Supreme Court of India
Bishan Devi & Ors vs Sirbaksh Singh & Anr on 20 August, 1979
Equivalent citations: 1979 AIR 1862, 1980 SCR (1) 300
Author: P Kailasam
Bench: Kailasam, P.S.

PETITIONER:
BISHAN DEVI & ORS.

Vs.

RESPONDENT:
SIRBAKSH SINGH & ANR.

DATE OF JUDGMENT20/08/1979

BENCH:
KAILASAM, P.S.
BENCH:
KAILASAM, P.S.
GUPTA, A.C.

CITATION:
1979 AIR 1862 1980 SCR (1) 300
1980 SCC (1) 273
CITATOR INFO :
RF 1991 SC1769 (6)

ACT:
Motor Vehicles Act 1939, S. 110A-Determination and payment of compensation-No immediate and adequate relief to dependents under the existing law-Amendment suggested-Provision similar as in rail and air accidents-Liability to pay minimum compensation absolute-Dependents not satisfied may pursue remedies before Claims Tribunal-Regular monthly payments instead of lump sum payment-Advantageous to dependants-Less burdensome on the insurer.

HEADNOTE:
The appellants in their claim petition, before the Motor Accidents Claims Tribunal, claimed Rs. 50,000/- as compensation alleging that the husband of the first appellant was run over by a truck which was driven in a rash and negligent manner. Appellants 2 to 5 were the minor children of the first appellant.

The claim was contested by the owner of the truck, Respondent No. 1 and the insurer, Respondent No. 2. A written plea was filed by the second respondent contending that the truck had been stolen by somebody while it was standing, that a report to the police had been made to this

effect and that the truck was driven without the consent of the owner and consequently the respondents were not liable. It was further pleaded that the replying respondent was absolved from any possible liability in connection with the alleged accident under the provisions of Ss. 95 and 96 (2) of the Motor Vehicles Act 1939. The first respondent in his written statement filed about a month after that of the second respondent, contended that the truck did not meet with any accident nor was any intimation sent to the replying respondent.

The Motor Accident Claims Tribunal, came to the conclusion from the pleadings and evidence that the claimants had failed to establish the identity of the driver and the claimants not even being aware of the name of the driver who had driven the offending truck, had failed to prove their case and rejected the claim.

The appeal of the claimants to the High Court was rejected, the High Court agreeing with the finding of the Claims Tribunal and further holding that the truck was stolen by some irresponsible person who did not know driving and by reckless driving caused the accident and therefore the owner of the truck cannot be held responsible.

Allowing the appeal,

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HELD: 1. According to the insurer by his written statement which was filed a month before the written statement of the owner it was pleaded that somebody stole the truck without the knowledge of the owner or the driver. The plea of the owner in his written statement filed more than a month there-after, was that the truck did not meet with any accident. While the owner did not complain about any theft of the vehicle, the insurer professed further knowledge that the vehicle was driven by somebody who had no driving licence

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and without the authorisation of the owner. Apart from not examining himself the insurer did not make any attempt to substantiate his plea that the driver who was driving the vehicle did not have the driving licence. The plea taken by both the owner and insurer is palpably false and made without any sense of responsibility with a view to somehow escape liability. It is most unbecoming of an insurance company to have acted in this callous and irresponsible manner.

[305 F-H, 306B, 307G]

2. There is no finding by the Claims Tribunal that the truck was driven by an unauthorised person. The High Court found that the truck ought to have been stolen and driven by some irresponsible person who did not know driving. According to AW 4 the truck was driven by RW 2. In fact in the F.I.R., AW 4 stated that it was RW 2 who was diving the truck. In cross-examination he stated that the case against RW 2 is still pending in the court and as far as he could

remember he had no driving licence. The evidence of the owner of the truck is totally unreliable. The evidence of RW 2 is self-serving and is made with a view to escape the prosecution that was launched against him. It is therefore surprising that the High Court observed that it is evident from the material on record that RW 2 did not possess the driving licence. [307H-308D]

3. Under S. 96(2)(b)(ii) the insurer can defend a claim for compensation on the ground that the vehicle was driven by a person who was not duly licensed. Apart from making the averment in his written statement the insurer did not take any steps to establish that the vehicle was driven by a person who was not properly licensed. The evidence of AWs. 4 and 5 clearly establishes that R.W. 2 was driving the vehicle. [308E-F]

