Karnataka High Court Patel Roadways And Another vs Manish Chhotalal Thakkar And ... on 4 August, 2000 Equivalent citations: 2001 ACJ 180, ILR 2000 KAR 3286, 2000 (6) KarLJ 216 Bench: R Raveendran, V Sabhahit JUDGMENT 1. Admitted. The matter is heard finally by consent. 2. This appeal arises from the judgment and award dated 10-2-1999 passed by the Principal District Judge and Motor Accident Claims Tribunal, Dharwad in MVC No. 657 of 1996. 3. The said claim petition was filed by the widow, mother and minor son of one Subhash Thakkar, a businessman who died in a motor accident on 1-5-1994. According to the claimants, on 1-5-1994 when the said Subhash Thakkar was travelling in a Maruti Car bearing No. KA-25-M-1606 on the Poona-Bangalore Road (near Hegganahalli Gate, Sira), a lorry bearing No. GOA-6062 came at a high speed being driven in a rash and negligent manner and dashed against the car; and as a consequence the said Subhash Thakkar sustained injuries and subsequently died as a result of the said injuries. Feeling aggrieved, the claimants filed MVC No. 657 of 1996 claiming a compensation of Rs. 50,00,000/-. Two others who were travelling in the said car also died as a result on the injuries sustained in the said accident and their L.Rs filed MVC Nos. 654 and 656 of 1996. 4. Initially, the claim petitions were filed against four respondents i.e., the driver and insurer of the lorry (respondents 1 and 2) and the owner and insurer of the car (respondents 3 and 4). Subsequently, when the claimants who were under the impression that first respondent was the owner-cum-driver of the lorry came to know that first respondent was only a driver of the lorry and not the owner, the owner of the lorry was impleaded as fifth respondent. The claimants contended that the accident occurred due to the negligence of the lorry driver. They alternatively contended that the accident occurred due to the composite negligence of the lorry driver and also the driver of the car. The claim petitions were resisted by the respondents. 5. On the pleadings, the Tribunal framed issues on the question of (1) Negligence; (2) Death as a result of negligence; (3) Entitlement and quantum of compensation and (4) Final order. 6. Common evidence was recorded in the three cases. The widow of the deceased (claimant No. 1 in MVC No. 657 of 1996) was examined as P.W. 3 and an eye-witness was examined as P.W. 2. The claimants in the other two petitions were examined as P.W. 1 and P.W. 4. Exs. P-1 to P-17 were marked on behalf of the claimants in three petitions. On behalf of the respondents in the claim petition no oral evidence was let in, but the insurance policy was marked as Ex. R-1. 7. On appreciating the evidence, the Tribunal, by its common judgment dated 10-2-1999 allowed the claim petitions in part. The Tribunal held that the accident occurred on account of rash and negligent driving of the lorry bearing No. GOA-6062 by its driver; that there was no negligence on the part of the driver of the car; that the claimants were the legal representatives of the deceased and were entitled to a compensation of Rs. 9,62,000.00 with interest at 12% p.a. from the date of petition till the date of realisation. The compensation was awarded under the following heads: (a) Loss of dependency Rs. 9,27,000.00 (b) Loss of estate Rs, 10,000.00
(c) Loss of consortium Rs. 10,000.00 (d) Funeral expenses Rs. 15,000.00.

8. Feeling aggrieved the owner and insurer of the lorry (respondents 5 and 2 in the claim petition) have filed this appeal, raising the following contentions:

(a) The finding of the Tribunal that driver of the lorry alone was negligent is erroneous and the Tribunal ought to have held that there was composite negligence on the part of the drivers of the lorry and the car and restricted the liability of the appellants to only 50% of the amount awarded.

(b) The compensation awarded is excessive as the Tribunal committed an error both in regard to the assessment of the monthly income of the deceased and in selecting the appropriate multiplier.

(c) The award of interest at 12% p.a. on the compensation amount is excessive.

