(1974) 01 BOM CK 0013

Bombay High Court

Case No: F.A. No. 633 of 1964

Shakuntla Shridhar Shetty		APPELLANT
	Vs	
State of Maharashtra		RESPONDENT

Date of Decision: Jan. 23, 1974

Acts Referred:

- Fatal Accidents Act, 1855 - Section 1A, 2
- Penal Code, 1860 (IPC) - Section 304A

Hon'ble Judges: Mukhi, J; Joshi, J

Bench: Division Bench

Advocate: A.C. Agarwal, for the Appellant; V.H. Gumaste, for the Respondent

Final Decision: Allowed

Judgement

Mukhi, J.
It is unfortunate that this appeal from a decision of the Civil Judge, Senior division, Poona, in a Special Civil Suit No. 32 of 1963 in a running-down action is being heard ten years after it was admitted and as much as thirteen years since the date of the accident in which the deceased Shridhar Bapu Shetty lost his life.

2. Special Civil Suit No. 32 of 1963 has been filed by the wife and children of the deceased and is a claim u/s 1A of the Indian Fatal Accidents Act, 1855. The learned Civil Judge raised the necessary issues, including an issue on the question of alleged negligence and the quantum of damages as claimed by the Plaintiffs. He also raised the issue as to the maintainability of the suit against Defendant No. 2, the Dairy Development Officer of Maharashtra State and a further issue, being issue No. 3, which is in the following words:

Do Plaintiffs prove that the deceased was following the rules of the road as alleged by them?

It is significant that the learned Civil Judge decided this issue in the affirmative and thereby held that so far as the deceased was concerned he was riding his bicycle and going on the left, i.e. the proper side, and was observing the rules of the road. Notwithstanding this finding, which would exclude any question of contributory negligence, the learned Civil Judge went on to hold that the Plaintiffs had not proved that Defendant No. 3 who was driving the jeep was negligent when it collided with the cycle and, therefore, dismissed the suit. In this view, the learned Civil Judge did not decide the issue as to the quantum of damages.

3. The relevant facts and the manner in which the accident took place may now be mentioned. The deceased Shridhar Bapu Shetty, it would appear, was a hotel keeper and had a Udipi hotel at Poona. On February 14, 1961 at about 6 a.m. i.e. in the early morning the deceased was riding a cycle on Jangali Maharaj Road and he was going in the direction of the Deccan Gymkhana. It would appear that near the gates of the Sambhaji Park on Jangali Maharaj Road jeep driven by Defendant No. 3 Sharad Piabhakar Vaidya came from behind, that is to say, the same direction from North to South and hit the cycle which the deceased was driving, why the result that the deceased and the cycle were thrown at a distance. The deceased fell down and was severely injured, and although he was removed to the hospital promptly enough he died by reason of his injuries so sustained four days after the accident, i.e. to say, on February 18, 1961.

4. It is necessary to mention that the usual investigation was made by the police which resulted in the prosecution of Defendant No. 3 and in fact Defendant No. 3 was convicted and sentenced u/s 304A of the Indian Penal Code. It would appear that the State filed a revision application to the High Court for enhancement of the sentence and in those proceedings Defendant No. 3 was fortuitously given the benefit of doubt and his conviction was set aside.

5. As regards the damages alleged to have been suffered by the Plaintiffs, it is stated in the plaint that the deceased at the time of his death was forty-two years of age and had a reasonable expectation of life. The deceased was also providing pecuniary support to the Plaintiffs. Plaintiff No. 6, Appi Shridhar Shetty is the widow, Plaintiffs Nos. 1, 2, 3 and 4 are daughters of the deceased and were, at the time of the filing of the suit in 1963, all minors. The contention of the Plaintiffs, as set out in the plaint, is that they suffered heavy loss by reason of the untimely death of the only earning member of the family. They, therefore, claimed a sum of Rs. 50,000 by way of compensation.

6. A perusal of the plaint clearly shows that the claim is u/s 1A of the Fatal Accidents Act, 1855, and that although Section 2 of the said Act provides that a claim for loss to the estate of the deceased can be inserted, such a claim has in fact not been made. We find it as a matter of regret that the plaint is somewhat sketchy and adequate consideration does not appear to have been given to the legal position as it existed nor has the claim for compensation been itemized as is normally done.

