

(2010) 12 MAD CK 0168

Madras High Court

Case No: C.M.A. No. 1788 of 2006

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Rangammal and Others

RESPONDENT

Date of Decision: Dec. 21, 2010

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 2(1)
- Civil Procedure Code, 1908 (CPC) - Section 2(1), 2(11)
- Fatal Accidents Act, 1855 - Section 1A, 2
- Hindu Succession Act, 1956 - Section 8
- Motor Vehicles Act, 1988 - Section 110A, 140, 163A, 165(1), 166
- Penal Code, 1860 (IPC) - Section 304A

Citation: (2011) 2 MLJ 819

Hon'ble Judges: S. Manikumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S. Manikumar, J.

Being aggrieved by the finding regarding negligence fixed on the driver of the Van, bearing Registration No. TN 45 0126, owned by the third Respondent and insured with the Appellant-Oriental Insurance Company, Coimbatore, and the quantum of compensation awarded to the Respondents 1 and 2, the present appeal has been filed by the Appellant-Insurance Company. According to the Appellant-Insurance Company, the claim petition itself is not maintainable, as the Respondents/claimants were not dependents on the income of the deceased.

2. Facts leading to the appeal are as follows:

Respondents 1 and 2/claimants, aged 57 and 50 years, claiming themselves to be the brother and sister of the deceased, have stated that on 15.8.2000, about 15.15

Hours, when their sister/deceased was walking on Metturpalayam to Nellidurai Road, near Amman Virunthinar Mandapam, in front of Sukku Coffee Shop, Mettupalayam, a van bearing Registration No. TN 45 0126, owned by the third Respondent and insured with the Appellant-Insurance Company, driven by its driver in a rash and negligent manner, came in the same direction, dashed against their sister, Marakkal and though she was given intensive treatment in Government Hospital, Mettupalayam, she died. It is the case of the Respondent/claimant that at the time of accident, the deceased was aged 55 years and as a coolie, earned Rs. 3,000/- per month. FIR was lodged and that a case in Cr. No. 524 of 2000 has also been registered against the driver of the Van, u/s 304(A) IPC, on the file of the Mettupalayam Police Station. Claiming themselves to be the legal representatives and dependent on the income of the deceased, the Respondents/claimants have preferred a claim petition for compensation of Rs. 5,00,000/-.

3. The owner of the van remained ex parte, before the Tribunal.

4. Disputing the manner of accident, the Appellant-Insurance Company inter alia contended that the accident has occurred due to the contributory negligence or the deceased, who without noticing the van, coming on the road, had suddenly crossed the road and invited the accident and therefore, they submitted that the award should be apportioned, if it is proved that the Insurance Policy of the said van was valid and effective at the time of accident. They also submitted that the Respondents/claimants have to prove the rash and negligent driving of the vehicle. In addition to the above, the Company also submitted that the driver of the van did not have any valid and effective driving licence to drive the particular type of vehicle, which was involved in the accident. The abovesaid act is in violation of Section 3 of the Motor Vehicles Act and the terms and conditions of the Insurance Policy. Without prejudice to the above, they also disputed the age, avocation, income of the deceased and the compensation claimed under various heads. The Appellant-Insurance Company also filed an additional counter affidavit, contending inter alia, that the deceased was aged more than 60 years and not 55 years, at the time of accident, as alleged in the claim petition and that the deceased was not a coolie, but a beggar and used to get only Rs. 30/- per day. It is also their contention that as the Respondents/claimants are not dependents of the deceased, they are not entitled to make a claim for compensation.

5. Before the Tribunal, bother of the deceased examined himself as P.W. 1 and reiterated the manner of accident. P.W. 2, is said to be the eye-witness. Exhibit P-1 - FIR, Exhibit 2 - Motor Vehicles Inspector's Report, Exhibit P-3-Post-Mortem Certificate and Exhibit P-4 - Legal Heir Certificate were marked on the side of the Respondents/claimants. No oral and documentary evidence has been let in on behalf of the Appellant-Insurance Company.

