

LAW COMMISSION OF INDIA

ONE HUNDRED AND ELEVENTH REPORT

ON

THE FATAL ACCIDENTS ACT, 1855

May, 1985.

Justice K.K.Mathew.

New Delhi-110001.

Dated the 16th May, 1985.

My dear Minister,

I am forwarding herewith the One Hundred and Eleventh Report of the Law Commission on "The Fatal Accidents Act, 1855".

The subject was taken up by the Law Commission ~~sub nomine~~. The need for taking up the subject is explained in para 1.1 of the Report.

The Commission is indebted to Shri P.M.Bakshi, Part-time Member, and Shri S.Ramaiah, Member Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,


O/C
(K.K.Mathew)

Shri A.K.Sen,
Honourable Minister of Law
and Justice,
New Delhi.

Encl: 111th Report.

Fatal Accidents Act

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CHAPTER I
INTRODUCTORY

Why the
Act taken
up.

1.1. This Report is concerned with the century-old Act entitled the Fatal Accidents Act, 1855. The Act deals with the recovery of damages for the death of a person, caused by the "wrongful act, neglect or default" of another person. The subject has been taken up by the Law Commission as a part of its function of revision of laws, so as to remove injustice. Certain defects in the Act have been pointed out by judicial decisions.¹ Deficiencies have also been discovered in the Act on a few other matters and the need for an over-all review of this Act, which was passed more than a century ago, is obvious in the light of the above defects and deficiencies.

Judicial
criticism.

1.2. By way of example of defects in the present Act, we may refer to the following observations made in a Kerala case:-²

"The Fatal Accidents Act, placed on the statute book as early as 1855, is a trifle archaic in form and somewhat obsolescent in content, but Courts are called upon to enforce the statute as it is. Under the Indian Act, which is largely modelled on the English statute of 1846, brothers and sisters are not entitled to rank as "dependants, although, in England, the mother country (I mean, of the statute), by Section 2 of the Fatal Accidents Act, 1855, brother, sister, uncle and aunt of the deceased and the issue of such relatives have been inducted into the area of statutory dependency. The other progressive amendments to the English statute also have not been copied in our country. In one of the three suits we are concerned with, viz., O.S.No. 22 of 1965, plaintiffs 3, 4 and 5 are the two brothers and sisters.

1. Para 1.2, infra.

2. P.B.Kader V. Thatchamma, A.I.R. 1970 Ker. 241, 243.

of the deceased who, under the Indian Act, are not entitled to claim compensation. Again, the Fatal Accidents Act, 1855, states that "every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased".

"The Act also requires all the dependents to be named in the plaint. What happens, if all these dependents are not on record, although they are alive or the suit is brought by some but not for the benefit of the others? Also, strictly speaking, the section visualised some sort of a representative action, but, where the suit is brought, not by the executor or administrator, but by some of the beneficiaries themselves, should "the suit be dismissed because the others are not on record ? That would be taking an extremely technical view and therefore an objection in that form, taken in two suits where the parents are alive, but not impleaded (nor claim made on their behalf), has been rightly overruled by the trial court, although that does not mean that the plaintiffs should get the benefit of the compensation which should have gone to the parents had they (the parents) also claimed".

Apart from the defects referred to in the Kerala judgment cited above, many others are revealed on a detailed study of the Act. We shall deal with them in due course. Before doing so, a few words regarding the nature of the legislation on the subject would be useful.

Effect of
death on
causes of
actions:
two
aspects.

1.3. Legislation of the nature under consideration belongs primarily to the realm of torts (though not exclusively so), and is concerned with the effect of death as creating tortious liability. It may be useful to point out that in the law of torts, death might operate in two different directions. Death may extinguish a cause of action; or it may create one. The first aspect is concerned with the question: "How far does a cause of action survive the death of the person wronged or the wrong-doer?" In Indian statute law, this subject is dealt with primarily in the ¹ Succession Act, which provides for the survival, on death, of most causes of action.

In relation to the second aspect of death - namely, death as creating a cause of action - the question to be considered is: "How far does one person have an interest in the life of another so that the law gives him a cause of action on the death of the other?" In India, this question is dealt with in the Act under discussion, that is to say, the Fatal Accidents Act.

The two questions mentioned above are, in essence, distinct from each other. The first question is primarily of an adjective nature, concerned as it is with the effect of death on an existing cause of action. The second question is of a substantive nature, concerned as it is with the creation of a new cause of action. In the present study, ² we are concerned with the second question.

common Law
rule as to
death.

1.4. On this particular question, (whether death creates a cause of action) at common law, the death of a human being ³ could not create a cause of action in favour of any person.

1. Section 306, Indian Succession Act, 1925.

2. See also paragraph 1.10, *infra*.

3. Baker V. Bolton, (1808) 1 Camp 493; 170 E.R. 1033.

This was the position even if the death was the result of the wrongful act of the person causing death. The law of torts closed its boundaries when death wanted to enter it.

History of the rule disallowing recovery for fatal accident. 1.5. It was, thus, one of the celebrated oddities of the common law that, for the wrongful killing of a human being, redress could not be obtained in tort. An over-statement by Lord Ellenborough is considered to have been responsible for stopping the development of such a remedy. The exact origin of the rule is, however, complex and obscure.¹

²

So far as the person injured (and consequentially dead) is concerned, naturally, he could not physically sue; and his own cause of action - even if the law gave one - would not have survived at common law, in view of the operation of another rule, namely, that personal actions die with the person. But this rule, by itself, would not have prevented the recovery of compensation by his dependents. What prevented recovery by the defendants was the rule prohibiting award of compensation for death, which has been mentioned above.

Common law rule 1.6. The common law rule mentioned above, giving a wrong-doer civil immunity if the injury caused death (before a judgment was secured), was obviously indefensible.³ If a wrongful act causes injury short of death, compensation would be recoverable. If a wrongful act causing death is made immune from liability, the result would be that the more serious harm would remain uncompensated for, while the less serious harm would be compensated.

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1. (a) Holdsworth, "Origin of rule in Baker v. Bolton" (1916) 32 L.Q.B. 43.
(b) Holdsworth, H.E.L. (1923) Vol. 3, page 331.
 2. Malone, "Genesis of Wrongful Death" (1965) 17 Stan. L. Rev. 1043.
 3. Note "Inadequacy of existing wrongful death and survival legislation" (1930-31) 44 Har. Law Review 980.

English Act
of 1846.

1.7. The intolerability of this position led, in England, to the passing of the Fatal Accidents Act, 1846,¹ known also as Lord Campbell's Act. The Act created a new cause of action for the death in favour of the personal representatives of the deceased, for the benefit of certain designated relatives.² It thus abolished the rule in Baker v. Bolton.³ Successive amendments and re-enactment of the Act in England spell out various details, but preserve the principle of the Act of 1846.

Indian Act
of 1855.

1.8. After the English Fatal Accidents Act was enacted in 1846, the Indian legislators followed suit in 1855. The Fatal Accidents Act, 1855, which is the subject matter of this study, provides that on the death of a person caused by the "wrongful act, neglect or default" of another person, the personal representative of the deceased can maintain an action for damages on behalf of the wife, husband, parent or child of the deceased, if "the wrongful act, neglect or default" is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof.

History of
legislative
proceedings.

1.9. It appears from the proceedings relating to the Bill which led to the Indian Act of 1855, that in the beginning, the proposal was to follow the English Act of 1846, almost verbatim.⁴ The Select Committee which reported on the Bill does not seem to have made radical alterations in the Bill.⁵ However, the Select Committee did make a few changes on matters of detail in the Bill. For example, it added a preamble to the Bill and introduced a provision enabling the plaintiff to include a claim for the loss to the estate.

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1. Fatal Accidents Act, 1846.
 2. See now the Fatal Accidents Act, 1976, extensively amended in 1982.
 3. Paragraph 1.3, supra.
 4. National Archives Papers relating to Act 13 of 1855.
 5. Report of the Select Committee on the Fatal Accidents Bill, 1855 - 2nd February, 1855.

The Select Committee also altered the last clause of the Bill, by directing that particulars as to the nature of the claim and as to the persons for whose benefit the claim was brought, should be inserted in the plaint. The Select Committee observed that this alteration had been made to accommodate the provisions to the practice of the mofussil courts. Besides making a few other verbal alterations, the Select Committee added an interpretation clause. This clause was taken from the British statute on 1846 on the subject, but limited the meaning of the word "parent" so as not to include a step-father or a step-mother.

Cause of action for wrongful death has thus been effectively provided for.

Two interests violated.

1.10. At this stage, it should be mentioned that when a tort causes death, ¹ two interests have been invaded:-

(i) The first is the interest of the deceased in the security of his person and property - an interest which has been invaded by compelling him to endure a suffering and to submit to the loss of earnings.