4. The Motor Accident Claims Tribunal rejected the evidence of AWs. 4 and 5 on the ground that as the time of accident is said to be 1 a.m. it is not possible for the witnesses to have recognised R.W. 2 (driver). The evidence of AW 4 was rejected as he failed to identify RW 2. AW 5 stated that he knew RW 2 and that it was he who was driving the truck and that he ran away after causing the accident. The basis on which the Claims Tribunal came to the conclusion that the identity of the driver was not established is not acceptable. Equally unacceptable is the conclusion of the High Court that as suggested by the counsel for the respondents the truck was stolen by some irresponsible person who did not know driving and by his reckless act caused the accident. There has been no discussion of the evidence of AWs 4 and 5.

[306F-G, H-307A]

5. The deceased at the time of his death was working as a Patwari and was drawing Rs. 109/- per month as his salary, out of which he used to handover Rs. 100/- to Appellant No. 1 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. Rs. 20,000/- as compensation and Rs. 2,500/- as costs awarded. [308H-309A]

6. The instant case brings into focus the difficulties experienced by dependants in obtaining relief before the Motor Accidents Claims Tribunal. The law as it exists, requires that the claimant should prove that the driver of the vehicle was guilty of rash and negligent driving. The burden thus placed is very heavy and difficult to discharge by the claimant. The records of police investigation are not made available to the Tribunal. The officers who investigated the accident are seldom available to give evidence before the Claims Tribunal and assist it in coming to a proper conclusion. The insurance company in quite a
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few cases, takes an unreasonable stand raises all sorts of untenable pleas just to thwart relief to thee dependants. In

many of the claims it turns out to be beyond the capacity of the claimant to maintain his claim in a court of law. It is for the legislature to make provisions for immediate and adequate relief to the dependants in motor accident cases. [309B, E-F, 310E]

7. The legislature may consider making the liability to pay minimum compensation absolute as is provided for to the dependants of victims in rail and air accidents. When a person dies in a motor accident, the number of his dependants and the period of their dependency may be ascertained. The minimum compensation may be paid every month to the dependants according to their share for the period to which they are entitled. The insurance companies being nationalised the necessity for awarding lump sum payment to secure the interest of the dependants is no longer there. Regular monthly payments could be made through one of the nationalised banks nearest to the place of residence of the dependants. Payment of monthly instalments and avoidance of lump sum payment would reduce substantially the burden on the insurer and consequently of the insured. [310E-G]

Minu B. Mehta & Anr. v. Balkrishna Ramchandra Nayan & Anr., 1977. Accidents Claims Journal-118; State of Haryana v. Darshan Devi & Ors., 1979 Accidents Claims Tribunal 205; referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1455 of 1969 Appeal by Special Leave from the Judgment and Order dated 7-12-1967 of the Punjab and Haryana High Court in F.A.O. No. 10 of 1963.

Hardev Singh and R. S. Sodhi for the Appellants. R. A. Gupta for Respondent No. 1.

V. C. Mahajan, Naunit Lal and Kailash Vasdev for Respondent No. 2.

The Judgment of the Court was delivered by KAILASAM J. This appeal is by special leave granted by this Court to Bishan Devi widow of late Bhagwan Das and her four children against the judgment and order dated 7th December, 1967 of the High Court of Punjab & Haryana dismissing the Claimants' F.A.O. No. 10 of 1962 against the award of Punjab Motor Accidents Claims Tribunal, Chandigarh, dismissing their claim.

The appellants filed a petition on 4th September, 1961 before the Chairman, Motor Accidents Claims Tribunal, Punjab, Chandigarh alleging that the husband of the first appellant died by having been run over by a lorry at midnight between the 8th and 9th July, 1961, at about a distance of 60 feet from the road. It was alleged that the truck was coming from Jullundur and it took a sudden turn and ran over the first appellant's husband, Shri Bhagwan Das, and that it was being driven in a rash

and negligent manner. The appellants 2 to 5 were the minor children of the first appellant, all of them being below 11 years of age on the date of the filing of the petition. It was alleged that the monthly income of the deceased was Rs. 109/- per month and a claim was made for Rs. 50,000 as compensation.

