

(8) In the light of the discussion above, we find no infirmity in the impugned order of the Collector, Annexure P.3, and the subsequent orders affirming the same. No other argument having been raised by the learned counsel for the appellant, we dismiss this appeal but with no order as to costs.

H.S.B.

FULL BENCH

Before D. S. Tewatia, S. P. Goyal and S. S. Sodhi, JJ.

PARKASH CHAND AND ANOTHER,—Appellants.

versus

PAL SINGH AND OTHERS,—Respondents.

First Appeal Against Order No. 135 of 1980

May 7, 1985.

Motor Vehicles Act (IV of 1939)—Sections 110 to 110-F—Fatal Accidents Act (XIII of 1855)—Sections 1, 1-A and 2—Claims for compensation arising from a motor accident—Substantive law that governs such claims—Such claims—Whether governed by section 1-A of the Fatal Accidents Act—‘legal representatives of the deceased’ referred to in section 110-A—Meaning of—Persons for whose benefit action for damages could be brought and by whom under the Fatal Accidents Act—Stated—Compensation awarded under Section 110-A—Whether includes damages on account of pecuniary loss suffered by the dependants and also loss suffered by the estate—Petition for compensation on account of death in a motor accident—Legal representatives and dependants of the deceased other than those enumerated in section 1 of Fatal Accidents Act—Whether have a locus standi to maintain such a petition.

Held, that section 110 of the Motor Vehicles Act, 1939 does no more than prescribing for the constitution and establishment of a forum for adjudicating the claim for compensation and section 110-A provides as to who could activate the given forum and for whose benefit. None of the two provisions, which are the only relevant provisions, in express terms, provides, as is provided under Section 1-A of the Fatal Accidents Act, 1855 that a party causing death of

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a person shall be liable to an action or suit for damages and, therefore, the claimant would still have to invoke to the above extent, the substantive provision of para 1 of section 1-A for claiming damages from the tortfeasor, for in the absence of such a provision a tortfeasor could come round and ask as to under which law he was liable to pay damages for causing death of a given person. However, in regard to other matters viz. the forum where damages could be claimed, the person who could claim the damages, for the persons for whose benefit the damages could be claimed, the measure of compensation and the limitation for filing an application, the provisions of sections 110 and 110-A and 110-B of the Motor Vehicles Act (providing for all these aforementioned matters) would substitute and supplant those of the Fatal Accidents Act, because provisions of the latter Act being general and those of the former being specific, the specific provisions would have overriding effect upon the general provisions.

(Para 15)

Held, that under the provisions of the Fatal Accidents Act, a claim for compensation can be made, *inter-alia*, in the absence of executor or administrator, by representative of the person deceased irrespective of the fact whether the beneficiary of the claim was to be wife, husband, parents or child of the deceased or his estate. The representatives of the deceased person in the absence of any executor or administrator could be the dependents themselves and, therefore, where any of such dependents survives the deceased, such surviving dependent can bring an action in his own name, and for his benefit, for damages in regard to the pecuniary loss suffered by him as a result of such death. Whether the dependents surviving the deceased could claim damages in regard to the pecuniary loss suffered by the estate, section 2-A of the Fatal Accidents Act, provides for joining of a claim for damages in regard to the pecuniary loss to the estate by the executor, administrator or legal representatives of the deceased person. In section 2 thereof, no reference is made to the dependents, that is, wife, husband, parent and child. In the absence of executor, administrator etc., whether the surviving dependents would be able to insert a claim for damages in regard to the pecuniary loss to the estate of the deceased would depend on the facts of a given case. In a situation, where the deceased died intestate, the dependents would obviously be the persons who would be entitled to initiate action for damages in regard to the estate of the deceased person if, under law, they were entitled to succeed to the estate of the deceased. The position, where the deceased had made a will in which he had provided for devolution of his entire estate upon a person other than the dependents, then in such a case, so far as action for claiming damages in regard to the loss to the estate of the deceased is concerned, the person envisaged

in the will to inherit the entire estate alone be entitled to initiate action for claiming such damages. That means, in such a case, for the purpose of section 2 of the Fatal Accidents Act, representative of the person deceased would also include a person mentioned in the will in addition to such persons as under the law of succession applicable to the deceased person are entitled to inherit his estate. In other words, the term 'representative of the deceased' would refer not only to such persons as under the law of succession applicable to the deceased were entitled to the estate of the deceased but also to a person, if the deceased died after making a will, who is entitled under the will to inherit the estate of the deceased if such latter person happens to be other than former set of persons. In so far as the expression 'representative' for the purpose of section 1-A of the Fatal Accidents Act is concerned, it would refer to the whole body of such persons as are under the law of succession applicable to the deceased entitled to succeed to his estate, including the dependents and, therefore, all or any of such persons would be entitled to initiate action for claiming damages under section 1-A of the Fatal Accidents Act for the benefit of any or all of the dependents surviving the deceased in regard to the pecuniary loss suffered by any such dependent. A situation can be envisaged where the surviving dependent lay totally unconscious and the deceased had died intestate. In such a situation, only representative of the deceased could bring action.

