Himachal Pradesh High Court
Himachal Road Transport ... vs Puni Devi And Ors. on 7 July, 1992
Equivalent citations: I (1993) ACC 418, 1993 ACJ 998
Author: K Sharma
Bench: L Seth, K Sharma
JUDGMENT Kamlesh Sharma, J.

1. These eleven appeals [F.A.O. (MVA) Nos. 160 to 169 of 1983 and No. 1 of 1986] and nine Cross-objections (Nos. 27 to 33 of 1984, 286 of 1983 and 139 of 1986) are being disposed of by a common judgment as these arise out of a common award (except No. 1 of 1986) as well as common accident. The appellant in all the appeals is the Himachal Road Transport Corporation who owned bus No. HPS 7697 which unfortunately met with an accident. The respondents, except the respondents in F.A.O. Nos. 167 of 1983,168 of 1983 and 1 of 1986, are the legal heirs of those who died in the accident. The respondents in F.A.O. Nos. 167 of 1983,168 of 1983 and 1 of 1986 have themselves suffered injuries in the accident. Cross-objections have also been filed in all the appeals except in F.A.O. Nos. 161 of 1983 and 169 of 1983.

2. On 28th February, 1981, at 8.15 a.m., the ill-fated bus No. HPS 7697 stalled its journey from Kotgarh to Rampur. Its driver was Prem Singha and conductor was Sanjiv Kumar. Another person, namely, Chet Ram, was also deputed on this bus as conductor under training. When it reached a place Nirath, it developed some snag and could not proceed further. The conductor, Sanjiv Kumar, brought a mechanic from Rampur, who could by about 4.00 p.m. remove the snag by conducting the necessary repairs. Thereafter, as no time was left to continue further journey to Rampur, it was decided to bring back the bus to Kotgarh from Nirath. The bus had hardly covered a distance of 14 kilometres when at a place known as Bhuti Mor it rolled down the road for a distance of about 1,000-1,200 feet while negotiating a curve. As a result of the accident, a number of passengers travelling in the bus suffered injuries and eighteen out of them lost their lives. The driver, Prem Singha and the conductor under training, Chet Ram, also died in the accident.

3. In the claim petitions filed by the legal representatives of the deceased and the injured themselves, it was alleged that the accident had taken place due to rash and negligent driving by the driver of the bus. The H.R.T.C. admitted that the bus in question did meet with an accident at the time and place alleged in the claim petitions but it was denied that the cause of accident was rash and negligent driving of the bus by its driver. The specific stand taken by the H.R.T.C. was that the accident had occurred due to sagging of the road at the place of the accident at the time when the driver was negotiating the curve. According to the H.R.T.C., it was entirely an act of God and no rash and negligent act could be attributed to the driver of the bus,

4. On preponderance of the evidence adduced by the parties, the Motor Accidents Claims Tribunal has rejected the defence of the H.R.T.C. and has held that the accident had taken place due to rash and negligent driving of the bus by its driver. These findings have been challenged by the H.R.T.C. in its appeals under consideration. The quantum of compensation awarded to the respondents is also disputed by both the parties. The grievance of the appellant, the H.R.T.C., is that it is on the higher side whereas the respondents-claimants have prayed for its enhancement by filing cross-objections.

5. The main contention raised on behalf of the H.R.T.C. is that the learned Motor Accidents Claims Tribunal has misread and misconstrued the evidence on record to come to the conclusion that the accident had occurred due to rash and negligent act of the driver. On negligence of the driver, the relevant evidence comprises of the statements of Dhan Sukh, PW 3, Bhushan, PW 4, M.L. Singal, PW 13, Sunder Lal, S.H.O., PW 15, Sanjiv Kumar, conductor, RW 1 and the documents, report of the Committee, Exh. PW 13/A and site plan, Exh. PW 15/B.

6. Dhan Sukh, PW 3, was travelling in the bus at the time it met with the accident. According to him, at the relevant time the bus was being driven by Prem Singha at a very rash speed, who was under the influence of liquor, as was being talked about by the passengers. He has stated that at the place of accident, the road is 'pucca, plain and wide'. This witness had received injuries in the accident and had remained under treatment as an indoor patient for about one month in the Snowdon Hospital. In his cross-examination, he has admitted that there was a curve at the place of accident but he could not tell the width of the metalled road and did not remember whether there were parapets at the place of accident. He has categorically denied that the accident took place because the kacha portion of the road at the place of the accident had sagged and the bus had tilted.

7. The other eye-witness to the accident is Bhushan, PW 4, who was also travelling in the bus at the time of the accident. He has stated that the bus was being driven by the driver Prem Singha in a very rash manner which was rather unusual. According to him, the driver had taken liquor at Nirath and was under its influence at the time of the accident. This witness has stated that the road at the place of accident was metalled and plain and its width was not less than 16/ 17 feet. He had also sustained injuries in the accident. In his cross-examination, he has denied that kacha portion of the road at the place of accident had sagged down. He has stated that at the time of accident, it was not raining but two days earlier it had rained. This witness had admitted that there were no parapets at the place of accident.

8. M.L. Singal, PW 13, was a member of the Enquiry Committee constituted by the Government to enquire into the causes of the accident. G.M. Rathore, the then S.D.M., Rampur, A.D. Arora, Automobile Engineer, H.R.T.C. and the Deputy Superintendent of Police, Rampur, B.S. Negi, were also members of the Enquiry Committee. They had given their report after visiting the spot on 1st March, 1981. M.L. Singal in his cross-examination has admitted that during the enquiry from the statements of the members of the public, it was disclosed that the driver of the bus had taken liquor at Nirath. According to him, the width of the road at the point of accident was 4.10 metres.