If the recovering of compensation for invasion of this interest is allowed, the amount to be recovered should really be an asset of the estate. It is to be calculated on the harm caused to the deceased.

(ii) The second interest invaded is that of the relatives of the deceased - an interest in the nature of an expectation; their anticipation of sharing in the prospective earnings of the victim is necessarily

1. See Note in (1915) 28 Harvard Law Rev. 802.

destroyed by the termination of the life of the victim itself. The amount to be recovered under this head is not an asset of the estate.

Interest of the first type can be protected only if there is provision for survival of the cause of action which had accrued to the deceased before his death.¹

A statute in the nature of Fatal Accidents Act would protect only the second type of interest.²

Felonious tort. 1.11. It is also appropriate to mention that at common law, there was another rule which prevented recovery for a felonious tort - a rule not confined to a tort causing death. The classic formulation of the rule is contained in the judgment of Phillimore L.R. in Smith V. Salwyn,³ from which the following passage is taken:-

"It is a well-established rule of law that a plaintiff against whom a felony has been committed by the defendant cannot make that felony the foundation of a cause of action unless the defendant has been prosecuted or a reasonable excuse has been shown for his not having been prosecuted."

It may be mentioned that in England, the rule of the common law mentioned above has been abolished by statute.⁴ The rule has been abolished by express provision in many other countries also. Thus, the provision in Canada on the subject is in the following form:-⁵

"No civil remedy for any act or omission shall be suspended, or any proceedings taken in connection therewith stayed, by reason only of the fact that such act or omission constitutes a felony."

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1. See Note in (1915) 28 Harvard Law Rev. 902.
 2. See also paragraph 1.3, supra.
 3. Smith v. Salwyn, (1914) 3 K.B. 98, 106 (C.A.).
 4. Pannam, "Felonious Tort Rule" (1965) 38 Aust.L.J. 164.
 5. Section 1, Criminal Law Act, 1967 (Eng.).
 6. Section 13, Canadian Criminal Code.

Working Paper. 1.12. In order to facilitate consideration of the subject, the Commission had prepared a working paper¹ containing the tentative proposals of the Commission, for eliciting the opinions of interested persons and bodies on the subject. The comments received on the working paper will be dealt with, at the appropriate place, in this Report.²

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1. Law Commission file No. F. 2(1)85. L.C. Working Paper on Fatal Accidents Act, 1855 (January 1985).
 2. Chapter ~~XIV~~, infra.

CHAPTER II

LAW IN ENGLAND AND IN OTHER COUNTRIES

Reforms in
England.

2.1. The Indian Act is mainly modelled on the English Act of 1846, as stated above. However, in England, several improvements have been made in the law on the subject. The process of reform has been gradual. Until 1976, the statutory provisions had to be collected from scattered enactments passed from time to time to reform the law. In 1976, the law was consolidated as the Fatal Accidents Act, 1976. In 1982, the first four sections of the Act of 1976 were replaced by new sections substituted by the Administration of Justice Act, 1982 (C.53). As a result, one has now to read both the Act of 1976 and the Act of 1982, for ascertaining the English law on the subject.

Some salient
features of
the position
in England.

2.2. Attention may be usefully drawn to a few salient features of the legislative developments in England -

- (a) Where the defendant's tort has caused the death of the deceased by wrongful act, neglect or default, the Fatal Accidents Act, compels the defendant to compensate the specified dependants, for their loss of support from the deceased, provided that the deceased (if he had survived) would himself have been able to sue the defendant.
- (b) The executor or administrator of the deceased brings the action, but holds the damages recovered on behalf of the dependants. Any dependant entitled under the Act may bring proceedings in his own name, if the executor or administrator has not started proceedings within six months of the death of the deceased.

The ^{se}moneys are not diminished by death duties or by the claims of the deceased's creditors, because they do not pass into the deceased's estate.

- (c) The "dependants" entitled under the Acts are the spouse, ex-spouse, children or other descendants, step-children, parents, step-parents or other ascendants, brothers, sisters, aunts or uncles and issues of aunts and uncles. Certain de-facto-relations are also recognised.
- (d) Any of these relationships can arise by adoption, or by marriage ("affinity") and the relationship may be illegitimate or of the half-blood. (Relatives of the "half-blood" are persons related by virtue of a common ancestor, but descended from different spouses of that ancestor).
- (e) The measure of damages in such a case is the extent of the dependence of the relative, multiplied by the likely period of its time of continuance.
- (f) Benefits accruing to the relative as a result of the death of the deceased are not to be taken into account in the assessment of damages.
- (g) A defendant must not be made to pay damages twice over in respect of the same wrong. Hence, when the executor sues the defendant both under the Law Reform etc. Act, 1934, and under the Fatal Accidents Act, the damages awarded under each Act are calculated with reference to those awarded under the other Act,¹ so that the total award involves no duplication.

1. *Ross v. Ford*, (1937) A.C. 826; (1937) 3 All. E.R. 359 (H.L.).

English Act
of 1982.

2.3. By the Administration of Justice Act of 1982,¹ recently enacted in England, sections 1 to 4 of the Act of 1976 have been replaced by revised sections. In the course of this revision, some important additions have also been made. Provision has now been made for treating what may be called a de facto wife as a "dependant" for the purposes of the Act. A right has also been given to the former wife or husband of the deceased, to rank as a dependant. The earlier provision that insurance and other benefits which accrue to the dependants are to be disregarded has now been made comprehensive. In effect, the court is barred from taking into account (by way of deduction) any benefit which accrues to a dependant on death. Certain other changes have also been made to enhance the social justice aspect of the legislation. An attempt has also been made to remove certain anomalies arising from the co-existence of a claim under the Act and a claim for shortened expectation of life. Provision has also been made to allow damages for bereavement² an idea probably inspired by the Scottish Law.³

Law in other
Commonwealth
countries.

2.4. The law on the subject in most Commonwealth countries has also been modelled mainly on the English pattern.

Position in
U.S.A.

2.5. In the United States, the statute law in the majority of the States provides for compensation for death, substantially on the same lines as the English Act. The phraseology differs, but the substance is the same.³

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1. The Administration of Justice Act, 1982 (Eng.).
 2. See paragraph 2.7, infra.
 3. Note in (1964-65) 17 Stanford Law Review, pages 1054-1055.

Scotish law
can be
solatium.
2.6. In Scotland also, damages are allowed to the bereaved family for solatium, as well as for loss of support. Lord Watson has observed that the action for solatium and damages had been allowed to the spouse,
¹ parent or child for a century in Scotland. It has already been mentioned that the English Act, as amended
²
³ in 1982, now allows damages for bereavement.

Civil Law
countries.
2.7. In modern civil law jurisdictions, such as France, whose law has been greatly influenced by the Roman Law, the courts have, since the beginning, encountered little difficulty in awarding damages to the family of the deceased victim for both pecuniary and
⁴ non-pecuniary losses from his death.

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1. Note in (1964-65) Vol. 17 Stanford Law Review, pages 1054-1055.
 2. Clark v. Garfin Coal Co. (1891) A.C. 412, 418 (H.L.).
 3. Paragraph 2.3, supra.
 4. Note in (1964-65) Vol. 17 Stanford Law Review, pages 1054-1055.

CHAPTER III

TITLE, EXTENT AND APPLICATION : SECTION 1

Section 1.

Extent and
Application-
recommendation.

3.1. We can now take up examination of the Fatal Accidents Act, 1855, section by section.

3.2. Section 1 of the Act deals with the (territorial) extent of the Act. On this particular point, no change is needed. But if the present Act is to be replaced by a new Act, (as is going to be our recommendation), it will be proper to insert, in the new Act, a provision that its provisions will not apply retrospectively.¹ It is better to avoid controversies on the subject. That particular qualification can be inserted in section 1, and also in the repeal clause.² We recommend accordingly. Incidentally, the present title "Fatal Accidents" is not appropriate, and should be replaced by the more appropriate words "wrongful death".

1. See Appendix 1, clause 1(3).

2. Appendix 1, clause 14(2).

CHAPTER IV

RIGHT TO COMPENSATION; SECTION 1A, FIRST PARAGRAPH.

~~Section 1A, first paragraph.~~

4.1. Section 1A is the principal operative section in the Act, and enables a suit to be filed for loss occasioned by death. The suit can be filed by the specified relatives. There are also a few other matters of detail, dealt with in the section. It will be convenient to deal with the various paragraphs of the section one by one.

The first paragraph of section 1 enacts as under :-

"1A. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime".