6. The Tribunal, on evaluation of pleadings and evidence, found that the accident has occurred due to the rash and negligent driving of the van, owned by the third

Respondent and insured with the Appellant-Insurance Company. The Tribunal, on the basis of the entry, in Exhibit P-3 - Post-Mortem Certificate, has determined the age of the deceased, as 55 years and in the absence of any proof, the Tribunal has fixed the monthly income of the deceased at Rs. 2,000/- . Having regard to the age of the deceased, the Tribunal applied "11" multiplier and after deducting 1/3 rd towards personal and living expenses, computed the dependency compensation at Rs. 1,76,000/- . In addition to the above, the Tribunal has awarded Rs. 10,000/- for loss of love and affection and Rs. 2,000/- for funeral expenses. Altogether, the Tribunal has awarded a sum of Rs. 1,88,000/- with interest at the rate of 9% per annum from the date of claim till the date of realisation.

7. Inviting the attention of this Court to the contents of Exhibit P-1 - FIR given by a Ward Member. Mr. M. Rajasekar, learned Counsel for the Appellant submitted that the deceased was only a beggar and not a labourer, as claimed by the Respondents/claimants and in the absence of any document to prove the relationship of the deceased with Respondents 1 and 2, the claim petition itself ought to have been dismissed. He further submitted that when P.W. 2, witness to the accident, has categorically admitted that he did not know the deceased and the Respondents/claimants and even did not remember the colour and description of the vehicle, which hit the deceased on the date of accident, the Tribunal ought to have disbelieved his version and consequently, held that there was no accident, at all causing the death of the woman. He also submitted that as both the Respondents/claimants, were aged 57 and 50 years respectively and certainly, they cannot be said to be dependents on the deceased and in the absence of any document to prove that their relationship, the Tribunal ought to have rejected their case and dismissed the claim petition.

8. Placing reliance on a decision in Tata AIG Genl. Insurance. Co. Ltd. v. P. Balakrishna Reddy and Ors. 2009 (1) TNMAC 205 (DB), I learned Counsel for the Appellant-Insurance Company submitted that Exhibit P-1 - FIR, ought not to have been given credence, as to the manner of accident, especially, when there is noticeable incongruity in the avocation as pleaded by the Respondents/claimants.

9. On the aspect that the Respondents/claimants are not entitled to make a claim for compensation, as they are not Dependents on the deceased and that they are entitled only to claim compensation under "No Fault Liability", learned Counsel for the Appellant-Insurance Company relied on the decisions in Smt. Manjuri Bera v. Oriental Insurance Co. Ltd. AIR 2007 SCW 1962 : (2007) 4 MLJ 906 and G. Deivasigamani v. Metropolitan Transport Corporation Ltd. (2008) 1 MLJ 1107 and prayed to set aside the award.

10. Per contra, justifying the quantum of compensation awarded to the Respondents/claimants. Mr. S.S. Swaminathan, learned Counsel for the Respondents/claimants submitted that the findings of the Tribunal, regarding negligence has been rendered on a proper analysis of pleadings and evidence and

that the same cannot be said to be manifestly illegal or perverse, warranting interference. He further submitted that when Exhibit P-4, Legal Heir Certificate, has been produced to prove the relationship of the Respondents/claimants, with the deceased, they are entitled to represent the estate and in the absence of any specific bar in the Motor Vehicles Act, the Respondents/claimants are entitled to claim compensation. Since the deceased was unmarried and they were all living together, the loss of estate, can be claimed as compensation, and therefore, submitted that the contention of the Appellant, requires to be rejected.

11. According to him, when the Appellant-Insurance Company themselves has filed a counter affidavit, contending *inter alia* that the accident had occurred only due to the contributory negligence of the deceased, it is not open to them to contend that Exhibit P-1 - FIR, should be rejected or for the matter, the claim petition should be dismissed on the ground of contradictory facts. He further submitted that the judgments relied on by the learned Counsel for the Appellant would not lend any support to the Appellant, as there is sufficient evidence available on record, to prove the relationship and dependency. For the abovesaid reasons, he prayed sustain the award.

