

### **Citations on Motor Accident Claims**

**Accident's claim.-Amendment of petition.-Considerations for.- Discovery of permanent disability to the extent of 50 per cent after the filing of original petition.- Enhancement of original claim should be allowed.**

*Anand Kumar Jain v. Union of India and another*, AIR 1986 SC 1125: 1986(2) ACJ 774

**Accident's claim.-Compensation.- Considerations for determination of .- Necessity to balance loss of future pecuniary benefit which could have accrued to the claimant.-Decision partly on conjectures.-Permissibility.**

Under Section 110-B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation which appears to it to be just. Then power given to the tribunal in the matter of fixing compensation under that provision is wide. Even if we assume (we do not propose to decide that question in this case) that compensation under the provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1855 (Act 13 of 1855), the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source come to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained. The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin or error. If the assessment made by the High Court cannot be considered to be unreasonable.-and we do not think it to be unreasonable.-it will not be proper for this Court to interfere with the same. *M/s. Sheikhpura Transport Co. Ltd. v. Northern India Transporters Insurance Co. Ltd. and another etc.*, AIR 1971 SC 1624: 1973 Pun LR 722: 1971(1) SCC 785: 1971 Supp. SCR 20

**Accident's claim.-Damages for loss of life.-Compensation assessed on the basis**

**of contribution to the household and remaining years of service etc.**

The wife of the deceased Bishan Devi as A.W. 6 has deposed that the deceased was drawing a salary of Rs. 109/50 per month out of which he used to hand over Rs. 100 to her for household expenses. The deceased had many more years to go and his contribution to the household which consisted of his wife and four children would have increased. In the circumstances we feel that a compensation of Rs. 20,000 and costs of Rs. 2,500 in all the courts is payable by the two respondents to her and the four children. The wife and the four children will take the amount equally. The amount of Rupees 20,000 will bear interest at 6% per annum from the date of the claim i.e. from 4th September, 1961. There will be a joint decree against both the respondents. *Bishan Devi and others v. Sirbaksh Singh and another*, AIR 1979 SC 1862: 1980(1) SCC 273: 1980(1) SCR 300: 1979 ACJ 496

**Accident's claim.-Damages for loss of life.-Considerations for assessment.- Earnings of deceased.- Potential of future increase in earning, should have been taken into consideration.**

It would appear that the only basis on which the compensation has been awarded is the total salary which the deceased Satyendra Nath Raha would have got upto the age of 55 years which has been taken at Rs. 1,20,000/- and after deducting half which would normally have been spent, the actual income lost to the family was Rupees 60,000/-. It seems to us, however, that in making the calculation, the Claims Tribunal and the High Court overlooked two important and vital considerations. In the first place, while the admitted position was that the deceased Satyendra Nath Raha was working in the grade of Rupees 590- 30-830-35-900 and was getting a salary of Rs. 620/- p.m. at the time of his death, the Courts below have not taken into account the salary which he would have earned while reaching the maximum of his grade long before his retirement. It is admitted that the deceased Satyendra Nath Raha was 37 years of age at the time of the accident and at this rate he would have reached the maximum of the grade of Rs. 900/- at the age of 46 years i.e. full 9 years before his superannuation. On the other hand with the rise in price index it could well have been expected that there would be several revisions in the grade by the time the deceased Raha had attained the age of super-

annuation, which, if taken into account, would further enhance the amount. *Smt. Manjushri Raha and others etc. v. B.L. Gupta and others etc.*, AIR 1977 SC 1158: 1977(2) SCC 174: 1977(2) SCR 944

**Accident's claim.-Damages for loss of life.-Considerations for assessment.-Dependency on earnings of deceased.-Necessity of.-Re-marriage by spouse.-Effect of.**

The husband may not be dependent on the wife's income, the basis of assessing the damages payable to the husband for the death of his wife would be similar. Here, the lady had 35 years of service before her when she died. We have found that the claimant's loss reasonably works out to Rs. 50/- a month i.e., Rs. 600/- a year. Keeping in mind all the relevant facts and contingencies and taking 20 as the suitable multiplier, the figure comes to Rs. 12,000/-. The tribunal's award cannot therefore be challenged as too low. *Madya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar and others*, AIR 1977 SC 1189: 1977(3) SCC 64: 1977(3) SCR 627

**Accident's claim.-Damages for loss of life.-Considerations for assessment .-Earnings of deceased wife.- Dependency of husband.-Manner of assessment.**