~~In the
dependent
on maintaining
liability of
action.~~

4.2. With reference to the first paragraph, it is to be noted that two conditions are necessary before the suit can be maintained under the section :-

- i) the death must have been "caused by wrongful act, neglect or default"; and
- ii) the act, neglect or default must be such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof.

These conditions, when read together, postulate that, but for the rule prohibiting recovery for death, the act which caused the death would have been actionable. The right of action under the section, however, is a new one, and not a survival of the cause of action of the deceased. It is "derivative", only to the extent that the conditions precedent applicable to the deceased must exist.¹

1. See Williams, "Some Reforms in the Law of Torts" (1961) 24 Modern L.R. 100, 106.

4.3. As to the words "wrongful act, neglect or default" it may be stated that in most cases under the Act, the cause of action is in tort. In England, it has been held (with reference to the Act of 1946) that breach of contract will suffice.¹ The language of the English provision² and the Indian provision being substantially the same in this respect, our courts may be expected to take the same view on the above point. In fact, the rule in Baker v. Bolton (which the Fatal Accidents Act is intended to supersede)³ itself did not apply to breach of contract⁴.

Australian
Usage.

4.4. In an Australian case arising under substantially similar legislation, a mother recovered for the death of her son who was electrocuted by a defective light bulb purchased by him from defendants. Negligence on the part of the retailers could not be established, but there was breach of implied warranty of fitness which could have conferred a right of action on the deceased.⁵

Annotation.

4.5. As to the nature of the connection between the wrongful conduct relied on and the death caused thereby it has been held that the wrongful conduct need not be the direct or sole cause of death, but it must be one of the effective causes leading to the death.⁶

Verbal
changes in
section 1A,
first para-
graph -
Recommend-
ations.

4.6. No changes of substance are called for in the first paragraph of section 1A. A few verbal changes, however, are required. Having regard to current usage -

- i) the word "action" should be replaced by the word "suit"; and
- ii) the words "felony or other crime" should be replaced by the word "offence".

We recommend accordingly.

Certain other minor verbal improvements, based mainly on section 1(1) of the (English) Fatal Accidents Act, 1976 are also desirable. These will be apparent from the draft Bill recommended in an Appendix to the Report.

1. Grein v. Imperial Airways Ltd. (1936) 2 All E.R. 1258.

2. See now section 1(1), Act of 1976.

3. Paragraphs 1.3 and 1.7, supra.

4. Frost v. Aidesbury Dairy Co., (1915) 1 K.B. 608.

5. Woolworths v. Crotty, (1942) 66 C.L.R. 603

(High Court of Australia).

6. Governor-General of India in Council v. Bhanwari Devi, A.I.R. 1961 All. 14, 18, para 48.

CHAPTER V

RELATIVES ENTITLED TO COMPENSATION : SECTION 1A, SECOND PARAGRAPH

Section 1A,
Second para-
graph -
Relatives
entitled to
compensa-
tion.

5.1. The second paragraph of section 1A of the Act of 1855 is as follows :

"Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased."

This paragraph, thus, deals with two matters—

- i) the relatives entitled to compensation, — which is a substantive matter; and
- ii) the form of the action, — which is a procedural one.

Relatives
entitled
to compen-
sation.

5.2. As to the first matter (relatives entitled to compensation), the provision at present is limited to the wife, husband, parent and child.

Prima facie, this seems to be too narrow a circle. In this context, it should be noted that the category of relatives has been expanded in England.

As the law in England now stands,¹ it includes —

- (a) the wife, husband,² parent and child;³
- (b) any person who is, or who is the issue of, a brother, sister, uncle or aunt of the deceased person.⁴

(The expressions "parent" and "child" are defined in a wide manner, both in England and in India).

Illegitimate
and adopted
children -
position in
India.

5.3. Illegitimate dependants and step-children of the several categories are also included in England.

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1. Fatal Accidents Act, 1976 (English).
 2. Also a divorced spouse; see paragraph 5.7, infra.
 3. Section 1(3), Fatal Accidents Act, 1976 (English).
 4. Section 1(3), Fatal Accidents Act, 1976 (English).

Para 5.3.
From td.

Adopted children are included in England by a general enactment. Briefly stated, the position under that enactment is that an adopted child shall be treated, in law, as if he had been born as a child of the marriage.¹

scope of
relatives
entitled
to compen-
sation -
proposal
for
extension.

5.4. (a) It may be noted that in India, sisters and brothers are recognized dependants under the Workmen's Compensation Act² and also under the Railways Act.³ In our view, the wider list of relatives⁴ adopted in England is suitable for India also. In the context of the Fatal Accidents Act, uncles and aunts, brothers and sisters, and their issues should be included.

(b) In fact, having regard to Indian sentiments, there could be scope even for including a widowed daughter-in-law living with the deceased. Cases are not uncommon where the widowed daughter-in-law, not having an independent source of income, was economically dependent on the father-in-law who had died as a result of the injury. Even in England,⁵ the inclusion of the widowed daughter-in-law and mother-in-law had been suggested in the debates on legislation proposed on the subject, though the suggestion does not seem to have been implemented. Inclusion of the widowed daughter-in-law within the category of persons entitled to compensation would be eminently desirable in Indian conditions. The same logic applies to a deceased brother's widow. The list should, therefore, be expanded to cover these two relatives also.

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1. First Schedule, paragraph 3, Children Act, 1975 (C.72) (English).
 2. Section 4(1) and 8(5), Workmen's Compensation Act, 1923.
 3. Section 82A, Indian Railways Act, 1890.
 4. Paragraph 5.2, Supra.
 5. See H.L. Debates, Vol. 216, col. 1079-1080.

5.5. On the basis of the above discussion, the following relatives should be covered for the purposes of section 1A, second paragraph:¹

- (a) wife or husband,²
- (b) child³, including step-child, adopted child,⁴ and illegitimate child⁵ and grand-children or persons of like description.⁶
- (c) parent, including step-parent, and grand-parent,
- (d) brother,⁷ including that by half-blood or uterine blood, and his issue,
- (e) sister,⁸ including that by half-blood or uterine blood, and her issue,
- (f) aunts and uncles and their issues,⁹
- (g) widowed daughter-in-law.¹⁰
- (h) widow of brother.¹¹

5.6. It is also proper that persons in the womb at the time of death should also be covered, if subsequently born alive.¹²

-
- 1. See Appendix 1, clauses 4(1) and 4(3).
 - 2. As to divorced spouses, see paragraph 5.1, infra.
 - 3. See paragraph 10.6, infra and Appendix 1, Clauses 2(1) and 2(2).
 - 4. See paragraph 10.1, infra and Appendix 1, Clause 2(1).
 - 5. See Appendix 1, clause 2(2) and paragraph 10.4(i), infra.
 - 6. See paragraph 10.4(ii), infra.
 - 7. See paragraph 5.4(a), supra.
 - 8. See paragraph 5.4(a), supra.
 - 9. See paragraph 5.4(a), supra.
 - 10. Paragraph 5.4(b), supra.
 - 11. Paragraph 5.4(b), supra.
 - 12. See Appendix 1, clause 2(6). Compare section 99(ix), Indian Succession Act, 1925.

Relatives in
the womb -
pro positi.

5.7. While dealing with the question of persons who should be entitled to rank as beneficiaries, some comments are in order as to divorced spouses. In England, the expression "wife" as occurring in the Fatal Accidents legislation was judicially construed as not including a divorced wife.¹ However, in 1982, the law was amended. Section 1(3)(a) and section 1(4), Fatal Accidents Act, 1976 (as amended by section 3 of the Administration of Justice Act, 1982) provide that the expression "defendant" means, inter-alia, the wife or husband or former wife or husband of the deceased. It is also made clear that the reference to the "former wife or husband" of the deceased includes a reference to a person whose marriage to the deceased has been annulled or declared void, as well as a person whose marriage has been dissolved.

On merits, this is a good provision. On the passing of a decree of divorce or nullity of marriage, the court generally orders a spouse to make to the other spouse, periodical payments by way of maintenance. If the spouse so ordered to pay maintenance dies, liability should survive against the estate of the deceased. But in India, this has now been achieved judicially. Hence no statutory provision is needed.²

Part in the
time of
the execu-
tor, admi-
nistrator
or repre-
sentative.

5.8. This disposes of one point concerning the second part of section 1A, second paragraph of the existing Act. That paragraph further provides that the suit shall be brought by, and in the name of, the executor, administrator or representative of the person deceased.

1- Payne Collins v. Taylor Woodrow Construction Co., Ltd., (1975) 1 All E.R. 899.