7. The defence of the driver of the jeep, namely, Defendant No. 3 was that although his jeep did in fact dash against the rear wheel of the cycle and that the deceased was thrown from the cycle and ultimately died as a result of the injuries so received by him, the accident was a pure accident and Defendant No. 3 was not driving the jeep rashly and negligently. Then there is an usual averment that the claim for Rs. 50,000 by way of damages is excessive and a technical plea that the suit could not be maintained against Defendant No. 2 who was not a corporation sole. It may be mentioned that the trial Court held that the suit against Defendant No. 2 was not maintainable and dismissed it as against him on that ground, 8. The learned Government Pleader, who appeared for the Defendants, informed us with his characteristic fairness that the following facts were not disputed:

(1) The accident took place on February 14, 1961 on Jangali Maharaj Road at Poona.

(2) The time of the accident was 6 a.m. in the morning, at which time there was broad daylight.

(3) There was no traffic on the road at that time. And lastly that the fact.

(4) Jangali Maharaj Road is a straight and wide road.

In other words, Defendant No. 3 has admitted that the jeep driven by him actually hit the cycle, which the deceased was riding, from behind with the result that the deceased was thrown and fell from the cycle, was injured and ultimately died. Therefore, there is no denial that Defendant No. 3 caused "the accident" in the physical sense but the plea of Defendant No. 3 is that it was a pure accident and that he was not responsible because he was not driving either rashly or negligently. It is appropriate to set out the said defence in the words of Defendant No. 3, who has examined himself. In para 5 of his written statement Defendant No. 3 has stated as follows:

The real story is that the deceased Shetty was injured in the accident and died thereafter. This Defendant is not at any fault or was negligent. He was driving his vehicle at a proper speed by observing the traffic rules. In fact, the deceased Shridhar Shetty without giving signal, turned his cycle towards the right and suddenly came in front of the jeep of this Defendant. The Defendant after seeing him sounded horn to warn the deceased Shetty and applied brakes. Defendant took every caution to save the deceased and turned his jeep towards right. But suddenly the deceased Shetty started going straight and because of his fault, the jeep was dashed on the rear wheel of the cycle and Mr. Shetty fell down. The Defendant tried his level best to save the cyclist from the accident. Therefore, the deceased Shetty is only responsible for the accident and Defendant was not in any way at fault. The Honourable High Court after considering all these facts have held that the Defendant was not responsible for the accident, but in fact the Defendant tried his best to avoid the accident and in view of the aforesaid finding, the Honourable High Court was pleased to acquit the Defendant and, therefore, this Defendant is in no

way liable to pay any compensation to the Plaintiffs.

9. The evidence of Defendant No. 3 before the Court closely follows the averment in the plaint with certain further details as to the alleged distances and the alleged spot of the accident.

10. It is, therefore, to be noticed that the basic features of the accident are simple. The deceased was riding his bicycle along Jangali Maharaj Road; he was proceeding to the extreme left of the road; the jeep was proceeding in the same direction as the cycle and was behind the cycle and that in the events that happened the jeep collided against the cycle and ultimately as a result of this collision the deceased received the injuries and thereafter succumbed to his injuries.

11. It also requires to be noticed that although both the vehicles were going in the same direction, the cycle is a slow moving vehicle and the jeep is a fast vehicle.

12. It will be necessary for us, therefore, to decide whether it has been proved that Defendant No. 3 was negligent and that by his negligence the accident was caused.

13. The legal position as to negligence is fairly clear and has been expounded in a number of cases. In Blyth v. Birmingham Waterworks Company (1856) 11 Ex. 781, at p. 784, it was held:

"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

In Bourhill v. Young (1942) 2 All E.R. 396 at p. 404 Lord Wright observed:

The general concept of reasonable foresight is the criterion of negligence and is fluid in its application: it has to be fitted to the facts of the particular case.

In the same judgment reference was made to Polemis and Furness, Wityh & Co., In re: (1921) 3 K.B. 560 and the observations of Scrutton L. J. that (P. 577):

"To determine whether an act is negligent, it is relevant to determine whether any reasonable person would foresee that the act would cause damage ; if he would not, the act is not negligent... Once the act is negligent, the fact that its exact operation was not foreseen is immaterial.

In Grant v. Sun Shipping Co. Ltd. (1948) A.C. 549 Lord du Parcq observed (p. 567):

"I am far from saying that everyone is entitled to assume, in all circumstances, that other persons will be careful. On the contrary, a prudent man will guard against the possible negligence of others when experience shows such negligence to be common.