(Paras 19 & 20)

Held, that the dichotomy in regard to the nature of damages available to the dependents and to the estate of the deceased obtaining in the Fatal Accidents Act does not find mention in the relevant provisions of the Motor Vehicles Act. Section 110-A of the Motor Vehicles Act provides for filing of an application by any or all the legal representatives of the person deceased and that such action would be for the benefit of all the legal representatives of the deceased. Section 110-A thus entitles the legal representatives to be the beneficiaries of the damages realised as a result of the application for damages. The section thus makes no difference between the two sets of beneficiaries, that is, the dependents for sharing pecuniary loss suffered by them and the pecuniary loss suffered by the estate, as mentioned in the Fatal Accidents Act. Section 110-A of the Motor Vehicles Act does not talk either of pecuniary loss to the dependents or pecuniary loss to the estate. In such a situation, where the provisions of the specific Act are silent, the substantive provisions of the general Act would be applicable. When so viewed, the compensation awarded under Section 110-A would include damages on account of pecuniary loss suffered by the dependents, if any, as also the pecuniary loss suffered by the estate.

(Paras 22 & 23)

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Held, that where the compensation awardable by the Tribunal is referable not only to the pecuniary loss suffered by the dependents but also the pecuniary loss suffered by the estate, the expression 'legal representative of the deceased' in section 110-A of the Motor Vehicles Act would refer to the dependents who had suffered pecuniary loss as a result of such death as also such other persons who, in the absence of the dependents under the law of succession, were entitled to succeed to the estate, besides the person, if the deceased person had died after making a will, who under the will was entitled to succeed to the estate of the deceased person. Clause (b) of sub-section (1) of Section 110-A authorises all or any of the legal representatives to file an application for compensation. That means, but for the proviso to sub-section (1) of Section 110-A, all or any one of the aforementioned body of legal representatives of the deceased could file an application for compensation on account of the death of the person deceased. So in a given case for finding as to whether the person who had filed the application for claiming compensation under Section 110-A is entitled to do so, one would have to see, subject to the proviso aforementioned, whether he is one of the dependents or is a person entitled to succeed to the estate of the deceased under the law of succession applicable to the deceased if the deceased died intestate or is he the person who had been mentioned in the will to be his successor to his estate if the deceased had died after making a will. If the person who has moved the application for compensation, subject to the proviso, happens to file in any of the aforementioned three categories, he shall be held to be enjoying the *locus standi* to maintain the said application. Since the legal representatives of the deceased under Section 110-A of the Motor Vehicles Act, subject to the proviso thereof, have been identified, the proviso restricts the choice of legal representatives of the deceased who could file claim application. Whereas the Fatal Accidents Act envisages two sets of beneficiaries of the damages (1) the dependents and (2) the estate of the deceased, sub-section (1) of Section 110-A read with the proviso envisages all the legal representatives of the person deceased to be the beneficiaries of the Award. The proviso goes to the extent that it envisages a mandate to the Tribunal to implead as respondent any such legal representative if he had not joined the legal representative who had filed the application as an applicant. Section 110-A envisages filing of an application for compensation by any or all such legal representatives as are entitled to share the damages that may be awarded by the Tribunal which damages may be referable to the pecuniary loss suffered by the dependents or the pecuniary loss suffered by the estate of the person deceased or both. Without being exhaustive, the following six situations can be envisaged:—

- (1) Where the person has died intestate and the only saving that he was capable of making or held to be making represented the pecuniary loss of the dependents and which

pecuniary loss was claimable up to the entire working life of the deceased that was cut short by the accident;

- (2) Where the deceased died intestate leaving behind/surviving any or all the surviving dependents and his possible saving was claimed to be more than the pecuniary loss to the dependents or if his possible saving was held to be equal to the pecuniary loss of the dependents, the said pecuniary loss was not claimable for the entire remaining working life of the deceased;
- (3) Where the deceased died leaving behind any or all the dependents but had not died intestate and in the will he had nominated a given person to be entitled to in part or whole of his estate and that person happened to be a person other than the dependents;
- (4) Where the person deceased died intestate without leaving behind any dependent;
- (5) Where the person deceased died without leaving behind any dependent but had made a will appointing a person named therein as being entitled to his estate exclusively; and
- (6) Where the person deceased died after making a will in which he had nominated a person or persons to succeed to only part of his estate.