9. Sunder Lal, the then S.H.O., Police Station, Rampur, PW 15, who conducted investigation in the criminal case in respect of the accident in question, has stated that according to the report of the Chemical Examiner, Exh. PW 15/A, alcohol was found in the viscera of the driver of the bus. He has also placed on record a photocopy of site plan prepared by him, Exh. PW 15/B. In his cross-examination, he has denied that the road at the place of accident had given way. According to him, he had only found the parapets having been knocked off by the bus. He has also denied that the road was slushy at the place of the accident.

10. On the other hand, Sanjiv Kumar, RW 1, conductor of the bus, has stated that the driver of the bus was driving the bus from Nirath up to the place of the accident in a proper manner and at normal speed". According to him, the width of the road at the place of accident was about 10/12 feet out of which about 9 feet was tarred portion. He has come out with an altogether different version that at the place of the accident "there is a curve with a rock jutting towards the road from the left side and the driver was to drive it towards kacha portion on the right hand side to escape that rock". He goes on to state that "at the time of accident when this bus went on to kacha portion, it was slippery on account of rain as it was still raining and the bus then sagged when it was on kacha portion and thus went down the road." He has admitted that earlier on the same route the driver had been driving the bus and he used to accompany him. In his cross-examination, he has shown his ignorance that the driver had taken liquor at Nirath and was under its influence at the time of the accident. According to him, there was no danga at the place where the bus rolled down the road while negotiating the curve. Further, he has contradicted himself that at the time of accident it was raining and stated that it had rained in the morning. He has denied that at the time of the accident the speed of the bus was 'excessive'.

11. A.D. Arora, the then Automobile Engineer, H.R.T.C., RW 5, Member, Enquiry Committee, has brought on record the original enquiry report as Exh. RW 5/A, a copy whereof is Exh. PW 13/A. In the report of the Enquiry Committee, Exh. PW 13/A, the width of the road at the place of the accident is given as 12 feet, out of which 9 feet was metalled and three feet was kacha on both sides of the road. To these findings, one of the members, M.L. Singal, S.D.O. (PWD), Thanedhar, PW 13, has differed and according to him, the width of the road was 4.10 metres. It is stated in the report that from the spot inquiry it was learnt that the driver of the bus, Prem Singha, had taken alcohol at Nirath before he started for his journey to Kotgarh. The cause of the accident as given in the report is as under:

...There are no parapets or stone guides on the berms of the road. There is one protruding rock on the hill side (left side). The driver appears to have negotiated the curve slightly away from the hill side, keeping in view the obstructing protruding rock. The driver drove the bus on the valley side right on the edge and part of the width of the wheel went out of the road width. Since road width is 12 feet and edge of the road is kacha, driver could not negotiate the curve to the required degree. As such loose portion of the road sagged and vehicle lost its balance and tilted towards khud side....

12. As per the site plan Exh. PW 15/B, the width of the road was 9 feet metalled portion and 13A feet kacha portion towards the left side and l'/2 feet kacha portion towards the right side. The gradient of the road is given as 1: 25.

13. From the oral and documentary evidence discussed above, excluding the statement of Sanjiv Kumar, RW 1, it is proved that at the time of the accident, the driver of the bus was under the influence of liquor and he was driving the vehicle rashly and negligently. Though at the place of accident there is a curve, yet, the road was almost plain as the gradient was 1: 25. The width of the road at the point of accident is more than 12 feet, though, according to M.L. Singal, PW 13, the then S.D.O. (PWD), Thanedhar, it was 4.10 metres (more than 13 feet), out of which 9 feet was metalled. None of the witnesses has stated that at the time of the accident it was raining and the kacha portion

of the road was slushy and slippery. Even Sanjiv Kumar has admitted in his cross-examination that it was not raining at the time of accident and it had rained only in the morning. He has also admitted that earlier to the date of the accident, the driver Prem Singha was plying bus on the same route.

14. From these facts proved, it is established that the road on which the accident took place was worthy of vehicular traffic. The defence taken by the H.R.T.C. that the accident had taken place due to sagging of the kacha portion of the road has not been proved. The apparent cause of the accident is that the driver was negligent in taking the bus to the edge of the road while negotiating the curve knowing fully well that the edge of the road is always vulnerable to sagging, more so in the rainy season. He had been driving the bus on the same route and to him such a defect was patent. It is not the case of H.R.T.C. that the width of the road at the place of accident was such as to negotiate the curve, the bus was required to be taken to the extreme right on the edge of the kacha portion of the road. So far the version of protruding rock at the place of accident is concerned, it is an afterthought as it has not been mentioned in the reply/replies to the claim petition(s). Moreover, it has not been stated either by Sanjiv Kumar, RW 1 or in the enquiry report, Exh. PW 13/A, that to what extent the rock was protruding. If it was so and causing difficulty in negotiating the curve, the driver, who was earlier driving bus on the same route, had failed in his duty to bring it to the notice of the authorities and get it removed. This defence was also not put to the witnesses, Dhan Sukh, PW 3, Bhushan PW 4, M.L. Singal, PW 13 and Sunder Lal, PW 15. The enquiry report, Exh. PW 13/A, is also vague and perfunctory inasmuch as it has not been mentioned to what extent the rock was protruding, what was the size of the bus and how much width was required to negotiate the curve, etc. In the facts and circumstances proved on record, the defence of protruding rock is not made out. Therefore, we hold that to go to the edge of the kacha portion of the road when it had rained was sheer negligence of the driver who was supposed to know that the road after getting wet might give way.