Whether the deceased's average monthly salary is taken to be Rs. 200/- or Rs. 250/- , we find it difficult to argue that only half of that amount would have been sufficient for her monthly expenses till she retired from service, so that the remaining half may be taken as the measure of her husband's monthly loss. It is not impossible that she would have contributed half of her salary to the household, but then it is reasonable to suppose that the husband who was employed at a slightly higher salary would have contributed his share to the common pool which would have been utilised for the lodging and board of both of them. We do not therefore think it is correct to assume that the husband's loss amounted to half the monthly salary the deceased was likely to draw until she retired. It on an average she contributed Rs. 100/- every month to the common pool, then his loss would be roughly not more than Rs. 50/- a month and, assuming she worked till she was 58 years, the total loss would not exceed Rs. 19,000/-. But in assessing damages certain other factors

have to be taken note of which the High Court overlooked, such as the uncertainties of life and the fact of accelerated payment.-that the husband would be getting a lump sum payment which but for his wife's death would have been available to him in dribblets over a number of years. Allowance must be made for the uncertainties and the total figure scaled down accordingly. The deceased might not have been able to earn till the age of retirement for some reason or other, like illness or for having to spend more time to look after the family which was expected to grow. Thus the amount assessed has to be reduced taking into account these imponderable factors. Some element of conjecture is inevitable in assessing damages. The husband may not be dependent on the wife's income, the basis of assessing the damages payable to the husband for the death of his wife would be similar. Here, the lady had 35 years of service before her when she died. We have found that the claimant's loss reasonably works out to Rs. 50/- a month i.e., Rs. 600/- a year. Keeping in mind all the relevant facts and contingencies and taking 20 as the suitable multiplier, the figure comes to Rs. 12,000/-. The tribunal's award cannot therefore be challenged as too low. *Madya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar and others*, AIR 1977 SC 1189: 1977(3) SCC 64: 1977(3) SCR 627

**Accident's claim.-Damages for loss of life.-Deceased aged about 25 years at the time of death.-Monthly income proved to be Rs. 1000/-.-Contribution of deceased towards the family assessed at Rs. 500/-.-Compensation of Rs. 1,00,000/- awarded.**

Even at the modest computation, the contribution of Hari Singh towards his family could not be less than Rs. 500/- per month, that, is Rs. 6,000/- per year. Taking the normal span of life to be 60 years, Hari Singh would have lived for another 35 years. It is apparent that the appellants have been deprived of more than a lac of rupees and, accordingly, their claim for Rs. 1 lac on account of compensation was quite reasonable. *Smt. Rajendra Kumari and another v. Smt. Shanta Trivedi and others*, AIR 1989 SC 1074: 1989(2) SCC 140: 1989(1) SCR 761: 1989(1) Scale 485: 1989(1) JT 353: 1989(95) Pun LR 420

**Accident's claim.-Damages for loss of life.-Deduction for lump sum payment.-**

**Delay in disposal of litigation.-Deduction is not justified.**

*Hardeo Kaur and others v. Rajasthan State Transport Corporation and another*, AIR 1992 SC 1261: 1992(2) SCC 567: 1992(1) Scale 662: 1992(2) JT 409: 1992(2) LW 732

**Accident's claim.-Damages for loss of life.-Deduction for personal expenses around 50 per cent of salary is not proper.**

*Hardeo Kaur and others v. Rajasthan State Transport Corporation and another*, AIR 1992 SC 1261: 1992(2) SCC 567: 1992(1) Scale 662: 1992(2) JT 409: 1992(2) LW 732

**Accident's claim.-Damages for loss of life.-Method of valuation by use of multiplier.-The appropriate multiplier is selected with reference to the age of deceased or claimant whichever is higher.**

The assessments of damages to compensate the defendants is beset with difficulties from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents may not live up to the estimated remaining period of their life up to the expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of year's purchase. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or

that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last. *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and others*, AIR 1994 SC 1631: 1994(2) SCC 176: 1993(4) Scale 643: 1994(1) ACJ 1: 1994(1) Ker LT 67: 1994 Mah LJ 1049

**Accident's claim.-Damages for loss of life.-The deceased died 19 days after accident.-The claimants are entitled to compensation for continuous pain and suffering.-The amount under this head, as awarded by trial Court, restored.**

*N. Sivammal and others v. The Managing Director, Pandian Roadways Corpn. and another*, AIR 1985 SC 106: 1985(1) SCC 18: 1985 ACJ 75