Whether the person who has made the application has the *locus standi* to do so, would be judged in each of the aforementioned six situations in accordance with the criteria that a person making application must also be entitled to enjoy the damages either in whole or in part.

(Paras 24 to 27)

1. Magjibhai Khimii Vira and another *v.* Chaturbhai Taljabhai and others, 1977 Guj. 195.
2. General Manager, Karnataka State Road Transport Corporation *v.* Peerappa Parasappa and others, 1979 A.C.J. 229.
3. Shanker Rao *v.* Babulal Fouzdar and another, A.I.R. 1980 M.P. 154.

DISSENTED FROM.

(Case referred by Hon'ble Mr. Justice S. S. Sodhi to the larger Bench for decision of an important question of law involved in this

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case on 15th May, 1984. The Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice S. S. Sodhi again referred the case to the Full Bench on 29th August, 1984. The Full Bench consisting of Hon'ble Mr. Justice D. S. Tewatia, Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice S. S. Sodhi after answering the relevant question of law again referred the case to the Hon'ble Single Bench for decision of the case on 7th May, 1985).

First Appeal from order of the court of Shri Balwant Singh Teji, Motor Accident Claims Tribunal, Jullundur dated the 25th September, 1979 dismissing the claim petition and leaving the parties to bear their own costs.

S. P. Jain and Hemant Kumar, Advocates, for the appellant.

M. B. Singh, Advocate and G. S. Bhatia, Advocate, for respondent No. 3.

H. S. Sangha, Advocate, for Nos. 1 & 4.

Vinod Sharma, Advocate, for respondent No. 2.

JUDGMENT

D. S. Tewatia, J.:

(1) This appeal in the first instance came up for hearing before Sodhi, J., who referred the same to a large Bench by his order, dated 15th May, 1984. The Division Bench which thus came to deal with the matter by order, dated 29th August, 1984 referred the following question for the decision of the larger Bench :

“Whether the legal representatives and dependents, other than those enumerated in section 1 of the Fatal Accidents Act, 1855, can maintain a petition for compensation on account of the death of their relation who died in a motor accident, by virtue of the provisions of section 110-A of the Motor Vehicles Act, 1939”.

The import of the aforesaid legal proposition has to be examined against the background of facts which are not in dispute and can be stated thus:

(2) Dharam Pal, a rickshaw puller, aged 21 years on the date of the accident, met with an accident with an ambassador car No. PUQ-2148 (Taxi) on 26th February, 1977 at about 10 p.m. near a cycle-repair shop close to Naz Cinema, G.T. Road, Jalandhar, in which accident he sustained injuries on various parts of his body, including the head. He succumbed to his injuries on 15th May, 1977 in the Christian Medical College and Brown Hospital, Ludhiana, where he remained as an indoor patient from 27th February, 1977 onwards till his death.

(3) The offending vehicle was owned by Pal Singh, Taxi Stand, Opposite to M/s Shamsheer Singh Sehgal and Sons, G.T. Road, Jalandhar, and Tarsem Singh, son of Lachman Singh, resident of Village and Post Office Dhanowali. The said car was insured with the United India Fire and General Insurance Company Limited, under Policy No. 416/21/1/1003, cover note NR/51877 for the period from 19th October, 1976 to 18th October, 1977. The car was being driven at the time by Mohinder Singh, Driver.

(4) Dharam Pal deceased's two brothers, namely, Parkash Chand and Saran Dass, appellants herein, applied to the Tribunal claiming a sum of Rs. one lakh by way of compensation on account of the death of Dharam Pal deceased. It was alleged that Dharam Pal was earning about Rs. 500 p.m. when he met with an accident. He was intelligent, brilliant and an earning hand for the family and had he lived his life, he would have become very prosperous.

(5) The claim was resisted, *inter-alia*, on the ground that the appellants were not entitled to file the claim petition in question.

(6) The Tribunal framed issue No. 2 to the effect "Whether the petitioners have *locus standi* to file this claim petition ?" The Tribunal held that the deceased Dharam Pal died as a result of injuries sustained by him in the accident which occurred as a result of negligent driving of the offending motor vehicle. The petition was held to have been filed within limitation. However, the Tribunal upheld the objection of the respondent in regard to the *locus standi* of the appellants to file the petition. The Tribunal took the view that only such relations, as are envisaged in section 1-A of the Fatal Accidents Act, could file an application for claiming compensation on account of the death of their relation and dismissed the application.