14. As regards the duty to anticipate, it was held in Berril v. Road Haulage Executive (1952) 2 Lloyds Rep. 490 that a driver of a vehicle was not bound to foresee every

extremity of folly which occurs on the road. Equally he was not entitled to drive upon the footing that other users of the road will exercise reasonable care. "He is bound to anticipate any act which is reasonably foreseeable, which the experience of road users teaches that people do, albeit negligently."

15. It is not necessary to refer to any authority for the proposition that when a person is using the road he owes a duty to other users of the road who also owe a duty to him, but there is no doubt that the driver of a vehicle must take reasonable care to avoid acts or omissions which can be reasonably foreseen and which will be likely to injure other persons on the road.

16. The Mysore High Court in Seethamma v. Benedict D''Sa 1966 A.C.J. 178 observed:

It is a firmly established rule that a person driving a motor vehicle on a highway must drive the vehicle with reasonable care, strictly observing the traffic regulations and the rules of the road, so as not to imperil the safety of other persons whether they are pedestrians or cyclists or others who have a similar right to use the high-way on which he drives it.

17. Dilating upon the duties of the driver of a motor vehicle, Venkatadri J. observed in Champalal v. Venkataraman 1966 A.C.J. 224 that:

The driver must keep a proper lookout for pedestrians or other users of the road. He must whenever expedient give warning of his approach as at cross roads. Even if another user of the road is negligent he must exercise due skill in trying to avoid the consequence of that negligence.

18. There can be no doubt that a person in the control of a motor vehicle must keep a good look-out in all the directions of the road, on the sides and in front of him and if he does so it would naturally be expected that he would be able to notice a person walking or riding a cycle right in front of him.

19. It requires to be stated that having noticed another user of the road, whether in the form of a pedestrian or a cyclist or another vehicle, in front of him, (whether going in the same direction or in the opposite direction) it at once becomes the duty of the driver of the vehicle to adjust the speed of his vehicle in such a manner that it comes under his complete control and he may stop it instantaneously in case of necessity so as to avoid an accident.

20. These observations of various Courts clearly set out the nature of the duty to care as well as the standard of care expected from the driver of a vehicle. Now, applying the above rules to the facts of the present case, let us see if the negligence of Defendant No. 3 as the driver of the jeep which collided against the cycle has been established.

21. There can be no doubt that the initial burden to prove negligence on the part of the driver of the vehicle concerned is always on the Plaintiff. But it is also to be

noticed that in order to arrive at a finding as to whether there is negligence or not, the Court is entitled to take into consideration the entire evidence that is placed on record.

22. In the case before us, the Plaintiffs'' evidence consists of one Vasant Ganesh Joshi (P.W. 3) who claims to have seen the accident as it took place in front of the middle gate of the Sambhaji Park. He has claimed that he was at a distance of about 8 ft. to 10 ft. from the spot of the accident and saw the jeep-car dash against the cyclist which was going ahead.

23. Curiously, this witness is also one of the panchas and it is admitted by him that he did not tell the Police Inspector Ponkshe who came on the scene and was investigating the offence that he had seen the incident and was a witness to the accident. Instead of that he merely acted as a punch at the request of the police. In the criminal Court also witness Joshi did not state that he had seen the accident itself. His explanation is that he was there i.e. at the scene and he was asked by the police to act as a panch. It is contended by the learned Government pleader that for the above reason the evidence of witness Joshi is unreliable and should not be taken into consideration.

24. Now, even if the evidence of witness Joshi is excluded as a witness of the accident itself, it cannot be denied that he is an eyewitness of the scene of the accident as he came there immediately after the accident had taken place. To that extent it will be difficult to suggest that his evidence may not be looked into at all.

25. The other witnesses for the Plaintiffs are (1) Sub-Inspector Ponkshe, who arrived at the scene of the accident after the deceased, who had been injured, had already been removed to hospital in a taxi; and (2) P. W. 5 Jagannath Babu Shetty, sister''s son of the deceased, who arrived at the scene of the accident almost immediately while the deceased was in an unconscious state and was still lying on the road.