2. Aruna v. Dorothea, A.L.R. 1983 S.C. 916.

~~Suit by
Beneficiaries
-
proposed.~~

5.8. The expression "representative" in this context means the wife, husband or parent or child,¹ - i.e. the person entitled at present to the benefits of the Act. It is well understood that the claim made by the representative is essentially a claim on behalf of all the defendants.²

Further, even if one of the dependants does not put in a claim, that does not deprive the others of their right to compensation.³ The suit is for the benefit of all. The relief is given not to a class, but to individuals.⁴

~~Payment
Unto
Court-
proposed.~~

5.9. It may be noted that the English Act⁵ expressly allows a suit by the beneficiaries, if the executor or administrator does not bring an action within the specified provision. There should be a similar provision in the Indian Act. Its utility is obvious.⁶

5.10. Another point requires consideration in the interests of speedy disposal. If the defendant is advised to pay money into court, it should suffice that he pays it as one sum, which is intended to cover the compensation payable to all persons, without specifying the shares of the relatives. Such a provision should be inserted in our Act, so that the defendant paying into court is not bothered with the subsequent stages of the trial which would be concerned only with the apportionment of compensation - a matter in which the defendant would have no interest.⁷

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1. Jeet Kumari v. Chittagon E&E Supply Co., A.I.R. 1947 Cal. 195, 199, paragraph 17 (reviews cases).
 2. N.I.T. Insurance v. Anuvrata, A.I.R. 1966 Punjab 288, 292 (F.P.).
 3. (1970) 82 Punj.L.R.42,45, noted in the Yearly Digest.
 4. Concord of India Insurance Co. v. Subramaniam Iyer, A.I.R. 1963 Ker. 209, 210, paragraph 4.
 5. Section 2(2), Fatal Accidents Act, 1976 (English).
 6. See Appendix 1, clause 4(2).
 7. See Appendix 1, Clause 9.

CHAPTER VI

DAMAGES: SECTION 1A, THIRD PARAGRAPH.

Section 1A,
third para-
graph.

6.1. We can now come to the question of damages. The third paragraph of section 1A of the Act of 1855 reads as under :-

"and in every such action the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amounts recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by the judgement or decree shall direct."

'Losses' to
the
deceased
are
not pro-
portioned.

6.2. It will be noticed that under section 1A, third paragraph,¹ damages are to be proportioned to the "loss resulting from death to the parties respectively", for whom and for whose benefit the action shall be brought. The nature of the 'loss' to be compensated is not described in the above provision (nor in the corresponding provision in the English Act). The question, therefore, naturally arises, - what is the nature of the loss to be compensated? The answer to this question depends on the view which one takes with reference to a deeper question, namely, what ought to be the conception of the law as regards the interests of the dependants?

Having laid down that survivors interested in a man's life should be compensated for the injury which they sustain from the wrongful act causing his death, the law must also answer the question - in respect of which interests (of the dependants) ought the compensation to be provided?

1. Paragraph 6.1, supra.

6.3. The interest of the survivor in the continuance of the life of the person dying may be material, or intangible, or both. A material interest consists in (i) the present enjoyment of the pecuniary benefits or material advantages having a value in money, which are brought to an end by the death of the person dying, or (ii) in a reasonable expectation of the enjoyment of such benefits or advantages.

An intangible interest in the continuance of life consists in the natural ties of relationship or close association with a particular person and the moral comfort and companionship arising thereout.¹ If compensation is to be measured with reference to the interest affected, and is to be fair and just compensation in money for the destruction of that interest, then it should include compensation for the intangible interest as well as for a tangible interest. It should include a solatium also.²

Survival
damages
for loss.

6.4. Having taken these aspects into consideration, we recommend that section 1A, third paragraph, should be widened so as to cover damages for loss of the nature indicated above.³⁻⁴

Incidentally, it may be mentioned here that in England, by a recent amendment of the Fatal Accidents Act, 1976, provision has been made allowing the parents and spouse of the deceased to claim compensation, specifically for "bereavement", subject to a maximum.⁵

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1. Owen Dixon, "Survival of Causes of Action" (1943) 1 Univ., Queensland L.J. 1, reproduced in The Jesting Pilate, 238, 243.
 2. Owen Dixon, "Survival of Causes of Action" (1948) 1 Univ. Queensland L.J. 1, reproduced in the Jesting Pilate, 238, 243.
 3. Paragraph 6.3, supra.
 4. Appendix 1, clause 6(4).
 5. Section 1A, Fatal Accidents Act, 1976, as amended in 1982.

The common law did not allow damages for bereavement.¹

portion
n, third
paragraph.

6.5. Another point concerning section 1A, third paragraph,² may be mentioned at this stage. In our view, a specific provision to the effect that the damages should be proportionate to the injury is needed, and the present provision may, therefore, be retained. However, we recommend in this paragraph certain verbal improvements and additions which will be apparent from the draft appended at the end of this Report.³

funeral
expenses
be
balanced.

6.6. It is also necessary to make an express provision as to funeral expenses.⁴

In a Kerala case,⁵ the following observations occur on the subject:-

"Another head of compensatory damages, that may fall within the scope of section 1-A, is the expenditure that the relatives have met for the medical treatment and the funeral of the deceased.

"(7) The heads of damages recoverable under section 2 are:

- i) Pain and suffering undergone by the deceased;
- ii) Loss of expectation of life;
- iii) Loss of earnings and profits upto the date of death (but not of future earnings);
- iv) Medical and hospital expenses, if incurred;
- v) Funeral expenses, where they have been paid out of the estate of the deceased."

In our view, it would be desirable to make an express provision for funeral expenses.

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1. Salmond and Steuston, Torts (1981), page 548, and cases cited therein.
 2. Paragraph 6.1, supra.
 3. See Appendix 1, clause 6(1).
 4. Appendix 1, clause 6(3).
 5. Concord of India v. Subramania Iyer, A.I.R. 1964 Ker. 209, 211, paragraph 7 (Menon and Madhavan Nair, JJ. - judgement by Madhavan Nair, J.).

Apportion-
ment -
recommendation.

6.7. We recommend that a provision as to the apportionment of compensation awarded may also be usefully included, somewhat on the following lines:-

- "(1) Where the compensation has not been otherwise apportioned, the Court may apportion it among the persons entitled.
- (2) The Court may in its discretion postpone the distribution of money to which minors are entitled and may direct payment from the undivided fund."¹

1. Appendix 1, clause 10.

CHAPTER VII

WIDOW'S RE-MARRIAGE

The question
for considera-
tion.

7.1. In regard to the persons entitled to compensation and the possible bars to their right to recovery, one question that needs consideration is the position of the widow who re-marries. The precise questions that have arisen in this context are :-

- i) Is the widow who has re-married entitled to compensation?
- ii) Is the widow who has not yet re-married, but who has a prospect of re-marriage, entitled to compensation?

It will be convenient to deal with the position separately with reference to each of the two situations enumerated above.

Position where
widow has
re-married.

7.2. Where the widow has already re-married by the time the claim petition comes to be determined, her dependency on the estate of the deceased may, for all practical purposes, be said to have come to an end. On this reasoning, the Allahabad High Court has held that the widow who has re-married is not entitled to compensation.¹

Prospects of
re-marriage
of widow.

7.3. Where, however, the widow has not yet re-married and the question to be considered is as to the effect of the prospect of her re-marriage, the question is not easy of solution. For any court, it is difficult to assess satisfactorily whether, and if so, when and with whom, the widow has a "prospect" of re-marriage. A case from Karnataka illustrates the very delicate task which the court

1. Oriental Fire & General Insurance Co., Ltd.
v. Chandrawati, A.I.R. 1983 All, 174, 178,
paragraphs 10 and 11.

Para 7.3. must perform, when the court comes to be faced with the question of assessing the prospect of re-marriage of a widow.¹ The claimant in that case was a Muslim widow. When she was cross-examined before the Claims Tribunal constituted under the Motor Vehicles Act, her age was 21 years and she clearly denied that she had any intention of re-marrying. Notwithstanding her denial, the Claims Tribunal, after considering what (in its opinion) were "real and imminent" prospects of her re-marriage, quantified the compensation to be awarded to her on the basis of only five years' purchase value. On appeal, the High Court held this to be a wrong approach. The High Court stated that it was true that in the case of Muslim claimants, their personal law treats marriage as a civil contract and the re-marriage of a widow does not attract any social ostracism. Even so, according to the High Court, a higher standard of re-assurance as to the reality of the prospects of such re-marriage and of its beneficial economic repercussions on the defendant widow was necessary, before her prospects of re-marriage could be taken into account in fixing the amount of compensation. That was lacking in this case, according to the High Court.

Comment
in Delhi
Court.

