(1991) 10 KL CK 0051

High Court Of Kerala

Case No: M.F.A. No. 676 of 1986

Oriental Fire and Genl. Ins. Co. Ltd. and Another		APPELLANT
	Vs	
P.P. Misri and Others		RESPONDENT

Date of Decision: Oct. 11, 1991

Acts Referred:

- Motor Vehicles Act, 1988 - Section 110A

Citation: (1993) ACJ 25

Hon'ble Judges: Varghese Kalliath, J; G.H. Guttal, J

Bench: Division Bench

Advocate: S. Parameswaran, for the Appellant; V.C. John and Jimmy John, for the Respondent

Final Decision: Dismissed

Judgement

Varghese Kalliath, J.

Respondents in appeal are the widow and children of one Hamsa and his mother. A baleful this illfettered drive of a motor vehicle by Hamsa resulted in a tragic accident, ended Hamsa drop dead though reached in hospital and rendered the respondents destitutes. Respondents claimed compensation in M.V.O.P. No. 845 of 1985. The Tribunal awarded a compensation of Rs. 1,50,750/-. The award is challenged in this appeal by the owner of the vehicle, the insured and the insurer jointly.

2. The facts are not very seriously disputed. But for the purpose of the questions raised in this appeal, we shall give a short resume of the facts of the case.

3. The calamitous event happened at about 2 p.m. on 14.8.1982. Deceased Hamsa was driving the illfated lorry KLO 5123. Due to mechanical failure, the lorry capsized. It fell into a nearby paddy field. Hamsa was caught up underneath the lorry. After extricating him from under the lorry, he was taken to the hospital. It was found that

Hamsa had several injuries. He died at about 3.45 p.m. at the Government Hospital, Punalur.

4. The second appellant is the owner of the lorry. First appellant is the insurer of the lorry. The lorry was covered by the insurance policy. In these circumstances, respondents herein, the widow and children and mother of the deceased Hamsa, filed an application u/s 110-A of the Motor Vehicles Act (for short ''the Act''). There is no dispute as to the fact that the deceased Hamsa was the driver of the lorry.

5. The second appellant, the owner, contended that the amount claimed is exorbitant and that the insurance company is liable to pay if any amount is awarded as compensation. The first appellant contended that the petition before the Tribunal is not maintainable. It admitted the fact that the vehicle was insured but contended that the respondents are under an obligation to prove that the accident happened in the course of employment. It was also contended that the claim amount is exorbitant.

6. Before us several interesting questions of law were raised by counsel for appellants. Both the counsel appearing for appellants and respondents argued the case ably and elaborately. Counsel for the respondents submitted that at any rate, even if all the adverse points of law raised against the respondents are sustainable, they are entitled under the Workmen''s Compensation Act an amount of Rs. 83,192/- with interest and that the insurance company is liable to make that payment. It is not seriously contended that the insurance company has the liability to make payment under the Workmen''s Compensation Act, 1923. Counsel for the respondents submitted a statement showing the calculation under the Workmen''s Compensation Act. We asked counsel for appellants whether they are prepared to pay compensation under the Workmen''s Compensation Act. We gave time to the appellant''s counsel to ascertain whether the insurer appellant is prepared to pay the amount under the Workmen''s Compensation Act. Counsel took enough time and submitted a memo stating that counsel could not contact the officer of the insurance company and that he is not in a position to state the correctness of the amount shown in the memo submitted by respondents'' counsel, since he did not get a copy of the same. Anyhow, we only record that on this aspect we did not get real assistance. We leave the matter there.

7. Counsel for appellants submitted before us that the application before the Tribunal is not maintainable and that the Tribunal ought to have dismissed the application holding that it is not maintainable. He expanded his argument and submitted that the widow, children and mother of the deceased driver of the vehicle cannot maintain an application u/s 110-A of the Act. The reason highlighted by counsel is that deceased Hamsa was the driver of lorry and as such, the legal representatives cannot file an application. Further, it was contended that Hamsa was an employee of the owner and his legal representatives cannot file an application u/s 110-A of the Act. Their remedy is under a different Act, viz.,

Workmen''s Compensation Act. Counsel also submitted that considering the nature of the accident, the application is not maintainable. This contention he raised on the ground that an application u/s 110-A of the Act postulates the use of the vehicle and an accident involving negligence by the use of the vehicle. Counsel further submitted that an application for compensation under the Act contemplates always an act of negligence and that act of negligence should form the cause of the accident. He submitted that there was no negligence on the part of the driver in this case. He also submitted that even if there was negligence on the part of the driver, the appellants are not liable to pay any compensation. These are the main points highlighted by counsel for appellants.

8. The appellants contended that the claim itself is not maintainable before the Tribunal u/s 110-A of the Act on the facts and circumstances of the case. This contention was raised on the ground that the application for compensation u/s 110-A is a special provision for determining compensation of a particular class of tortious action, viz., accidents arising out of the use of motor vehicles involving negligence as a cause for maintaining an action for tort and the special provision u/s 110-A postulates that compensation for certain tortious acts should be exclusively adjudicated by the Motor Accidents Claims Tribunal. It is clear since an application for compensation that can be entertained by an Accidents Claims Tribunal should be a claim for compensation arising out of an accident by the use of the vehicle as specified in Sub-section (1) of Section 110. The section is clear to the extent that any person who has sustained injury or where death has resulted from the accident on account of the use of a motor vehicle the injured or all or any of the legal representatives of the deceased can maintain a petition.

9. In this case, counsel further submitted that the deceased was an employee of the owner of the vehicle. The legal representatives of such a person cannot maintain a petition u/s 110-A. We see no force in this contention. What is required for making an application before the Claims Tribunal is a legitimacy and entitlement for the person concerned to approach a Claims Tribunal by reason of a motor accident, if the person who approaches the Tribunal is the injured or the legal representative of the deceased in the accident, certainly he can maintain the petition if he satisfies the Tribunal that the injury/injuries was/were sustained as a result of the accident.