9. At the stage of admission, the appellants raised a contention that the claim petition was not maintainable as the driver of the car had not been impleaded a party. According to the appellants, any claim petition filed without impleading the driver or drivers of the vehicles involved in the accident is not maintainable having regard to the decision of this Court in Karnataka State Road Transport Corporation, Bangalore v Smt. Biyabi alias Kundan Bai and Others. The learned Counsel for the appellants submitted that this matter is a pure question of law, and related to the maintainability of the claim petition and therefore they may be permitted to raise the said contention in addition to the contentions mentioned in the appeal memo, under Order 41, Rule 2 of the Civil Procedure Code. The appellants were permitted to raise the said conten- tion as it is related to the maintainability of the claim petition itself and a pure question of law.

10. On the contentions raised, the following questions arise for consideration in this appeal: "(i) Whether the claim petition/s filed without impleading the driver/s of the vehicle/s involved in the accident is not maintainable?

(ii) Whether the finding of the Tribunal that the driver of the lorry alone was negligent in causing the accident is erroneous?
(iii) Whether the compensation awarded is excessive?
(iv) Whether the interest awarded is excessive?" Re: Point No. (i):

11. The question that arises for consideration is whether a claim petition under the provisions of the Motor Vehicles Act, 1988 ('Act' for short) is maintainable only against the owner and insurer without impleading the driver as a party. In other words, whether the driver/s of the vehicle/s which caused the accident is/are necessary party/parties. Relying on the decision of a Division Bench of this Court in Karnataka State Road Transport Corporation's case, supra, the appellants contend that the driver is a

necessary party to a claim petition and the petition has to be dismissed if the driver/s of the vehicle/s involved in the accident are not impleaded as parties to the claim petition. Before considering whether the said decision in fact lays down such a proposition of law, a brief reference to the relevant provisions of the Act and legal position is necessary.

12. Chapter XII of the Motor Vehicles Act, 1988 (for short, the 'Act') deals with Claims Tribunals. Section 166 of the 'Act' provides for filing the application for compensation, before Claims Tribunal constituted under Section 165 of the Act. Sub-section (1) specifies the persons who can file an application for compensation. It does not make any provision as to who should be the respondents in such a claim petition. Sub-section (2) of Section 149 however requires that notice should be given to the insurer before commencement of the proceedings in which award is given, and permits the insurer to defend the action on the grounds mentioned therein. 12.1 Section 168 of the Act relates to award of the Claims Tribunal. Sub-section (1) thereof provides that on receipt of an application for compensation made under Section 166 the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim and make an award determining the amount of compensation which appears to it to be just, and specifying the person or persons to whom compensation shall be paid, and in making the award, the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. 12.2 First part of sub-section (1) of Section 168 requires notice to be given to the parties to the petition and specifically requires that notice should be given to the insurer. There is no specific requirement that notice should be given to the driver. Thus all the first part of sub-section (1) of Section 168 contemplates is that if the driver is made a party, he should also be given notice. Second part of sub-section (1) of Section 168 requires the Claims Tribunal to specify the amount which shall be paid by the insurer or owner or driver of the vehicle. It does not follow therefrom that the driver should be a party to the claim petition. The effect of second part of sub-section (1) is that if the insurer, owner and driver are parties, then, the Tribunal should specify the amount that should be paid by each of the parties (that is by the insurer or owner or driver) or by any or all of them. If driver is not a party, nothing could be awarded against him. Nothing in Section 168 of the Act can therefore be read as requiring that driver should compulsorily be made a party to the claim proceedings. 12.3 Section 176 of the Act provides that State Government may make rules for, among other things the purpose of carrying into effect the provisions of Sections 165 to 174 and in particular, such rules may provide for the form of application for claims for compensation and the particulars it may contain, and the fees if any, to be paid in respect of such application. In exercise of the powers under the said section and other enabling provisions, the State Government has framed the Karnataka Motor Vehicles