7.4. The point has arisen before the Delhi High Court also. Commenting on the difficulty of determining the question of prospects of re-marriage, the Delhi High Court observed as under in a judgement reported in 1976 :-

"So long as there is no legislative reform, the possibility of the re-marriage of the widow claimant must continue to hold the centre of the stage in India. The judges will continue to be engaged in the guessing game of sizing up the claimant's chances of finding a new husband and bringing the dependency to an end."²

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1. Rajabi v. The Oriental Fire & General Insurance Co. Ltd., Coimbatore, A.I.R. 1981 Karn. 70.
 2. Jaimal Singh v. Jawala Devi, A.I.R. 1976 Delhi 127, 131

English Law.

7.5. In this context, it may be useful to note that in England, previously the prospect of re-marriage of a widow was considered to be a relevant consideration for assessing the quantum of damages payable to her on the death of her husband. The question whether the widow, on re-marriage, forfeits the right to claim damages arose before the House of Lords in an interesting case. The judgement contains certain strong arguments against considering the prospects of re-marriage as relevant to the assessment of damages to be granted to the widow.¹ Lord Diplock pointed out that the prospects of marriage might themselves be affected by the amount of the award of damages, so that the larger the damages for the lost dependency, the better would be the widow's chance of obtaining another husband.

As has been pointed out by a learned writer,² it was not necessary for the House of Lords to consider what will be the measure of damages for the lost dependency, if the widow had re-married after the husband's death but before final award of damages. But he points out -

"It is of interest, however, that twice in his speech Lord Diplock

1. Mallett v. McMonagle, (1969) 2 W.L.R. 767 (H.L.).

2. R.V. Baker, Note (1969) 85 L.Q.R. 305, 306.

Paragraph
7.5. contd.

pointed out that amount of the dependency should be estimated 'at the date of his (the husband's) death'. If the widow marries again after her husband's death, ought the compensation that became payable on his death be reduced because of a subsequent event such as her re-marriage? The widow's expectation of life will, of course, be taken into consideration in calculating the amount of the payment which she is entitled to receive, but her re-marriage might be regarded as an independent act arising after her right has vested in her. If there is evidence that she has refused an offer of marriage, can this be used to reduce her claim to dependency on the ground that it was her duty to take reasonable steps to limit her loss? Again, if a widow who has read the Law Reports realises that financially it may be better for her to live in sin than to get married before she has received her dependency payment, ought the law to encourage her to do so? Of course, if the dependency payments were an annual payment to be made only until re-marriage, then the answer would be a simple one, but if it is a lump sum that becomes payable on her husband's death, then she ought to be entitled to it in full, even though thereafter she takes the independent step of getting re-married before the sum has been paid to her.

"A final point may be of interest. If the widow has suffered a severe accident to her face between the time of her husband's death and the

.....

"calculations made at the trial regarding her dependency, will the damages be substantially increased because her chances of re-marriage have lessened during the interval?"

Form in
England.

7.6. The problem was solved in England by intervention of the Legislature, which enacted the Law Reform (Miscellaneous Provisions) Act, 1971. Section 4(1) of the Act¹ provided that "in assessing damages payable to a widow.... there shall not be taken into account re-marriage of the widow or prospects of her re-marriage".

Present
provision
in England.

7.7. The provision has been re-enacted in the Fatal Accidents Act, 1976. The present provision in England on the subject is in the following terms, as contained in the Fatal Accidents Act²:-

"(3) In an action under this Act where there fall to be assessed damages payable to a widow in respect of the death of her husband, there shall not be taken into account the re-marriage of the widow or her prospects of re-marriage."

This provision settles the matter. It is, however, possible to say that the English provision goes too far in disregarding even actual re-marriage of the widow³.

This provision was, as stated above, first inserted in England in 1971, in view of certain judicial decisions⁴ which had pointed out that it would be very difficult for a court to embark upon an inquiry as to how far a particular widow has "prospects" of re-marriage.

1. Section 4(1), Law Reform (Miscellaneous Provisions) Act, 1971 (Eng.). See now section 3(3), Fatal Accidents Act, 1976, as amended in 1982.

2. Section 3(3), Fatal Accidents Act, 1976, as amended in 1982.

3. See paragraphs 7.9 and 7.11 infra.

4. Section 4(1), Law Reform (Miscellaneous Provisions) Act, 1971, replaced by section 3(2), 1976 Act, again replaced in 1982.

5. Buckley v. Allan, (1967) All E.R. 539.

ate in
House
Lords.

7.8. It may be mentioned that when the Law Reform (Miscellaneous Provisions) Bill (as introduced) was under debate in the House of Lords, very strong views were expressed against treating the prospects of re-marriage as relevant to the assessment of compensation. The Bill as it then stood presumably allowed the court to take into account her actual re-marriage. The most vociferous objection was that of Baroness Summerskill, and it may be of interest to quote one passage from her speech.¹ --

"Finally, I say that it is lamentable that noble Lords by this Amendment should seem to perpetuate in our courts this crude assessment of the value of a woman, oblivious to the mental stress to which she is subjected. Again, I should like to emphasise that the widow should be regarded as having been the working partner of her late husband for whom she has worked in the home, reared the children and has thus enabled him to earn his wage or salary and to improve his skills. As I said on Second Reading, that was just one phase of her life, a phase which has had a tragic ending. Her financial compensation should bear no relationship to the next phase, whether she marries or remains single."

Criticism
of the
English
Act.

7.9. It is obvious that there is need for reform of the law in India. At the same time, it should be pointed out that the English Act² seems to have gone too far in excluding, from consideration, not merely the prospect of re-marriage, but also the actual re-marriage of the widow.³ To prohibit the court from such an inquiry is to disregard realities. In fact, even in England, the provision as enacted has not been welcomed by everyone. It has been

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1. Baroness Summerskill in (1971) Vol. 318, House of Lords Debates, col. 539-540 (6th May, 1971).
 2. Section 3(3), Fatal Accidents Act, 1976, as amended in 1982.
 3. See paragraph 7.7, supra.

criticised by the English Law Commission,¹ as also by the Pearson Commission on Personal Injury.²

Salmond's view as to the re-marriage of widow.

7.10. The editors of the latest edition of Salmond on Torts record their views as under³:-

"This legislation shows that change is not equivalent to reform; it has led to gross injustice, not least in that the court may be obliged to disregard a vital fact which has happened, namely, the widow's re-marriage to a wealthy second husband."⁴

Commission's view as to the re-marriage of widow.

7.11. In our opinion, the English provision relating to re-marriage (which we have quoted above⁵) is partly good, and partly bad. In so far as it requires the court to disregard the prospects of the marriage, it is good, as it saves the court from the task of embarking upon an aimless inquiry. However, in so far as it requires the court to disregard even the actual re-marriage of the widow, it does not appear to be a sound one. After re-marriage (assuming that re-marriage takes place before the trial of the claim concludes), the court knows that the woman will receive support from some other source. The court should not be required to disregard that reality.

Recommendation regarding re-marriage of widow.

7.12. In the light of the above discussion, our recommendation is that the court need not assess the prospects of re-marriage of the widow, but, at the same time, the court must take into account the actual re-marriage of the widow.⁶

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1. Law Commission of England, Report on Personal Injury Litigation (Law Com. No. 56).
 2. Pearson Commission (Royal Commission on Civil Liabilities and Compensation for Personal Injuries) Report (1978) Cmnd. 7054, para 411.
 3. Salmond and Heuston, Torts (1981), page 548 (edited by Heuston and Chambers).
 4. See also Atiyah, Accidents, Compensation and the Law (3rd ed.) page 184.
 5. Paragraph 7.7, supra.
 6. See Appendix 1, clause 6(2).

CHAPTER VIII

MULTIPLICITY OF SUITS; SECTION 2

Section 2 - 8.1. We now proceed to a consideration of section 2 of the first part. Curiously, the section begins with the words "Provided that". The section really consists of two parts. The first part reads:

"2. Not more than one suit to be brought." (2)

Provided always that no more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint".

The second part of the section reads:

"Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased."

Section 2, first part - Recommendation for minor verbal changes.
8.2. The first part¹ of the section is intended to prohibit a multiplicity of actions, and requires no changes of substance. But a few minor verbal changes are necessary in order to bring the language in line with modern legal usage. These will be apparent from the draft which we are appending to this Report.²

Section 2, second part minor verbal change needed.
8.3. The second part³ of section 2 deals with a much more important matter. It permits the executor, administrator or representative of the deceased to insert a claim for an' recover pecuniary loss to the estate occasioned by the wrongful act, negligence or default.

1. Paragraph 8.1, supra.

2. Appendix I, clause 5.

3. Paragraph 8.1, supra.

Analysis
by Supreme
Court.

