Directors does not suffer from any error of law apparent on the face of the record, and which had resulted in manifest injustice to the petitioner.

Piyare Lall Khanna
v.
The State Bank of Patiala and others

Pandit, J.

In view of what I have said above, this petition fails and is dismissed. There will, however, be no order as to costs.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat and Prem Chand Pandit, JJ.

THE NORTHERN INDIA TRANSPORTERS INSURANCE CO., LTD.,—*Appellant.*

versus

AMRA WATI AND ANOTHER,—*Respondents.*

First Appeal From Order No. 145 of 1965.

1965

December, 15th.

Motor Vehicles Act (IV of 1939)—S. 110-A—Parties to the applications—Negligent driver—Whether necessary party—All the heirs of the deceased—Whether must join the application.

Held, that it is not necessary for a claimant for compensation to implead every person guilty of a tort so long as the party, against whom the claim is pressed, is joined in the claim and that party of course is the transport company. The mere circumstances that the transport company may have some claim against the driver, is of no consequence and really of no concern to the claimants.

Held, that a claim for compensation as a result of the death of a person in the accident arises out of the Fatal Accidents Act, 1855, and is to be made on behalf of the heirs mentioned in that Act, namely, the wife, husband, parent and child, and, although the claim can be made by an executor or an administrator or a representative of the deceased, it is essentially a claim on behalf of all of them. There was, therefore, no justification for excluding the compensation payable to the daughters merely because their names were brought into the proceedings at a later stage. Apart from this even a late claim can be admitted by the Tribunal and in the present case it certainly should have been admitted.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 5th March, 1962, to a larger Bench for decision owing to an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice P. C. Pandit, on 11th March, 1964, further referred the case to the Full Bench for decision. The Full Bench consisting of the Hon'ble Mr. Justice S. S. Dulat, the Hon'ble

Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice P. C. Pandit, after deciding the law point sent the case back to the Division Bench for final decision on 10th February, 1965. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice P. C. Pandit, on 15th December, 1965.

First Appeal from order of Shri G. S. Gyani, Motor Accidents Claims Tribunal, Punjab, (under Section 110 of the Motor Vehicles Act as amended by Act 100 of 1956) dated the 11th October, 1959, awarding Rs. twenty-two thousand and eight hundred with costs in favour of the applicants and against the respondents and ordering that by virtue of section 96 of the Motor Vehicles Act the amount of compensation will be paid by the insurers, i.e., the Northern India Transporters Insurance Company, Jullundur City.

A. M. SURI, S. M. SURI, MAHARAJ BAKHSH SINGH, & L. M. SURI, ADVOCATES, for the Appellants.

D. S. NEHRA, WITH K. S. NEHRA AND T. S. MUNJRAL, ADVOCATES, for the Respondents.

JUDGMENT OF THE D. B.

Dulat, J. DULAT, J.—Roundabout 9.40 a.m. on the 11th February, 1959 a passenger bus travelling on the main road between Ludhiana and Ferozepore got out of the driver's control and struck a tree on its off side. In the result, two passengers—Bachan Singh and Narinder Nath—died on the spot, while some others received smaller injuries. Bachan Singh's widow (Sham Kaur) and Narinder Nath's widow (Amra Wati), filed claims for compensation before the Tribunal appointed under the Motor Vehicles Act. Sham Kaur claimed on behalf of herself and her two daughters a sum of Rs. 3,24,000. The names of the two daughters—Harbans Kaur and Balbir Kaur—were not mentioned in the first application which was filed within time, that is, on the 6th April, 1959, but subsequently their names were sought to be introduced through an application dated the 2nd November, 1959. Amra Wati claimed Rs. 85,000 on behalf of herself and her minor children. The bus belonged to the Sheikhupura Transport Company, Private Limited and it was insured with the Northern India Transporters Insurance Company, and both of them were joined in the claim as respondents. The Tribunal found that the accident was due to the negligence of the bus driver and the transport company was consequently liable. It held that proper compensation due on account

of Bachan Singh's death would be Rs. 18,000 and then apportioned it among the claimants as below:—

		Rs.
Bachan Singh's widow (Sham Kaur)	...	8,000
His daughter (Harbans Kaur)	...	4,000
His daughter (Balbir Kaur)	...	6,000

The Tribunal, however, held that the claim of the two daughters was time-barred and nothing was payable to them and, in the result, it made a direction that the widow, Sham Kaur, be paid Rs. 8,000 as compensation.