Rules, 1989 ('Rules' for short). Chapter VII of the Rules relates to Claims Tribunals. 12.4 Rule 232 provides that every application for compensation arising out of a motor accident of the nature specified in Section 165(1), to be made by a person specified in Section 166(1) to the Claims Tribunal shall be in Form No. KMV 63 and shall contain the particulars specified therein. Form No. KMV 63 requires the claimants to furnish the particulars of the name, father's name, full address, age, occupation and monthly income of the person injured/dead; the name and address of the employer of the deceased; whether the deceased/injured was paying income-tax if so the amount; the place, date and time of accident, name and address of police station under whose jurisdiction the accident took place; whether the person in respect of whom compensation is claimed was travelling in the vehicle involved in the accident; nature of injuries sustained and the continuing effect thereof; name and address of the Medical Officer who attended to the injured/dead, period of treatment and expenditure, nature of injuries and caused permanent disablement, registration number and type of vehicle involved in the accident; name and address of the owner of the vehicle; and name, policy number, insurance particulars and address of the insurer of the vehicle. It is seen from the prescribed form of application (Form No. KMV 63) that the claimant is not required to furnish the name and address of the driver. 12.5 Rule 235 provides that the Claims Tribunal shall, on an application made to it by the applicant, send to the owner or driver of the vehicle or both from whom the applicant claims relief and the insurer, a copy of the application, together with the notice of the date on which it will dispose the application, and may call upon the parties to produce on that date any evidence which they may wish to tender. This rule makes it clear that the claimant is not required to make both the owner and the driver as a party, but he has the option of proceeding against the owner or driver or both. 12.6 When the Act and the rules and the prescribed form do not require the driver to be made a party and when Rule 235 specifically gives the choice to the claimant to proceed against the owner or driver or both, it cannot be said that driver is a necessary party for a claim petition, under the Act. When the form of the claim petition does not require a claimant to even name the driver, the claimant cannot be found fault with, for not impleading the driver.

13. We will next examine whether a driver is a necessary party to a claim for damages against the owner of the vehicle under the Law of Torts. It is contended that the foundation for liability for a claim petition for compensation under Chapter XII of the Act, is in the Law of Torts; and the provisions of Chapter XII merely provide a forum of adjudication of claims arising from motor accidents. The question therefore is whether the Law of Torts casts any obligation on the claimant to sue the driver, along with the owner, and whether a claim for damages/compensation for the negligent act of the driver (servant) is not maintainable the owner (master) alone.

14. Two or more persons become joint tortfeasors (wrongdoers) by either com-

mitting a tort in concert or by the principle of vicarious liability (as in the case of master and servant or principal and agent). Under the Law of Torts, joining wrongdoers are jointly and severally liable for the whole of the damages. Where the liability is joint and several, the person aggrieved has the choice of suing either of the joint tortfeasors or both of them. But, where only one of the tortfeasors (master) is sued, not on the ground that he committed any wrong, but on the ground that he is vicariously liable for the tort committed by the other tortfeasor (servant), then to make the master liable, it is necessary to prove that the servant (who is not sued) acted in the course of employment and acted negligently. We may refer to oft-quoted passages from two celebrated works on tort and Motor Insurance in this context. 14.1 Salmond in his Treatise on Torts, states thus (18th Edition, page 417 et sequens): "Where the same damage is caused to a person by two or more wrongdoers, those wrongdoers may be either joint or independent tortfeasors. Persons are to be deemed joint tortfeasors within the meaning of this rule whenever they are responsible for the same tort–that is to say, whenever the law for any reason imputes the commission of the same wrongful act to two or more persons at once. This happens in at least three classes of cases namely, agency, vicarious liability and common action. ... In order to be joint tortfeasors they must in fact or in law, have committed the same wrongful act.... The injuria as well as the damnum must be the same". "Joint wrongdoers are jointly and severally responsible for the whole damage. That is to say, the person injured may sue any of them separately for the full amount of the loss; or he may sue all of them jointly in the same action, and even in this latter case the judgment so obtained against all of them may be executed in full against any of them". In Black's Dictionary, 'Joint and several liability' is defined as follows: "A liability is said to be joint and several when the creditor may sue one or more of the parties to such liability separately, or all of them together, at his opinion". 14.2 In Shawcross on Motor Insurance (2nd Edition), it is observed thus: "Joint tortfeasors, that is, those persons who' together incur responsibility in respect of the same wrongful act, whether by way of vicarious responsibility or by way of common action in a wrongful activity were at common law jointly and severally responsible for the whole of the damages sustained by the injured party. At common law, this gave the latter the right to choose whether he should seek to take one or all of the joint wrongdoers liable in an action, but once he had obtained judgment against those sued he could not proceed against the others. ...".

