and not death. Regarding the liability for damages the first Defendant's case is that the bus was not driven carelessly or with negligence and that the accident occurred on account of the contributory negligence of deceased Kamath. The case put forward is that when the bus reached the place near St. Mary's Chapel an Ambassador car, K.I.E. 7855, suddenly overtook the bus. Kamath wanted to stop the car presumably to get a lift to his school. The driver of the car suddenly applied the brakes. At that time a lorry was coming from the opposite direction. The driver of the bus swerved to the left and applied brakes to avoid hitting the car. Kamath who was proceeding in haste to enter the car stepped back fearing that the bus might hit him. Since there were pits near the place where Kamath was standing, he lost balance and fell down with his right leg on the road. It was in this manner that the left back wheel of the bus hit Kamath's body. It is further stated that the wife and children of Kamath have independent source of income and hence are not legally entitled to claim any compensation. The trial court gave a decree against Defendants 1 and 2 in the sum of Rs. 26,479.20 with proportionate costs and future interest at 6% from the date of the decree till the date of realisation. Dissatisfied with this decree, Plaintiffs have filed A.S. No. 64 of 1978 and the 1st Defendant, AS. No. 1.4 of 1977.

4. Since the appeals relate to the same accident and involve same questions of law and facts, they are being disposed of by a common judgment. We will be referring to the parties in this judgment with reference to their array in A.S. No. 64 of 1978. We will first dispose of the plea of want of jurisdiction. If the proceedings from which these two appeals arise were an application for compensation u/s 110-A of the Motor Vehicles Act, the question of jurisdiction could have been easily answered, for Section 110-A(2) of the Motor Vehicles Act,

which reads as follows:

Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred and shall be in such form and shall contain such particulars as may be prescribed.

Provides for applications for compensation to be made only before Tribunals having jurisdiction over the area in which the accident occurred. Since these appeals arise from a suit under the CPC filed prior to the coming into force of Section 110-A, the question of jurisdiction will have to be decided with reference to the provisions of that Code. The 1st Respondent's counsel submitted that it would work hardship to parties like the Corporation if those who claim compensation are given liberty to choose the forum as they like. It can be, that an accident takes place in place A and the victim of the accident is taken to place B, far away from A, and if parties are given liberty to file suits in such far away places, it would be difficult to those who will have to answer the action. We are not impressed with this plea. These difficulties can arise for both.

5. The section that applies in Section 20(c) CPC which reads as: "the cause of action wholly or in part arises". A claim for compensation by the dependents of a deceased person can be based either on the accident or death as a result of the accident. The claim in this case is referable both in the death of Kamath and to the accident that caused his death. Cause of action flows both from the accident and the death. Since the suit is filed in the Ernakulam Sub-Court, within whose jurisdiction death occurred, it can never be said that the cause of action for the claim did not at least in part arise within the jurisdiction of that Court. We would like to make it clear that in cases of claims of compensation resulting in the death of a person, the cause of action consists both in death and in the accident which caused the death. Therefore, courts within whose jurisdiction either death occurs or the accident occurs have jurisdiction to entertain the suit. We answer the question of jurisdiction against the 1st Respondent and hold that the suit is properly laid in the Ernakulam Sub-Court.

6. The next question to be considered is as to how the accident took place. Did it take place because of the negligence of the driver or was it contributed by the negligence of Sri Kamath. The Respondents have a case that the accident took place because of the contributory negligence of Kamath. From the evidence on record which has been discussed in detail by the court below and which we wish to consider presently. It will be clear that this case of contributory negligence has no legs to stand. Apart from the most unsatisfactory evidence of the conductor of the bus, there is precious little to sustain this case and, therefore, we have no hesitation to reject this case.