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(7) The question posed for the decision of this Bench would first necessitate the ascertaining of the substantive law that would govern the claims for compensation arising from a motor accident and this would require a peep into the past. Prior to the insertion of the provisions of sections 110-A to 110-F of the Motor Vehicles Act, an action claiming damages on account of the death was brought only by such persons and for the benefit of such persons as are mentioned in the relevant provisions of the Fatal Accidents Act. Prior to the enactment of the Fatal Accidents Act, 1855, the position that obtained in India was identical to the one that obtained in England prior to the passing of the Fatal Accidents Act of 1846, popularly known as Lord Campbell's Act, an Act on which the Fatal Accidents Act, 1855, had been modelled. The Campbell's Act in England and the Fatal Accidents Act in India were put on the statutes' book to mitigate the rigours of the ratio of *Baker v. Bolton*, (1), which reiterated the *maxim actio personalis moritur cum persona*, in the wake of which it came to be commented that it was cheaper to kill than to maim.

(8) Section 1-A of the Fatal Accidents Act is divided into three paragraphs. The first paragraph made liable a tortfeasor for paying damages on account of causing death. The second paragraph provided that every said action for damages 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 third paragraph authorised the Court to give such damages, as it may think proportionate to the loss resulting from such death to the parties respectively for whom and for whose benefit such action is brought and divided the amount of damages between the beneficiaries in such shares as it directs by its judgment or decree.

(9) Section 2 of the Fatal Accidents Act, besides prohibiting more than one action or suit in respect of the same subject-matter of complaint, envisages insertion of a claim by the executor, administrator or representative of the deceased for any pecuniary loss to the estate of the deceased which sum, when recovered, would form part of the assets of the estate of the deceased.

(1) (1808) a Camp 49=10 R.R. 734.

(10) The Legal Representatives Suits Act (No. 12 of 1885) was enacted to enable executors, administrators or representatives to sue and be sued for certain wrongs (which according to the existing law did not survive) causing pecuniary loss to the estate of the deceased persons where action might have been maintained by such persons for compensation for such wrongs during his life-time. Again by section 306 of the Succession Act, the right to prosecute any action or proceedings existing in favour of a person at the time of the decease is made to survive to his executors or administrators except cause of action for personal injuries not causing the death of the party. Section 306 of the Succession Act thus made it plain that the cause of action regarding personal injuries causing the death of the party enured after his death to his executors or administrators. This provision also was meant to mitigate the harshness of the dictum of Lord Ellenborough in *Baker's case* (supra) to the effect that at common law, death of human being cannot be complained of as an actionable injury for which damages could be awarded to his dependents.

(11) Heavy pressure of the vehicular traffic on the narrow roads of India led to a large number of accidents causing widespread misery to the dependents of the deceased. Civil suits for damages were not only expensive, but took long time to fructify, whereas the plight of the hapless dependents cried for quick succour. This led to the insertion of the provisions of sections 110-A to 110-F in the Motor Vehicles Act, which, *inter-alia*, provided an inexpensive forum with a hope for a quick remedy for claiming compensation.

(12) The question, therefore, that arises for consideration is as to whether after the enactment of the provisions of sections 110-A to 110-F in the Motor Vehicles Act, would the provisions of section 1-A of the Fatal Accidents Act still govern the claims for compensation? If they do, then to what extent?

(13) There appears to be in existence sharp cleavage of judicial opinion in this regard. Judicial precedents are not lacking for or against the view that the provisions of sections 110-A to 110-F of the Motor Vehicles Act are merely adjectival and procedural in nature and that the provisions of the Fatal Accidents Act alone constitute the substantive law governing the claims for compensation, both with regard to the person who can claim compensation,

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as also regarding the measure of compensation, and that only such persons as are entitled to claim compensation under section 1-A of the Fatal Accidents Act, are entitled to maintain an application for compensation.

(14) Before advertng to the judicial precedents, it would be apt to first notice the relevant provisions of the two statutes and examine the import of these to the question posed for the opinion of the Bench in the light of the facts of the present case. Relevant provisions of sections 1-A and 2 of the Fatal Accidents Act are in the following terms :—

“1-A. 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.

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.

* * * * *

2. Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint:

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.”

Relevant provisions of sections 110-A and 110-B of the Motor Vehicle Act are in the following terms :—

“110-A (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 110 may be made—

- (a) by the person who has sustained the injury; or
- (aa) by the owner of the property; or
- (b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives who have not so joined, shall be impleaded as respondents to the application.