The respondents to the petition were (1) Sirbaksh Singh and (2) The Motor Owners' Mutual Insurance Co. Ltd., Belgaum the insurer. The written plea was filed by the second respondent, the insurer, on 10th October, 1961. Some of the pleas are noteworthy and it is necessary to set them out in some detail. In para 4 the insurer pleaded that the "truck was stolen by somebody while it was standing. A report to the police was made to this effect. Whoever made this accident, if any, drove the truck without the consent of the owner, and, therefore, the respondents are not liable". In its reply parawise in paragraph 1 it reiterated "This truck did not meet with any accident nor was any intimation sent to the replying respondent". In paragraph 2 it was again reiterated "No accident took place as alleged. Somebody stole away the truck without the knowledge of the owner or driver. The respondents are not liable to pay any compensation. The person liable is the person who was driving the truck at the relevant time and not the owner." In paragraph 11 it was pleaded "that the replying respondent is, in any case, absolved from any possible liability in connection with the alleged accident under the provisions of Sections 95 and 96(2) of the Motor Vehicles Act, 1939". In paragraph 12 it was stated that the "offending vehicle was being driven at the relevant time by a driver who had no driving licence and was not even an authorised driver of respondent No. 1, as he had stolen the truck and the owner is therefore not liable". Again in paragraph 13 the insurer pleaded that the "truck at the time of the accident was being unauthorisedly used and driven without the permission or authority of the owner. As the truck was being used without the authority of the owner, therefore, the owner is not vicariously liable for the tort. The replying respondent is, therefore, also not liable."

The first respondent, the owner of the vehicle filed his written statement on 16th November, 1961. In his statement he stated while dealing with the merits in paragraph 1 that "this truck did not meet with any accident nor was any intimation sent to the replying respondent". In paragraph 2 he stated that "No such accident occurred as alleged in which the husband of the applicant may have been killed due to the negligence of the driver of respondent No.

1. Allegation of negligence on the part of the driver is denied as incorrect."

On these pleadings parties went to trial. The claimants examined 5 witnesses AWs 1 to AWs 5. AW. 1 is Bachan Singh. He was sleeping on the night of occurrence on the roof of the Trade Union Office. The witness and others heard hue and cry at night when the offending truck ran over the deceased. Bachan Singh and others came down and extricated the deceased and two other persons from underneath the truck. The deceased died at the spot and two other injured were removed to the Civil Hospital, Jullundur. AW. 2 is Darshan Singh. He stated that he was sleeping in his truck on the night of the accident. He on hearing the alarm got up and saw the two constables where the accident had taken place. Bhagwan Das was extricated from underneath the truck with two other injured persons. Bhagwan Das died at the spot. According to the witness the accident took place at 2 A.M. and the deceased was carried in the same offending truck to the hospital. AW. 3 is not a material

witness as he does not speak of the incident but only saw the dead body and identified it. AW. 4 is Shiv Charan Das. He and another constable were on patrol duty on the night of the occurrence. At 1 a.m. the truck came from Jullundur side at a fast speed and turned towards the adda of the Union. Three persons including the deceased were sleeping on the kacha on cot which were run over. The deceased was injured seriously. He along with others were removed to the Civil Hospital, Jullundur, in the same truck. The witness lodged the F.I.R. with the A.S.I. who came at the spot from Kartarpur. In cross-examination the witness stated "So far as I remember Anoop Singh had no driving licence." AW. 5 was on patrol duty along with AW. 4 and at about 1 a.m. he saw the truck coming from Jullundur side with registration No. PNJ-6430 at a fast speed. The truck turned to its left and overran the three cots on which three persons were sleeping and struck against the door of union office. The sleepers on the cots were injured and Bhagwan Das had died subsequently. According to the witness one Anoop Singh was driving the truck. In cross-examination he stated "I do not know if Anoop Singh possessed the driving licence".

On the side of the respondents three witnesses RWs. 1 to 3 were examined. RW. 1 is the owner of the vehicle. He stated that on the night of the occurrence they drove the truck from Jullundur to Jallowal, his village, and parked it at 11.30 p.m. on the roadside. They left the truck and slept in their houses. They were informed by one Ishar Singh that the truck was missing. They left in search of the truck at about 1 a.m. at Bhogpur. At Bhogpur they learnt at 1.30 a.m. that the said truck was involved in an accident. He did not know who removed the truck. Though he went to report the loss of the truck to the police, as he learnt that the truck was caught in an accident he did not go to the police station and lodge the report about the theft of the vehicle. He denied that Anoop Singh was driving the truck and caused the accident. RW. 2 is Anoop Singh. He stated that he did not know driving and had not driven the truck in question nor did he cause any accident. The evidence of RW. 3 is not material.