7. 13 witnesses were examined for the Appellants and 18 documents were marked. One witness was examined for the Respondents. The admitted case is that deceased Kamath was proceeding on the National Highway from Alleppey to Ernakulam on the western side, that the fast passenger bus in question was

coming from Alleppey to Ernakulam and that on the western side of the road was a newly acquired vacant land for the National Highway, where there are pits. The Appellants' case is that Kamath was proceeding to the bus stop, when the bus coming from behind at great speed driven negligently and carelessly by the 2nd Respondent caused the accident. P. Ws. 6 to 9 and 11 were examined to prove how the accident took place. P.W. II is the driver of the car, K. L. E. 7855, which, it is said, overtook the bus. P.W. 6 is a witness in the scene mahazar as well as in the inquest. He deposed as to how the accident took place. He saw the accident from a jeweler's shop nearby. He proved the scene mahazar Ext. A. 1 and inquest report Ext. A-15. P.W. 10 the Sub-inspector of Police has sworn to the correctness of the statements contained in Ext. P. 15. P.W. 11 is the owner of the Jewellery shop. He also saw the accident. He deposed that he saw Kamath proceeding with a bag in his hand and the fast passenger coming from behind at high speed hit Kamath and knock him down. To the same effect is the evidence of P.W. 6. From the evidence of P.W. 6 and 7 it is also evident that the car in question was not moving or had not overtaken the bus, but was stationary. The court below has given due weight to the evidence of P.W. 7, who is an uninterested witness, and in whose immediate presence the accident took place. His evidence completely falsifies the case of the 1st Respondent that Kamath wanted to stop the car, as a result of which the car moved resulting in the accident in question. P.W. 8 is a barber working near the place of accident who corroborated P.W. 6. and P.W. 7. P.W. 9 is another eyewitness. In the F. I. Statement Ext. A-16 itself it is stated that the neighboring shopkeepers had seen the occurrence. P.W. 11 who was the driver of the car in question deposed that car the was standing still on the public road, waiting for some passengers, who had hired the car. He heard a sound and then turned back. He saw the transport bus hitting the left side of the car. He could not give further details about the accident, but deposed that Kamath did not try to stop the car, nor did he want to get into the car. He also denied the suggestion that the car had overtaken the bus. In the face of such a volume of evidence from the Plaintiffs side found acceptable and reliable by the court below the only evidence contra is that of the conductor of the bus. His evidence is contrary to the evidence of P. Ws. 6 to 9. The court below did not accept his evidence. His case that the car overtook the bus and a lorry came from the opposite direction, which was against the evidence given by P. Ws. 6 to 9, was disbelieved by the court below. On a reassessment of the evidence, we have no hesitation to hold that the court below was justified in coming to the conclusion that the accident took place as spoken to by the Plaintiffs' witnesses and that the bus hit deceased Kamath while he was walking along the road on the western side and that Kamath was not negligent in any manner.

8. Ext. A-4 mahazar gives telling materials to conclude that the accident was due to the negligence of the driver of the bus. The place of accident is described in Ext. A-4 and from it, it is clear that Kamath was not only on the western edge of the road but was even beyond the foot path on the western side ; he was off the

sandy portion newly acquired for the high, way. This in our view is pre eminently a fit case for the application of the principle *res ipsa loquitur*. We, therefore, hold, in confirmation of the finding of the court below, that the accident took place because of the negligence of the driver of the bus belonging to the 1st Respondent.

9. The suit was filed by the wife and three children. The other Defendants, mother and grand-mother, were shown as Defendants 3 and 4. The court below had disallowed the claim of D-3 and D-4 that difficulty is got over since they also figure as Appellants. It is not disputed that they are not dependants of late Kamath.

10. Now comes the important question as to how compensation has to be fixed. In the court below compensation of Rs. 5,000/- was claimed as general damages by the Plaintiffs for the excruciating pain and sufferings the deceased had undergone because of the accident. The 1st Respondent's claim was that this claim was excessive, since the interval of suffering was only from 8.30 a.m. till 3.30 p.m. during which time Sri Kamath was unconscious. The court below fixed the compensation on this count at Rs. 1,000/-.

11. The Plaintiffs claimed Rs. 87,399/- as special damages towards the future loss of income of the deceased. This was calculated as follows: The income of the deceased per month as salary and allowances at the time of his death was Rs. 249/-. This was claimed for 29 years and 3 months. Plaintiffs also claimed Rs. 2,000/- as loss on account of provident fund contribution. The total sum works out to Rs. 94,399/- including the Rs. 5,000/- claimed as general damages.