10. Counsel also submitted that in an accident not on account of negligence of any one wherein some person/persons sustained an injury or a person died in the accident, the injured person or the legal representatives of the deceased person cannot maintain a petition since the element of wrongful act, which is the basis for a tortious action, is absent and so, the petition is not maintainable. This argument pre-supposes as a jurisdictional fact, the existence of negligence. The question whether negligence is necessary or not for obtaining relief is a matter which we propose to discuss later. It requires deeper consideration. But, for the purpose of entertaining a petition, we need consider only the integrants of Sections 110 and

110-A of the Act.

11. A reading of Section 110 makes it clear that the Tribunals are constituted for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles or damage to any property of a third party so arising, or both. It has to be noted that when the claim involves the death or bodily injury on account of an accident, we would say it is a motor accident, it comprehends death or injury of all kinds of persons, whether employee passenger or pedestrian or passenger in the vehicle. Further, it has to be noted that such death or injury should arise out of use of motor vehicle. Besides, u/s 110-AA, it is made clear that notwithstanding the provisions contained in the Workmen''s Compensation Act, in a case where death or bodily injury to any person gives rise to a claim for compensation under the Motor Vehicles Act and also under the Workmen''s Compensation Act the person entitled to compensation, without prejudice to the provisions of Chapter VII-A of the Motor Vehicles Act, can claim compensation under either of those Acts. This is also a sure indication that even though a driver of a motor vehicle has got a right to get compensation under the Workmen''s Compensation Act, he has also got an option to get his claim for compensation adjudicated by a Motor Accidents Claims Tribunal. In this view also, the legal representatives of a deceased, who was the driver of the vehicle in question, were not debarred from approaching a Claims Tribunal.

12. The remaining question that has to be considered as far as the entertainability of the petition before the Tribunal is as to the nature of the involvement of the motor vehicle in question. There may be cases where, without an accident, as we understand it, something which involves a hitting or collision or such other thing, there may happen an injury to, or even death of, a person. In order to comprehend all such cases, Section 110(1) very guardedly uses the words "arising out of the use of motor vehicles". The question has come up for consideration in many cases.

13. In Motor and General Finance (India) Ltd. Vs. Mary Mony and Others, , a Division Bench of this Court, in which one of us is a party, had occasion to consider the content and scope of Section 110(1) of the Act. The Division Bench observed that "though the fundamental principle on which the liability is fastened can be traced to the law of Torts, many of the crucial aspects of that liability have been now made statutory by the Act. Even then the principles of law of Torts are relevant in the quantification of damages." It was also observed that the word ''use'' in Section 110(1) of the Act has been used in a wider sense to cover all engagements of the motor vehicle, including driving, parking, keeping stationary, repairing, leaving unattended on the road or for any other purposes. In the case when a vehicle is being driven and is stopped or parked for being repaired, it cannot be said that the vehicle is not being used. [See General Manager, Karnataka State Road Transport Corporation v. S. Satalingappa 1979 ACJ 452 (Karnataka) and V.G. Sumant v. Shailendra Kumar 1980 ACJ 248 (MP)].

14. If a vehicle is parked on a dangerous slope and if the vehicle slipped down and an accident is caused, we feel that Section 110-A of the Act will be attracted. When by the opening of the door of a motor vehicle, parked on a public road, an accident arises, giving rise to a claim for compensation, it could not be said that the accident did not arise out of the use of the motor vehicle concerned. The words ''use of the vehicle'' in Section 110(1) of the Act are wide enough to comprehend such cases also.

15. It was contended that in a case where no liability can be fastened on the driver, no petition can be filed u/s 110-A of the Act. In this case, the legal representatives of the driver are the claimants. It was also contended that naturally, they cannot make any claim against the driver. They are making claims against the owner. Counsel submitted that such a petition is not maintainable. It has to be remembered that the question of maintainability or the power to entertain and adjudicate an application in favour of the applicant/applicants will not automatically insulate a dismissal of the petition on merits. Question of entertainability and maintainability of the petition is distinct and different from considering it on merits and giving a decision on merits either dismissing or allowing the petition.

16. Counsel submitted that a reading of Section 110-B of the Act would suggest that the Tribunal has no jurisdiction to entertain an application for adjudication for compensation to be paid to the injured or to the legal representatives in case of death of a person against persons other than the driver. The owner is only vicariously liable and if the driver is not liable, there cannot be any vicarious liability on the owner and that liability cannot be indemnified by the insurer. At the first blush, it may appear that the submission is correct. But, we do not think we can accept that submission. Counsel has relied on Section 110-B of the Act. Section 110-B, of course, directs the Tribunal, when making the award, to specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. Section 110-B only mandates the Tribunal that if the liability to pay compensation is found to be of the driver, owner or insurer, an apportionment, if necessary, should be made, making the liability of the various persons clear and specific. It (Section 110-B) does not, however, indicate that the application can be filed only against the driver of the vehicle and as the owner who is vicariously liable and insurer as the indemnifier of the owner. This aspect of the matter was considered by a Division Bench of this Court in United India Insurance Co. Ltd. v. Premakumaran 1988 ACJ 597 (Kerala). The Division Bench held that the adjudication of all claims of compensation in respect of accidents arising out of the use of motor vehicle is to be done by the Tribunal and that even though u/s 110-B, the driver, owner and insurer are mentioned, it does not curtail the power of the Tribunal to direct the payment of compensation to the injured or the legal heirs of the deceased by any person who caused the accident involving the use of the motor vehicle which resulted in the death of the injured or injuries to persons claiming compensation.

17. In Union of India v. Bhagwati Prasad 1983 ACJ 13 (Allahabad), a Division Bench of the Allahabad High Court held that the Claims Tribunal has got jurisdiction to entertain a petition against the person other than the driver, owner or insurer. It was a case against Railways. A Full Bench of the Punjab and Haryana High Court in Rajpal Singh v. Union of India 1986 ACJ 344 (P&H), also considered the question in detail and held that a claim petition can be filed against persons other than the driver, owner or insurer.