15. The Supreme Court in Minu B. Mehta and Another v Balkrishna Ramchandra Nayan and Another, reiterated that even in claim applications under Motor Vehicles Act, to make the owner and insurer of a vehicle liable to pay compensation, it is necessary to prove negligence on the part of the driver. The relevant observations of the Supreme Court are: "The liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the Law of

Torts. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent... This plea ignores the basic requirements of the owner's liability and the claimants right to receive compensation. The owners' liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a Tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the Law of Torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results. (We) hold that proof of negligence is necessary before the owner or the insurance company could be held liable for payment of compensation in a motor accident claim case". It should be noticed that in Minu B. Mehta's case, supra, the owners were impleaded as respondents 1 and 2 and insurer was impleaded as respondent 3 in the claim petition and driver was obviously not a party.

16. The question whether a driver is a necessary party was specifically considered by this Court in General Manager, Karnataka State Road Transport Corporation v Vijayalaxmi. Justice Venkatachaliah (as he then was) speaking for the Division Bench stated the law thus: "7. What remains to be considered is the contention that the non-joinder of the Driver is fatal to the action. The owner's liability in this case is vicarious liability of the Master for the tortuous act of the servant in the course of employment. They are both in the position of Joint tortfeasors and their liability is joint and several. The position is too well-settled to admit of doubt. However, out of deference to the learned Counsel who seemed to set some store by this contention we might refer to some authorities.
17. In Clerk and Lindsell on Torts (14th Edition, 1975), the statement of the law on the point is this: "A master is saddled with responsibility to a third party in the event of his servant committing a tort in the course of his employment. The servant himself is also liable, and he and his master are joint tortfeasors, though in practice it is the master who is sued since he is better able to pay the damages. For vicarious liability to arise three things have to be established: a master-servant relationship; that the servant committed a tort; and that he did so in the course of his employment", (vide para 76 at page 43) (emphasis supplied) As to who are joint tortfeasors, it is stated: "Who, then, are joint tortfeasors?

One way of answering the question is to see whether the cause of action against each tortfeasor is the same. If the same evidence would support an action against each, they are joint tortfeasors. They will be jointly liable for a tort which they both commit. . . ". (vide para 201 at page 114) Where damage is caused to a person by two or more wrongdoers they may either be joint tortfeasors or independent tortfeasors. A case of vicarious liability is a case of joint tortfeasors. On the question as to the nature of the vicarious liability of the master for the tortious act of the servant, Salmond on "Torts" (18th Edition, 1981) states: "A master is jointly and severally liable for any tort committed by his servant while acting in the course of employment. This is by far the most important of the various cases in which vicarious responsibility or vicarious liability is recognised by the law. Vicarious liability means that one person takes or supplies the place of another so far as liability is concerned", (vide para 172 at page 425) (emphasis supplied) In Jones v Manchester Corporation, Denning L.J. said: "In all these cases it is of importance to remember that when a master employs a servant to do something for him, he is responsible for the servant's conduct as if it were his own. If the servant commits a tort in the course of his employment, then the master is a tortfeasor as well as the servant. The master is never treated as an innocent party. . . ". (emphasis supplied) Indeed, the word 'vicarious' itself lexicographically means one that takes the place of another. Vicarious liability means that one person takes the place of another so far as liability is concerned.

18. There is, therefore, no substance in the contention that in an action against the master for the tortious act of the servant, the latter himself is a necessary party and that his non-joinder is fatal to the action. The case being one of joint and several liability the master alone can be sued; but, of course, in the action, the tort of the servant, in the course of the employment, must be established".

19. A similar view has been expressed by two earlier Division Benches of this Court in Seethamma and Others v Benedict D'Sa and Others, and Mysore State Road Transport Corporation v M. Navarathnamal. In the latter case, this Court rejected the contention that non-joinder of the driver if fatal to the case, on the following reasoning: "The next contention relates to non-joinder of the driver of the bus as a party in the present proceedings. It is well-settled that if a servant in the course of his employment is guilty of a negligent act thus causing loss to a third party, the master would be vicariously liable and any liability arising therefrom is both joint and several to them. It is also to be observed that the proceedings of the present nature are initiated by a petition under Section 110-A of the Motor Vehicles Act and the Rules framed thereunder in which it is nowhere provided for making the driver of a motor vehicle, a party.. .".