12. The court below disallowed a substantial portion of the claim. Reliance was placed by the court below on a Division Bench decision of this Court in A.S. No. 518 of 1973 for adopting the multiple of 15 years and arrived at the figure of Rs. 44,820/-. From this amount certain deductions were made. From the evidence it had come out that the deceased used to take Rs. 25/- for his personal expenses and entrusted the balance amount to his wife. On this account a sum of Rs. 4,500/- ($25 \times 12 \times 15$) was deducted. The living expenses of the deceased were fixed at Rs. 50/- per month. On this account a sum of Rs. 9,000/- ($50 \times 12 \times 15$) was also deducted. The court below deducted an amount of Rs. 250/- received from the Corporation and loss on account of provident fund contribution of Rs. 1,029/- was added. The total came to Rs. 33,000/-. Since the mother and grand mother had not joined the suit, 1/5th of the above compensation was also deducted. The balance after deducting Rs. 6,619.80 on this account was found to be Rs. 26,480.20 Ps.

13. The Appellants' counsel submitted before us that figure arrived at by the court below did not reflect the correct amount of compensation to which the Appellants were entitled. There was considerable arbitrariness in taking the multiplier at 15. In this case, it was contended, there was admitted evidence of the income that the deceased received. If compensation is computed on the

basis of the admitted income, the amount of compensation could be arrived at with precision. It was further contended that since the monthly income at the time of death and what he would have got in future was known Appellants should be given compensation at this monthly rate calculated for 29 years and 3 months, the prospective period of service that he had before him.

14. Since the Appellants' counsel submitted that the income which deceased was getting was an admitted figure and cannot be disputed, we called upon him to make available to us the statement showing the salary, D.A. and other allowances which deceased Sri Kamath would have received till the date of his retirement on 17.1996, the death-cum-retirement gratuity receivable by him on retirement and the full pension which he would have received for 12 years after his retirement. He has produced a statement, a copy of which was given to the Respondents' counsel. There was no dispute regarding the correctness of the entries contained in the statement. The date of birth of Sri Kamath was 16.6.1941, the date of commencement of service 4.1.1960, date of retirement, if alive, 30.6.1996, scale of pay as on 1.3.1972, 95-5-160-6-190, and as on 1.7.1976, 285-12-333-13-450-15-465-15/2-540. There is no evidence in this case nor even a whisper that Kamath was not healthy. Normal span of life for a healthy person can now be safely fixed at 70. Both his mother and grandmother are alive. Apart from a random statement in the written statement that his wife and children have independent means, there is no evidence to substantiate this. We therefore, hold that the wife and children as well as mother and grandmother were solely depending upon the income that Kamath was receiving, and proceed to fix the compensation on the data supplied.

15. In State Insurance Officer Vs. Thankamma John and Others one of us (Poti, J.) speaking for the Bench had set out the principles to be born in mind in determining compensation payable to dependents. In that case also the victim was a person with a definite monthly income. The question about the multiple and the necessary allowances to be made on account of acceleration was gone into in that case for the reason that even if half of the salary received by the deceased were taken into account and the multiple of 15 adopted, the resultant compensation would be more than what was claimed even in the cross-objection. Therefore, the question was not pursued on the lines that we propose to do in this case.

16. The question as to how to assess the value of the dependency is not free from difficulty. The value of dependency is the amount of pecuniary benefit that the dependents could reasonably expect to get in the future. To reach this figure the normal method used by courts is first to calculate as accurately as possible the net annual loss suffered. In cases where the deceased is a salaried man, calculation is based on his pre-accident take home pay and multiply it by the number of years that the dependency is reasonably expected to last. Such take home pay is often referred to as the multiplies and the number of years as the multiplier. In arriving at the multiplicand courts will have to first ascertain the net

income available to the deceased and dependents, deduct from it such part of his income as the deceased used to spend for his maintenance and other expenses, and then multiply the balance by the multiplier. If in a given case there is evidence that the deceased treated his dependents differently, regard should be had for this different treatment also. If there is no evidence to this effect, it should be presumed that the dependents shared the balance equally.