Regarding Narinder Nath's death, the Tribunal held that proper compensation again was Rs. 18,000 and directed it to be paid to the heirs in certain proportions. Further, the Tribunal, in both these cases ordered that the entire compensation will be recovered from the insurance company under section 96 of the Motor Vehicles Act. Against the decision, two appeals have been filed by the insurance company—one concerning Sham Kaur's claim (First Appeal from Order 155 of 1960) and the other concerning the claim of Amra Wati (First Appeal from Order 145 of 1960)—, while two cross-appeals (First Appeal from Order 6 of 1961 and First Appeal from Order 7 of 1961) have been preferred on behalf of the claimants asking for enhancement of the compensation. All the four appeals can be conveniently disposed of together.

The transport company owning the bus has not filed any appeal, but Mr. Tirath Singh appearing for that company has sought to support the order of the Tribunal not only on the grounds taken by it but also on certain other grounds. One of his contentions, however, is that the Tribunal's finding, that the accident was due to the negligence of the bus driver, is not on the evidence correct and although he cannot of course in the absence of any appeal claim that no compensation should be granted, he is, according to his submission, entitled to urge that no enhancement in compensation should be allowed. I am not clear if Mr. Tirath Singh is in this manner entitled to have the question of negligence reopened but, since there is on the merits no particular substance in the contention, it is in the present case not necessary to go into that

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matter. The evidence is perfectly clear that on the road, along which the bus was travelling, there was at the time of this incident no particular traffic. It had started to drizzle a little at that time and in view of this some of the passengers pointed out to the driver that he was perhaps driving too fast. The driver, Jagdish Lal, paid no heed to this warning and in fact retorted that he was already late and could not, therefore, travel slowly. Soon after that the bus apparently skidded and got out of control and hit a tree not on its near side but on the opposite side. Mr. Tirath Singh suggested, as had been the suggestion of the driver when he gave evidence, that in fact the bus was travelling at a reasonable speed, 23 to 24 miles an hour, but, as there were some pits on the road, he had to keep twisting the steering wheel frequently to avoid the pits and on account of a sharp twist the tie-rod became loose and the steering thus got out of control and the bus could not be stopped before it struck a tree. Reliance was placed on the circumstance that when the bus was inspected after the accident, it was found that the pull and push rod in the steering had been dislodged, The evidence of the motor mechanic, Deva Singh (R.W. 1), was relied upon for that purpose but that evidence does not show that the pull and push rod did not come off as a result of the impact with the tree or that it had happened prior to that. Further, if the bus was really travelling at the slow speed as mentioned by the driver, no explanation is forthcoming why, when the steering got out of control, the bus could not be stopped, the road being fairly wide. It is obvious, therefore, that the bus was being driven at some speed and it was not under proper control and the driver omitted to take note of the drizzle on the road which was likely to cause a skid unless the vehicle was well under control. In the circumstances of this case, it is, in my opinion, idle to look for the precise and immediate cause of the accident as the manner in which it happened and the attending circumstances are eloquent of negligence and but for considerable negligence on the driver's part no such accident could have possibly occurred. Nor do I see any reason for disbelieving the testimony of the witnesses in the bus who say that even in their judgment the bus was being driven too fast and in spite of their warning the driver paid no heed. I feel satisfied, therefore, that the accident was due to the negligence of the driver and that

he was driving the vehicle without proper control over it. It is admitted, of course, that for this negligence the transport company is in law liable.