26. It is unfortunate that for reasons not explained to us, the panchanama has not been exhibited. But fortunately the evidence of P.W. 5 Jagannath shows that the deceased was lying on the road in an unconscious state with his head about one foot from the kerb of the left side footpath. The evidence of this witness as well as of S.I. Ponkshe also shows that the jeep was seen standing about 10 to 12 feet away from the left, that is to say, about 12 feet from the left kerb curve and, therefore, somewhat towards the middle of the road. The other fact that is established and which is- not disputed is that there were brake-marks on the road 40 ft. in length. They would have-bearing on the speed of the jeep at the time of the accident.

27. Now, let us see who were the eyewitnesses to the accident itself. First of all there is Defendant No. 3 who was driving the jeep and who has examined himself as D.W. 1. We shall presently consider bits evidence. But it is significant that there were two other passengers in the jeep and they were one Mr. Bulbule, Assistant Milk Distribution Officer, and one Mr. Y.B. Gaikwad, the milk dispatcher. It is reasonably

to be expected that these two persons were eye-witnesses of the accident that took place, but curiously they have not been examined by the Defendants. It is not as if that these two persons were not available at the time of the trial of the suit because there is no such suggestion and in fact when questioned in cross-examination Defendant No. 3 stated in terms "I am not examining the occupants of the car Mr. Bulbule and Gaikwad."

28. There is no reliable evidence as to at what spot on the road the actual impact took place. P. W. 2 Sub-Inspector Ponkshe had stated that the spot of the accident was 12 ft. west of the eastern border of the road. Since S.I. Ponkshe was not an eye-witness of the accident, we are not able to understand how he can depose to this aspect of the accident.

29. Witness Joshi has, on the other hand stated that the spot of the accident was about 4 ft. away from the footpath. If witness Joshi is not to be regarded as an eye-witness to the accident, then neither can he properly depose to the spot of the accident.

30. It becomes necessary, therefore, to find out from the evidence of Defendant No. 3 read with the circumstantial evidence on record as to at what spot the impact took place and in fact how the accident took place and whether Defendant No. 3 was negligent and, therefore, responsible.

31. First of all Defendant No. 3 has stated that ""the deceased was going on cycle at about 2 ft. to 3 ft. from the footpath". But he also stated that "the collision between my jeep and the cycle took place at the spot about 12 ft. from the foot-path." Now, if these two statements are to be reconciled then it is obvious that the deceased on his cycle and the jeep must have both swerved to the right so that the impact could take place at a spot 12 ft. from the curve. How did this happen to come about ? It becomes necessary to closely examine Defendant No. 3''s evidence.

32. Firstly, he says that when he saw the cyclist (for the first time) he (the cyclist) was going ahead of the jeep at about a distance of 25 ft. Defendant No. 3 then says:

The cyclist took a sudden turn to the right without giving any signal to me. I swerved to my right to avoid collision with the cyclist. I had applied brakes and had blown the horn. On hearing the horn, the cyclist again turned and came in a straight line. I had applied the brake, but the jeep moved on and collided and the jeep dashed against the mudguard of the hind wheel of the cycle.

33. Now, if the cyclist was going ahead of the jeep at a distance of about 25 ft., then it would follow that the jeep was directly behind it. It has not been stated by Defendant No. 3 as to whether the cyclist who was going ahead was to his left. As a matter of fact, Defendant No. 3 has deposed that the cyclist prior to the accident was only 2 to 3 ft. from the kerb. It would clearly appear that the jeep was, therefore, also being driven on the extreme left. The jeep is said to have slightly

swerved to the right, only after the cyclist turned to the right. S.I. Ponkshe deposes that there were wheel marks on the road, which, according to him, showed that it had swerved to the right. It is equally obvious that there were no other swerves of the jeep either to the left or the right when the cyclist is said to have come into a straight line, directly in front of him. If the version of Defendant No. 3 was true then it must follow that the cyclist who was going ahead of the jeep at a distance of about 25 ft. must have taken a sudden turn to the right without giving any signal so that the driver of the jeep had to swerve to his right and the cyclist on hearing the horn should have, again straightened to the left and the jeep hit him at a spot 12 ft. from the left side kerb. In our view it is substantially clear that the jeep was following the cycle and was on the extreme left of the road when the cyclist was going ahead of him some 2 or 3 ft. from the left side of the kerb. Defendant No. 3 has admitted that when the cyclist swerved to the right he was about 10 to 15 ft. away from the jeep. He also stated that he had slightly applied the brakes when the cyclist had turned to the right and then he denies that he was driving the jeep at a speed of 30 to 40 miles per hour.