17. Courts in awarding compensation should guard themselves against paying over compensation. When a decree for compensation is passed, the court puts into the dependents hands future contribution before they would have actually received. This is otherwise known as accelerated benefit. To avoid this, the safe method is to find out the present value of the future contribution that is to be awarded. We will refer to the method adopted by us in this case presently. Any future contribution that we give now to the dependents can be invested by them. They can enjoy the income therefrom and keep intact the lump sum granted. The policy of the courts should be to put into the dependents' hands by the decree only that amount which after investment and reinvestment gets reduced to nothing on the expiry of the period of their dependency, by their utilizing it for their maintenance for that period. In such calculations the court is bound to be in the realm of hypothesis, which cannot be avoided. It may not always be possible to arrive at a figure with mathematical precision, for there are so often many imponderables. Courts are loath to adopt actuarial statistics and annuity tables, for it is said that in the region of such calculations "arithmetic is a good servant, but a bad master". However, since we have before us admitted data, we proceed to do a little exercise in arithmetic for we feel that such an exercise will be rewarding for arriving at the nearest approximation.

18. The Appellants' counsel has given to us a statement showing the details of anticipated income from 1.3.1972 to 1.7.1996.

Date of increment Period Pay Rs D.A. Rs. Total Rs. Total amount per year

1 2 3 4 5 6 7

1.3.1972 1.3.72 to 1.6.72 130.00 119.00 249.00 249X4 996.00

1.7.1972 1 year 136.00 119.00 255.00 255x12 3060.00

1.7.1973 " 142.00 143.00 285.00 285x12 3420.00

1.7.1974 " 148.00 155.00 303.00 303X12 3636.00

1.7.1975 J) 332.00 1.00 108.00 439.00 440X12 5279.00

1.7.1976 " 359.00 158.00 517.00 517X12 6204.00

1.7.1977 " 372.00 158.00 530.00 530X12 6360.00

1.7.1978 " 385.00 158.00 543.00 543x12 6516.00

1.7.1979 " 398.00 158.00 556.00 556X12 6672.00

1.7.1980 " 411.00 162.00 573.00 573x12 6876.00
 1.7.1981 J) 424.00 167.00 591.00 591x12 7092.00
 1.7.1982 5? 437.00 173.00 610.00 610X12 7320.00
 1.7.1983 J) 450.00 178.00 628.00 628X12 7536.00
 1.7.1984 1 year 465.00 184.00 649.00 649X12 7788.00
 1.7.1985 " 465.00 184.00 649.00 649X12 7788.00
 1.7.1986 " 480.00 190.00 670.00 670X12 8040.00
 1.7.1987 " 480.00 190.00 670.00 670X12 8040.00
 1.7.1988 " 495.00 196.00 691.00 691x12 8292.00
 1.7.1989 S5 495.00 196.00 691.00 691X12 8292.00
 1.7.1990 " 510.00 201.00 711.00 711x12 8532.00
 1.7.1991 " 510.00 201.00 711.00 711X12 8532.00
 1.7.1992 >I 525.00 207.00 732.00 732X12 8784.00
 1.7.1993 ?? 525.00 207.00 732.00 732X12 8784.00
 1.7.1994 ?? 540.00 213.00 753.00 753X12 9036.00
 1.7.1995)) 540.00 213.00 753.00 753X12 9036.00
 1.7.1996 ;> 540.00 213.00 753.00 753X12 9036.00

Total Salary Rs. 1,80,947.00

The total salary as per this calculation is Rs. 1,80,947/-. The claim in the appeal is however limited to Rs. 67,699.80, being the difference of the amount claimed in the suit and the amount decreed.

19. As indicated above, it will not be proper to pay to the dependents now the amount they would have got spread over the years till 1.7.1996. Our effort will be to find out the present value of the amount that they will get each year. This, however, will not apply to the period from 1.7.1973 to 1.7 1980, for the decree is being passed in 1980. Even so, the full amount shown in the last column in the table above cannot be given even for this period since certain deductions have to be made from that amount.

20. Evidence in this case is that the deceased was taking Rs. 25/- every month for his pocket expenses. This works out to Rs. 300/- per year. The court below also deducted this amount from its calculation. There are 6 dependents, viz., his wife, 3 children, mother and grand-mother. The annual income after deducting the above Rs. 200/- will have to be shared by these 6 dependents and the deceased. For the dependent's share we will have to find out 6/7 of the

amount ; his 1/7th will not come in for calculation, because he would have used that amount for his maintenance, were he alive. This division is on the basis that all share equally for their maintenance from this amount. From the amount so obtained, an amount of Rs. 1,200/- being the annual pension which the wife will get for the period from 1.7.1973 to 1.7.1979 and Rs. 720/- for the period from 1.8.1980 to 1.7.1996 will also have to be deducted. It is the amount after these deductions that will have to be decreed. We give below the amounts so arrived at for these years:

Year Amount Rs.