8.4. The Supreme Court had occasion to compare the contents of sections 1 and 2, and observed as follows¹:-

"The causes of action under Section 1 and that under section 2 are different. While, under section 1, damages are recoverable for the benefit of the persons mentioned therein, under section 2 compensation goes to the benefit of the estate; whereas under section 1 damages are payable in respect of loss sustained by the persons mentioned therein, under section 2 damages can be claimed inter alia for loss of expectation of life. Though in some cases parties that are entitled to compensation under both the sections may happen to be the same persons, they need not necessarily be so; persons entitled to benefit under section 1 may be different from those claiming under section 2. Prima facie as the two claims are to be based upon different causes of action, the claimants, whether the same or different, would be entitled to recover compensation separately under both the heads. If a person taking benefit under both the sections is the same, he cannot be permitted to recover twice over for the same loss. In awarding damages under both the heads, there shall not be duplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into the calculation of the personal loss under section 1, that portion shall be excluded in giving compensation under section 2 and vice versa."

1. Gobald Motor Service Ltd. v. R.M.K. Veluswami, A.I.R.
1962 S.C. 1.

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for
so
r.

8.5. It is settled law that under the Fatal Accidents Act the liability under section 1 and the liability under section 2 are distinct, different and independent.¹ Under section 1, damages are recoverable for the benefit of persons mentioned therein as loss sustained by them. In contrast, under section 2, damages are awarded for the recoupment of the pecuniary loss to the estate of the deceased as a result of the accident. The two claims are based upon different causes of action and the claimants would be entitled to recover compensation separately under both the heads. If, however, the person who takes benefit under section 1 happens to be the same person as entitled to compensation under section 2, there cannot be duplication of the same claim and compensation awarded under section 2 for the loss of the estate of the deceased will be taken into account in the calculation of the compensation payable to the claimants under section 1.

The claim thus relates to economic loss.²⁻³⁻⁴

Verbal
changes
recommended.

8.6. No change of substance is needed in this portion of the section. However, minor verbal changes are needed. These will be evident from the re-draft recommended by us as contained in an Appendix to this Report.⁵

1. Mahim v. Savari Bai, A.I.R. 1973 Mad. 83, 88.

2. K.D.R. Iyer v. T.K. Nair, A.I.R. 1970 S.C. 323 376, 377, para 4.

3. Bai Nanda v. Patel Univabhan, I.L.R. (1966) Guj. 500.

4. Engineers International v. Hanumantha Baji, (1974) 1 M.L.J. 37.

5. Appendix 1, clause 8.

CHAPTER XI

PROCEDURE : SECTION 3

Action 3 - 9.1. We may now deal with certain procedural matters. Amendment Section 3 of the Act is relevant in this respect and proposed. reads as follows:-

"3. Plaintiff shall deliver particulars, etc. -

The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered."

Amendment of section 3 proposed. 9.2. The portion relating to nature of the claim is redundant, in view of the specific provisions in the Code of Civil Procedure as to contents of plaint,¹ and should be omitted.

Particulars to be given. 9.3. When section 3 provides that the plaint must give particulars of the nature of the claim, the section, of course, contemplates that the loss must be set out with reasonable detail; because, after all, the claim is for damages for the loss.² It would be better if the section expressly so provides, and we propose accordingly.³ Opportunity may also be taken of improving the language, which is, at present, archaic.

Affidavit. 9.4. It may also be provided that there shall be filed with the plaint an affidavit by the plaintiff in which he shall state that to the best of his knowledge, information and belief the persons on whose behalf the suit is brought as set forth in the plaint are the only persons entitled

1. Order 1, Rule 1, Code of Civil Procedure, 1908.

2. See - (a) Goolhai v. Rostenji, A.I.R. 1935 Bom. 333,335.
(b) Eather v. Maurice, A.I.R. 1934 Cal. 653,658.

3. See Appendix I, clause 11(1).

or who claim to be entitled to the benefit thereof.¹ The court in which the suit is instituted, if of opinion that there are sufficient reasons for doing so, may dispense with the filing of the affidavit.²

Determina-
tion of
questions.

9.5. It may further be provided that where suits are brought by or for the benefit of two or more persons claiming to be entitled, as wife, husband, parent or child of the deceased, the court in which the suits or either of them are pending may make such order as deems just for the determination, not only of the question of the liability of the defendant, but also of all questions as to the persons entitled under this Act to the damages if any, that may be recovered.³

Determina-
tion of
questions
of liabi-
lity and
claim.

9.6. It may also be useful to have a provision setting out the procedure for determining questions of liability and questions of claim. The former - i.e. questions of liability - should preferably be determined first. A suitable provision on the subject is recommended.⁴

Non-
joinder
of some
bene-
ficiaries.

9.7. The provision contained in the existing Act that the claim under the Act must be made on behalf of all the defendants, raises the question as to what is to happen if the suit is brought by only some of the beneficiaries. As was pointed out in a Kerala case,⁵ to which a reference has already been made,⁶ to hold that a suit should be dismissed because the other beneficiaries are not on record, would be to take too technical a view. In that particular case, the objection on the score of non-joinder had been overruled

1. Appendix I, clause 11(2).

2. Appendix I, clause 11(3).

3. Appendix I, clause 12.

4. Appendix I, clause 13.

5. P.B. Kader v. Thatchamma, A.I.R. 1970 Ker. 241, 246.

6. Paragraph 4.2, SUPRA.

Paragraph
7.
ntd.

by the trial court, whose view was upheld by the High Court. To avoid such controversy arising elsewhere, it may be proper to make an express provision on the subject to ensure that the non-joinder of some of the beneficiaries shall not be a ground for dismissal of the suit brought by the other beneficiaries but the court may, when passing the decree, make such provisions in the decree as it may consider just in order to protect the interests of the beneficiaries not joined.¹

188

(2)

b)

1)

a.

1. See Appendix I, clause 4(4).

CHAPTER X

DEFINITIONS: SECTION 4

Section 4 -
definition
of "Person"
to be
omitted.

10.1. In the present Act the definitions are placed at the end, in section 4. The word "person", it is provided, applies to bodies politic and corporate. This definition is no longer required, as the expression "person" is defined in section 3(42) of the General Clauses Act, 1897, which will become applicable to the proposed new Act. The definition of "person" should therefore be omitted.

Definitions
of "child"
and "parent"
to be
omitted.

10.2. The present Act defines the expression "child" as including son and daughter, grandson and grand daughter and step-son and step-daughter. It also defines the expression "parents" as including father, mother and grand father and grand mother. In the light of the considerations already mentioned,¹ these definitions may require suitable re-drafting, which we are separately recommending.²

Definition
of "injury"
to be
added.

10.3. So much as regards the definitions already contained in the Act. Some new definitions also require to be added. First, it is necessary to insert a definition of the expression "injury",³ on the lines of section 1(6), English Act of 1976.

Other
provisions
by way of
interpreta-
tion
recommended.

10.4. Further, it is necessary to insert certain other provisions in the nature of interpretation, for which assistance can be taken from the English Act of 1976.
These relate to -

- (i) legitimacy,⁴ and
- (ii) relationship by affinity.⁵

1. Paragraph 5(e), supra.

2. See Appendix 1, clauses 2(1) (b) and 2(2).

3. Appendix 1, Clause 2(4).

4. See Appendix 1, clause 2(2) and paragraph 5.5(b), supra.

5. See Appendix 1, clause 2(3).

CHAPTER XI

REDUCTIONS FROM DAMAGES

benefits
so far
be
deducted.

11.1. There still remain to be discussed certain matters which are not dealt with in the Act at present. These may now be taken up.

First, there is the question of deductions from damages. Often, the person liable to pay damages under the Act argues that certain benefits which accrue on death should be deducted while assessing damages for death. Elsewhere the matter has been dealt with by specific legislation, but not so far in India. As a result, certain difficult questions arise in India, which need consideration.¹⁾

Deductions
from damages
not permis-
sible under
the English
Act of
1976.

11.2. In England, by section 4 of the Fatal Accidents Act of 1976, it was provided that in assessing damages in respect of a person's death in any action under the Act, there shall not be taken into account any insurance money, benefit, pension, or gratuity which has been, or will, or may be, paid "as a result of the death". "Insurance money" was defined, in section 4(2) of the Act, as including return of premiums. The word "pension" was defined to include² return of contributions and any payment of a lump sum.¹⁾

Amendment
of 1982
in England.

11.3. This elaborate provision was contained in section 4 of the English Act of 1976. By the amendment of 1982, a simpler and more comprehensive provision has been substituted for section 4, in England.³⁾ Section 4, as substituted in 1982 in England, now reads as follows:-

1. Paragraph 11.4, infra.

2. See Peacock v. Amusement Equipment Co., Ltd., (1954)

2 All E.R. 689.

3. Administration of Justice Act, 1982 (Eng.).

"4. Assessment of damages: disregard of benefits:

In assessing damages in respect of a person's death in an action under this Act, benefits which have accrued or will or may accrue to any person from his estate or otherwise as a result of his death shall be disregarded."