12. Heard the learned Counsel for the parties and perused the materials available on record.

13. Exhibit P-1 - FIR, dated 20.8.2000, has been given by one Mr. Alexander, who was a Ward Member, Thekampatti Panchayat. According to him, the deceased and the first Respondent, Rangammal were beggars. On 15.8.2000, when he was walking on the left side of Mettupalayam to Nellidurai Road, near Amman Virunthinor Mandapam, in front of Sukku Coffee Shop, Mettupalayam, a van bearing Registration No. TN 45 0126, owned by the third Respondent and insured with the Appellant-Insurance Company, driven by its driver in a rash and negligent manner, dashed against the deceased and as a result of which, she was thrown away. Thereafter, the van was stopped and she died on the spot. He has lodged a complaint with the Head Constable of Mettupalayam Police Station and that a case in Cr. No. 524 of 2000 has been registered u/s 304(A) IPC, against the driver of the Van. Admittedly, the owner of the vehicle remained *ex parte*, before the Tribunal.

14. Though the Appellant-Insurance Company sought permission to contest the claim u/s 170 of the Motor Vehicles Act, perusal of the counter affidavit shows that they have not denied that the vehicle bearing Registration No. TN 45 0126, owned by the third Respondent and insured with them, was not involved in the accident. They have only contended that the Respondents/claimants have to prove the rash and negligent driving of the driver of the van and that the accident has occurred due to contributor negligence of the deceased, who had unmindfully, crossed the road and hence they prayed for apportionment of negligence and consequential liability.

15. As rightly contended by the learned Counsel for the Respondents/claimants, when the Appellant-Insurance Company themselves have come forward to apply the theory of contributory negligence, the accident stands automatically proved and it is only the manner of accident, which is disputed. Except the contradiction in the avocation of the deceased, it is not open to the Appellant to contend as if the vehicle was not involved in the accident.

16. Before the Tribunal, P.W. 1 has reiterated the manner of accident. Merely because P.W. 2, in his cross examination, was not in a position to give the colour or description of the offending vehicle, viz., the van, it cannot be said that the vehicle itself, was not involved in the accident, as stated supra, the Appellant themselves have come forward with the theory of contributory negligence. Exhibit P-1 - FIR, has been given by a Ward Member of Thekampatti Panchayat, after three hours of the accident and there is no reason as to why a Ward Member should falsely implicate a van and he is not going to be benefited in any manner.

17. It should be noted that the FIR has been given by a third party and Courts have consistently held that in Motor Accident Claims cases, FIR, at best, can be taken on record, to set the criminal law in motion, and to the factum of accident, unless it is disputed. The contents of the FIR, which are given by a third party, need not always reflect the correct particulars, in all respects, as to the age, avocation of the deceased etc. Merely because a third party states that the deceased was a beggar, that cannot be simply be taken on record, as the admitted fact, by the Respondents/claimants. There is no reason as to why the oral testimony of the Respondents/claimants, regarding the avocation should be discarded, particularly, when their testimony is put to cross-examination. No documentary proof can be expected for engagement of a labourer.

18. In *National Insurance Co. Ltd., v. Rattani* 2009 (1) TNMAC 103 (SC), the accident took place, when the deceased Sunil Kumar along with other injured persons, were travelling as members of a marriage party in a Tata 407 vehicle bearing registration No. HR-39-9869, which was a goods vehicle. The first information report was lodged in relation thereto wherein, the driver of the vehicle was made an accused. Separate claim petitions were filed by the legal representatives of the deceased therein as well as by the injured before the Motor Vehicles Claims Tribunal, Bhavani. In the FIR, it was stated that all the members of marriage party were the occupants of the four wheeler and that there was no mention about the loading of dowry articles or furniture etc. However, in their depositions therein, the claimants raised a new plea, that the deceased and the other injured persons were travelling in the said truck as representatives of the owner of the goods. In view of the contradiction in the evidence, the Supreme Court, at paragraph 7, observed that

7. We are not oblivious of the fact that ordinarily an allegation made in the first information would not be admissible in evidence per se but as the allegation made in the first information report had been made a part of the claim petition, there is no

doubt whatsoever that the Tribunal and consequently the appellate Courts would be entitled to look into the same.