* * * * *

The existence of a substantive provision providing for recovery of damages on account of the death of a person being a *sine qua non* for staking a claim in the prescribed forum for damages, the question arises : does any of the provisions ranging from sections 110-A to 110-F of the Motor Vehicles Act provides for recovery of damages on account of death of a person? Section 110 envisages constitution and establishment of claims Tribunal for the purpose of adjudicating upon claim for compensation in respect of accidents, *inter alia*, involving the death of a person arising out of the use of motor vehicles. Section 110-A provides for filing of an application before the Claims Tribunal claiming compensation arising out of an accident of the nature specified in sub-section (1) of section 110, *inter alia*, where death has resulted from the accident, by all or any of the legal representatives of the deceased and that such an application shall be, *inter alia*, for the benefit of all the

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legal representatives of the deceased, even when all the legal representatives have not joined in making the application.

(15) Section 110, as has been noticed, does no more than prescribing for the constitution and establishment of a forum for adjudicating the claim for compensation and section 110-A provides as to who could activate the given forum and for whose benefit. None of the two provisions, which are the only relevant provisions, in express terms, provides, as it provided under section 1-A of the Fatal Accidents Act, that a party causing death of a person shall be liable to an action or suit for damages and, therefore, the claimant, would still have to invoke to the above extent, the substantive provision of para 1 of section 1-A for claiming damages from the tortfeasor, for in the absence of such a provision a tortfeasor could come round and ask as to under which law he was liable to pay damages for causing death of a given person. However, in regard to other matters, viz., the forum where damages could be claimed, the person who could claim the damages, for the persons for whose benefit the damages could be claimed, the measure of compensation and the limitation for filing an application, the provisions of sections 110 and 110-A and 110-B of the Motor Vehicles Act (providing for all these aforementioned matters) would substitute and supplant those of the Fatal Accidents Act, because provisions of the latter Act being general and those of the former being specific, the specific provisions would have overriding effect upon the general provisions.

(16) We are here concerned only with the question as to whether a brother of the deceased could file an application claiming compensation on account of the death of his brother.

(17) Sub-section (1) of section 110-A of the Motor Vehicles Act authorises all or any of the legal representatives of the deceased to make an application for compensation which shall be for the benefit of all the legal representatives. The question that arises for consideration is as to what do we understand by the term 'legal representatives of the deceased'. In other words, who can be considered to be the legal representative of the deceased? In considering the said term, it would be first desirable to focus on the fact as to who are the persons for whose benefit an action for damages could be brought up and by whom under the relevant provisions of the Fatal Accidents Act.

(18) Section 1-A of the Fatal Accidents Act envisages action by executors, administrators or representatives of the deceased (1) for the benefit of wife, husband, parent and child of the deceased (for the sake of brevity, they are hereinafter referred to as the dependents of the deceased) in regard to the pecuniary loss resulting to them from such death of their relative, and (2) in regard to the pecuniary loss to the estate of the deceased occasioned by his such death.

(19) Under the provisions of the Fatal Accidents Act, a claim for compensation can be made, *inter alia*, in the absence of executor or administrator, by representative of the person deceased irrespective of the fact whether the beneficiary of the claim was to be wife, husband, parent or child of the deceased or his estate. The representatives of the deceased person in the absence of any executor or administrator could be the dependents themselves and, therefore, where any of such dependents survives the deceased, such surviving dependent can bring an action in his own name, and for his benefit, for damages in regard to the pecuniary loss suffered by him as a result of such death. The question then arises : could the dependents surviving the deceased claim damages in regard to the pecuniary loss suffered by the estate? Section 2-A of the Fatal Accidents Act provides for joining of a claim for damages in regard to the pecuniary loss to the estate by the executor, administrator or legal representative of the deceased person. In section 2, thereof, no reference is made to the dependents, that is, wife, husband, parent and child. Does it mean that in the absence of executor, administrator, etc., surviving dependent would not be able to insert a claim for damages in regard to the pecuniary loss to the estate of the deceased. The answer to this question would depend on the facts of a given case. In a situation, where the deceased died intestate, the dependents would obviously be the persons who would be entitled to initiate action for damages in regard to the estate of the deceased person if, under law, they were entitled to succeed to the estate of the deceased. The position, where the deceased had made a will in which he had provided for devolution of his entire estate upon a person other than the dependents, then in such a case, so far as action for claiming damages in regard to the loss to the estate of the deceased is concerned, the person envisaged in the will to inherit the entire estate alone be entitled to initiate action for claiming such damages. That means, in such a case, for the purpose of section 2 of the Fatal Accidents Act, representative of the person deceased would also include a person

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mentioned in the will in addition to such persons as under the law of succession applicable to the deceased person are entitled to inherit his estate. In other words, the term 'representative of the deceased' would refer not only to such persons as under the law of succession applicable to the deceased were entitled to the estate of the deceased but also to a person, if the deceased died after making a will, who is entitled under the will to inherit the estate of the deceased if such latter person happens to be other than former set of persons.