Indian
law
is to
insurance.

11.4. In India, it is now well settled that the amount of insurance payable to a dependant of the deceased cannot be deducted from the damages payable under the Fatal Accidents Act.¹ But questions often arise regarding other benefits accruing on death. Thus, it has been held that ex-gratia payments cannot be taken into account in assessing compensation. Even as regards insurance amount, some High Courts make a nice distinction between the insurance amount proper and its "acceleration". Thus, the Bombay view is that the insurance amount is not to be deducted, but the acceleration is to be deducted.²

Then, there is the question of family pension. According to the Karnataka High Court, family pension must be taken into account for deduction, but provident fund or gratuity cannot be taken into account.³

Recommendation as to deductions.

11.5. All such controversies should, in our view, be avoided. It appears to us that the comprehensive provision in section 4 of the English Act (as amended),⁴ can be usefully adopted in India. At the same time, it appears proper to provide specifically, (in the Indian Act), that the various benefits that were specifically mentioned in the English Act of 1976 (before its amendment in 1982),⁵

1. Amarjit Kaur v. Vanguard Insurance Company, A.I.R. 1982 Delhi 1 (reviews cases).

2. Nirji Veerji & Co. v. Baroda, A.I.R. 1982 Bom. 467 (P.B.).

3. Deputy General Manager, State Road Transport Corp. v. H. Parajamma, A.I.R. 1981 Karn. 129.

4. Paragraph 11.3, supra.

5. Paragraph 11.2, supra.

are also not deductible, so that, on those matters, there may not arise the possibility of different views being adopted in different courts. Such a comprehensive provision on the subject of benefits accruing on death will settle the position on important points.

comprehen-
sive
recommendations.

11.6. We are, accordingly recommending an omnibus provision,¹ requiring the court to disregard all benefits accruing on death, and also specifically providing that benefits specifically enumerated in the proposed provision shall not be taken into account in assessing damages payable under the Act.

1. See Appendix , clause 7.

SUCCESSION CERTIFICATE

A Kerala
Case.

12.1. It is desirable to discuss at this stage the position regarding succession certificate. In a Kerala case reported recently, the Kerala State Road Transport Corporation contested the claim, for compensation, of a widow whose husband had been killed in an accident caused by the negligence of the driver of a bus belonging to the Corporation. The Corporation insisted that the widow should produce a succession certificate, before payment of the compensation could be made to her. Aggrieved by this refusal, the widow moved the High Court of Kerala by a letter which was treated as a petition. In its judgment, the High Court pointed out that the widow was not claiming as a successor to her husband's estate, but was claiming on her own account and a succession certificate was not needed in the case. Elaborating the point, the High Court made the following observations :-

"The assumption that a succession certificate is necessary for payment of compensation to the dependants of a person who dies on account of accident is evidently not correct. In two decisions of this Court in State Insurance Officer v. Thankamma, (1980) Ker. LT. 362), the scheme of the Indian Fatal Accidents Act has been adverted to.

-
1. Kochupennu Lakshmi v. Chairman, K.S.R.T. CORPN.
A.I.R. 1984 Ker. 97, 99, paragraph 5 (June).

"Evidently, that enactment is brought into existence to enable dependants of a person whose death has been caused by wrongful act, neglect or default to claim compensation. But for that Act, there would be no case for the heirs of a deceased to claim compensation on account of death caused by wrongful act. It is to meet this situation that the Fatal Accidents namely, the wife, husband, parent and child of the person whose death has been caused, to claim loss resulting to them from such death."¹

Position
where
claim
based on
succession.

12.2. Incidentally, in the same Kerala case, the following observations were made regarding succession certificate required when a claim is made on the basis of succession:

"It is for the legislature to deal with the matter by enabling payments to be made at least in respect of small sums of money, without a succession certificate being required to give immunity to the debtor. We are not going into that question in this case, for, even otherwise we think we will be able to give relief to the petitioner herein."

1. Kochupennu Lakshmi v. Chairman, K.S.R.T. Corp.,
A.I.R. 1984 Ker. 97, 99 paragraph A (June).

Specific
provision
not
needed.

12.3. We have considered the question whether it is necessary to introduce, in the Fatal Accidents Act, a provision that no succession certificate shall be required for a claim under the Act. However, we think that this is obvious, and the objection raised by the Kerala State Road Transport Corporation in the case cited above, if we may say so, betrays a total misconception of the law. It is inconceivable that such an objection could be made by any Corporation (public or private) which is properly advised. We do not, therefore, propose any clarificatory provision on the above points, at least for the present.

1. Paragraph 12.2., supra.

CHAPTER XIII

COMMENTS RECEIVED ON THE WORKING PAPER

Trend of comments.

13.1. As already stated, the Commission has prepared a working paper on the subject and invited comments on tentative proposals. Three comments have been received on the working paper.

Comments in agreement with the working paper.

13.2. Comments received on the Working paper from State Government of Himachal Pradesh and the State Government of Karnataka concur with the proposals of the Law Commission, as put forth in the working paper (which were substantially the same as those going to be set out in the next chapter of this Report).

Comment regarding quantum of policy.

13.3. One comment on the working paper received from an individual suggests that the amount of Fatal Accident Insurance Policy should be raised in view of the rise in the cost of living. In this context, we may point out that the Fatal Accidents Act does not deal with the amount of insurance policy nor with the quantum of compensation, the quantum is left to be fixed by the court, with due regard to all relevant factors.

-
1. Paragraph 1.12 ~~andrea~~.
 2. Law Commission File No. 2(1)/85-1C, Serial No.12.
 3. Law Commission File No.2(1)/85-1C, Serial No.15.
 4. Law Commission File No.2(1)/85-1C, Serial No.16,
(Shri N.C. Simons, Anakapalle, Vishakhapatnam district).

CHAPTER XIV

REVISED ACT RECOMMENDED

revised Act
recommended,
but not with
retrospective
effect.

Recommendation
in
Appendix 1.

Appendices
2-3.

14.1. In view of the extensive changes which will have to be carried on in the Act if our recommendations contained in the preceding Chapters are accepted, a revised Act (rather than a mere amending Act) would be more convenient. The revised Act should not have retrospective effect,¹ for reasons already stated.²

14.2. In Appendix 1, we annex a draft Bill. Its several clauses seek to show, in a concrete form, the various points made in the preceding Chapters.

14.3. A comparative table showing the section of the existing Act and the corresponding provision as recommended in the draft Bill envisaged by us is given in Appendix 2.

Appendix 3 contains a list of selected statutory provisions in India providing for compensation on death.

1. Appendix I, clause 1(3).

2. See paragraph 3.1, infra.

(K.K. MATHEW)
CHAIRMAN

(J.P. CHATURVEDI)
MEMBER

(DR. M.B. RAO)
MEMBER

(P.M. BAKSHI)
PART-TIME MEMBER

(VEPA P. SARATHI)
PART-TIME MEMBER

(S. RAMAIAH)
MEMBER SECRETARY

DATED: 16th MAY, 1985.

APPENDIX 1

DRAFT BILL

RECOMMENDATIONS IN THE FORM OF A DRAFT BILL

Arrangement of clauses

1. Short title, extent, commencement and application.
2. Interpretation.
3. Right of suit for wrongful death.
4. Suit for benefit of relatives.
5. Only one suit permissible.
6. Damages proportionate to injury.
7. Benefits not to be taken into account.
8. Claim for loss to the estate.
9. Money paid into court.
10. Apportionment of compensation.
11. Plaintiff and affidavit.
12. Power of court.
13. Determination of question of liability before claim.
14. Repent.

THE WRONGFUL DEATH BILL, 1985

Preliminary.

1. (1) This Act may be called the Wrongful Death Act, 1985.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, but shall not apply to any cause of action arising on a death which occurred before its commencement.

2. (1) In this Act, unless the context otherwise requires,

(a) "child" includes son, daughter, grandson, grand-daughter, ² adopted child, and a person to whom the deceased stood in loco parentis;

(b) "parent" includes father, mother, grand-father, grandmother, step-father, step-mother, a person who adopted a child, and a person who stood in loco parentis to the deceased.

.....
(2) For the purposes of this Act, an illegitimate person shall be regarded as the legitimate child of his mother and reputed father.

1. See paragraph 3.2.

2. As to step-children, see clause 2(3), infra.

3. See paragraphs 5.5(b) and 10.1.

4. See paragraph 5.5(e).

5. See paragraph 10.2.

6. See paragraph 5.5(b) and 10.4(1).

(3) In deducing any relationship for the purpose of this Act, any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half-blood as a relationship of the whole blood, and the step-child of any person as his child.