19. On the contention of the claimants theiein that the goods in the truck offered by way of gift by the bride party were being transported and that the deceased and other injured persons travelled as representative of the owner of the goods, vis-a-vis the contention of the Insurance Company, they were travelled only as gratuitous passengers and consequently, not entitled to make a claim for compensation, the Apex Court held that the deceased and Others could not have become the representatives of the owner of the goods and even otherwise in view of the specific averments made in the claim petitions and the first information report, their contention cannot be accepted. Even otherwise, on the basis of the depositions, the Supreme Court observed that "All 30 - 40 persons by no stretch of imagination could have been the representatives of the owner of goods, meaning thereby, the articles of gift."

20. In the above reported decision, the Supreme Court further observed that the First Information Report, as such, may or may not be taken into consideration for the purpose of arriving at a finding with regard to the question raised by the Insurance Company, as to the admissibility of the contents of the same, which forms part of the claim petition. The purpose for which, the contents of FIR therein was tested was whether the injured or deceased travelled as gratuitous passengers as owners of the goods, in a vehicle, which was admittedly a goods vehicle. The said judgment is not applicable to the facts of the present case for the reason that there is no serious dispute with regard to the accident or involvement of the vehicle, bearing Registration No. TN 45 0126 and at the risk of repetition, the contents of the counter affidavit of the Appellant-Insurance Company is reproduced hereunder:

The accident was caused due to the contributory negligence of the deceased himself who without noticing the van TN 45 - 0126 coming from behind without any signal suddenly attempted to cross the road and caused the accident.....The Petitioner has to prove rashness and negligence of the driver of the van TN 45 0126 independently.

21. In the instant case, as the involvement of the vehicle is candidly admitted and therefore, the question remains to be considered is only with regard to the finding of negligence. The oral testimony of P.W. 2, an independent witness, is corroborated by the contents in Exhibit P-1, FIR as to the manner of accident. Merely because, he was not in a position to state, about the number, colour of the vehicle, where the Respondents" reside, his testimony as to the manner of accident, cannot simply be rejected. When a witness is examined after a long time, one cannot expect his memory to be so sharp to remember even the colour of the vehicle. He has given the FIR immediately and the Police has taken action on that basis. Besides, when the involvement of the vehicle is admitted and a theory of contributory negligence is taken as defence, the contention regarding the abovesaid details are not relevant to disprove the manner of accident. Needless to say that it is not necessary for the

eye-witness to know the residential address of the deceased or her avocation, income, etc., when he has simply witnessed the accident and it is not necessary to consider as to whether he is related to the deceased or not, known the deceased or his family members. Just because he was not able to speak about the avocation and income, etc., it cannot be contended that his evidence is not trust worthy, as regards the manner of accident. A third party is not expected to know all the details stated supra. Testing the finding of negligence on the principles of preponderance of probability, this Court is of the view that perversity is not per se apparent on the face of the record or it cannot be said that there is no evidence, for the Tribunal, to come to a conclusion, fixing negligence on the driver of the van. Hence, the finding of the Tribunal with regard to negligence cannot be said to be perverse and therefore, the same is confirmed.

22. As regards the next contention, that the Tribunal has erred in concluding that the Respondents/claimants are entitled to maintain a claim petition for compensation, based on Exhibit P-4, Legal Heir Certificate, this Court deems it fit to consider the decisions relied on by the learned Counsel for the Appellant on this aspect.

23. In *Smt. Manjuri Bera v. Oriental Insurance Co. Ltd.* (supra), the Supreme Court, while considering the claim, whether the married daughter of the deceased can maintain a claim in terms of Section 163-A of the Motor Vehicles Act, at paragraphs 12, 13, 14 and 16, held, as follows:

12. According, to Section 2(11) of Code of Civil Procedure, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or issued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e. u/s 2(1)(g).

13. As observed by this Court in *Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique*, the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative. As observed in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

14. There are several factors which have to be noted. The liability u/s 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

16. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned amicus curiae.