(20) In so far as the expression 'representative' for the purpose of section 1-A of the Fatal Accidents Act is concerned, it would refer to the whole body of such persons as are under the law of succession applicable to the deceased entitled to succeed to his estate, including the dependents and, therefore, all or any of such persons would be entitled to initiate action for claiming damages under section 1-A of the Fatal Accidents Act for the benefit of any or all of the dependents surviving the deceased in regard to the pecuniary loss suffered by any such dependent. One can envisage a situation where the surviving dependent lay totally unconscious and the deceased had died intestate. In such a situation, only representative of the deceased could bring action.

(21) If the term 'representative of the deceased' in section 1-A of the Fatal Accidents was held to connote only the dependents, and the dependent or dependents were not in a position to bring an action, then such dependents would have to forego the damages on account of pecuniary loss that they have suffered as a result of the death of the person deceased. One cannot attribute such a lack of foresight to the legislature and, therefore, the term 'representative of the deceased' occurring in section 1-A cannot be conceived to be referring to only the dependents. Of course, damages realised as a result of the action would ensure for the benefit of the dependents alone and not for the representative of the deceased who had initiated the action if that representative of the deceased happened to be a person other than the dependant person himself.

(22) The dichotomy in regard to the nature of damages available to the dependents and to the estate of the deceased obtaining in the Fatal Accidents Act does not find mention in the relevant provisions of the Motor Vehicles Act. Section 110-A of the Motor

Vehicles Act provides for filing of an application by any or all the legal representatives of the person deceased and that such action would be for the benefit of all the legal representatives of the deceased. Section 110-A thus entitles the legal representatives to be the beneficiaries of the damages realised as a result of the application for damages. The section thus makes no difference between the two sets of beneficiaries, that is, the dependents for sharing pecuniary loss suffered by them and the pecuniary loss suffered by the estate, as mentioned in the Fatal Accidents Act.

(23) So the question would arise as to which particular loss, the compensation for damages so awarded would be referable. Section 110-A of the Motor Vehicles Act does not talk either of pecuniary loss to the dependents or pecuniary loss to the estate. In such a situation, where the provisions of the specific Act are silent, the substantive provisions of the general Act would be applicable. When so viewed, the compensation awarded under section 110-A would include damages on account of pecuniary loss suffered by the dependents, if any, as also the pecuniary loss suffered by the estate.

(24) Where the compensation awardable by the Tribunal is referable not only to the pecuniary loss suffered by the dependents but also the pecuniary loss suffered by the estate, the expression 'legal representative of the deceased' obtaining in section 110-A of the Motor Vehicles Act in our view would refer to the dependents, who had suffered pecuniary loss as a result of such death, as also such other persons who, in the absence of the dependents under the law of succession, were entitled to succeed to the estate, besides the person, if the deceased person had died after making a will, who under the will was entitled to succeed to the estate of the deceased person.

(25) Clause (b) of sub-section (1) of section 110-A of the Motor Vehicles Act authorises all or any of the legal representatives to file an application for compensation. That means, but for the proviso to sub-section (1) of section 110-A, all or any one of the aforementioned body of legal representatives of the deceased could file an application for compensation on account of the death of the person deceased. So in a given case for finding as to whether the person who had filed the application for claiming compensation under section 110-A is entitled to do so, one would have to see,

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subject to the proviso aforementioned, whether he is one of the dependents or is a person entitled to succeed to the estate of the deceased under the law of succession applicable to the deceased if the deceased died intestate or is he the person who had been mentioned in the will to be his successor to his estate if the deceased had died after making a will. If the person who has moved the application for compensation, subject to the proviso, happens to fall in any of the aforementioned three categories, he shall be held to be enjoying the *locus standi* to maintain the said application.

(26) Since we have identified legal representatives of the deceased under section 110-A of the Motor Vehicles Act, subject to the proviso thereof, so the question that arises for consideration is: does the proviso restricts the choice of legal representatives of the deceased who could file claim application? In my opinion, it does. As already observed, whereas the Fatal Accidents Act envisages two sets of beneficiaries of the damages (1) the dependents and (2) the estate of the deceased. Sub-section (1) of section 110-A, read with the proviso, envisages all the legal representatives of the person deceased to be the beneficiaries of the award. The proviso goes to the extent that it envisages a mandate to the Tribunal to implead as respondent any such legal representative if he had not joined the legal representative who had filed the application as an applicant. In my opinion, section 110-A envisages filing of an application for compensation by any or all such legal representatives as are entitled to share the damages that may be awarded by the Tribunal which damages, as already observed, may be referable to the pecuniary loss suffered by the dependents or the pecuniary loss suffered by the estate of the person deceased or both.