34. Now, there is a clear admission that in its juxtaposition with the cyclist the jeep was behind the cycle at a distance of about 10 or 15 ft. The question would be as to why the driver of the jeep had placed himself in such a position on such a wide road as Jangali Maharaj Road, which, we are told, is 80 feet wide road and which, we safely assume, as at least a 60 feet wide road. The time is early morning and there is no real traffic on the road and it is broad daylight. In these circumstances Defendant No. 3, the driver of the vehicle, placed himself 10 to 15 feet directly behind the cyclist. It becomes important, therefore, to consider what was the speed of the jeep at that particular time.

35. In his statement Defendant No. 3 has somewhat glibly stated that he was driving the vehicle at a speed of 15 miles per hour. It is not understandable why on a clear road in broad day-light without any impediments or obstructions and particularly when the road is straight and visibility good any driver of a jeep should drive at 15 miles per hour. A speed of 30 to 40 miles per hour on such road may not be said to be excessive, provided a proper lookout is maintained and necessary care and caution is taken, in relation to any other traffic on the road. If the jeep had been about 15 feet away from the left side of the road or even a little further to middle of the road, then provided there was no oncoming traffic there is no reason why it could not have been driven at 30 to 40 miles per hour. But as would appear Defendant No. 3, the driver of the jeep, was driving his jeep with a cycle directly in his path, then such a speed or even a lesser speed would obviously be considered excessive in the circumstances. The learned Government Pleader has himself stated that the statement of Defendant No. 3 that he was driving at 15 miles per hour should be discarded. After referring to the brake-marks on the road of 40 feet in length and to the tables in Bingham''s Motor Claims Cases, being table of "approximate minimum stopping distances" the learned Government Pleader

sought to show that the speed of the jeep on the dry asphalt road (and we would assume that Jangali Maharaj Road on that day was a dry asphalt road), was about 26 to 27 miles per hour. Now, we will assume that the speed of the jeep just before the accident was not more than 26 to 27 miles per hour and looking at the brake-marks of 40 feet on the road and deducting therefrom the length of the jeep, we will assume that it would take 32 feet for Defendant No. 3 to bring his jeep to a dead halt. Now, if this is so, then it is difficult to resist the conclusion that Defendant No. 3 was driving the jeep at a speed which was excessive in the circumstances. He should have foreseen that if the cyclist in front of him was to turn to the right or to the left or even falter or fall down on the road then he, with the speed with which he was driving, would not be able to control the jeep and avoid the accident.

The facts of the case and the evidence on record clearly show that the jeep was on a wide road without any traffic and with good visibility, the road being a straight road on which it should be possible for any one to see as much as several hundreds of yards away and the question would arise as to what was the traffic in relation to which care should be exercised. Defendant No. 3 could have, therefore, with only normal care easily avoided the cyclist and driven past him, yet on his own admission he sees the cyclist for the first time when the cyclist is ahead of him by only 25 feet which distance is almost immediately reduced to 10 or 15 feet and yet Defendant No. 3 does not take any specific or swerving action which would have clearly avoided the impact.

One question which comes to our mind is, of course, whether the statement of Defendant No. 3 that he saw the cyclist for the first time at a distance of about 25 feet is in fact true. A statement like this would put the Defendant No. 3 in a dilemma. If on a clear road he saw the cyclist for the first time only some 25 feet away then he could be asked why he failed to see the cyclist earlier. It could, therefore, be put to him that he was not keeping a proper look-out. If it is taken to be true that for some explainable reason Defendant No. 3 saw the cyclist for the first time only when the cyclist was ahead of him by about 25 feet, then the question would be asked, why did he not take immediate avoiding action by slowing down, jamming the brakes, swerving away either to the right or even to the left ?

36. We have been unable to appreciate how a careful motorist with full control over his vehicle could on a 60 feet wide road with little or no traffic and full and clear visibility fail to avoid a slow moving cycle clearly ahead of him, except of course, by reason of negligence.

37. As to the point of impact, if the evidence on record is taken into consideration it would appear to us that the point of impact could not have been 12 feet from the left side kerb as Defendant No. 3 would have the Court to believe. In fact, the circumstantial evidence on record points to the contrary. The position of the deceased on the ground and of the jeep on the road would go to show that the impact took place near the kerb as the jeep swerved and the jeep then went ahead

to the right and stopped 12 feet away from the kerb.