15. Relying upon Kalawati v. Nalagarh Dehati Cooperative Transport Society Ltd. Nalagarh 1976 ACJ 443 (HP) and Bhota Ram v. State of Himachal Pradesh 1982 ACJ 99 (HP), it has further been urged on behalf of the appellant that no negligence can be attributed to the driver as the bus fell down the road while negotiating the curve due to sagging of the road, which was beyond his control.

16. In the case of Kalawati v. Nalagarh Dehati Cooperative Transport Society Ltd., Nalagarh 1976 ACJ 443 (HP), on the evidence on the record, the learned Judge had come to the findings that:

...it is a common case between the parties that the width of the road was about 15/16 feet at the particular point and there was a landslide towards the hill and about 3 feet of the road was under the debris fallen from the landslide and there was only a width of 12 feet left at that place and, therefore, the driver could not be said to be negligent and if he had taken the bus towards the outer side and it is also a common case between the parties that the retaining wall underneath that particular portion gave way and the bus fell down into the khud...

On the basis of these findings, it was concluded that the accident had occurred due to sagging of the retaining wall which was beyond the control of the driver and he could not be held negligent for it. It was not a case where the driver had gone with the vehicle to the edge of the road without any

compelling reason, as in the present case, leaving much space on the other side of the road.

17. In the case of Bhola Ram v. State of Himachal Pradesh 1982 ACJ 99 (HP), the learned Judge, on the evidence on record, found that:

.. .the truck in question fell down into the khud resulting in the death of the deceased as the portion of the road on the site of the accident which comprised of false projection and which was supported on wooden logs gave way under the weight of the truck....

In the circumstances proved, according to the learned Judge, the defect in the projected portion of the road was latent and not patent which could not be discovered by the driver of the truck in spite of reasonable care. Therefore, the learned Judge held that assuming the entire width of the road as traffic worthy, the driver of the truck had not acted negligently by plying the truck on projected portion of the road. The ratio of these two cases does not apply to the present case as its facts, as discussed above, are different.

18. To the peculiar facts and circumstances of the present case, the decision in Shingara Ram v. Balak Ram Walia 1988 ACJ 176 (HP), is relevant. In almost similar facts and circumstances, P.O. Desai, CJ., has held that:

...To park a heavy vehicle like a truck in which so many persons were travelling on a danga on the kticha portion of the road on the wrong side was itself an act asking for trouble which could and should have been foreseen. Such an act on the part of an experienced driver cannot but be attributed to his gross negligence and to an utter disregard of a foreseeable resultant injury. It is not unreasonable to infer that but for the vehicle having been parked where it was, the accident would not have occurred. To put it differently, the accident apparently occurred because the vehicle was parked on that portion of the road which could not have taken the weight of a truck which was carrying load and which, therefore, gave way. It is too far-fetched to hold that the accident was caused on account of a latent defect in the road which could not have been detected by the second respondent. As held earlier, an experienced driver who had been often plying the vehicle on the same road should have foreseen that at the place where the vehicle came to be parked the road was in such a condition that it would not take the weight of a heavy vehicle carrying load. It does not require any expert knowledge to appreciate that in hilly areas, especially on the extreme edge of the road, the kacha portion with a danga will not have the strength to take the weight of such a vehicle whether it is in motion or it is parked. The vulnerable condition of the road at such a spot ought to be regarded as so patent that to call it a latent defect is to go out in search of an untenable excuse to overlook the negligence of the driver of the vehicle.

19. Another point raised on behalf of the appellant is that in the facts and circumstances of the present case, the Motor Accidents Claims Tribunal has wrongly applied the principle of res ipsa loquitur and held that onus had shifted on to the H.R.T.C. to prove that the accident had taken place (Sic. not) due to the negligence of the driver of the bus. The principle of res ipsa loquitur is a rule of evidence and is invoked in exceptional cases where the cause of accident is not known to the plaintiff. When this principle is applicable, it is sufficient for the plaintiff to prove the accident and

nothing more and the burden falls on the defendant to establish that the accident happened due to some other cause than his own negligence. For the application of this principle, it is required to be shown that the vehicle is owned by the defendant and had the defendant used proper care, the accident would not have happened in the ordinary course. The presumption of negligence that arises from the manifest circumstances of a case is required to be rebutted by the defendant by explaining why the accident has taken place and also why he is not responsible for it.

20. What is the principle of res ipsa loquitur and in what circumstances it applies, has been explained in Krishna Bus Service Ltd. v. Mangli 1976 ACJ 183 (SC); Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. Pvt. Ltd. 1977 ACJ 343 (SC); State of Punjab v. H.L. Kochhar 1980 ACJ 437 (HP); Gaurabai v. Jagdish Prasad 1984 ACJ 360 (Bombay); and New India Assurance Co. Ltd. v. Ramchandra 1990 ACJ 206 (MP).