Mr. Tirath Singh then says that the driver of the bus was not made a party to the proceedings and there was, therefore, some illegality in the trial. There is no point in this submission, for it is not necessary for a claimant to implead every person guilty of a tort so long as the party, against whom the claim is pressed, is joined in the claim and that party of course is the transport company. The mere circumstances, that the transport company may have some claim against the driver, is of no consequence and really of no concern to the claimants.

Mr. Tirath Singh next disputes the correctness of the amount of compensation awarded, but the question there is whether it should be enhanced as, in the absence of an appeal by the transport company, no reduction in the claim can be made.

The two appeals by the Insurance Company (F.A.Os. 145 and 155 of 1960) are easily disposed of. A Full Bench of this Court, to which this question was referred, has decided that under the terms of the Motor Vehicles Act to which the insurance policy in this case conforms, the insurer is liable to contribute only two thousand rupees in the case of each injured passenger and the liability is limited to the sum of Rs. 2,000. Counsel agree, in view of the Full Bench decision, that the insurance company can be directed to pay only Rs. 2,000 to the claimants in each of the cases; the rest of the compensation being payable by the transport company owning the bus. It was suggested in the course of arguments, although not very seriously, that the insurer in this case had undertaken liability exceeding the minimum required by the Motor Vehicles Act, but that is not so and the terms of the policy are clear that it was limited to what is the minimum required by the Act.

There remains the two appeals by the claimants that is, the heirs of Bachan Singh in one case, and those of Narinder Nath in the other (F.A.Os. 6 and 7 of 1961).

Regarding Bachan Singh, it appears that he has left behind a widow Shrimati Sham Kaur and two daughters,

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Harbans Kaur and Balbir Kaur. The Tribunal below first fiinds that the average annual income of Bachan Singh deceased was about Rs. 9,000 out of which about Rs. 2,000 was income from land and a house which of course are now inherited by the claimants. The Tribunal, therefore, found that the income lost to the heirs was about Rs. 7,000 per annum, but he reduced it further to Rs. 6,000 per annum; thinking that there might be some exaggeration in the stated income. Actually, however, it appears that there was hardly any room for exaggeration. Further, the Tribunal held that out of the total income the deceased was probably contributing only about Rs. 100 a month to family expenses spending the rest on himself. Mr. Sethi urges that this was an arbitrary view and there was no reason to think that Bachan Singh was spending the bulk of his income on him and considering that his total income was about Rs. 9,000 a year, he could hardly have spent most of it on himself leaving only Rs. 100 a month for his family. I think, there is force in this contention and considering everything it seems to me that it is not unreasonable to think that he must have been spending at least Rs. 200 a month on the family, that is, the widow and the daughters. The Tribunal has found that Bachan Singh, who was roundabout 42 or 43 years old, could legitimately be expected to live for another 15 years. The total loss would, therefore, in my opinion, come to Rs. 36,000 and not Rs. 18,000 as found by the Tribunal. I say this because otherwise, too, Rs. 18,000 as compensation appears to me far too little, while Rs. 36,000 is in all the circumstances reasonable. I would, therefore, hold that the claimants have suffered to the extent of Rs. 36,000 by the death of Shri Bachan Singh.