1973 1474

1974 1659

1975 3821

1976 4747

1977 4903

1978 5059

1979 5215

1980 5898

For the remaining years the present value of the amount shown in the last column in the table given above will have to be worked out by adopting a simple mathematical formula.

21. If a person deposits rupees today in a bank at 1% interest for number of years, the total amount by investing and reinvesting, in other words with compound interest, will be the amount equivalent to $(1 + 1/100)$. The rate of interest for fixed deposits for more than 10 years is 10%. If one rupee is invested at 10% for one year the amount that one gets after one year is $(1 + 10/100)$ or 110/100 or 1.1. If it is for two years it is $(1 + 10/100)^2$ i.e., 1.21, for 3 years 1.33, for 4 years 1.40, for 5 years 1.61, for 6 years 1.77, for 7 years 1.96, for 8 years 2.14, for 9 years 2.30, for 10 years 2.59, for 11 years 2.85, for 12 years 3.14, for 13 years 3.42, for 14 years 3.80, for 15 years 4.18 and for 16 years 4.60. Now we will take the year 1981 ; the annual amount shown in last column is 7,092/- ; deducting Rs. 200/- we get Rs. 6,792; 6/7 of this is 5,822/-; deducting Rs. 720/- being the annual pension we get Rs. 5,701/-. We have already found that one rupee becomes 1.1 in one year. What amount becomes Rs. 5,701/- in one year ?

For this, Rs. 5,701/- has to be divided by 1.1 and for succeeding years by the figures 1.21, 1.33 etc. If it is so worked out from 1981, we get the following figures:

Year Amount Rs.

1981 4637
1982 4382
1983 4122
1984 3902
1985 3539
1986 3341
1987 3032
1988 2854
1989 2597
1990 2446
1991 2223
1992 2086
1993 1899
1994 1781
1995 1619
1996 1471

22. In the above calculation there is a small mistake. The number of dependents is taken as 6 for the entire period. Mother and grand-mother are two among them. Mother is now 59 and the grand-mother 78. It will not be proper to give them a further lease of 16 years life for the purpose of this case. We feel that it will be reasonable to grant the grand-mother five years of life more and the mother ten years of life more for the purpose of calculation in this case. This means that the number of dependents from 1986 to 1990 will be five and from 1991 to 1996 four. The fraction that we took in the above calculation is $\frac{6}{7}$. Because of what we have stated above, this fraction will be $\frac{5}{7}$ and $\frac{4}{7}$ respectively for the years 1986 to 1990 and 1991 to 1996. The difference on this account works out to Rs. 1,033/-. This has to be deducted from the total amount.

23. After 1996 the deceased would have got his pension which is Rs. 200/-. By that time the children would have attained earning age and would have ceased to be dependents. Therefore, the pension will be shared by the deceased and his wife alone. The wife's share will be Rs. 100/- which works out to Rs. 1,200/- in a year. The wife would be 50 years at the time of Sri Kamath's retirement. It would be safe to allow to her 10 years pension at this rate which works out to Rs. 12,000/-. This is the anticipated amount. To avoid accelerated payment, the present value of this amount has to be worked out. Using the same formula as before the present value of the total pension for the years from 1996 for 10

years is Rs. 1,000/-. (This is got by dividing the amount by 11.91). This amount also has to be added.

24. The total amount thus payable to the Appellants is as follows:

(1) From 1973 to 1980 = Rs. 32,776.00

(2) From 1981 to 1996 deducting Rs. 1,033: 44,908.00

(3) Pension = 1,000.00

Total = 78,684.00

Amount decreed = 26,479.20

Balance = 52,204.80

Therefore, the Appellants will be entitled to an additional compensation of Rs. 52,204.80 in excess of what is decreed by the court below with 6% interest from the date of the suit till realisation.

In the result, in modification of the decree of the court below as above, we allow A.S. No. 64 of 1978 with costs and dismiss A.S. No. 194 of 1977 without costs.

P. Subramonian Poti, J.

25. I fully agree with the judgment proposed by my learned brother. I have thought it proper to add a few words of my own to my learned brother's judgment in view of the importance of the question.