18. In a recent decision of the Allahabad High Court in Union of India Vs. Smt. Sushila Devi and others, , it was held that Claims Tribunal is not confined in its jurisdiction to claims for compensation which are directed only against the driver, owner and insurer of the vehicle. Where the claim is founded on the assertion that the accident was caused by the use of the motor vehicle, the Tribunal shall undoubtedly have jurisdiction to entertain the claim even though it is directed against a third party. We are of opinion that the crucial aspect to be looked into in deciding the question of jurisdiction is that the claim must be in respect of accidents involving the death of, or bodily injury to, persons caused or contributed by the use of motor vehicle whether wholly or conjointly with some third party. When we say third party, we only mean other than the driver or owner.

19. We may also advert to Section 110-F of the Act, which clearly mandates that no civil court shall have jurisdiction to entertain a question relating to compensation, which may be adjudicated upon by the Claims Tribunals.

20. A Full Bench of the Punjab and Haryana High Court in Rajpal Singh v. Union of India 1986 ACJ 344 (P&H), also took the view that a claim petition can be filed for personal injuries and the Tribunal can adjudicate the matter even if it is not against the driver. We do not want to multiply decisions and we do not feel any doubt as to the maintainability of an action in a case where by the use of the motor vehicle by the driver himself a claim can arise on account of the death of the driver himself. We hold that the petition is maintainable.

21. The most serious question that was canvassed before us by the insurance company is that the accident occurred though by the use of the motor vehicle, it is a case of accident not on account of any fault of any person concerned and so no one can be made liable for compensation, even though by the use of the motor vehicle a person lost his life. The question that is posed before us is that the liability to pay compensation though arises from the use of the motor vehicle, it will only attract the provision regarding the power of the Claims Tribunal to adjudicate the question of compensation. To decree or to direct the payment of compensation requires the establishment of a tortious act and the tortious act that can be contemplated in this case is only some kind of failure of duty on the part of a person to take reasonable care in using the motor vehicle. Counsel submitted that only in a case where negligence is proved, the Tribunal can direct payment of compensation. He wanted to distinguish the entertainability of the petition and the grant of relief under the

petition and submitted that the grant of relief under the petition depends upon the requirement of liability on the part of a person who is directed to pay compensation and his liability arises only if he is proved to have committed a tortious act. This aspect of the matter requires consideration in two ways.

22. Counsel for respondents submitted that the claim is made against the owner of the vehicle and in turn a decree is sought against the insurer of the owner, since the owner is negligent. Further, it was contended that even if the claimants are not in a position to prove negligence on the part of the owner, if the driver is not negligent and the driver lost his life in an accident involving the use of the motor vehicle, the owner is liable. The second part of the submission or contention can be termed as a peculiar kind of absolute liability within the vista, stretch and reach of tortious liability on the part of the owner when the vehicle is used. This aspect of the matter has been elaborately considered by the Bombay High Court in Marine and General Ins. Co. Ltd. v. Dr. Balakrishna Ramachandra Nayan 1976 ACJ 288 (Bombay) and the Bombay High Court took the view that the Act provides liability arising out of the use of the motor vehicle and if one person suffers any loss, which has to be compensated and if that loss is occasioned on account of the use of the vehicle in spite of lack of negligence on the part of any person, the owner of the vehicle is liable.

23. We are fully aware of the theory that it is no part of a Judge''s function to create rules of law, his task is only to apply already established rules. The simple method of reasoning for the purpose of decision making is to ascertain the relevant rule and apply it to the fact of the case. It is true that in the vast majority of cases, the rule of law that applies is obvious and clear and simply to subsume the facts of the case under the rule and draw the consequence automatically. But situations may arise where the law is not clear, it may have different shapes, some clouding the decision process. This mechanical type of reasoning may lead to injustice in individual cases. But in uncertain cases, the court will be tempted to break the new ground. Rylands v. Fletcher (1868) LR 3 HL 330, is a typical example. These kinds of situations may arise in actions in torts.

24. Rylands v. Fletcher (1868) LR 3 HL 330, was a case where there was no rule already in existence to the effect that if a person accumulates on his land anything likely to do harm if it escapes, then he is liable if it escapes and causes damage and the court''s problem in that case is to develop just such a rule. To formulate a rule on the basis of existing rules and precedents to apply to novel situations is really difficult and once a rule is formulated, it may be possible to apply the syllogism automatically. But, in cases creating such a situation, the chief difficulty is to establish the premises of the syllogism. There may be other kinds of cases where the general rule may be well established, but it will be difficult and doubtful whether the facts presented before the court bring it within the rule. These types of cases occur usually with reference to statutory interpretation.

25. Salmond has pointed out a case of uncertainty thus: "A statute may lay down a clear rule concerning driving without insurance, but the case before the court may raise the question whether it will apply to a case where the defendant was steering a car on tow." The question is whether the rule applies or not. There are other interesting cases in English Law. The common law provided that if a wild animal escapes and does damage, then the person in control of the animal is liable. M. Quaker v. Coddard (1940) 1 KB 687, posed the problem whether a camel can be qualified as a wild animal for the purpose of the rule. Behrens v. Bertrom Mills Circus Ltd. (1957) 2 QB 1, posed another situation, whether a trained circus elephant came within the abovesaid rule.

26. In Rylands v. Fletcher (1868) LR 3 HL 330, there were rules regarding the escape of cattle and various other things and from these rules, by the process of induction, the court laid down the dictum in Rylands v. Fletcher (supra). Certainly the most important factor for the decision process is to take into account the existing law, precedental and statutory. An element of law making is ingrained in the decision process. In the case of legislation, it starts with a clean slate and gives power to frame whatever rules policy suggests, but in the case of judicial law making process, if it can be called thus, it can be worked only within the framework of exising law and will limit the range of answers which the judge can give. Certainly, the persuasive authorities of precedents would help the court to shape the decision on closely related topics.

27. In Donoghue v. Stevenson (1932) AC 598, a case in torts, the House of Lords decided that a manufacturer owes a duty of care to the ultimate consumer. To lay down this principle, the House of Lords referred to Lord Dunedin, "a peculiar duty to take precaution imposed upon those who send forth or install such articles when it is necessarily the case that other parties will come within their proximity". It was said that the principle depends upon the fact that the knowledge of the danger creates the obligation to warn and its concealment is in the nature of fraud. But, the case in Donoghue v. Stevenson (supra) related to ginger beer and it was difficult to suggest that ginger beer was an article dangerous in itself and Lord Dunedin''s principle attaches only to such articles.