24. In *A. Manavalagan v. A. Krishnamurthy I* (2005) ACC 04 (DB), the Division bench of the Karnataka High Court has considered a case, where, the husband has claimed compensation for the death of his wife under the Motor Vehicles Act. He was not Dependant on his wife. While considering the issue as to whether a legal representative, not Dependant on the income of the deceased, would be entitled to claim loss of dependency, the Division Bench, at Paragraph 16 and 19(1) and (11), held as follows:

16. But, what would be the position if the claimant, though a legal heir is not a Dependant of the deceased? Obviously, the question of awarding any amount under the head of loss of dependency would not arise, as there was no financial dependency. In fact in this case, the deceased was not even managing the "house hold" as is normally done by a housewife as the husband and wife were living in different places due to exigencies of service and the couple had no children. In such a case, the main head of compensation will be loss to estate u/s 2 of the Fatal Accidents Act. The claim petition becomes one on behalf of the estate of the deceased and the compensation received becomes part of the assets of the estate. Consequently what is to be awarded under the head of loss of dependency u/s 1-A would be nil, as there is no real pecuniary loss to the members of the family.

19. We may summarise the principles enunciated, thus:

(i) The law contemplates two categories, of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a

result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependents beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power u/s 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependents of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by the dependents, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of loss to estate.

25. In *G. Deivasigamani v. Metropolitan Transport Corporation Ltd.* (supra), for the death of the husband, wife claimed compensation. During the pendency of the claim petition, she also passed away. Brothers and Sisters of the deceased were impleaded as parties to the appeal and claimed compensation under the heads, loss of dependency, love and affection and other conventional damages. After considering the definition of "legal representative" as provided in Section 2(11) of CPC and catena of decisions, a learned single Judge of this Court has held that the legal representatives, who were not dependents, were not entitled to loss of dependency, but however, entitled to compensation u/s 140 of the Motor Vehicles Act.

26. In the instant case, though the complainant in the FIR, has stated that the deceased was a beggar and the Respondents/claimants have contended that all of them stayed together with the deceased and engaged as agricultural coolies in the land belonging to one Ramasamy Gounder. It is well settled that persons, who are engaged in unskilled jobs or artisans, small traders, may not have any documentary proof to prove their avocation or employment. Though a dispute as regards the relationship, has been raised by way of grounds in this appeal, perusal of oral testimony of the first Respondent/claimant, does not reflect as to whether there was any doubt over the relationship. It is also to be noted that Exhibit P-4, Legal Heir Certificate has been filed to prove that the deceased was the elder sister of the Respondents/claimants. Merely because, a third party informant states that the

deceased was a beggar, that cannot be simply be accepted, as regards avocation. As stated supra, FIR can be taken on record as substantive evidence as regards the factum of accident and it is not based on any solemn statement. Whereas, the testimony of the Respondents/claimants as regards avocation is made on solemn statements, subject to cross-examination. A third party statement before the Police cannot be given weightage over the statements of the Respondents/claimants, before the Tribunal and therefore, the contention of the Appellant that the deceased was a beggar cannot be accepted.

27. In Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, the Gujarat High Court held that all the Legal heirs and the Legal Representatives of the deceased can maintain a claim petition u/s 110-A (now u/s 166(1) of the Motor Vehicles Act and consequently awarded compensation to the nephews of the deceased. Considering the divergence of opinion expressed by various High Courts, as regards the maintainability of the claim petition u/s 110-A (now u/s 166(1)) of the Motor Vehicles Act, by persons other than the wife, husband, parents and child of a person, who died in a Motor accident, the Supreme Court on appeal, at paragraph 10, held as follows:

10. Clauses (b) and (c) of Sub-section (1) of Section 110-A of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to Sub-section (1) of Section 110-A provides that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be made on behalf of or for the benefit of all the legal representatives of the deceased impleaded as Respondents to the application. The expression "legal representative" has not been defined in the Act Section 2(11) of the Code of Civil Procedure, 1908 defines "legal representative" as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of Sub-section (1) of Section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and Clause (c) of that Sub-section authorises any agent duly authorised by all or any of the legal

representatives of the deceased to make it. The proviso to Sub-section (1) of Section 110-A of the Act appears to be of some, significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent, and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the person, or persons who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in Section 110-A of the Act.