21. Applying the ratio of these judgments to the facts and circumstances of the present case, we find no substance in the submission made on behalf of the appellant that the principle of res ipsa loquitur does not apply in the present case. There is no dispute that the road was being used for vehicular traffic since long. Even the driver Prem Singha was plying bus on the same route in the past. The width of the road at the place of the accident was more than 12 feet and no driver had ever complained in the past that it was difficult to negotiate the curve. In these circumstances, if the accident had taken place, it speaks for itself that it was due to the negligence of the driver. The principle applies in the present case and it is for the H.R.T.C. to rebut the presumption of negligence by giving satisfactory explanation that the accident had not happened due to the negligence of the driver. The plea of sagging of the road taken by the H.R.T.C. is not proved on record and is apparently a result and not the cause though it has not been shown how much portion of the road had sagged. The cause is taking the bus to the edge of the road which is nothing but sheer negligence of the driver.

22. After affirming the finding of the Motor Accidents Claims Tribunal that the driver was negligent, we shall examine whether the compensation awarded to the claimants is just and reasonable. There is no dispute that the Motor Accidents Claims Tribunal has correctly applied the principle of 'multiplier' for assessing the amount of compensation but the objections of the parties are with regard to the determination of datum figure and the selection of multiplier in each case.

23. The parties have relied upon the Division Bench judgment of this court in Himachal Road Transport Corporation v. Jai Ram 1980 ACJ 1 (HP),,for the method of calculating (i) the figure of annual dependency which is the basic or datum figure representing the multiplicand and (ii) the number of years' purchase representing the multiplier. For calculating the loss of dependency, out of the net income of the deceased, the amount spent for his personal expenditure is to be deducted. If no satisfactory evidence is available for loss of dependency, units of family expenditure are to be fixed and units consumed by the deceased for his personal expenditure are to be deducted there from. As laid down in Himachal Road Transport Corporation v. Jai Ram (supra), the adult member of the family would consume double the units consumed by a minor except that minor who is taking higher education in school or college for whom units of expenditure equal to the units consumed by an adult will be proper. To the figure so arrived at, the amount which the deceased would have saved

for future is also to be added as loss to the estate.

24. So far selection of multiplier is concerned, it has been held in Himachal Road Transport Corporation v. Jai Ram 1980 ACJ 1 (HP), that:

...in the case of the deceased who was hale and hearty and who was in the middle age of round about thirty-five years, it would be safe to take the multiplier ranging from 15 to 18 years provided there are no other compelling circumstances which would induce the courts to adopt a multiplier which is lower or higher than these limits.

The learned Judges of the Division Bench have further observed that:

...the choice of multiplier is to be made by the court using its own experience and having due regard to the peculiar facts of each case, because the ultimate goal is not to adhere to any rigid formula, but to award a compensation which is just. In this approach the courts have to remain sympathetic and realistic in their considerations because every assessment of compensation of this type rests more or less on conjectures of a fallible human being who is not able to know the ways of providence. Under the circumstances, what is required to be assessed is only a reasonable probability as it appeals to a reasonable person.

25. In regard to interest, the respondents are entitled to higher rate of interest than that awarded by the Motor Accidents Claims Tribunal. In Narcinva V. Kamat v. Alfredo Antonio Doe Martins 1985 ACJ 397'(SC), the Supreme Court has awarded interest at the rate of 12 per cent per annum from the date of the accident whereas in Chameli Wati v. Delhi Municipal Corporation 1985 ACJ 645 (SC) and Jagbir Singh v. General Manager, Punjab Roadways 1987 ACJ 15 (SC), the Supreme Court has awarded interest at the rate of 12 per cent per annum from the date of the claim petition. Following the law laid down in these decisions, a learned single Judge of this court in the Oriental Fire and General Insurance Co. Ltd. v. Mast Ram 1989 ACJ 1120 (HP), has awarded interest at the rate of 12 per cent per annum from the date of filing the claim petition. Therefore, guided by these decisions, we hold that the respondents are entitled to interest at the rate of 12 per cent per annum from the date of the application. Moreover, interest can be awarded and/or the rate of interest can be enhanced even without asking for it specifically in the claim petition as well as by preferring cross-objections. In this regard, the Supreme Court in Ramesh Chandra v. Randhir Singh 1990 ACJ 777 (SC), has laid down that:

...Section 110-CC, as it stood on the date of the accident, provided that where any court or Claims Tribunal allows a claim for compensation made under the Act, such court or Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. The caption of the provision is 'Award of interest where any claim is allowed'. The question of award of interest is dependent on the claim being allowed. Should the claim be not allowed, the question of grant of interest would not arise, and if awardable, it is in addition to the amount of compensation: The court or Tribunal, in these circumstances, should determine, in the first instance, claim for compensation and in the event of its being allowed can further exercise the discretion to grant

simple interest in terms thereof, but as an additive to the amount of compensation. So the addition of interest to the compensation, by judicial discretion, is sequential in the eye of law and no claim in that regard, in our view, specifically need be laid in so many words in the claim petition. The grant of interest, in our view, is not dependent on any pleading in that regard and can even be orally asked if the contingency arises. Thus, in our view, there is no substance in ground No. II of the special leave petition and the attack to the grant of interest is negatived.

26. Now, we shall take up each appeal and its cross-objections, if any, separately.

F.A.O. No. 160 of 1983 with Cross-objections No. 31 of 1984:

27. The respondents-claimants are the widow and the minor son respectively of Himtoo Ram who died in the accident. It is not in dispute that he was 35 years of age at the time of the accident and was working as labourer, having expertise in pruning, grading and packing of fruits. Besides Puni Devi, PW 23, Devinder Singh, PW 20, has stated that Himtoo Ram was earning Rs. 20/ 25/30 per day as primer, grader and packer. But in cross-examination, he has admitted that this work is seasonal and for about five months in a year. The Motor Accidents Claims Tribunal has determined the datum figure of Rs. 300/- per month by taking his daily wage as Rs. 20/- and has applied the multiplier of 12 years. Accordingly, an amount of Rs. 46,000/- including the conventional amount of Rs. 3,000/- with 6 per cent interest from the date of order has been awarded.