26. It was safer once to kill a man than maim him. A dead man can make no claim against the wrong doer. No claim for tortious act survived to the heirs and so they too could make no claim. The Fatal Accidents Act, 1926 brought in the well needed change. The dependants, of the person dying by a fatal accident obtained, for the first time, a right to make a claim against the wrong doer. The loss to the dependants and the loss to the estate were to be compensated by the wrong doer. Despite the Fatal Accidents Act the claims for compensation were few not because there were only few fatal accidents but evidently because resort to the long drawn out process of litigation in the civil Court with the burden of a heavy and deterrent court fee had little appeal to the common man. Consequently the law in India on the quantum of compensation payable is not well developed. Courts have quite often resorted to ad hoc approaches to determine claims under the Fatal Accidents Act. The Amendment of the Motor Vehicles Act by incorporating Section 110-A and the constitution of Claims Tribunals in the States have caused a marked difference. The Claims Tribunals functioning independently at various centers should necessarily make a uniform approach to the question of determination of compensation. In this background it is appropriate to outline the approach to the question of compensation. No doubt the principles have been broadly stated by a Division Bench of this Court in State Insurance Officer Vs. Thankamma John and Others but there was no scope for a closer examination in that case because even without such an approach the

claimant in that case was found entitled to more than that he had claimed.

27. On the death of a person as a result of fatal accident loss would arise to his dependants if he had been earning income on which they depended for their livelihood. If a surplus would have been left after meeting the expenses of his dependants and himself, over the years such surplus would accumulate and on his death the estate would have had the accumulated surplus. By reason of acceleration of his death due to the fatal accident the estate would be losing the benefit of such an asset. Section 1-A of the Fatal Accidents Act provides for compensating the loss to the estate. The dependants need not necessarily be the heirs of the deceased. The dependants need not exhaust all the heirs. No loss to the estate may arise in the case of a person whose earning is so limited as not to leave a surplus on his death. In the case of persons in the lower income group and even the lower middle income group this could be the case, more or less. Only in the case of persons with income that would normally leave a surplus after meeting the expenses of the family there will be benefit to the estate by the person's death. In such a case the loss by reason of an early death will be to the persons who inherit as heirs of the deceased person. In such a case it may be necessary not only to find out what would have been the income of the deceased had he lived the normal life span but also what he would have expended for his dependants and himself and what would have been the surplus available. A determination of such available surplus would furnish the basic data for determination of loss to the estate. What a person would spend for his dependants would determine the loss to the dependants who could be compensated within the scope of Section 1-A of the Act.

28. The factors which a court called upon to assess compensation payable to the dependants or loss to the estate, has to notice are many. Generally and in the vast majority of normal cases the relevant matters to be taken into account are:

(a) the age of the deceased;

(b) the estimated life span, taking particular note of his health and physical condition, family history, if any, bearing on longevity and the risk, if any, to life or normal life span, involved in the nature of his profession;

(c) his income structure, current and future; and (d) the number of dependants and the period and extent of dependency.

29. A Division Bench of this Court had occasion to hold in *State Insurance Officer Vs. Thankamma John and Others* that the life span of about 65-70 years would be reasonable in the present context. Despite the stress and strain of modern life the advances of medical science and familiarity with rules of hygienic living have resulted in expectation of a longer life span. When a court has evidence that the deceased was afflicted by any disease of a nature that would normally reduce life expectancy or that the family history indicates that in the normal course the deceased may have lived a less than normal period of life or that the deceased was engaged in a hazardous occupation endangering his head with the possibility

of an early death on that account or an occupation with a high expectation of fatal accidents the court would be justified in adopting an appropriate view as to the reduction in the expectation of life span.

30. Having determined the probable number of years the deceased would have lived the next question the court should ask itself is, what was the income structure of the deceased at the time of his death and what would it have been had he not met with the fatal accident. It may be easy to determine the income the deceased was earning on the date of death. But the process of determination of the income he would have continued to earn is by no means easy. It would vary by reason of the seniority and experiences he gains in his profession. A civil servant will get his increments from time to time and his promotions in the normal course. After a stage he would retire and get the retiring benefits. A workman may become more experienced and may in due course become an expert if his profession is one in which expertise counts. A professional man may continue to earn more recognition and may gather a progressively larger clientele. In all such instances the court will have to take a realistic view of the possible income structure of the person for the entire period of his fruitful life. That would give an idea of what would have been available to the deceased to spend on himself and on his dependants.