**Accident's claim.-Damages.- Payment of compensation.-Payment in annuity.- Damages to be invested with Bank to prevent exploitation of claimants.- Guidelines to be strictly followed.**

The five-Judge Bench of the High Court concluded that there was a conflict in the guidelines laid down by this court and those laid down by the three-Judge Bench. It observed: 21. In the guidelines laid down by Hon'ble Supreme Court and the guidelines laid down by full Bench of this Court, there is conflict. It is not possible to reconcile the same. As per the guidelines laid down by the Full Bench of this Court, the Insurance Company which may have become liable to pay the amount of compensation is required to retain the amount with it. It is obliged to pay the same to the claimants periodically with interest at the rate of 15 per cent. This is not the case in the guidelines laid down by the Hon'ble Supreme Court. The guidelines laid down by the Hon'ble Supreme Court requires that the amount of compensation should be deposited in the Tribunal. Thereafter, it is for the Tribunal to regulate disbursement and investment of the amount. Moreover, the guidelines laid down by the Hon'ble Supreme Court take care of all types of cases, wherein even the insurance company may not have been held liable to make payment of the

compensation; while, in the case of the guidelines laid down by Full Bench of this court, the guidelines are silent in cases where the Insurance Company is not made liable to make payment of the amount of compensation and only the owner of the vehicle or the driver is made liable to pay the compensation. 22. The guidelines issued by the Hon'ble Supreme Court take care of the provisions of Section 168(3) of the Vehicle Act, 1988, while, as indicated hereinabove, attention of the Full Bench has not been drawn to the provisions of Section 168 (3) of the Act, which requires a person liable to make payment of the amount of compensation to deposit the amount of compensation with the Tribunal within thirty days from the date of announcement of the award. 23. In the guidelines laid down by the Hon'ble Supreme Court emphasis is to protect the interests of minor claimants and the interest of illiterate and semi-literate, as well as poor claimants. The guidelines laid down by the Hon'ble Supreme Court also apply to literate and other claimants. But in such cases discretion is left with the Tribunal, indicating the circumstances and the manner in which the discretion may be exercised. While in the guidelines laid down by the Full Bench, it is difficult to read that any such discretion is left with the Tribunal. for the aforesaid reasons there is conflict between the guidelines laid down by the Hon'ble Supreme Court in the case of *Union Carbide Corporation* (supra) and again in the case of *General Manager, Kerala State Road Transport Corporation* (supra). Moreover, this conflict is irreconcilable inasmuch as it would be impossible to implement both the guidelines simultaneously. We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the Fixed Deposit Receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the Court/ Tribunal which ordered the deposit. This will eliminate the practice of taking loans which may be upto 80 per cent of the amount invested and thereby defeating the very purpose of the order. We do hope that the Courts/Tribunals in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claims. We are sure that the Courts/Tribunal will realise their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them. The very purpose of laying down the guidelines was to ensure the safety of the amount so that the

claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements will be equally shared by the Courts/Tribunals. *Lilaben Udesing Cohel v. Oriental Insurance Company Ltd. and others*, AIR 1996 SC 1605:

**Accident's claim.-Death in accident with motor vehicle.-Lump sum deduction of 33 per cent not permissible.**

*Urmilla Pandey and others v. Khalil Ahmad and others*, AIR 1994 SC 2405: 1994(4) SCC 207: 1994(2) Scale 989: 1994(4) JT 55: 1994(4) TAC 218

**Accident's claim.-Jurisdiction of Tribunal.-Claim made in respect of an accident occurred prior to constitution of tribunal.-The tribunal has jurisdiction to entertain the petition and if there is delay, it may condone the same as the provision in fact provide for change in forum and therefore, would operate retrospectively.**

The expressions arising out of an accident occurring in sub-section (1) and over the area in which the accident occurred, mentioned in sub-section (2) clearly show that the change of forum was meant to be operative retrospectively irrespective of the fact as to when the accident occurred. To that extent there was no difficulty in giving the answer in a simple way. But the provision of limitation of 60 days contained in sub-section (3) created an obstacle in the straight application of the well-established principle of law. If the accident had occurred within 60 days prior to the constitution of the Tribunal then the bar of limitation provided in sub-section (3) was not an impediment. An application to the Tribunal could be said to be the only remedy. If such an application, due to one reason or the other, could not be made within 60 days then the Tribunal had the power to condone the delay under the proviso. Appropos the bar of limitation provided in Section 110A(3), one can say on the basis of the authorities aforesaid, that strictly speaking, the bar does not operate in relation to an application for compensation arising out of an accident which occurred prior to the constitution of the Claims Tribunal. But since in such a case there is a change of forum, unlike the fact of the said cases, the reasonable view to