38. It would appear to us that even on a prima facie consideration there is ample evidence to show that Defendant No. 3 was negligent in the handling of the jeep. If the defence is properly construed, it would appear that the real defence of Defendant No. 3 is the defence of inevitable accident and it is settled law that the burden rests on the Defendant to show that it was an inevitable accident. The Defendant must either show what was the cause of the accident and that the result of that cause was inevitable or that he must show all possible causes and with reference to every one of such possible causes that the result could not have been possibly avoided. Defendant No. 3 admits that he was driving the jeep and that the jeep collided with the cycle, which resulted ultimately in the death of the cyclist. Defendant No. 3 has attempted to show that the cyclist swerved to the right suddenly without giving a signal, then again straightened himself to the left and came in his path. This, in our view, is unacceptable because on Defendant No. 3''s own showing the deceased was riding his bicycle only 2 to 3 feet away from the left side kerb. The jeep was also near the kerb, behind the cycle and the jeep must have swiped the cycle while swerving to the right because at the speed at which it was and its proximity to the cyclist it could not be halted.
Apart from the fact that the evidence on record clearly shows Defendant No. 3''s negligence, Defendant No. 3 has failed to establish his theory of inevitable accident. In this context it is very significant that the two eye-witnesses in the jeep have not been examined and an adverse inference must be drawn against the Defendant. The inference would be that, if those witnesses who were in the jeep had been examined their evidence would have gone against Defendant No. 3.

39. We are, therefore, satisfied that Defendant No. 3 was negligent and by reason of his negligence the death of deceased was caused.

Before coming to the question of the quantum of damages, we must mention the fact that the trial Court has held that so far the deceased was concerned he was following the rules of the road and driving his cycle by the left side of the road and yet curiously the learned trial Judge came to the conclusion that there was no evidence snowing that Defendant No. 3 drove the vehicle rashly or negligently.

40. Now, so far as the quantum of damages is concerned, we may refer to a judgment of the Supreme Court in C.K.S. Iyer v. T.K. Nair 1970 A.C.J.110 where the Supreme Court has stated the principles governing the assessment of damages under Fatal Accidents Act, 1855.

41. Now, we have stated at the outset that it is a matter of record that the plaint does not include a claim u/s 2 of the Fatal Accidents Act, viz. the economic loss sustained by the estate of the deceased. The only claim in the plaint is the claim u/s 1A of the Act, viz. the pecuniary loss to the beneficiaries, who in this case are the widow of the deceased and his four daughters were at the time of the filing of the

plaint were miners.

42. The Supreme Court referred to some of the well-known English decisions as well as an earlier decision of the Supreme Court in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, and at para. 14 of their judgment summed up the law on the point and how assessment of damages is to be made in the following words:

"Compulsory damages u/s 1A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damage is the economic loss sustained by estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child, attains majority. In the matter of ascertainment of damages, the appellate Court should be slow in disturbing the findings reached by the Courts below, if they have taken all the relevant facts into consideration.

43. It is, therefore, to be noticed that the mode of assessment of damages in a fatal accident''s case is beset with certain difficulties and depends upon many imponderables. But nevertheless the Court has to do its duty and come to a finding as to what should be the proper quantum of damages. It may not be made with mathematical accuracy but it will depend on the facts and circumstances of each case and as the Supreme Court has rightly observed, "conjecture to some extent is inevitable".

44. The first aspect to be noticed is as to how long the deceased could have expected to live if he had not been knocked down and killed in the accident. The plaint mentions the age of the deceased at the time of his death as 42. But Plaintiff No. 6, who is the widow, in her deposition seems to have stated that he was 48 years of age. There is also a post-mortem report, although reliance cannot be placed on it, which mentions the age as 40 years. Normally the Court would be bound to take the age as 48, as deposed to by P.W. 1, the widow of the deceased. But it is difficult to understand why she should in her examination-in chief say that the deceased was 48 years old at the time of his death when in the plaint she has stated that he was 42. We feel that it would be appropriate to take the age of the deceased at the time

of his death a$ 45 and in view of the evidence as to his health and a reasonable expectation of life hold that he would have, as a hotel-keeper, who are normally not subject to as much wear and tear as professional people or businessmen having large businesses are lived to the age of at least 65 years of age.