20. Most of the other High Courts have also taken the view that driver is not a necessary party. Reference may be made to the decisions of the Kerala High Court in (i) United India Insurance Company Limited v Ratnamma, (ii) United India Fire and General Insurance Company Limited v Varghese

, (in) Anuradha Varma v State of Kerala , (iv) Simon Pathrose v United India Insurance Company Limited. The decision of the Bombay High Court in State of Maharashtra v Gulabi Sudhu and Others , the decision of the Madras High Court in Mohammed Habibullah and Another v K. Seethammal, the decision of the Allahabad High Court in Babu Singh v Champa Devi, the decision of the Patna High Court in Badri Narain Prasad v Anil Kumar Gupta , the decision of the Punjab High Court in Vanguard Fire and General Insurance Company Limited v Sarla Devi and lastly the decisions of the Delhi High Court in Radha Krishan Sachdeva v Flt. Lt. L.D. Sharma, Ved Kumari and Another v Kishan Lal and Others .

21. The only discordant note is struck by the Madhya Pradesh High Court in two decisions, namely New India Assurance Company Limited v Munni Devi and Madhya Pradesh State Road Transport Corporation v Vaijanti , holding that driver is a necessary party. But, we find that in Madhya Pradesh the relevant rules that is Rule 277 of the Madhya Pradesh Motor Vehicles Rules, 1977 and the form of claim application prescribed thereunder (Form C.A.A.) require the owner, insurer as also the driver to be impleaded as parties. We do not however agree with the said two decisions, if they were to be read as laying down a general principle that under Law of Torts, the master cannot be sued to enforce his vicarious liability for the negligence of the servant, without impleading the servant.
22. The position that clearly emerges is as follows: (a) Neither the Motor Vehicles Act nor Rules thereunder require the driver to be impleaded as a party to the claim petition, (b) Under Law of Torts, the owner and driver of the Motor Vehicle being joint tortfeasors, who are jointly and severally liable for the negligence of the driver, the claimant can sue either the owner or the driver or both. But, whether driver is impleaded or not, a owner (master) can be made vicariously liable for the acts of his driver (servant), only by proving negligence on the part of the driver (servant), (c) Therefore a claim petition can be maintained against the owner and insurer of the vehicle causing the accident, without impleading the driver. However proving the negligence of the driver is a condition precedent to make the owner vicariously liable for the act of the driver, (d) But where the driver is not impleaded as a party, no decree or award can be made against him. A driver can be held liable personally only when he is impleaded as a party and notice of the proceedings is issued to him.
23. Let us now consider whether the decision of this Court in Biyabi's case, supra, relied on by the appellant lays down any principle to the contrary. In that decision, after referring to the decision of the Supreme Court in Minu B. Mehta's case, supra, and the decision of this Court in Vijayalaxmi's case, supra, and extracts from Clerk and Lindsell on Torts and Salmond on Torts, this Court reiterated the view expressed in Vijayalaxmi's case, supra, that for fastening the liability of compensation on the master, the Tribunal should record a finding that the accident had taken place on account of the negligence of the driver. Thereafter the

Court proceeded to examine whether a person (driver) can be condemned of acting negligently and be made to face civil consequence without being impleaded as a party. This Court held that a person cannot be made to face civil consequence unless he had been impleaded as a party and given an opportunity to show cause in the matter. The four civil consequences mentioned are: "... (a) of fastening joint liability of paying compensation; (b) a judicial stigma of being negligent in discharge of his duty; (c) facing adverse evidence in any future or other proceedings; and (d) of running the risk of losing future promotional or other employment prospect even without having a opportunity of hearing and putting forth his defence?. . . .". This Court thereafter proceeded to reiterate that before recording any finding adverse to the driver, reasonable opportunity of hearing has to be afforded to him by issuance of a notice.

24. We are in respectful agreement with the said principles laid down in Biyabi's case, supra. If the driver is to be made personally liable to pay the compensation amount, certainly he should be made a party and given notice. If the driver is not impleaded as a party, there cannot obviously be any personal liability on the driver. But that is not the same thing as saying that master cannot be made liable in the absence of driver being impleaded as a party. It is also evident from the decision in Biyabi's case, supra, that if a finding is recorded by the Tribunal about negligence of the driver for fastening liability on the owner, without impleading him as a party, no disciplinary proceedings can be initiated by the employer against the driver for the negligence, merely based on such finding, nor can any adverse remarks be entered in his service record. In other words, if any action detrimental or adverse to the interest of the driver is to be taken by his employer, he cannot do so merely on the basis of a finding of negligence of the driver recorded in a proceedings to which the driver was not a party.