28. The H.R.T.C. has not raised any serious objection to the quantum of compensation but the respondents, who have preferred the cross-objections, have urged that the Motor Accidents Claims Tribunal was not right in not awarding compensation for the loss of supervisory services of Himtoo Ram as it has been proved on record that besides working as a labourer he was also looking after his orchard measuring 5/6 bighas and from which his annual income was Rs. 7,000/- to Rs. 8,000/-. Their further objection is that looking to the age of the deceased, the proper multiplier should have been 18 years and not 12 years as applied by the Motor Accidents Claims Tribunal.

29. We find that the Motor Accidents Claims Tribunal, in its judgment, has made a mention that the deceased was also supervising his orchard besides working as a pruner, grader and packer but while fixing the datum figure at Rs. 300/- per month, it has not given details that how much was granted as compensation for loss of his services including supervisory services on his own orchard. It is admitted by Devinder Singh, PW 20, that the work of a pruner, grader and packer is seasonal and for about five months in a year. Further, Puni Devi has admitted that even after the death of Himtoo Ram, the income from the orchard was Rs. 7,000/- to Rs. 8,000/- in the year in which she was making her statement, that is, 1982. In the case of death of an agriculturist/ orchardist, since the corpus of the land/ orchard is left intact, only the value of supervisory services of the deceased is to be assessed which should not be more than the salary of a manager/supervisor. In the present case, the deceased was working as pruner, grader and packer for only five months in a year at a daily wage of Rs. 20/ 25/30 but the Motor Accidents Claims Tribunal has assessed the datum figure of Rs. 300/- per month for the whole year. It is common knowledge that the work of an agriculturist/orchardist is seasonal and for about five to six months. Therefore, in our opinion, without going into detailed calculations, the datum figure determined by the Motor Accidents

Claims Tribunal is just and reasonable. However, the correct multiplier in the case of a person of 35 years should be 18 years instead of 12 years. As such, the amount of compensation should be Rs. 64,800/- plus conventional amount of Rs. 3,000/-. The respondents will also be entitled to interest at the rate of 12 per cent per annum from the date of application till the date of payment.

30. The appeal is dismissed and the cross-objections are allowed to the extent indicated above.

F.A.O. No. 161 of 1983:

31. The respondents-claimants are the widow and sons of Girdhari Lal who died in the accident. Respondent Naunihal has appeared as PW 25. His age at the time of making the statement was 38 years, which shows that he and his brother, the respondent No. 3, were not dependent upon the deceased. Admittedly, age of the deceased was 56 years at the time of the accident and he was retired Section Officer of the Law Department of the Government of Himachal Pradesh. He was drawing pension of Rs. 676/- per month and had an income of Rs. 50,000/- to Rs. 60,000/- from the orchard, consisting of pieces of land at different places. The Motor Accidents Claims Tribunal has determined the datum figure as Rs. 1,500/- per month, applied the multiplier of 8 years and awarded compensation of Rs. 1,44,000/- plus Rs. 3,000/- as conventional amount.

32. It is not clear from the judgment that on what basis the datum figure has been determined by the Motor Accidents Claims Tribunal. Besides the pension of Rs. 676/-per month, the respondents-claimants were entitled to compensation for the loss of supervisory services of the deceased which cannot be more than the salary which the respondents-claimants are giving to the manager employed by them for looking after the orchard, which is stated to be Rs. 450/-per month. Looking to the age of the deceased, the multiplier of 8 year's is also on the higher side. Except respondent-claimant No. 1, Bhagwan Dassi, nobody was dependent upon the deceased, therefore, applying the unit method, the datum figure will be Rs. 563/- (Rs. 676 + Rs. 450 divided by 2= Rs. 563) plus Rs. 140/- ('/4th savings of total expenditure of the deceased), i.e., Rs. 703/-or say Rs. 700/-. Looking to the age of the deceased, the just and reasonable multiplier in the present case is five years. The respondents are entitled to Rs. 42,000/- plus Rs. 3,000/- as conventional amount. They are also entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

33. The appeal is allowed to the above-stated extent. No cross-objections have been filed on behalf of the respondents.

F.A.O. No. 162 of 1983 with Cross-objections No. 30 of 1984:

34. The respondents are the mother, widow and minor son of Balbir Singh who died in the accident. It is not in dispute that he was 21 years of age at the time of the accident. Respondent Kamla and one Sahjo Devi, PW 21, who is sister of respondent Kamla, have come in the witness-box. She has stated that the deceased was managing the orchard measuring 50 to 55 bighas of land from which the annual income was Rs. 40,000/-. According to her, at the time of the accident the age of Parvati, widow of the deceased, was 16/17 years and she gave birth to a posthumous male child who is

impleaded as respondent No. 3. In her cross-examination she has stated that the deceased had studied up to 7th class only. She has given the income from the orchard in the year in which she made the statement, that is, 1982, as Rs. 15,000/- to Rs. 16,000/- per annum. According to her, earlier two permanent servants were kept on the orchard but after the death of Balbir Singh they had left the service and no servant on permanent basis could be engaged. The Motor Accidents Claims Tribunal has assessed the datum figure at Rs. 300/- per month and applying the multiplier of 18 years, the compensation awarded is Rs. 64,800/- which has been rounded to Rs. 65,000/- plus Rs. 3,000/- as conventional amount.