Interpreting Section 110-A (now amended as Section 166(1)), vis-a-vis, a corresponding provision in the Fatal Accidents Act, 1855, the Apex Court further held that,

These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 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, 1855. New situations and new dangers require new strategies and new remedies.

While confirming the decision of Gujarat High Court in Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, case the Supreme Court at paragraph 12 held that

We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy, it is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed u/s 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already, held has been substantially modified by the provisions contained

in the Act in relation to cases arising out of motor vehicles accidents.

28. In *Vidya Dhar Duhey and Ors. v. U.P. State Road Transport Corporation* 1997 ACJ 1366, the Allahabad High Court has considered an issue, as to whether a claim for compensation for the death in motor accidents filed by the claimants, viz., widowed aunt and sister of deceased's maternal uncle, who are dependents, but not the legal heirs of the deceased, viz., parents, wife and son, could be entertained or not. Following a decision in *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai* (supra), the Allahabad High Court held that the emphasis under the Motor Vehicles Act is dependency and that near and dear, including the brother's children can be the dependents.

29. In [Oriental Insurance Company Ltd. Vs. Naresh Chandra Agrawal and others](#), the parents of the deceased were not alive and therefore, the brother of the deceased in the capacity of legal representative, preferred a claim. The award passed by the Tribunal, following the *Gujarat State Road Transport Corporation v. Ramabhai Prabhatbhai* (supra) case, was confirmed by the Allahabad High Court, holding that the Legal Representatives including the brother of the deceased is entitled to claim compensation.

30. In [Govindasamy Vs. Ravi, V. Rajaboopathi, United India Insurance Co. Ltd. and Oriental Insurance Company](#), a Division Bench of this Court held that the deceased father's younger brother is entitled to claim compensation, as he was also a legal representative, as per the Hindu Succession Act.

31. In [Kishan Lal and Others Vs. Bharosi Lal and Others](#), the deceased was the elder brother of the claimants-Appellants Nos. 1 and 4, and was the brother-in-law of Appellants Nos. 2 and 5 and father of Appellant No. 3 before the High Court. The deceased was unmarried and he had adopted a son, Appellant No. 3 therein. The maintainability of a claim petition, on behalf of the brothers, adopted son and other relatives, was one of the issues before the Tribunal. Without giving any opportunity to the parties, the Tribunal held that inasmuch as the deceased was an unmarried person, the Appellant Nos. 1, 2, 4 and 5 were not entitled to maintain a claim petition and that they were not the dependents of the deceased. As no document was filed to prove the adoption, the claim of the Appellant No. 3 was also rejected. Thus, in toto, the Tribunal dismissed the claim petition. After referring to Sections 166(1)(c) of the Motor Vehicles, which provides that an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165, can be made, by Hon'ble Mr. Justice J.S. Verma (as he then was), has held as follows:

5. I find merit in the submission of the learned Counsel for the Appellants that if the contrary view is taken, in the event of death of a person in accident who happens to be an unmarried or whose parents are not living, it shall amount to as if no compensation can be claimed in regard to the death of such persons and such compensation will lead to such an unpleasant situation that the defaulting negligent

driver will escape the liability for any such accident for the purpose of compensation, I fully agree with learned Counsel for the Appellants in this regard and specially when in the present case, application for compensation had also been filed including an adopted son, adoption of which could only be proved by leading evidence as per law.

So saying, the order of the Tribunal, dismissing the claim petition, was set aside and that the matter was remitted back to the Tribunal, to proceed with the claim petition on merits.