On the pleadings and the evidence referred to the Motor Accidents Claims Tribunal came to the conclusion that the claimants had failed to establish the identity of the driver and that the claimants were not even aware of the name of the driver who had driven the offending truck. Thus the applicants had failed in proving their case. In view of this finding the Claims Tribunal observed that it had no other alternative but to decide the issue against the applicants. Because of this finding it felt it was not necessary to discuss the other issues. The appeal by the claimants was rejected by the High Court. The High Court agreed with the finding of the Claims Tribunal and observed that "There is no doubt that the evidence on record is not enough to show that Anup Singh or any other person directly or tacitly authorised by Sirbaksh was driving the truck at the time of accident. Anup Singh as is evident from the material on the record did not possess the driving licence. It is difficult to believe that Sirbaksh Singh could have allowed him to drive his truck without a driving licence." Holding that the truck was stolen by some irresponsible person who did not know driving and caused the accident by his reckless driving the High Court found that the owner of the truck cannot be held to be responsible. It is distressing to note that neither the Claims Tribunal nor the High Court considered the relevant evidence in the case. The claim was rejected by the Tribunal on the ground that the identity of the driver had not been established and by the High Court on the ground that "It is evident that Anoop Singh did not possess a driving licence and that the truck was stolen by some irresponsible person who did not know driving and that the owner cannot be held to be

responsible".

We cannot help observing that the plea put forward by the insurer is on the face of it frivolous and totally unacceptable. According to the insurer by his written statement which was filed on 10th October, 1961 a month before the written statement of the owner was filed, it was pleaded that somebody stole away the truck without the knowledge of the owner or the driver. It was further contended that the vehicle was being driven at the relevant time by a person who had no driving licence and was not even an authorised driver of respondent No. 1 as he had stolen the truck. The plea of the owner in his written statement which was filed on 16th November, 1961 more than a month thereafter is that "This truck did not meet with any accident nor was any intimation sent to the replying respondent". It may be noted that in this written statement which was filed after a fairly long interval there is no allegation by the owner that the truck was stolen. We do not know on what basis the insurer about a month before the written statement was filed by the owner alleged that the truck was stolen without the knowledge of the owner or the driver. While the owner did not complain about any theft of the vehicle the insurer professes further knowledge that the vehicle was driven by somebody who had no driving licence without the authorisation of the owner.

The F.I.R. was lodged at the police station at 4-30 a.m. at Kartarpur which is 12 miles from the scene of occurrence. The occurrence took place at about 2 a.m. In the F.I.R. which was lodged without any delay, Shivcharan Das Constable, who is examined as AW. 4 stated that he was on patrol duty along with Joginder Nath and when they reached the pucca road near Truck Stop Union Bhogpur the truck No. 6430/PNJ which was being driven by Anoop Singh driver at a very fast speed and carelessly, came and turned to the left below the road towards Truck Union. The truck overran the three cots and collided against the doors of the room of Truck Union Office and stopped. All the three cots were smashed and the three persons sleeping over them were seriously injured. He further stated that Anoop Singh ran away leaving the truck. The injured along with the deceased were taken to the Civil Hospital Bhogpur for treatment. As the doctor was not present the two injured were taken to Jullundur in the same truck. The F.I.R. was immediately registered. This witness in his evidence corroborated what he stated in the F.I.R. The evidence of A.W.4 was also corroborated by the testimony of AW. 5, Joginder Nath, who was on patrol duty along with AW. 4. He stated that at about 1 a.m. a truck came from Jullundur side with registration No. PNJ-6430 with fast speed. It turned to its left and overran the three cots in which three persons were sleeping and struck against the door of the Union's office. The Motor Accidents Claims Tribunal rejected the evidence of AWs. 4 and 5 on the ground that as the time of accident is said to be 1 a.m. it is not possible for the witnesses to have recognised the driver. The evidence of AW. 4 was rejected as he failed to identify Anoop Singh. AW. 5 stated that he knew Anoop Singh and that it was he who was driving the truck and that Anoop Singh ran away after causing the accident. Neither AW. 4 nor AW. 5 was asked that they would not have been in a position to see the driver as they were about 30 to 40 yards away when the accident took place. According to AW. 4 the deceased and the other injured were removed to the Bhogpur hospital and from there to the Jullundur hospital in the same truck. We fail to understand the basis on which the Claims Tribunal came to the conclusion that the identity of the driver was not established. Equally, unacceptable is the conclusion of the High Court that "as suggested by the counsel for the respondents the truck was stolen by some irres-