The Tribunal was of opinion that out of Rs. 18,000 fixed as compensation, Rs. 8,000 should be paid to the widow and the remaining Rs. 10,000 to the two daughters, but he went on to hold that the claim on behalf of the daughters was belated having been formally made only on the 2nd November, 1959, and, therefore, directed that nothing be paid to the daughters. This conclusion has been seriously challenged before me and on good grounds. It has to be remembered that a claim of this kind, which arises out of the Fatal Accidents Act, 1855, is to be made on behalf of the heirs mentioned in that Act, namely, the wife, husband,

parent and child, and, although the claim; can be made by an executor or an administrator or a representative of the deceased, it is essentially a claim on behalf of all of them. There was, therefore, no justification for excluding the compensation payable to the daughters merely because their names were brought into the proceedings at a later stage. Apart from this, I find that even a late claim can be admitted by the Tribunal and in the present case it certainly should have been admitted. I would, therefore, in disagreement with the Tribunal's view, hold that the total amount of compensation, namely, Rs. 36,000, now fixed should all be paid in the following manner, that is Rs. 16,000 to Sham Kaur, Rs. 8,000 to Harbans Kaur and Rs. 12,000 to the second daughter Balbir Kaur who is younger. Out of this claim Rs. 2,000 is ordered to be paid by the Insurance Company, the Northern India Transporters Insurance Company, and the rest by the transport company, the Sheikhupura Transport Company Limited, Ludhiana.

Regarding Narinder Nath, the total compensation fixed by the learned Tribunal is the same as in the case of Bachan Singh, deceased, and he has arrived at the figure of Rs. 18,000 on the view that Narinder Nath, being about of the same age as Bachan Singh, could be expected to live for another 15 years and further that he was contributing no more than Rs. 100 a month to his family members. While the expectation of his life is not unreasonable, the amount of Rs. 100 paid to the family, again, seems too little. The evidence shows that Narinder Nath, who was working as a commission agent, was earning income which was rising every year, and in the last year, that is, in 1958-59, his income was nearly Rs. 5,000. He had a larger family consisting of a widow and seven children. Naturally, therefore, although his total income was smaller than that of Bachan Singh, there is little doubt that he must have been spending a larger portion of that income on his family and Rs. 200 per month for the family expenses is certainly not too large. I would, therefore, fix the compensation on account of his death payable to his heirs at Rs. 36,000. Out of this, Rs. 8,000 should be paid to his widow Shrimati Amra Wati, and the remaining Rs. 28,000 should be paid to his seven children in equal shares, that is, Rs. 4,000 each. It is true that two of the

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children, being girls, are shown to be earning some income of their own, but that is not in my opinion sufficient justification for depriving them of their share of the compensation as the Tribunal below appears to have done. They are both girls and certainly in need of money for their future. I do not, therefore, propose to make any distinction between them and the other children and, as already mentioned. I would direct that each of the seven children be paid Rs. 4,000 and the widow of course Rs. 8,000. Out of this total sum of Rs. 36,000, the insurance company, the Northern India Transporters Insurance Company, is ordered to pay only Rs. 2,000, and the balance, that is, Rs. 34,000; must be paid by the transport company, namely, the Sheikhupura Transport Company Limited, Ludhiana. The costs of the two appeals by the Insurance Company (F.A.Os. 145 and 155 of 1960) will be borne by the parties themselves, while the costs of the claimants' appeals (F.A.Os. 6 and 7 of 1961) will be paid by the Transport Company.

The result is that all the four appeals are allowed in terms and to the extent indicated above.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

WEALTH TAX REFERENCE

Before Mehar Singh and Prem Chand Pandit, JJ.

THE COMMISSIONER OF WEALTH TAX PUNJAB, ETC.,—*Applicant.*

versus

M/S. DALMIA DADRI CEMENT, LTD,—*Respondent.*

Wealth Tax Reference No. 21 of 1962.

1965

December, 15th.

Wealth Tax Act (XXVI of 1957)—S. 5(1)(xxi)—"Set-up"—Meaning of—Whether covers the whole process of establishing a separate unit—S. 45(d)—Exemption under—Date of operation—Whether the next financial year after the establishment of the separate units.

Held, that the expression "set up", as used in clause (xxi) of section 5(1) of the Wealth Tax Act, means completed or ready to be commissioned or ready to commence business, all of which expressions mean in this context exactly the same. It does not cover the whole process from the commencement of the operations to establish a new and separate unit to the end when such