35. As stated above, in the case of an agriculturist/orchardist, the compensation for the value of supervisory services is to be taken as the net income of the deceased. Looking to the size of the orchard, it should be Rs. 450/- per month. Applying the unit method, the datum figure will be Rs. 322/-(Rs. 450/- - Rs. 128/-) plus Rs. 32/- ('/4th savings of total expenditure of the deceased), i.e., Rs. 354/-. Looking to the age of the deceased, that is, 21 years, the just and reasonable multiplier will be 22 years. As such, the amount of compensation payable to the respondents will be Rs. 93,456/- plus Rs. 3,000/- as conventional amount.

36. The respondents will also be entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

37. The appeal is dismissed and the cross-objections are allowed to the extent indicated above.

F.A.O. No. 163 of 1983 with Cross-objections No. 286 of 1983:

38. The respondents are the minor son and widow of Chet Ram deceased. There is no dispute that his age at the time of the accident was 23 years and he was employed as conductor with the H.R.T.C. At the time of his death, he was drawing monthly salary at the rate of Rs. 560/-. Respondent Kanta Devi has appeared in the witness-box as PW 22. She was 22 and respondent Ramesh was l'/2 years of age at the time of her deposition. The Motor Accidents Claims Tribunal has determined the datum figure at Rs. 380/- per month, which came to Rs. 4,560/- per annum but was rounded to Rs. 4,500/-. Applying the multiplier of 18 years, the Motor Accidents Claims Tribunal awarded an amount of Rs. 81,000/- plus Rs. 3,000/- as conventional amount.

39. Applying the unit method, the datum figure will be Rs. 336/- (Rs. 560 - Rs. 224 = Rs. 336/-) plus Rs. 56/-, i.e., Rs. 392/-rounded to Rs. 390/-. Looking to the age of the deceased, that is, 23 years, the just and reasonable multiplier will be 22 years. As such, the amount of compensation payable to the respondents works out to Rs. 1,02,960 plus Rs. 3,000/- as conventional amount.

40. The respondents will also be entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

41. The appeal is dismissed and the cross-objections are allowed to the extent indicated above.

F.A.O. No. 164 of 1983 with Cross-objections No. 33 of 1988:

42. The respondents are the widow and the sons of Jawind Lal who died in the accident. Admittedly, his age at the time of the accident was 48 years and he was serving as J.B.T. teacher in a Government Primary School. His monthly salary was Rs. 976/-. The Motor Accidents Claims Tribunal has determined the datum figure as Rs. 600/-, applied the multiplier of 10 years and awarded an amount of Rs. 72,000/-, which was rounded to Rs. 70,000/- plus Rs. 3,000/-as conventional amount.

43. Respondent-claimant Renku Devi has appeared as PW 19 but she has not given the ages of respondent Nos. 2 to 4 and whether they were dependent upon the deceased or not. Anyhow, considering the respondents-claimant Nos. 2 to 4 as adult members of the family of the deceased and applying the unit method, the datum figure will be Rs. 780/- (Rs. 976/- - Rs. 196/- = Rs. 780/-) plus Rs. 49/- ('/4th savings of total expenditure of the deceased), i.e., Rs. 829/-or say Rs. 830/-. Looking to the age of the deceased, that is, 48 years, the just and reasonable multiplier will be 12 years. As such, the amount of compensation payable to the respondents will be Rs. 1,19,520/- plus Rs. 3,000/- as conventional amount.

44. The respondents will also be entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

45. The appeal is dismissed and the cross-objections are allowed to the extent indicated above.

F.A.O. No. 165 of 1983 with Cross-objections No. 27 of 1984:

46. The respondents-claimants are the widow and the minor sons and minor daughter of Jeet Ram who died in the accident. Admittedly, his age at the time of the accident was 42 years. He was having an income of Rs. 18,000/- to Rs. 20,000/- from his orchard measuring 14 bighas. Besides this, he was working as primer, grader and packer and earning Rs. 25/- to Rs. 30/- per day, as stated by respondent-claimant Dropti Devi, PW 21. The Motor Accidents Claims Tribunal has determined the datum figure as Rs. 500/- per month, applied the multiplier of 11 years and awarded Rs. 66,000/- plus Rs. 3,000/- as conventional amount. As it is common knowledge that the work of the primer, grader and packer as well as work in the orchard is seasonal and of about 5 to 6 months' duration, the net income of the deceased from the wages is assessed at Rs. 300/- per month for six months plus the value of his supervisory services in his own orchard at Rs. 350/- per month, keeping in view the size of the orchard. Thus, the total net income of the deceased is assessed as Rs. 500/- per month. Applying the unit method, the datum figure will be Rs. 357/-(Rs. 500/- - Rs. 143/- = Rs. 357/-) plus Rs. 36/- ('/4th savings of total expenditure of the deceased), i.e., Rs. 393/-. Looking to the age of the deceased, the just and reasonable multiplier will be 16 years: As such, the amount of compensation payable to the respondents will be Rs. 75,456/- plus Rs. 3,000/- as conventional amount.