ponsible person who did not know the driving and by his reckless act caused the accident." There has been practically no discussion of the evidence of AWs. 4 and 5. There is no reference to the prompt F.I.R. lodged by AW. 4 who was on patrol duty wherein the material particulars about the incident and the driver have been furnished.

The suggestion made by the counsel for the respondents that the truck was stolen, as pointed earlier, was not pleaded by the owner of the vehicle even though he filed his written statement on 16th November, 1961, about a month after the date of the occurrence. All that the owner stated was that the truck did not meet with any accident. When he was examined he stated that he parked the truck at 11-30 p.m. on the roadside but when he returned he found the truck missing. He left in search of the truck at 1 a.m. and learnt at 1-30 a.m. that the truck was involved in an accident. Though he went to report the loss of the truck as he learnt that it was involved in an accident he did not go to the police station and lodge a report regarding theft. This statement is directly contrary to what he stated in the written statement that the truck did not meet with any accident. The insurer who filed his written statement a month before the owner filed the written statement stated that the truck was stolen by somebody and that a report to the police was made to this effect. No such report was ever made to the police and this statement is clearly false. Later in the course of the statement the insurer stated that the truck did not meet with any accident. He further went to the extent of stating that somebody stole away the truck without the knowledge of the owner of the driver, and that if at all it is only the person who was driving the truck who is liable and not the owner. It is significant to note that no one was examined to substantiate the facts alleged in the written statement of the insurer. The insurer was not satisfied with the above mentioned false, frivolous and irresponsible allegations. He proceeded to state that the driver who was driving the vehicle did not have a driving licence and was not the authorised driver of the owner as he had stolen the truck. Apart from not examining himself the insurer did not make any attempt to substantiate his plea that the driver who was driving the vehicle did not have the driving licence. We are constrained to state that the plea taken by both the owner and the insurer is palpably false and made without any sense of responsibility with a view to somehow escape the liability. It is most unbecoming of an insurance company to have acted in this callous and irresponsible manner.

There is no finding by the Claims Tribunal that the truck was driven by an unauthorized person. The High Court found that the truck ought to have been stolen and driven by some irresponsible person who did not know the driving. The High Court has stated "Anoop Singh as is evident from the material on record did not possess the driving licence". The evidence that Anoop Singh was driving the vehicle was given by AWs. 4 and 5, the policemen on patrol duty. According to AW. 4 the truck was driven by Anoop Singh. In fact in his F.I.R. he stated that it was Anoop Singh who was driving the truck. In cross-examination the witness stated that the case against Anoop Singh is still pending in the court and as far as he could remember he had no driving licence. AW. 5 when questioned stated: "I do not know if Anoop Singh possessed the driving licence". According to the owner Anoop Singh was not the driver and it was wrong to say that Anoop Singh was driving the truck and caused the accident. Anoop Singh when examined as RW.2 stated that he did not know driving and had not driven the truck in question nor did he cause any accident. As we have pointed out earlier the evidence of the owner of the truck is totally unreliable. The evidence of RW. 2 is self-serving and is made with a view to escape the prosecution that was launched against him. The only material about

Anoop Singh not having a driving licence is the statement of AW. 4 in cross-examination that he did not remember whether Anoop Singh had a licence and that of AW. 5 that he did not know whether Anoop Singh possessed the driving licence. It is surprising that the High Court observed "It is evident from the material on record that Anoop Singh did not possess the driving licence."

Under Sec. 96(2) (b) (ii) the insurer can defend a claim for compensation on the ground that the vehicle was driven by a person who was not duly licensed. Apart from making the averment in his written statement the insurer did not take any steps to establish that the vehicle was driven by a person who was not properly licensed. The evidence of AWs. 4 and 5 who have been examined clearly establishes that Anoop Singh was driving the vehicle. The two stray suggestions and the reply given by the two witnesses is not sufficient to establish that Anoop Singh was not licensed to drive a truck. It is the duty of the insurer to have substantiated his plea. We have no hesitation in rejecting the insurer's plea as false especially as the owner who filed the written statement a month later did not support the former's plea.