take would be that such an application can be filed within a reasonable time of the constitution of the Tribunal, which ordinarily and generally, would be the time of limitation mentioned in sub-section (3). If the application could not be made within that time from the date of the constitution of the Tribunal, in a given case, the further time taken in the making of the application may be held to be the reasonable time on the facts of that case for the making of the application or the delay made after the expiry of the period of limitation provided in sub-section (3) from the date of the constitution of the Tribunal can be condoned under the proviso to that sub-section. In any view of the matter, in our opinion, the jurisdiction of the Civil Court is ousted as soon as the Claims Tribunal is constituted and the filing of the application before the Tribunal is the only remedy available to the claimant. On the facts of this case, we held that the remedy available to the respondents was to go before the Claims Tribunal and since the law was not very clear on the point, the time of about four months taken in approaching the Tribunal after its constitution can be held to be either a reasonable time or the delay of less than 2 months could well be condoned under the proviso to sub-section (3) of Section 110A. *New India Insurance Co. Ltd. v. Smt. Shanti Misra*, AIR 1976 SC 237: 1975(2) SCC 840: 1976(2) SCR 266: 1976 ACJ 128

**Accident's claim.-Life expectancy.- Determination of.-Assumption of 58 years not permissible.-Life expectancy can not be less than 65 years.**

*Urmilla Pandey and others v. Khalil Ahmad and others*, AIR 1994 SC 2405: 1994(4) SCC 207: 1994(2) Scale 989: 1994(4) JT 55: 1994(4) TAC 218

**Accident's claim.-Life expectancy.- Determination of.-Death of army officer.- The servicemen are disciplined to live active and energetic life.-span of life should be taken to be 70 years.**

*Hardeo Kaur and others v. Rajasthan State Transport Corporation and another*, AIR 1992 SC 1261: 1992(2) SCC 567: 1992(1) Scale 662: 1992(2) JT 409: 1992(2) LW 732

**Accident's claim.-Locus standi.- Any legal representative of deceased can claim**

**compensation.-Such person is not required to be the person contemplated by Section 1-A of Fatal Accident Act.**

The proviso to sub-s. (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 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 100-A of the Act. Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by Section 110-A and Section 110-B of the Act and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855 in so far as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right 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. 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 Section 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 100-B of the Act 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 under Section 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 sometimes 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 case arising out of motor vehicles accidents. *Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another*, AIR 1987 SC 1690: 1987(3) SCC 234: 1987(3) SCR 404: 1987(1) Scale 1027: 1987(2) J.T. 384: 1987 Mah. L.J. 838

**Accident's claim.-Negligence.- Burden of proof .- Application of principle of res ipsa locutur.-The incident itself showing the negligence .-The burden is on the defendant to prove that the Driver was not negligent.**

*Pushpabai Parshottam Udeshi and others v. M/s. Ranjit Ginning & Pressing Co. Pvt. Ltd. and another*, AIR 1977 SC 1735: 1977(2) SCC 745: 1977(3) SCR 372

**Accident's claim.-Negligence.- Determination of.-The driver or owner of the vehicle should not escape the liability merely on account of some doubts when the culpability can be inferred from the circumstances.**

Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. *N. K. V. Bros. (P.) Ltd. v. M. Karumai Ammal and others etc.*, AIR 1980 SC 1354: 1980(3) SCC 457: 1980(3) SCR 101

**Accident's claim.-Negligence.- Mechanical defect in vehicle.-the owner must prove that all necessary precautions were taken to keep the vehicle road worthy condition and the defect was not discoverable by reasonable care.**

*Minu B. Mehta and another v. Balkrishna Ramchandra Nayan and another*, AIR 1977 SC 1248: 1977(2) SCC 441: 1977(2) SCR 886: 1977 ACJ 118

**Accident's claim.-Negligence.- Necessity of sympathetic treatment .-Paramount duty of State to ensure disablement.-Award of Tribunal affirmed.**