(27) Without being exhaustive, one can envisage the following six situations:—

- (1) where the person died intestate and the only saving that he was capable of making or held to be making represented the pecuniary loss of the dependents and which pecuniary loss was claimable up to the entire working life of the deceased that was cut short by the accident;
- (2) where the deceased died intestate leaving behind/surviving any or all the surviving dependents and his possible

saving was claimed to be more than the pecuniary loss to the dependents or if his possible saving was held to be equal to the pecuniary loss of the dependents, the said pecuniary loss was not claimable for the entire remaining working life of the deceased;

- (3) where the deceased died leaving behind any or all the dependents but had not died intestate and in the will he had nominated a given person to be entitled to in part or whole of his estate and that person happened to be a person other than the dependents;
- (4) where the person deceased died intestate without leaving behind any dependent;
- (5) where the person deceased died without leaving behind any dependent but had made a will appointing a person named therein as being entitled to his estate exclusively; and
- (6) where the person deceased died after making a will in which he had nominated a person or persons to succeed to only part of his estate.

Whether the person who has made the application has the *locus standi* to do so, would be judged in each of the aforementioned six situations in accordance with the criteria that a person making application must also be entitled to enjoy the damages either in whole or in part.

(28) In the case in hand, the person deceased Dharam Pal has left behind no dependent. The deceased, as his name suggests, is a Hindu by religion and so his estate would be inheritable in accordance with the provisions of the Hindu Succession Act. Section 8 of the Hindu Succession Act, 1956, deals with the intestate succession to a male. According to the said section, brothers fall in category (b). By virtue of the said section, person falling in a given category succeeds equally and persons falling in (a) category excludes the persons mentioned in category (b) and so forth. It is nobody's case that the deceased had left behind any of the persons falling in category (a). It is also nobody's case that the deceased had left behind any person other than the applicant-appellant falling in category (b). In view of this, the applicant-appellant would fall in

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such category of legal representatives as would be entitled to enjoy the damages that may be awarded by the Tribunal. The damages in this regard would be referable to the loss to the estate of the deceased which would be equal to the lost earnings for the lost years of the deceased's life. In other words, the possible saving of the deceased after accounting for his personal expenditure multiplied by a suitable multiplier having regard to the years by which the working life of the deceased had been cut-short by the accident. See in this regard *Pickett v. British Rail Engineering Ltd.* (2); and *Gammell v. Wilson and others* (3).

(29) Now the stage is set to examine the ratio of the decisions contrary to the one envisaged above:

In *Dewan Hari Chand and others v. Municipal Committee of Delhi and others*, (4), Deshpande, C.J., who delivered the opinion for the Bench, had to decide as to whether three brothers of the deceased, who had joined the father of the deceased, should be considered the legal representatives of the deceased and entitled to join their father in making the application and sharing the damages. The learned Chief Justice held that in the presence of their father who falls in category (a) of successors, the brothers could lay no claim to the estate of the deceased. They, in any case, were not dependents and, therefore, not entitled to damages that may be awardable in regard to the pecuniary loss to the dependents. This is a case which represents situation No. (1) aforesaid. There can be no dispute with the proposition that the brothers of a deceased are not his dependents and that in the presence of successors of category (a), they could not even lay claim to the estate of the deceased and, therefore, could not be considered to be such legal representatives as could file an application for compensation in terms of section 110-A, read with proviso thereto, of the Motor Vehicles Act.

(30) In *Ramesh Chandra and others v. Madhya Pradesh State Road Transport Corporation and others*, (5), mother of the deceased had been joined by his six brothers and sister. G. P. Singh, C.J.

(2) 1980 A.C.J. 261 (House of Lords, England).

(3) 1982 A.C.J. 409 (House of Lords, England).

(4) 1981 A.C.J. 131.

(5) 1983 A.C.J. 221.

held that brothers and sisters did not fall in the category of dependents envisaged in section 1-A of the Fatal Accidents Act and were not entitled to any damages in that regard in the presence of their mother, who fell in (a) category of successors. Brothers and sisters, who fell in (b) category of successors, also could not lay claim to any damages in regard to the loss suffered by the estate of the deceased. This case too falls in the same category as in *Dewan Hari Chand and others' case* (supra). Similarly, case of *Mrs. Pushpa v. State of Jammu and Kashmir*, (6) and case of *Moti Lal v. Gurbachan Singh and others*, (7), fall in the same category as that of *Dewan Hari Chand and others' case* (supra), as in the presence of the widow, mother, son and daughter, brother could not lay any claim to any damages representing the loss to the estate of the deceased.