25. But, we do not find any support in Biyabi's case, supra, for appellant's contention that in the absence of driver as a party, a claim petition is liable to be dismissed as not maintainable or that no pending proceeding can go on, unless and until the driver is impleaded as a party. There is no such proposition in the said decision. It should be noticed that nowhere in Biyabi's case, supra, this Court has held that a claim petition is not maintainable if the driver is not impleaded as party. All that the decision lays down is that no finding adverse to the driver can be recorded unless the driver is a party. It is however not possible to read more into the said decision or hold that in the absence of the driver, claim petition should be rejected. In the fact in Biyabi's case, supra, this Court did not dismiss the claim petition on the ground that driver was not a party. On the other hand, we find that on the facts and circumstances, as KSRTC vehicles did not have insurance cover and as KSRTC proposed to initiate action against erring drivers for negligence on the basis of finding of negligence recorded by the Tribunal, this Court made it clear that no adverse finding can be given nor action be taken against its drivers by KSRTC for negligence

unless the driver was a party to the claim proceedings; and therefore the matter was remitted to the Tribunal to serve a notice on the driver and then dispose of the matter. The decision in Biyabi's case, supra, is not therefore an authority for the proposition that no claim petition against the owner of a vehicle is maintainable without impleading the driver. Whether driver is to be impleaded or not is left to the discretion of the claimant. While there can be no doubt that impleading a driver will be appropriate, as he is a proper party, it cannot be said that he is a necessary party in a claim against the owner and insurer alone. Any finding of negligence of driver, recorded in a petition against the owner, or in a petition against the owner and insurer, without impleading driver, cannot be held to be an 'adverse' finding against the driver nor can it lead to any civil consequences against the driver. Such finding will be only for the purpose of fastening liability on the owner and not to fasten any liability on the driver. However, if the driver is impleaded and notice is issued to him, then civil consequences like making him personally liable will follow on recording a finding of negligence. In the circumstances, the contention that claim petition is not maintainable in the absence of the driver of the car is liable to be rejected. Re: Point No. (ii):

26. The case of claimant is that Chhotalal Thakkar was travelling with relatives/friends in car No. KA 25 M 1606 on Poona-Bangalore Road; that at about 1.30 a.m. on 1-5-1994 the car was proceeding near Hegganahalli Gate, on the correct side of the road; that at that time lorry No. GOA-6062 came at a high speed, driven in a rash and negligent manner and dashed against the car causing the ghastly accident resulting in several deaths.

27. P.W. 2 is examined as the eye-witness. He has stated he was travelling in the said lorry GOA-6062 along with his goods; that at about 1.30 a.m. on 1-5-1994, the said lorry which was driven at a high speed in a rash and negligent manner and the lorry driver lost control and went to his right hand side and dashed against a Maruthi car coming in the opposite direction (travelling on the correct side of the road). Nothing is elicited in his cross-examination to disbelieve the said evidence. The evidence also showed that the gap between the car and the left edge of the road was 4 feet and the distance between the car and the right side edge of the road was 18 feet. Thus it is clear that the driver of the lorry had came to the wrong side of the road and dashed against the car. The driver of the lorry did not step into the witness-box to controvert the said evidence. Hence, finding of the Tribunal that the accident occurred due to the negligence of the lorry driver reached after detailed consideration, is correct and does not call for interference. Re: Point No. (iii):

28. The evidence shows that the deceased Subash Thakkar was a businessman aged 27 years. He was survived by his young widow aged 22 years, a minor son aged 4 months and an aged mother. P.W. 3 who is the widow stated that he was a partner in several firms, viz., Pragati International, Pragathi Enterprises, Pragati Automobiles, Pragathi Industries and Pragati