32. In Managing Director, K.S.R.T.C. v. Venkataramappa K.S., III (2003) ACC 457 (DB), the deceased was an agricultural labourer and there was no class I heirs. A claim for compensation was made by the married sisters and brother. Before the Tribunal, an objection was raised by the Transport Corporation that the claimants were not the dependents on the deceased and therefore, they are not entitled to make a claim for compensation. However, the Tribunal has computed the dependency compensation, in addition to the compensation awarded under the conventional damages. Aggrieved by the same, the State Transport Corporation preferred an appeal to the High Court, reiterating the said averments. The High Court framed the following questions for consideration,

(1) Whether the brothers and sisters of the deceased can maintain a claim petition even though they were not depending upon the income of the deceased for their maintenance?

(2) Whether the compensation awarded by the Tribunal is on the excessive side?

33. Following the judgment in Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and Anr. (supra) and taking note of Section 8 of the Hindu Succession Act, which states that when a male Hindu dies intestate, his property has to be devolved, according to the provision of Section 8: i.e., (a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule; and (b) secondly, if there is no heir of Class I then upon the heirs, being the relatives specified in Class II of the Schedule, a Division Bench of the Karnataka High Court, held that the claimants, viz., brothers and sisters, who had fallen under Class-II heirs, as per Hindu Succession Act, would be entitled to maintain a claim.

34. In New India Assurance Co. Ltd. Vs. Ashwin Vrajlal Rajgor, Newphew of Late Kantilal D. Rajgor, a Division Bench of the Gujarat High Court has considered the entitlement of the brother's son and brother's wife (sister-in-law) of the deceased for compensation. Following the judgment in Megjibhai Khimji Vira v. Chaturbhai Taljabhai (supra), wherein, the Division Bench has held that the claim for compensation arising out of the use of motor vehicle can be maintained by brothers and nephews, who are the legal heirs and considering the judgment of the Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and Anr. (supra) another Division of the Gujarat High Court New India

Assurance Co. Ltd. v. Ashwin Vrajlal Rajgor (supra) held that in the absence of Class-I legal representatives to represent the estate of the deceased, a brother's, son, a Class-II heir and the brother's wife are entitled to claim compensation for the death of the deceased. The Division Bench has also taken note of the line of succession as provided under the Hindu Succession Act, 1956 and held that the Appellants therein, were entitled to compensation.

35. In the light of the above judgments, as regards dependency compensation is concerned, there is no hard and fast rule that brothers and sisters cannot maintain a claim petition for compensation under the said head. Each case has to be considered on its own merits. In the case on hand, the Tribunal has observed that it is not uncommon that unmarried brothers and sisters would live under one roof, as a joint family and in such circumstances, one may be dependent on the income of the other. The Tribunal, on the premise that prior to death, even if the deceased was engaged as a labourer, she would have earned atleast Rs. 2,000/- per month and accordingly, fixed the monthly income. After deducting 1/3rd towards her personal and living expenses, applied multiplier "11" applicable to the age of the deceased, 55 years, as evidenced from Exhibit P-4 - Post-Mortem Certificate and arrived at the dependency compensation at Rs. 1,76,000/-. It is to be noted that after 1/3rd deduction, the contribution to the family works out to Rs. 44.44/- per day.

36. The contention of the learned Counsel for the Appellant-Insurance Company that the Respondents/claimants, being the brother and sister of the deceased, are not entitled to maintain a claim petition for the loss of estate and that they are entitled only to compensation under "No Fault Liability" is not accepted and this Court is of the considered view that as the Respondents/claimants were aged 57 and 50 years respectively at the time of accident and considering the fact that the deceased was unmarried and aged 55 years at the time of accident, one would have been dependent on the income of the other and therefore, they are entitled to maintain a claim petition u/s 166 of the Motor Vehicles Act. The contention of the Appellant-Insurance Company that the Respondents/claimants are entitled to the compensation only under "No Fault Liability" is rejected. Perusal of the impugned judgment shows that in addition to loss of dependency, the Tribunal has awarded Rs. 10,000/- for loss of love and affection and Rs. 2,000/- for Funeral Expenses. Considering the facts and circumstances of the case in entirety, this Court is of the view that there is no perversity in the finding and quantum of compensation of Rs. 1,88,000/- awarded to the Respondents/claimants.

37. In the result, the civil miscellaneous appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.