47. The respondents will also be entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

48. The appeal is dismissed and the cross-objections are allowed to the extent indicated above.

F.A.O. No. 166 of 1983 with Cross-objections No. 29 of 1984:

49. The respondents-claimants are the widow and minor sons and daughter of Om Parkash who died in the accident. It is not in dispute that the deceased was about 41 years of age at the time of the accident and was working as J.B.T. teacher. Besides earning a salary of Rs. 874.30 per month at the time of his death, he was also looking after his orchard measuring 4/5 bighas from which the income was Rs. 3,000/- to Rs. 4,000/-per annum. The Motor Accidents Claims Tribunal has taken the datum figure as Rs. 600/- per month and applied the multiplier of 12 years to it for assessing the amount of compensation of Rs. 84000/- plus Rs. 3,000/- as conventional amount. Though respondent Subhagya Wati has stated that her husband Om Parkash remained posted near his house and was able to look after the orchard, yet, we are of the opinion that no separate compensation is required to be paid for the loss of supervisory services as it is difficult to assess that how much time he could devote for looking after the orchard, after performing his duties as a teacher. Moreover, the land is only 4/5 bighas. By applying the unit method, that is, two units for each adult and one unit for each child, the datum figure on the basis of net income of Rs. 875/- will be Rs. 656/- (Rs. 875/- -Rs. 219/- = Rs. 656/-) plus Rs. 54/- ('/4th savings of total expenditure of the deceased), i.e., Rs. 710/-, Looking to the age of the deceased, that is, 41 years, the just and reasonable multiplier will be 16 years. As such, the amount of compensation payable to the respondents will be Rs. 7,36,320/- plus Rs. 3,000/- as conventional amount.

50. The respondents will also be entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

51. The appeal is dismissed and the cross-objections are allowed to the extent indicated above.

F.A.O. No. 167 of 1983 with Cross-objections No. 32 of 1984:

52. The respondent himself had received injuries in the accident. Admittedly, his age at the time of the accident was ten years. The claim petition was originally filed by his father, Hira Lal, who had died during the pendency thereof and his mother, Kamla, was brought on record as his guardian. Dr. V.K. Goel, Associate Professor, Indira Gandhi Medical College and Hospital, Shimla, has appeared as PW 14 to prove the certificate, Exh. PW 14/A. He had examined the respondent, Naresh Kumar, when he was admitted in the eye ward on 1.3.1981 and found multiple abrasions on cornea of his right eye. Operation needling was done on the right eye on 9.7.1981. Later on, he examined respondent Naresh Kumar on 20.7.1982 and gave his findings as detailed in the certificate, Exh. PW 14/A. He has also brought on record the discharge slips, Exh. PW 6/A/Ex. PW 6/B. In his cross-examination, he has admitted that due to injuries in his right eye, the respondent Naresh Kumar has suffered 30 per cent permanent disability. The Motor Accidents Claims Tribunal has awarded Rs. 40,000/- as compensation for expenses on treatment, pain and sufferings and loss of future prospects of happy life.

53. The learned counsel for the appellant has not been able to show how this amount is on the higher side. On the other hand, the respondent Naresh Kumar has prayed for enhancement of the amount of compensation to Rs. 75,000/- as well as of interest to 12 per cent per annum. Without

going into details in respect of each item for which compensation is awarded in an injury case, we are of the opinion that the amount of Rs. 40,000/- awarded by Motor Accidents Claims Tribunal is just and reasonable. However, the respondent is entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

54. The appeal is dismissed and the cross-objections are allowed to the extent indicated above.

F.A.O. No. 168 of 1983 with Cross-objections No. 28 of 1984:

55. The respondent herself received injuries in the accident. Admittedly, her age at the time of the accident was 14 years. The claim petition was originally filed by her father, Hira Lal, who had died during the pendency thereof and her mother, Sahjo, was brought on record as her guardian. Dr. Vinod Kumar Dogra, Professor and Head of the department of Orthopaedics, Indira Gandhi Medical College and Hospital, Shimla, PW 7, has proved the discharge slip, Exh. PW 7/A, which shows that when respondent Indu Kumari was admitted, she had head injury, dislocation of hip joint and fracture of right femur and she remained admitted in the hospital from 1.3.1981 to 25.4.1981. Her mother, Sahjo Devi, PW 21, has also appeared in the witness-box and has stated that Indu Kumari was travelling in the bus along with her son Naresh, who had sustained injuries, and Balbir Singh, who had died in the accident. According to her, at the time of the accident, Indu Kumari was studying in 8th Class and, as a result of the injuries sustained in the accident, she has developed a defect in her spinal cord due to which she finds it difficult to walk and stand. There is no rebuttal to this evidence. As such, the Motor Accidents Claims Tribunal has rightly held that respondent Indu Kumari did sustain injuries in the accident. It has awarded Rs. 15,000/- as compensation on account of expenses on treatment, pain and sufferings. The learned counsel for the appellant has not been able to show to us how this amount is excessive. On the other hand, the respondent Indu Kumari has prayed for enhancement of the amount of compensation to Rs. 75,000/- as well as of interest to 12 per cent per annum. There is no evidence on the record to show that how much amount was spent on treatment, what is the permanent disability suffered and how the future prospects of happy life are hampered, therefore, without going into details in respect of each item for which compensation is awarded in an injury case, we are of the opinion that the amount of Rs. 15,000/- awarded as compensation by the Motor Accidents Claims Tribunal is just and reasonable.