28. It is interesting to note that the principle of Donoghue v. Stevenson (1932) AC 598, was extended in Malfroot v. Noxal (1935) 51 TLR 551. In that case, plaintiff was the owner of a motor cycle to which, a few days previously, the defendants had fitted a side-car. The plaintiff was on the motor cycle and a lady was in the side-car. Then the combination was driven along a public road, the side-car became detached from the motor cycle. Both the owner and the lady who was a passenger in the side-car sustained personal injuries. In an action for damages, the defendants were found guilty of negligence in fitting the side-car to the motor cycle and that they were liable to the male plaintiff in contract and in tort and to the female plaintiff in tort. Clearly, the two cases-Donoghue v. Stevenson (1932) AC 598 and Malfroot v.

Noxal (1935) 51 TLR 551-are different, yet close enough for the court to apply the rule concerning manufacturer''s liability to the case of repairers. This process of decision making is not judicial legislation. It is applying a principle on similar facts and making certain new rules by precedents, which would promote consistency and uniformity in law and develop in fact broad principles which would serve for resolving complicated similar circumstances.

29. In Marine & Genl. Ins. Co. Ltd. v. Dr. Balkrishna Ramachandra Nayan 1976 ACJ 288 (Bombay), a Division Bench of the Bombay High Court had occasion to consider the nature of the liability of the defendant in a case where compensation is claimed as a result of the injury suffered by the use of a motor vehicle. The two learned Judges wrote separate judgments. Though this judgment was appealed against and confirmed by the Supreme Court, the principle laid down in this judgment was heavily criticised and expressly dissented by the Supreme Court. A novel approach in regard to the foundation of the liability to compensation for a victim was enunciated by the learned Judges of the Bombay High Court. The claims for compensation in accidents caused by motor vehicles have been made the subject-matter of a particular statutory provision. But, the right to claim compensation was left under the law of Torts. This was seriously doubted by the Bombay High Court. The Division Bench, considering a catena of decisions, came to the conclusion that the provisions of the Act, though seemingly procedural in nature, are substantive in character and conferred rights on the victims of motor accidents. Further, the Division Bench said a tortious liability generally arises on the basis of a default in not taking care of a duty, which a person owes to the general public or to individuals and always required an element of fault, which was later on considered to be, in the circumstances of accident cases, as negligence. The Supreme Court did not agree with this theory. There was conflicting view as regards the fundamental theory regarding tortious liability. We do not want to go into that question elaborately, but we would like to refer to one decision of Lord Denning, articulating a novel approach. In Dutton v. Bognor Regis United Building Co. Ltd. (1972) 1 All ER 462, Lord Denning, M.R. observed:

This case is entirely novel. Never before has a claim been made against a council or its surveyor for negligence in passing a house. The case itself can be brought within the words of Lord Atkin in Donoghue v. Stevenson (1932) AC 598, but it is a question whether we should apply them here. In Home Office v. Dorset Yacht Co. Ltd. (1970) 2 All ER 294, Lord Reid said that the words of Lord Atkin expressed a principle which ought to apply in general unless there is some justification or valid explanation for its exclusion. So did Lord Pearson. But Lord Diplock spoke differently. He said that it was a guide but not a principle of universal application. It seems to me that it is a question of some policy which we as Judges have to decide. The time has come when in cases of new import, we should decide them according to the reason of the thing.

In another case, Nettleship v. Weston 1972 ACJ 115 (CA, England), Lord Denning, M.R. observed thus:

The high standard thus imposed by the judges is, I believe, largely the result of the policy of the Road Traffic Act. Parliament requires every driver to be insured against third party risks. The reason is so that a person injured by a motor car should not be left to bear the loss on his own, but should be compensated out of the insurance fund. The fund is better able to bear it than he can.

30. In State of Punjab v. V.K. Kalia 1968 ACJ 401 (P&H), a case arose where one K, a Superintendent of Police, while on official tour, received injuries as a result of the accident of the official jeep registered in his name and under his control and at the relevant time the jeep being in un-roadworthy condition, being driven by the constable, the cause of accident being worn out tyres and tubes and slippery road due to rainy day, the note of K and his driver amounted to offence u/s 121 of the Motor Vehicles Act and in the absence of proof of negligence on part of the State or Controller of Stores, K was found not entitled to claim compensation from the State. In this case, the question of absolute liability was considered. Absolute liability inheres in it liability without any fault or negligence, on the part of the respondent. It is an exceptional liability under the common law. The general rule being that a person is liable only for the injury or harm directly flowing from his intention or negligence and not for any harm resulting from an unavoidable accident. Of course, certain acts create absolute liability on certain employers towards their employees. It was very strongly contended that though under the general law, the concept of absolute liability is not the ordinary rule, the concept of absolute liability is not alien to the legislative intent. When the legislature wanted a speedy and effective remedy to meet a dangerous phenomenon, viz., by the proliferation of the use of motor vehicle, innocent third parties are under a serious risk of their lives and are susceptible to be inflicted with injuries, the question of negligence was purposely omitted in the provisos empowering the Claims Tribunal to award compensation to persons who are injured or to the legal representatives of the persons who lost their lives on account of accidents caused by the use of the motor vehicles.

31. It has to be noted that there is nothing under Sections 110,110-A, 110-B or 110-C of the Act, which postulates that compensation can be awarded by the Claims Tribunal only when negligence on the part of the driver of the vehicle concerned is established. These sections deal with adjudication of compensation for the injury sustained by a person or compensation to be paid to the legal representatives or dependants of a deceased person, in an accident involving the use of the motor vehicle. It was contended that these provisions, however, do not lay down any criterion for awarding compensation. It is not strictly correct to say that no criterion is given for awarding compensation. Section 110-B directs the Tribunal to adjudicate the application filed u/s 110-A and to determine the amount of compensation which appears to the Tribunal to be just. Nothing more is said to indicate that the cause of

action is based on negligence. Section 110 postulates an application for compensation to be decided by the Tribunal in all cases where death or injury is caused from an accident involving the use of a motor vehicle. Sarkaria, J., as he then was, however, said in State of Punjab v. V.K. Kalia 1968 ACJ 401(P&H), that the provisions contained in the Act are not complete in regard to the adjudication of the liability. It only substitutes Motor Accidents Claims Tribunal for the civil courts for adjudicating claims for compensation in respect of a particular kind of accident involving death of, or bodily injury to, persons arising out of the use of motor vehicle. The Act does not deal with questions as to who is to be held liable and in what circumstances, if an injury should result from an accident. When there is no guidance for fixing liability in the statutory provisions, naturally the Tribunal has to go back to the law of Torts and according to which, generally speaking, a wrong act or default of a general duty to the public or group of persons or an individual/individuals in causing the accident is essential to make the person liable.