The State has a paramount duty, apart from liability for tort, to make effective provision for disablement in cases of undeserved want.-Article 41 of the Constitution states so. It was improper of the Corporation to have tenaciously resisted the claim. It was right on the part of the Tribunal to have raised a rebuttable presumption on the strength of the doctrine of *res ipsa loquitur*. The heads of claim have been correctly appreciated by the Tribunal and the awards have been moderate. Here again, the State Corporation should have sympathised with the victims of the tragic accident and generously adjusted the claims within a short period. What is needed is not callous litigation but greater attention to the efficiency of service, including insistence on competent, cautious and responsible driving. *The Rajasthan State Road Transport Corporation, Jaipur v. Narain Shanker and another etc. etc.*, AIR 1980 SC 695: 1980(2) SCC 180: 1980(2) SCR 724: 1980 WLN 62

**Accident's claim.-Negligence.- Proof of.-application of principle of res ipsa loquitor.-In the absence of any explanation to the contrary, admission of driver that he made no attempt to slow down, proves negligence on his part.**

The driver of the bus, Alji Abdulla, R.W. 1, admitted in paragraph six of his deposition that he was driving the bus in the third gear right from the place the road proceeded on down-gradient and he continued driving in the third gear even at the time of the accident. This means that there was no attempt to show down while going from the tarred portion to the mud portion. This part of the statement of the driver in the cross-examination supports the petitioner's evidence which have been accepted by the trial court as proving rash and negligent conduct on the part of the driver. The evidence in the case indicates that there was no traffic on the road at the

time of the accident. No untoward incident took place like sudden failure of the brakes or an unexpected stray cattle coming in front of the bus and still the vehicle got into trouble. In absence of any unexpected development it was for the driver to have explained how this happened and there is no such explanation forthcoming. In such a situation the principle of *res ipsa loquitur* applies. The petitioner, in the circumstances, could not have proved the actual cause of the accident, and on the face of it it was so improbable that such an accident could have happened without the negligence of the driver that the Court should presume such negligence without further evidence. The burden in such a situation is on the defendant to show that the driver was not negligent and that the accident might, more probably, have happened in a manner which did not connote negligence on his part, but the defence has failed to produce any evidence to support such a possibility. *Basti Kasim Saheb (dead) by LRs v. The Mysore State Road Transport Corporation and others*, AIR 1991 SC 487: 1991(1) SCC 298: 1990 Supp (2) SCR 658: 1990(2) Scale 982: 1990(4) JT 371

**Accident's claim.-Negligence.- Rash and negligent driving.- Ticketless traveller.-Liability of carrier .-In the circumstances of the case, question, left open.**

*Madhya Pradesh State Road Transport Corporation and others v. Zenabhai and others*, AIR 1977 SC 2206: 1977(4) SCC 607: 1978 ACJ 122

**Accident's claim.-Sovereign immunity.-Application of.- Accident caused by the military truck whose driver was found to be negligent.-The Union of India is liable to pay compensation for the negligence.-The principle of sovereign immunity of the State has no application.**

*Pushpa Thakur v. Union of India and another*, AIR 1986 SC 1199: 1984 ACJ 559

**Accident's claim.-Vicarious liability .-Accident not committed by servant of Government or Local Authority but by an unauthorised person driving the vehicle at the time of accident, but for an authorised purpose.-The Government can not escape its liability.**

The facts of the present case disclose and demonstrate that an authorised act was being done in an unauthorised manner. The accident took place when the act authorised was being performed in a mode which may not be proper but nonetheless it was directly connected with in the course of employment.-it was not an independent act for a purpose or business which had no nexus or connection with the business of the State Government so as to absolve the appellant-State from the liability. The crucial test is whether the initial act of the employee was expressly authorised and lawful. The employer, as in the present case the State Government, shall nevertheless be responsible for the manner in which the employee, that is, the driver and the respondent executed the authority. This is necessary to ensure so that the injuries caused to third parties who are not directly involved or concerned with the nature of authority vested by the master to his servant are not deprived from getting compensation, if the dispute revolves around the mode or manner of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. In the present case, it has been established beyond doubt that the driver of the vehicle had been fully authorised to drive the jeep for a purpose connected with the affairs of the State and the dispute is only in respect of the manner and the mode in which the said driver performed his duties by allowing another employee of the State Government, who was also going on an official duty to drive the jeep, when the accident took place. Once it established that negligent act of the driver and respondent was 'in the course of employment', the appellant-State shall be liable for the same. State of Maharashtra and others v. Kanchanmala Vijaysing Shirke and others, AIR 1995 SC 2499; 1995(5) SCC 659; 1995(5) Scale 2; 1995(6) JT 155; 1995(3) Pun. LR (SC) 375