The deceased at the time of his death was working as Patwari and was drawing Rs. 109/- p.m. as his salary. The wife of the deceased Bishan Devi as AW. 6 has deposed that the deceased was drawing a salary of Rs. 109/50 per month out of which he used to handover 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 Rs. 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.

The instant case brings into focus the difficulties experienced by dependants in obtaining relief before the Motor Accidents Claims Tribunal. The victim in this case Bhagwan Das was run over by a Motor vehicle on the night between 8th and 9th July, 1961 leaving behind him his wife Bishan Devi and four minor children. For Eighteen long years they have been before courts asking for some compensation for the death of their bread-winner due to rash and negligent driving of a motor vehicle. One is tempted to remark that they would have been better of but for their hope of getting some relief in courts. They not only had to spend their time in courts but to borrow to fight for their rights. It is common knowledge that such helpless and desperate condition is exploited by unscrupulous persons who manage to get away with the bulk of the compensation money if and when the claimants succeed in getting it.

The law as it stands requires that the claimant should prove that the driver of the vehicle was guilty of rash and negligent driving. The burden thus placed is very heavy and difficult to discharge by the claimant. The records of police investigation are not made available to the Tribunal. The officers who investigated the accident are seldom available to give evidence before the Claims Tribunal and assist in coming to a proper conclusion. The insurance company in quite a few cases, as in the present one, takes an unreasonable stand and raises all sorts of untenable pleas just to thwart relief to the dependants. In many of the claims it turns out to be beyond the capacity of the claimant to maintain his claim in a court of law.

Due to the inordinate delay in disposal of claim petitions before the motor Claims Tribunal the badly needed relief to the claimants is not available for several years. Further time is taken in appeals. All along the dependants will have to carry on without any relief. It has been time and again pointed out by courts that insistence of proof of rash and negligent driving causes considerable hardship on the claimants.

We may point out that repeated suggestions have been made by this Court and several High Courts expressing the desirability of bringing a social insurance which would provide for direct payment to the dependants of the victim. This Court in Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr. has referred to the deci-

sion of the Kerala High Court in Kasavan Nair v. State Insurance Officer where the High Court expressed itself thus:

> "Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurers."

The Madras High Court in M/s. Ruby Insurance Co. Ltd. v. V. Govindaraj and Ors. has suggested the necessity of having social insurance to provide cover for the claimants irrespective of proof of negligence to a limited extent say Rs. 250/- to Rs. 300/- a month.

In a recent decision in the State of Haryana v. Darshan Devi & Ors. this Court observed:-

> "Now that insurance against third party risk is compulsory and motor insurance is nationalised and transport itself is largely by State Undertakings, the principle of no fault liability and on the spot settlement of claims should become national policy."

Unless these ideas are accepted by the legislature and embodied in appropriate enactments Courts are bound to administer and give effect to the law as it exists today.

It is for the legislature to make provisions for immediate and adequate relief to the dependants in motor accident cases. The legislature may consider making the liability to pay minimum compensation absolute as is provided for to the dependants of victims in rail and air accidents. When a person dies in a motor accident, the number of his dependants and the period of their dependency may be ascertained. The minimum compensation may be paid every month to the dependants according to their share for the period to which they are entitled.

The insurance companies are now nationalised and the necessity for awarding lump sum payment to secure the interest of the dependants is no longer there. Regular monthly payment could be made through one of the nationalised banks nearest to the place of residence of the dependants. Payment of monthly instalments and avoidance of lump sum payment would reduce substantially the burden on the insurer and consequently of the insured. Ordinarily in arriving at the lump sum payable, the Court takes the figure at about 12 years payment. Thus in the case of monthly compensation of Rs.

250/- payable, the lump sum arrived at would be between 30,000/- and 35,000/-. Regular monthly payment of Rs. 250/- can be made from the interest of the lump sum alone and the payment will be restricted only for the period of dependency of the several dependants. In most cases it is seen that a lump sum payment is not to the advantage of the dependants as large part of it is frittered away during litigation and by payment to persons assisting in the litigation. It may also be provided that if the dependants are not satisfied with the minimum compensation payable they will be at liberty to pursue their remedies before the Motor Accident Claims Tribunal.

N.V.K. Appeal allowed.