32. In Ram Pertap Vs. General Manager, Punjab Roadways, Ambala, Dua, J. observed that when death or bodily injury has been caused to a person by the use of motor vehicle and for directing payment of compensation, negligence, or failure to take the requisite amount of care required by law has to be established as against the person against whom the relief is sought by the claimants. Certainly, we have to advert to the decision of the Supreme Court in Minu B. Mehta v. Balkrishna Ramchandra Nay an 1977 ACJ 118 (SC), which is an obiter dictum and in which it considered the question of absolute liability at great length. The judgment was rendered by three Judges, A.N. Ray, C.J., M.H. Beg, J. and P.S. Kailasam, J. In the judgment prepared by Kailasam, J. to which the other two Judges agreed, the court observed as an obiter dictum after confirming the judgment of the Bombay High Court reported in Marine and General Insurance Co. Ltd. v. Dr. Balakrishna Ramachandra Nayan 1976 ACJ 288 (Bombay), wherein the Judges who have written separate judgments discussing elaborately and holding that an injury resulting from an accident involving the use of a motor vehicle on public road will constitute the basis of a liability to pay compensation and that it is not necessary to prove any negligence on the part of the driver, the Supreme Court expressed its dissent on the propositions laid down by the two Judges of the Bombay Hogh Court. The Supreme Court also noted that the Andhra Pradesh High Court also took a similar view in Haji Zakaria v. Naoshir Cama 1976 ACJ 320(AP). The Andhra Pradesh High Court in effect said that the use of motor vehicles in public place is an act which gave rise to absolute liability on the part of the owner and no particular act of negligence need be proved. We hasten to add that this proposition has not been accepted by the Supreme Court.

33. The Supreme Court considered the introduction of the compulsory insurance for motor vehicles in order to cover the risk that is involved in the use of the motor vehicles under Chapter VIII of the Act. The provisions of Chapter VIII of the Act are based on three English Acts, viz., Road Traffic Act, 1930; the Third Parties (Rights

Against Insurers) Act, 1930; and the Road Traffic Act, 1934. Before a person can be made liable to pay compensation for the injuries and damage which have been caused by his action it is necessary that the person damaged or injured should be able to establish that he has some cause of action for establishing the liability can arise out of common law or for breach of rights or infringement of rights created by statute. It was held that the provisions of the Act did not create any right to a person injured by the use of a motor vehicle against the owner of the vehicle without proving negligence. It has to be noted that in order to succeed in any action for negligence, the plaintiff must prove that the defendant had in the circumstances a duty to take care and that duty was owed by him to the plaintiff and that there was a breach of that duty and as a result of the breach damage was suffered by the plaintiff. The vicarious liability, of course, depends upon the fact that the conduct of the servant when the servant is proved to have acted negligently in the course of his employment, has caused damages to a person. Apart from this vicarious liability, an owner cannot be fastened with liability simply for the reason that he owned a motor car and an accident was caused not on account of any negligence on the part of the owner or the driver, when it was used. The Supreme Court was relying on the insurer''s liability policy, because the Act provided that a third party can seek relief against the insurer also under the provisions of the Act.

34. The Supreme Court did not accept the contention that negligence need not be proved on the basis that Chapter VIII of the Act is a consolidating and amending Act relating to accidents by the use of motor vehicles. It was contended that if any injury is caused to a third party arising out of the use of a motor vehicle in a public place and as such it contains the entire law, procedural as well as substantive and that the common law or law of Torts is no more applicable and that if death or bodily injury arises out of the use of motor vehicles in a public place, a liability is fastened to the owner. Reliance placed on Section 110-A of the Act, which provides for an application for compensation arising out of an accident to the Claims Tribunal and the provisions contained in Section 110-B, which provide for holding an enquiry and to make an award determining the amount of compensation, which appears to be just were found not to be sufficient by the Supreme Court for fastening a liability on the owner. The Supreme Court said the basic requirement for holding the owner liable to pay the compensation is failure to discharge duties cast on him by law and that the right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. The Supreme Court also said that the general law applicable is only common law and law of Tons.

35. It was further held that the plan that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle in a public place without proof of negligence if accepted will lead to strange results. The Supreme Court quoted the dictum laid down in the judgment of Vaidya, J. of the Bombay High Court. Vaidya, J. observed thus:

It is not necessary to discuss all these cases because, in my view, in none of these cases, was the question agitated as to what exactly was meant by tort in the context of automobile accidents and injuries resulting therefrom, for which more often than not human minds, hands or legs are not always accountable, in the later half of the twentieth century. The question has engaged the minds of jurists all over the common law world.