45. Now as regards the amount of support that the Plaintiffs say that they were receiving at the time of the death of the deceased, witness No. I the widow of the deceased, has given figures and shown that the pecuniary benefit being derived by the Plaintiffs was roughly Rs. 3,500 per year. There is also evidence on record that the deceased was earning about Rs. 4,000 and the income tax receipts showed that for the periods 1960-61 and 1961-62 he paid a sum of Rs. 103.20 as income tax. If one takes into consideration the fact that at that time the minimum income subject to tax was Rs. 3,000, then at 10 per cent, tax it would be logical to assume that his income was Rs. 4,000. This would show that it is quite probable that the pecuniary benefit being received from the deceased at that time was Rs. 3,500 per year.

46. Now, the evidence of the widow of the deceased as well as of Jagannath, the deceased''s sister''s son, shows that the widow under a ''''conducting agreement has been receiving Rs. 2,000 per year. This amount is, therefore, to be deducted from the amount said to have been derived as pecuniary benefit from the deceased, which leaves only Rs. 1,500 as the pecuniary loss suffered by the Plaintiff per year.

47. Now, it is settled law that the figure of damages is not a simple multiplication of the period that the deceased expected to live and the amount per year during that time which he would have supplied to the support of his wife and children. The amount is to be discounted for the purpose of lumpsum payment instead of being spread over for a period of years. If we take twenty years purchase for this purpose, then that amount will have to be discounted as stated above. We feel that it would be appropriate, therefore, to discount the amount by one-third only so that taking out Rs. 10,000, the amount would come to Rs. 20,000. We do this because it is to be noticed that thirteen years have already elapsed since the date of the accident and the dependants of the deceased have not received anything for all this period of time. We have taken other factors into consideration and adjusted one against the other. For instance, the earnings of the deceased may have gone up during the years so that the pecuniary expectations of the Plaintiffs would have correspondingly increased. But against this it is also to be considered that the deceased may have not lived upto 65 years and died a natural death earlier or otherwise lost his earning capacity.

48. It has been suggested to us that we should also take into consideration the loss in money value. It has been stated that one of the items to be taken into account in assessment of damages is permanent changes in the value of money.

49. Our attention has been invited to a Division Bench judgment of this High Court in Abdulkadar Ebrahim v. Kashinath 1968 A.C.J. 78 where it was observed that (p. 84):

In assessing damages, the present value of the rupee ought also to be considered as has been decided in Heart v. Griffiths-Jones (1948) 2 All E.R. 729 and in Glassgow Corporation v. Kelly. (1951) W.N. III.

There is, therefore, authority for the proposition that in assessing damages the fall in the value of the rupee should also be taken into consideration. Unfortunately nothing has been placed on record as to what is the exact fall in the value of the rupee over the period under consideration. However, some amount will have to be added under this heading, which we assess at Rs. 5,000 from the aggregate sum of Rs. 25,000 therefore we will deduct Rs. 1,300, which the deceased would have had paid for taxes if he had been alive and earned the income from which the beneficiaries would have derived pecuniary benefit.

So that we would make an award for Rs. 23,700 as the quantum of damages to be paid by the Defendants to the Plaintiffs.

50. The decision of the Civil Judge, Senior Division, Poona, is, therefore, set aside and the suit decreed for Rs. 23,700 (Rupees twenty-three thousand seven hundred only) with interest at 4 (four) per cent, per annum from the date of the suit. In accordance with Section 1A of the Fatal Accidents Act, 1855, the amount awarded shall be divided amongst the Plaintiffs in the following manner:

51. 1/2 (one-half) to the Plaintiff No. 6, the widow of the deceased and the rest to be divided equally amongst Plaintiffs Nos. 1 to 5 with the result that Plaintiff No. 6 would receive Rs. 11,850 and each of the child will receive Rs. 2,370 with proportionate interest.

52. Mr. Agarwal for the Plaintiffs states that Plaintiffs Nos. 1, 2 and 3 have attained majority and Plaintiff Nos. 4 and 5 continue to be minors. The amount payable to the two minors be invested in Fixed Deposit with a Nationalized Bank for the period of their minority. Respondent No. 1, the State of Maharashtra, is given three months'' time to make the payment. The decree should be sent to the Collector for recovery of Court-fees from the Plaintiffs.

53. Appeal allowed as indicated above with costs throughout.