(4) Any reference in this Act to injury includes any disease and any impairment of a person's physical or mental condition.

(5) All words in this Act expressive of relationship apply to a child in the womb who, thereafter, is born alive.

Right of suit for wrongful death.

3. If the death of a person has been caused by any wrongful act, neglect or default, which is such as would (if death had not ensued), have entitled the person injured ⁱⁿ to maintain a suit and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to a suit for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances amounting in law to culpable homicide or to any other offence.

Suit for
benefit of
relatives
[Section 1A,
second para-
graph in part 2]

4. (1) Every suit brought under this Act shall be for the benefit of the relative specified in sub-section (3) of the person whose death was so caused, and, except as hereinafter provided, shall be brought by and in the name of the executor or administrator of the deceased.

1. See paragraph 5.5(b) and 10.4 (1).

2. See paragraph 10.3.

3. See paragraph 5.6.

4. Verbal improvements have been made, taking advantage of the improved drafting in the English Act of 1976.

5. For references to injury, see clause 3(4).

6. The existing words "felony or other crimes" in section 11 have become inappropriate. Hence the changed wording.

7. See paragraph 4.6.

8. See paragraph 5.5.

Cf. S.2(2),
English Act
of 1976.

(2) If -

(a) there is no executor or administrator
of the deceased, or

(b) no suit is brought within six months
after the death by and in the name of
an executor or administrator of the deceased,
the suit may be brought by and in the name of all
or any of the relatives specified in sub-section (3).

(3) The relatives referred to in this section
are the following, namely, -

(a) wife or husband³

(b) child⁴,

(c) daughter-in-law, if a widow,⁴

(d) parent,⁵

(e) brother and brother's issue,⁶

(f) brother's widow,⁷

(g) sister and sister's issue,⁸

(h) uncle and uncle's issue,⁹

(i) aunt and aunt's issue.¹⁰

1. See paragraph 5.9.

2. See paragraph 5.5.

3. See clause 2(1)(a) - "child".

4. Paragraph 5.5 (3).

5. See clause 2(1)(b) - "parent".

6. Paragraph 5.5(d).

7. Paragraph 5.5(h).

8. Paragraph 5.5(g).

9. Paragraph 5.5(f).

10. Paragraph 5.5(i).

(4) The non-joinder of some of the dependants to suit under this Act shall not be a ground for dismissal of the suit brought by the other dependants, but in such a suit the Court, when passing a decree, may make such provisions as it considers just for protecting the interests of the dependants not on record.

Only one suit
permissible.
[S.2, first
paragraph].

of S.2(3),
English Act
of 1976.

Damages
proportionate
to injury.

Contrast section
3(3), English
Act of 1976
as amended
in 1982.

Contrast section
3(3), English
Act of 1976 as
amended in 1982.

of section
3(5), English Act
of 1976.

5. Not more than one suit shall lie under this ²⁻³ Act for and in respect of the same cause of action.

6. (1) In a suit under this Act, such damages may be awarded as are proportioned to the injury resulting from the death to the relatives, and the amount so recovered, shall, after deducting the costs not recovered from the defendant, be divided among the relatives in such shares as may be directed by the court.

(2) In a suit under this Act, in assessing damages payable to a widow in respect of the death of her husband,

(a) there shall not be taken into account prospects of the remarriage of the widow;

(b) but there shall be taken into account her remarriage.

(3) If the dependants have incurred funeral expenses in respect of the deceased, damages may, under this section, be awarded in respect of those expenses.

(4) Damages under this section may be given for tangible as well as for intangible loss.

1. See paragraph 9.7.

2. Period of limitation for a suit under the Fatal Accidents Act is two years under article 82, Limitation Act, 1963. (It was one year under article 21, Limitation Act, 1908).

3. See paragraph 8.2.

4. See paragraph 6.5.

5. See paragraph 7.12.

6. See paragraph 7.12.

7. See paragraph 6.6.

8. See paragraphs 6.3 and 6.4.

Benefits
accruing
on death
not to be
taken into
account.

7. (1) In a suit under this Act, in assessing damages in respect of a person's death, there shall not be taken into account any benefit which has accrued or will or may accrue as a result of the death.¹

(2) In this section -

(a) "benefit" means every gain accruing to a dependent as a result of the death, whether inherited from the deceased's estate or in any other manner accruing as a result of the death, and includes any insurance money, pension or gratuity or any benefit under any scheme relating to social security, including payments under any enactments in force and any payment by an association or trade union for the relief or maintenance of a member's dependents;

(b) "insurance money" includes a return of premium; and

(c) "pension" includes a return of contribution and any payment of a lump sum in respect of a person's employment.²

Claims for
loss to the
estate.
(Section 2,
second para).

8. In any suit under this Act, the plaintiff may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.³

1. Paragraphs 11.4 and 11.6.

2. See paragraphs 11.4 and 11.6.

3. See paragraph 8.6.

Payment and apportionment.

Money paid
in court.

9. Money paid into court in satisfaction of a cause of action under this Act may be in one sum without specifying the shares of the relatives.¹

Compare S(4)
English Act
of 1976.

10. (1) Where the compensation has not been otherwise apportioned, the Court may apportion it among the persons entitled.

(2) The Court may in its discretion postpone the distribution of money to which minors are entitled and may direct payment from the undivided fund.²

Procedure

Plaint and
affidavit.
(S.5).

11. (1) In a suit under this Act, the plaintiff shall, in his plaint, set forth the persons for whom or on whose behalf the suit is brought, and also to set out in reasonable detail the loss suffered by each of such persons.³

(2) There shall be filed, with the plaint in such a suit, an affidavit by the plaintiff in which he shall state that to the best of his knowledge, information and belief, the persons on whose behalf the suit is brought as set forth in the plaint are the only persons entitled or who claim to be entitled to the benefit thereof.⁴

(3) The court in which the suit is instituted, if of opinion that there are sufficient reasons for doing so, may dispense with the filing of the affidavit required by sub-section(2).⁵

1. See paragraphs 5.5 and 5.10.

2. See paragraph 6.7.

3. See paragraph 9.3.

4. See paragraph 9.4.

5. See paragraph 9.4.

Power of
court to
determine
certain
questions
(New).

12. Where suits under this Act are brought by or for the benefit of two or more persons claiming to be entitled under this Act, the court in which the suits or either or any of them are pending may make such order as it deems just for the determination, not only of the question of the liability of the defendant, but also of all questions as to the persons entitled under this Act to the damages, if any, that may be recovered.¹

Determina-
tion of
question of
liability
before claim.
(New).

13. In every suit under this Act -

- (a) the question of liability shall be determined before the question of interest of the particular claimant is decided;
- (b) the court shall then entertain the claims and assess the amount of each;
- (c) the court shall give an opportunity for further claims;
- (d) the court shall then pronounce judgement;
- (e) after the judgement is pronounced, the defendants shall not be liable to any other person claiming to be interested in the continuance of the life of the person so dying.²

Repeal.

14. (1) The Fatal Accidents Act, 1855 is hereby repealed.
(2) Without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897, nothing in this section shall affect the applicability of the Fatal Accidents Act, 1855 to a cause of action arising on a death which occurred before the commencement of this Act.³

-
- 1. See paragraph 9.5.
 - 2. See paragraph 9.6.
 - 3. See paragraph 3.2.

APPENDIX 2

Comparative Table showing the section
of the existing Act and the corresponding
clause in ^{the} recommended draft Bill

<u>Existing section</u>	<u>Proposed clause</u>
Section 1.	1.
Section 1A, first paragraph	3.
Section 1A, second paragraph	4(1), 4(2).
Section 1A, third paragraph.	6(1).
Section 2, first paragraph.	5.
Section 2, second paragraph.	8.
Section 3.	11.
Section 4, part relating to definition of "parent".	2(1) (b)
Section 4, part relating to definition of "child"	2(1) (1)
Section 4, relating to definition of "person".	Omitted.

APPENDIX 3

List of certain statutory provisions
providing for compensation on death.

1. Section 82A, Indian Railways Act, 1890.
2. Section 4(1) read with section 8(5),
Workmen's Compensation Act, 1923.
3. Section 3, last paragraph, Employers'
Liability Act, 1938 (24 of 1938).
4. Sections 95(1) (b), 96 and 102, Motor
Vehicles Act, 1939.
5. Section 53, Employees' State Insurance
Act, 1948 (34 of 1948).
6. Sections 346, 347 and 352, Merchant
Shipping Act, 1958.
7. Legislation relating to carriage by air.