Vaidya, J. also adverted to the principle that public good requires that everyone injured, viz., by the use of motor vehicle, must immediately get compensation for the injury. Every person has a right to safety and security of his person irrespective of fault or negligence or carelessness or inefficient functioning of the motor vehicles. Every person has a right to claim compensation as that is the only way of remedying the injury caused to him in a modern urbanised, industrialised and automobile-ridden life. The Supreme Court did not accept the theory propounded by Mridul, J. and Vaidya, J. of the Bombay High Court that Section 95(1)(b)(i) and 95(1)(b)(ii) of the Act must not be disintegrated and must be held to contain the same liability of the owner. Though the wording of the two clauses is different, according to Mridul, J. it is inconceivable that legislature would intend absolute liability in cases covered by Clause (ii) and not in cases covered by Clause (i). The Supreme Court very categorically and plainly said that the reasoning of the two learned Judges is unacceptable as it is opposed to basic principles of the owner''s liability for negligence of the servant and is based on a complete misreading of the provisions of Chapter VIII of the Act. It also observed that the High Court''s seal for what is considered to be protection of public good has misled it into adopting a course which is nothing short of legislation. The Supreme Court also considered the view expressed by the Andhra Pradesh High Court in Haji Zakaria v. Naoshir Cama 1976 ACJ 320 (AP) and said that the dictum laid down by the A.P. High Court is not acceptable. A decision of our High Court reported in Kesavan Nair v. State Insurance Officer 1971 ACJ 219 (Kerala), was also referred to by the Supreme Court, wherein Krishna Iyer, J., as he then was, observed thus: "Out of a sense of humanity and having regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurer." Adverting to the above observations of Krishna Iyer, J., the Supreme Court said modern legislation has provided insurance cover for all air and rail passengers and recently by amendment of Section 95 of the Act against death or bodily injury to passenger of a public service vehicle caused by or arising out of the use of a vehicle in a public place.

36. Counsel for the respondents submitted that the obiter dictum of the decision in Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 (SC), should be tested in the light of the observations contained in M.K. Kunhimohammed v. PA. Ahmedkutty 1987 ACJ 872 (SC). Certainly, the obiter dictum of the Supreme Court is binding on this Court. Bearing that in mind before considering the decision reported in M.K. Kunhimoltammed v. PA. Ahmedkutty 1987 ACJ 872 (SC), we shall advert to

certain other decisions which may support the case of a statutory liability quite independent of a tortious liability.

37. For understanding this aspect, of the matter, it is quite necessary also to advert to certain provisions of the Act, of course, already adverted to by us. Section 94(1), Section 110, Section 110-A, Section 110-B and Section 110-C are relevant in this context. Section 94(1) maintains that no person shall use except as a passenger, or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter VIII. The Supreme Court has said that the provisions in Chapter VIII are an adoption of the relevant provisions of the English Acts-Road Traffic Act, 1930; the Third Parties (Rights Against Insurers) Act, 1930; and the Road Traffic Act, 1934. The interpretation of Section 35(1) of the English Act was the subject-matter of several decisions of English courts. One of the most important cases which focuses light on the question was whether a provision like Section 94(1) itself will create a liability on the owners of the motor vehicles apart from the general liability under torts. The facts in Monk v. Varbey (1935) KB 75, are very interesting. One Monk was injured in a car accident. The car belonged to one Varbey. Varbey''s friend, one Knowles, had borrowed the car from Varbey and he asked one May to drive it for him. May and Knowles were not covered by third party liability insurance. Varbey''s policy also did not cover the use of a car by Knowles and May. Monk sued Varbey basing his claim against Varbey upon the alleged breach of Varbey of his statutory duty u/s 35(1) in having caused or permitted his motor car to be used in breach of the sub-section. Charles, J. upheld the claim on the grounds that Section 35 imposed a duty and that injury to any person on road in breach of the said section could be relied upon as a cause of action. In appeal, the judgment of Charles, J. was affirmed. The Court of Appeal ruled that the owner can be sued for breach of statutory duty and the injured need not first sue the uninsured person who caused the accident. The dicta in Monk''s case (supra) was followed by Goddard, J. in Richards v. Port of Manchester Ins. Co. (1934) 50 LI LR 88. By stressing the reasoning given in Monk v. Varbey (supra) and taking Section 94(1) of the Act as the base, it is possible to hold that Section 94(1) creates a statutory obligation, the breach whereof is enforceable by an appropriate action in an appropriate forum constituted in that behalf.

38. Of course, it is in relation to a breach of certain statutory obligations provided in a particular provision. But here an injured is seeking compensation on the basis of the statutory obligation regarding the breach of certain conditions in the matter of use of the vehicle. This is an indication that in a motor accident by virtue of certain provisions in the Act, particularly provision like Section 94(1), a cause of action can be pinned upon apart from a cause of action under the general law of Torts. Shaverose on Motor Insurance, 2nd Edn., tells us "it was held in Monk v. Varbey (1935) KB 75and in several later cases that a breach of this statutory duty is a

wrongful act giving rise to a claim for damages by a third party who is injured through the use of a motor vehicle in breach of the duty". The emphasis is on the fact that compensation for injury suffered by a person on account of the use of a motor vehicle can be obtained not basing the claim on a cause of action under the general law of Torts.

39. In Section 95 of the Act alone out of the several important and relevant sections on this question, the word ''liability'' is used. Section 95 deals with requirements of policies and limits of liabilities. There is Clause (b)(i) of Sub-section (1) in which it is provided that in order to comply with the requirements of Chapter VIII, a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

40. Though the word liability is used as the liability of the owner it is significant to note that the policy should cover the liability arising not on account of the negligent use of the vehicle, but simply a liability that arises by the use of the vehicle in a public place, which results in the death of or bodily injury to any person. The section does not contemplate anything like a breach of a general duty or lack of required care and diligence or to any forthright existence of negligence to create a liability. The insurance policy is required to meet the liability of the owner on account of the use of the vehicle which resulted in an accident. So, the use of the vehicle and the accident would be sufficient to attract the liability. The owner is impliedly made liable u/s 95 without impliedly or expressly asking negligence as a necessary integrant to fasten the liability on the owner. This position is articulated more clearly, when we consider Section 110-B read with Section 110.

41. The Tribunal''s function is to adjudicate upon claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles-vide Section 110. The process and the finale of the adjudication is delineated in Section 110-B. It only said that after enquiry, giving the parties an opportunity to be heard, the Tribunal should determine the amount of compensation which appears to it to be just. Nowhere it is stated that in determining the compensation, the Tribunal should be satisfied with the cause of action based on the general law of Torts. These provisions are paramountly intended to ensure safety to the people, who are subjected to certain dangers on account of the use of motor vehicles. In Sections 109, 110, 110-A and 110-AA, the legislature used the expression "claim compensation in respect of an accident arising out of the use of a motor vehicle" [Section 109]. Claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles [Sub-section (1) of Section 110] for compensation arising out of an accident of the nature as specified in Sub-section (1) of Section 110 and a

claim for compensation under this Act [Section 110-AA].