Bearings and that he had an income of Rs. 2,00,000/- per annum. Ex. P-10 is the Income-tax Assessment Order and Ex. P-10(b) is the return of income for the period 1-3-1992 to 31-3-1993. Ex. P-11 is the assessment order and P-11(b) is the return of income for the period 1-3-1990 to 31-3-1991. The income for the later period 1-3-1992 to 31-3-1993 is relevant. The documents show that deceased received a salary income of Rs. 48,000/- from Pragati International, interest of Rs. 23,509/-, rental income of Rs. 4,200/- dividends and debenture interest of Rs. 5,698/-, in all Rs. 81,407/-, that he had an assessable income of Rs. 62,350/- after permissible deductions and he had paid Rs. 975.00 as income-tax thereon. For the period 1-4-1990 to 31-3-1991, deceased had a salary income of Rs. 19,800/-, business income of Rs. 90,932/-, property income of Rs. 4,200/- and other income of Rs. 6,418/-. As he had suffered some losses also, he had returned a taxable income of Rs. 50,750/- and paid an income-tax of Rs. 3,728/-. Thus the income of the deceased was on the increase. The Tribunal deducted Rs. 20,500.00 towards personal and living expenses of the deceased and arrived at the annual contribution to the family as Rs. 51,500.00. The Tribunal applied a multiplier of 18 and determined the total loss of dependency as Rs. 9,27,000.00. To this, the Tribunal added a sum of Rs. 15,000.00 towards funeral expenses, Rs. 10,000.00 towards loss of estate, and Rs. 10,000.00 towards loss of consortium and arrived at the total compensation of Rs. 9,62,000.00.

29. On the facts and circumstances and evidence relating to the growing income, we find that the income of the deceased ought to have been assessed as Rs. 75,000/- per annum. As the family of the deceased consisted of 4 persons, it is more appropriate to deduct one-fourth towards personal and living expenses i.e., Rs. 18,750.00 p.a. instead of Rs. 20,500.00 p.a. Thus, contribution to the family would be Rs. 56,250.00 p.a. As the accident occurred on 1-5-1994, prior to 14-11-1994 (the date of introduction of Schedule II to the Motor Vehicles Act, 1988) the appropriate multiplier has to be selected with reference to an operative multiplier of 16 as per the principles laid down in H.T. Bhandary v Muniyamma, and General Manager, Kerala State Road Transport Corporation, Trivandrum v Mrs. Susamma Thomas and Others. Only where the accident occurs on or after 14-11-1994, the operative multiplier will be 18. (vide Gulam Khader v United India Insurance Company Limited). The applicable multiplier will therefore be 15 and not 18. Thus, the total loss of dependency will be Rs. 56,250.00 x 15 = 8,43,750/-.
30. The award of Rs. 35,000/- under the conventional heads, that is Rs. 15,000/- towards funeral expenses/transportation, Rs. 10,000.00 towards loss of consortium, Rs. 10,000.00 towards loss of estate, is not under challenge. They are also reasonable on the facts and circumstances. Thus, the total compensation to which the claimants are entitled is Rs. 8,78,750.00 instead of Rs. 9,62,000.00. Re: Point No. (iv):
31. The Tribunal has awarded interest at 12% p.a. The case relates to a fatal accident. Except funeral expenses, the entire compensation is general

damages (non-pecuniary damages). In such circumstances, interest should be only at 6% p.a. and not 12% p.a. (See the decision of this Court in Union of India v K.S. Lakshmi Kumar).

32. We therefore allow this appeal in part as follows:

(a) Total compensation amount payable to claimants is reduced from Rs. 9,62,000.00 to Rs. 8,78,750.00.
(b) The claimants will be entitled to interest at 6% p.a. on the side amount from the date of petition till the date of realisation.
(c) Claimant Nos. 1 to 3 (respondents 3 to 5 herein) shall be entitled to compensation amount in the ratio of 40%, 20% and 40% respectively.
(d) The entire amount with corresponding interest thereon due to claimant No. 3, and 50% of the amount with corresponding interest thereon due to claimant Nos. 1 and 2 shall be kept in Fixed Deposits for a term of five years in a Nationalised Bank. The deposit relating to claimant No. 3 shall be continued until he attains majority. Claimant Nos. 1 and 2 will be entitled to receive the interest in regard to their deposits. Claimant No. 1 will also be entitled to draw the interest in regard to deposit relating to claimant No. 3.
(e) The balance due to claimant Nos. 1 and 2 may be disbursed to them.
(f) Parties to bear their respective costs in this appeal.