56. However, the respondent is entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

57. The appeal is dismissed and the cross-objections are allowed to the extent indicated above.

F.A.O. No. 169 of 1983:

58. The respondents-claimants are the mother and minor sister of the deceased Kalawati who died in the accident. It is not in dispute that her age at the time of the accident was 18 years. The respondent, Phari Devi, PW 24, has appeared in the witness-box and has stated that she was employed as a domestic servant in the house of one Kapur Singh and getting Rs. 120/- as monthly salary plus free boarding, lodging and clothings. The Motor Accidents Claims Tribunal has

determined Rs. 120/- per month as the datum figure, which has been rounded off to Rs. 1,500/- per annum. Applying the multiplier of 20 years, an amount of Rs. 30,000/- plus Rs. 3,000/- as conventional amount has been awarded as compensation.

59. As the deceased was a domestic servant and was getting free boarding, lodging and clothes, in our opinion, the Motor Accidents Claims Tribunal has correctly assessed the datum figure at Rs. 1,500- per annum. However, looking to the age of the deceased, the multiplier of 20 years is on the lower side. The just and reasonable multiplier will be 22 years. But since no cross-objections have been filed by the respondents, the amount of compensation cannot be enhanced. Therefore, we hold that the amount of compensation awarded by the Motor Accidents Claims Tribunal is just and reasonable and the appeal is dismissed.

60. However, the respondents are entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

F.A.O. No. 1 of 1986 with Cross-objections No. 139 of 1986:

61. The respondent himself had suffered injuries in the accident and had filed the claim petition for awarding him an amount of Rs. 1,50,000/- as compensation. Admittedly, his age at the time of the accident was 20 years. The Motor Accidents Claims Tribunal has awarded Rs. 5,000/- on account of expenses on treatment, Rs. 10/000/- for future pain, weakness and sufferings which will continue for the rest of his life and also for loss of happiness and enjoyment of life and Rs. 42,000/- on account of future loss of earnings, total Rs. 57,000/-.

62. The net income of the respondent is assessed by the Motor Accidents Claims Tribunal at Rs. 4,800/- per annum and the loss to future income is assessed at 40 per cent of the net income on the basis of permanent disability suffered by the respondent. To the loss to future income per year, a multiplier of 22 years has been applied.

63. The learned counsel for the appellant has assailed the award on the grounds that delay in filing the claim petition was wrongly condoned, there is no evidence on negligence on the record and the quantum of compensation is excessive. On the other hand, the respondent has filed cross-objections praying for enhancement of the amount of compensation as well as of interest to 12 per cent per annum.

64. It is correct that the accident had taken place on 28th February, 1981 and the claim petition was filed on 11th August, 1983. The sufficient cause shown in the application for condonation of delay, which is supported by an affidavit and was filed along with the claim petition, is that from the date of the accident till 6th August, 1983, the respondent remained either admitted in hospital(s) or under treatment as an outdoor patient and was not in a position to move about till he was provided belt and crutches by the doctors. No reply to this application was filed despite a number of opportunities granted to the appellant. In his statement in the court, he has made a similar deposition which has also not been challenged in his cross-examination. In these circumstances, the Motor Accidents Claims Tribunal has rightly condoned the delay in filing the claim petition on the

sufficient cause shown for not filing it within the limitation prescribed.

65. We do not find any substance in the submission made on behalf of the appellant that there is no evidence on negligence on the record. Besides the statement of the respondent himself, a copy of the award dated 31st March, 1983, Exh. PW 4/B, in respect of the same accident was also brought on the record. On the other hand, there is no evidence in rebuttal produced by the appellant except the statement of Karam Chand, RW, 1, who was limning a shop at Nirath, that he had not found the driver of the bus in question drunk. It is not disputed that the respondent was travelling in the bus which had met with the accident on 28th February, 1981, at Bhuti Mor. Therefore, the finding of negligence of the driver of the bus arrived in the other appeals, arising out of the said accident, will apply in the present appeal also.

66. So far the quantum of compensation is concerned, it has not been shown by the learned counsel for the appellant how it is excessive. Admittedly, the respondent is a matriculate and was working on his land measuring about 15 bighas out of which 7 bighas was an orchard. According to him, he was also running a poultry farm and his income from the land and the poultry farm was Rs. 24,000/- to Rs. 25,000/- per annum. The Motor Accidents Claims Tribunal has correctly assessed his net income at Rs. 4,800/- per annum, as his wages and supervisory service in his own land and loss of future income by 40 per cent of the net income on the basis of the statement of Dr. S.R. Thakur, PW 2, that the respondent had suffered permanent physical impairment to the extent of 40 per cent. Looking to the age of the respondent, the multiplier of 22 years was also correctly applied by the Motor Accidents Claims Tribunal. However, the compensation amount of Rs. 10,000/- for future pain, sufferings and loss of enjoyment of life is on the lower side. We consider that an amount of Rs. 25,000/- is fair and just on this account. [Please see Brestu Ram v. Anant Ram 1990 ACJ 333 (HP)]. Similarly, the amount of Rs. 5,000/- for expenditure on treatment is also on the lower side since the respondent had remained under treatment for more than two years at Indira Gandhi Medical College and Hospital, Shimla and at P.G.I., Chandigarh. He must have spent at least an amount of Rs. 15,000/- on his treatment. Hence the awarded amount is increased from Rs. 57,000/- to Rs. 82,000/-.

67. The respondent is also entitled to interest at the rate of 12 per cent per annum from the date of the application till the date of payment.

68. The appeal is dismissed and the cross-objections are allowed to the extent indicated above.

69. In the result, all the abovestated appeals and cross-objections are decided in the terms indicated above.

70. The respondents are also entitled to costs of Rs. 250/- in each appeal, except in F.A.O. No. 161 of 1983.