42. In all these provisions, significantly, there is absence of an element of negligence. The legislature has simply used the words ''arising out of the use of the vehicle''. It is meaningful to note that the legislature is not using the words arising out of carelessness or negligence or with an adjective, which even remotely imply a negligent use of the motor vehicle. So use of motor vehicle with utmost care also may cause an innocent person lifelong enduring trauma. A motor vehicle may, when used with all possible care, skid on account of a sudden shower in a smooth laned road. No one can say that the accident was caused which resulted in an injury or death of a person on account of the skidding which is relatable to proper care or diligence. Much less to say that it is on account of the negligence of the owner or his driver. Perhaps, the life of an innocent person, who is absolutely not blameworthy in any way, is taken away only by reason of the use of the motor vehicle and not of any negligence or carelessness or proper attention of the owner or the driver of the vehicle. Instances like these can be multiplied. But we stop it here. We have no option to oscillate to develop such an approach, since the Supreme Court in Minu B. Mehta''s case 1977 ACJ 118 (SC), has observed definite views on the subject in its obiter dictum. The Supreme Court has taken the view that this aspect of the matter has been taken note of by the legislature by providing for such a contingency in Section 92-A in Chapter VII-A dealing with liability to pay compensation in certain cases on the principle of no fault. Certainly u/s 92-A (3) it has been made clear that the claim for no fault compensation provided under Sub-section (1) does not require to plead and establish that death or permanent disablement was due to any willful act, negligence or default of the owner or owners of the vehicle/s concerned or of any other person. Further, Sub-section (4) provides that such a claim shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

43. Sub-section (4) of Section 92-A is significant. It is more significant when we read Section 92-B which provides that the right to claim compensation u/s 92-A in respect of death or permanent disablement of any person shall be in addition to any other right (hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provisions of this Act or of any other law for the time being in force. Of course, from Section 92-B it is possible to see that the legislature has postulated two kinds of claims-one claim on the basis of no fault and the other claim on the principle of fault. It is possible to advance an argument that in the provisions contained in Chapter VIII to claim compensation, though not specifically mentioned, there is only a right to claim compensation on the principle of fault. By virtue of Section 92-B the principle of fault is impliedly ingrained in those sections, particularly so, because in Section 92-E it is made clear

that the provisions of Chapter VII-A shall have effect notwithstanding anything contained in any other provisions of the Act or of any other law for the time being in force.

44. There are several decisions which have taken the view that the absolute liability on the part of the owners of the motor vehicles to compensate an injured or the claimants of the person killed in an accident is confined to Section 92-A of the Act and that itself insulates the principle of fault or wrongful act for claiming additional compensation in addition to the compensation u/s 92-A of the Act. We only catalogue two of the decisions which have taken the view that wrongful act is necessary for basing a claim other than a claim u/s 92-A. They are: Mohammed Habibullah v. K. Seethammal 1966 ACJ 349 (Madras) and Perumal v. G. Ellusamy Reddiar 1974 ACJ 182 (Madras). Since the Supreme Court in a considered obiter dictum has categorically adopted the view that negligence is necessary to be proved before the owner of the vehicle or the insurance company can be made liable in law to pay compensation, the Bombay High Court''s decision in Marine & General Insurance Co. Ltd. v. Dr. Balakrishna Ramachandra Nayan 1976 ACJ 288 (Bombay) and the Andhra Pradesh High Court''s decision in Haji Zakaria v. Naoshir Cama 1976 ACJ 320 (AP), are of no assistance in this case.

45. Before completing the discussion on this matter, knowing fully well that the exposition of law by the Supreme Court in the obiter dictum in Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 (SC), is clear and unambiguous, we are obliged to refer to a later decision of the Supreme Court which has referred to Minu B. Mehta''s case 1977 ACJ 118 (SC). In Gujarat State Road Transport Corpn. v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC), the Supreme Court has made certain observations, which would indicate that the provisions in Chapter VIII of the Motor Vehicles Act are creating substantive rights. The Supreme Court said that Chapter VIII of the Motor Vehicles Act provides for a forum alternative to that provided under the provisions of the Fatal Accidents Act for realisation of compensation payable on account of motor vehicle accidents and its provisions are substantive and not merely procedural in nature. They substantially affect the rights of the parties. As the right of action created by the Fatal Accidents Act "was new in its species, new in its quality, new in its principles, in every way new", the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act. New situations and new dangers require new strategies and new remedies.

46. The abovesaid observations of the Supreme Court are said to be contrary to the observations made in Minu B. Mehta''s case 1977 ACJ 118 (SC), the obiter dictum. This is the editor''s note of the journal ''Supreme Court Cases''. But in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, ,

the Supreme Court said that the provisions contained in Section 92-A of the Act give a special right to the victims of accidents or representatives of the deceased persons and to that extent the substantive law of the country stands modified. The obiter dicta of the Supreme Court in Minu B. Mehta''s case (supra) was considered by the Supreme Court in Gujarat State Road Trans. Corpn. v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC). In para 8 of the judgment, the Supreme Court, in dealing with an argument that the provisions in Chapter VIII of the Act are merely procedural in character, under which an alternative forum is created for deciding the question of compensation payable in respect of injuries and death caused on account of motor vehicle accidents and that they have not modified in any manner the substantive law governing the said question, said:

In that case [Minu B. Mehta''s case 1977 ACJ 118 (SC)], this Court affirmed the finding of the High Court that the motor vehicle accident which was the cause of the death in that case has happened on account of the negligence of the driver of the vehicle and hence damages were payable to the claimant therein and this Court observed that the said finding was sufficient to conclude the judgment but the court felt that it was desirable to deal with the question of law that had been dealt with at considerable length by the High Court as to whether it was incumbent on the claimant to prove negligence on the part of the driver of the motor vehicle before he would be entitled to compensation.... The learned Judges of this Court were, however, of the view that the above observation was inconsistent with the law of the land and that no damages could become payable without proof of negligence on the part of the driver of the motor vehicle involved in the accident. They further observed that provisions of Chapter VIII of the Act were merely procedural and had not altered the substantive law. With great respect it should be observed that the observations of this Court on the above question were in the nature of obiter dicta since as already stated there was no necessity to go into the question whether proof of negligence on the part of the driver of the motor vehicle was necessary or not to claim damages under Chapter VIII of the Act....