31. Once the income structure of a person is determined the loss to the dependants call for determination. This would be the equivalent of what the deceased would have spent for the dependants during the successive years had he been living. That portion of his income would have been available for the expenses of the dependants, the number of dependants from time to time and other relevant factors may have to be taken into account to determine this. Normally, a person belonging to the lower middle income class may rarely be able to make material or substantial savings. As pointed out earlier almost the whole of his income would be spent for himself and the members of his family. It may not be so in the case of people in the higher income group like businessmen earning high profits. In their case even after spending for themselves and their dependants they would have surplus left which will accumulate in due course and it is that accumulation which would represent the loss to the estate on their death, That is because had they continued to live their normal span of life they would have left behind them assets to their estate equivalent to such accumulated surplus. Of course, the surplus might have grown by wise investment but to take that into account would be in the realms of speculation. What a person could afford to spend for his dependants is, therefore, a question of fact to be determined on the facts and circumstance of each case. Supposing there are half a dozen dependants at a given point of time it would be more or less right to think that the deceased will be taking as much for his own expenses as for any other member of the family and therefore, 6/7 of the income spent would have been spent on dependants. In other words, normally in an ordinary family the expense of each member of the family could be said to be more or less the same. Of course, there may be special expenses incurred by the head of

the family necessitated by the nature of his calling or profession. In such a case allowance will have to be made on that account. This rule has been indicated in the decision in State Insurance Officer Vs. Thankamma John and Others . It may also be said that after a few years the children who may be dependants may cease to be dependents and the other dependants may get a greater share in the income of the deceased for their expenses. These again are questions of fact and only broad guidelines could be indicated. Applying this rough and ready method it may be possible in ordinary cases to determine what amount the deceased would have spent in successive years for himself and what amount would have been available to meet the expenses of the dependants. The latter would represent the loss to them on account of his death.

32. If the deceased had been living the dependants might have been receiving the benefit of his income only from time to time whereas when the court is awarding compensation there is a lump sum payment. The payment of compensation for a benefit due in the future, some in the near and some in the distant, cannot be the sum total of the benefit in monetary terms that would be received over the years. The acceleration in the payment is of consequence. Hence the courts have to find out the present equivalent of a future benefit due in successive years. When accelerated lump sum payment is received if that is prudently invested one may reasonably expect 10% annual return on it today. Thus the equivalent, under present day conditions may be determined by taking the interest rate on the accelerated payment at 10%. At this rate equivalent of one rupee as in the successive years (compound interest at 10%) will be as follows:

Years 1 2 3 4 5 6 7 8

Principal & compound interest at 10% on Re. 1.10 1.21 1.33 1.46 1.61 1.77 1.95 2.14

Years 9 10 11 12 13 14 15 16

Principal & compound interest at 10% on Re. 1/- 2.35 2.59 2.85 3.14 3.45 3.79 4.17 4.59

33. The above results indicate that if one rupee is invested at an interest rate of 10% (compound interest) that will be Rs. 2.35 after 9 years and Rs. 3.45 after 13 years. If the income structure of the deceased indicates that in the 9th year he would have been, had he been alive, able to spare for his dependants Rs. 2.35, its equivalent today would be Re. 1/- and if in the 13th year he would have been able to spare Rs. 3.45 then its equivalent would be Re. 1/-. In either case the accelerated present payment would be Re. 1/-. Therefore, if a dependant is to receive Rs. 1,500/- 9 years later its equivalent today would be Rs. 1,500/2.35 (Rs. 638.30) and if he is to receive Rs. 1,500/-after 13 years its equivalent by reason of accelerated payment would be Rs. (Rs. 434.80). This is the method by which equivalent for the purpose of accelerated payment could be worked out in every case and that is the principle applied in this case too.

34. What other matters may have to be taken into account in any given case will depend upon the facts of that case. The proper exercise of the judicial mind to determine what, on the materials before the court, could reasonably be found as the loss to the dependants is called for in each and every case where the court is called upon to determine the compensation.