47. With due respect, we would say that it is not absolutely impossible to imply a disaffirmation by the Supreme Court itself as regards the obiter dicta in Minu B. Mehta''s case 1977 ACJ 118 (SC).

48. In para 8 of the judgment, the Supreme Court has observed that it is not correct to say that the provisions of Chapter VIII of the Act are merely procedural. In para 9, the Supreme Court observed that:

...Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicle accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher (1868) LR 3 HL 330.... Where a pedestrian without negligence on his part is injured or

killed by a motorist, whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if the principle of social justice should have any meaning at all.

But, the Supreme Court added that in order to meet the above social demand on the recommendation of the Indian Law Commission, Chapter VII-A was introduced in the Act. So, as it is, the position is clear that though in regard to compensation claimable under Chapter VII-A, the claimant, if injured, need not prove the negligence of the owner of the vehicle and also there cannot be any defence for the owner that the injured or the deceased, as the case may be, was negligent or at fault.

49. We feel that it is a possible view that when Section 92-A contemplates a positive and negative aspect, the other provisions which enabled the injured or the legal representatives of the deceased to claim compensation for the use of motor vehicle; (Sic.) but it involves a negative aspect, viz., the owner can escape liability by proving fault on the part of the deceased or injured.

50. While holding the principle laid down by the Bombay High Court in Marine and General Insurance Co. Ltd. v. Dr. Balakrishna Ramachandra Nay an 1976 ACJ 288 (Bombay), is basically wrong, the Supreme Court in para 28 of the judgment in Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 (SC), said that:

The owner''s liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a Tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of Torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle in a public place without proof of negligence if accepted would lead to strange results.

51. It is significant to note that even though the Supreme Court has not accepted the novel approach made by the Division Bench of the Bombay High Court, the Supreme Court has made it very clear that the owner has got a liability and that it arises out of his failure to discharge a duty cast on him by law. It is possible to put the case now at hand under the principle that the owner has failed to discharge a duty cast on him by law insofar as he has entrusted a vehicle with mechanical defects to a driver for a hazardous journey in a precarious track over which the lorry has to be driven. There is ample evidence in this case that the accident occurred on account of mechanical failure. There is a clear finding that the accident happened

not due to the rashness and negligence of the driver. He happened to be an innocent victim. The insurer is liable to pay the compensation under the Workmen''s Compensation Act, on the facts now revealed in the case, if the widow and children had approached the Commissioner under the Workmen''s Compensation Act. Of course, the determination of compensation will be under a different method. The question of negligence may not be of any importance for the determination of compensation under the Workmen''s Compensation Act and in this case, there is no question of negligence also. We feel that certainly the widow and children and mother of the deceased are entitled to substantial compensation under the Workmen''s Compensation Act.

52. The statute (Motor Vehicles Act) gives an option to the injured or the legal representatives of the deceased workman, to approach the Claims Tribunal under the Workmen''s Compensation Act for determination of compensation. The remedy is either under the Workmen''s Compensation Act or under the Motor Vehicles Act, but not under both. There are certain decisions which have taken the view that when once the workman or the legal representatives of the deceased workman has/have opted the forum of the Claims Tribunal under the Motor Vehicles Act, he/they cannot have recourse before the authority under the Workmen''s Compensation Act. Anyhow, the insurer is liable to indemnify the owner if he is found liable to pay any amount either under the Workmen''s Compensation Act or under the Motor Vehicles Act. The provision giving option, viz., Section 110-AA did not and shall not contemplate negligence as a necessary integrant for claiming compensation by a workman. It only gives the workman or the legal heirs of the deceased workman a different forum. This is also an aspect to be considered in determining the question whether all the ingredients to fasten the liability in a tortious act are necessary for attracting the liability to pay compensation by an owner to his workman who happened to be a victim of a motor accident, without his negligence. When the option is given to an injured workman or to the legal representatives of the deceased workman to claim a just compensation u/s 110-B of the Act, it is possible to say that the question of negligence is not there, unless and until it creates a defence to the owner to escape the liability. We are of opinion that accepting that part of the principle laid down by the Supreme Court in Minu B. Mehta v. Balkrishna Ramchandra Nay an 1977 ACJ 118 (SC), the owner is liable to compensate the driver on the principle that he has failed to discharge a duty cast on him by law and also on the principle that the owner is liable to the legal representatives of a deceased workman, if the workman dies in the course of employment, not on account of his negligence.

53. The inference from the finding of the Tribunal is that the vehicle was not road-worthy. The owner has got an obligation to put his vehicle on a public road only if it is roadworthy. The evidence also indicates that the accident took place only on account of the bad condition of the vehicle and not on account of the negligence of the driver.

54. The first respondent is a widow aged 27. Respondent Nos. 2 and 3 are the minor children of the deceased, aged 10 and 7 respectively. Respondent No. 4 is the mother of the deceased. The deceased was aged 30. He was earning, according to the respondents, an amount of Rs. 50/- per day. The Tribunal has examined the admission register and the Tribunal found that he was born on 8.10.1953 and was 29 years old. The Tribunal has fixed the quantum of dependency at Rs. 750/- per month and found that it can be continued at least for 30 (Sic. 20) years more and so, the total income that could have been obtained by the respondents, if the deceased had lived, is Rs. 1,80,000/-. The Tribunal has also taken note of the accelerated payment and imponderables, in determining the final amount to be paid as compensation to the respondents. For loss of consortium to a widow of 28 and for paternal care and affection to the two children and for the protection and care of an old mother, the Tribunal thought that it has to award reasonable compensation. But, the Tribunal has fixed a global figure and awarded only an amount of Rs. 1,50,750/-. As regards the quantum of compensation before us, the appellants did not advance any argument and they also accept it as reasonable.

55. In the result, we confirm the award passed by the Tribunal and dismiss the appeal. In the circumstances of the case, we do not order costs.