(31) *New India Insurance Co. Ltd. v. Smt. Shanti Misra*, (8), was cited in support of the proposition that despite the enacting of the provisions of section 110-A to 110-F of the Motor Vehicles Act, the substantive law represented by the provisions of sections 1-A and 2 of the Fatal Accidents Act remain applicable for claiming compensation, *inter-alia*, in regard to death due to motor accident. That was a case in which question that arose for consideration was as to whether the claim for compensation could have been filed in civil Court or before the Tribunal and whether within the period envisaged in the Fatal Accidents Act or the one envisaged in section 110-A(3) of the Motor Vehicles Act. Their Lordships in that case, no doubt, examined the language of sections 110 to 110-F, but they did so far answering the limited question aforementioned pertaining to the forum and the period of limitation. Their Lordships had not addressed themselves to the question as to whether the relevant provisions of the Motor Vehicles Act which authorised certain person to file the claim application, or envisaged the person for whose benefit the claim application could be filed, or provided for awarding of quantum of damages, were or were not in the nature of substantive provisions.

(32) In *Magjibhai Khimji Vira and another v. Chaturbhai Taljabhai and others* (9), Ahmadi, J., who formulated the opinion for the Bench, held that brother and nephews of the

(6) 1977 A.C.J. 375.

(7) 1980 A.C.J. 462.

(8) A.I.R. 1976 S.C. 237.

(9) 1977 Guj. 195.

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deceasedd were entitled to present claim application, as they must be held to be legal representatives of the deceased, Gordhanbhai Tarjabhai. The learned Judge has so held without critically examining either the relevant provisions of the Motor Vehicles Act or those of the Fatal Accidents Act. The learned Judge held them to be the legal representatives merely for the reason that after the enactment of the provisions of section 110-A to section 110-F of the Motor Vehicles Act, the provisions of the Fatal Accidents Act were held not to be applicable. With respect, I cannot concur in the view that the provisions of the Fatal Accidents Act are wholly inapplicable to a claim of the kind. The judgment does not disclose as to whether any heir with a superior claim to inherit the estate of the deceased was in existence or not and, therefore, it cannot be said that the nephews were or were not entitled to claim themselves to be the legal representatives of the deceased.

(33) In *General Manager, Karnataka State Road Transport Corporation v. Peerappa Parasappa and others*, (10), Bopanna, J., who delivered the opinion for the Bench, held that brothers and sisters of the deceased were entitled to compensation as legal representatives provided they proved their dependency on the deceased. The learned Judge took the view that the provisions of para 2 of section 1-A of the Fatal Accidents Act were not attracted, in view of the provisions of section 110-A which authorised every legal representative of the deceased to file an application for compensation, provided such legal representatives were dependents on the deceased.

(34) Though I agree that brothers and sisters could be legal representatives in a given set of facts, but with respect not because they happened to be actually dependent upon their deceased brother.

(35) In *Shanker Rao v. M/s Babulal Fouzdar and another*, (11), the Bench has held that despite the enactment of sections 110-A to 110-F in the Motor Vehicles Act, the provisions of the Fatal Accidents Act would continue to govern the compensation claim applications. The Bench as a result of the aforesaid formulation

(10) 1979 A.C.J. 229.

(11) A.I.R. 1980 M.P. 154.

held that the brother of the deceased was entitled to claim compensation in regard to loss to the estate of the deceased. With respect, we agree with the view that in a case that was before the said Bench, brother as legal representative was entitled to lay a claim in terms of section 2 of the Fatal Accidents Act read with section 110-A of the Motor Vehicles Act to the loss to the estate of the deceased, but with respect we do not agree with the view that sections 110-A to 110-F of the Motor Vehicles Act are merely adjectival and procedural in nature and were enacted only to provide a cheap and quick remedy to the claimants who were earlier required to file a civil suit paying *ad valorem* Court-fees in the Court of general jurisdiction, and that any question pertaining to a substantive law had to be determined in accordance with the general law of tort and the Fatal Accidents Act.

(36) In the result, we conclude that brothers in the present case would be entitled to maintain an application for compensation before the Tribunal and we answer the formulation in the affirmative.

(37) The case may now be placed before a Single Bench for decision on merits.

S. P. Goyal, J.—I agree.

S. S. Sodhi, J.—I agree.

N. K. S.

FULL BENCH

Before P. C. Jain, C.J., D. S. Tewatia and K. S. Tiwana, JJ.

SUKHDEV SINGH DHINDSA AND ANOTHER

—Petitioners.

versus

THE STATE OF PUNJAB AND ANOTHER

—Respondents.

Civil Writ Petition No. 5926 of 1983

August 9, 1985

Code of Criminal Procedure (Punjab Amendment) Act (I of 1984)—Sections 4 and 11—Code of Criminal Procedure (II of 1974)—Sections 167, 439 and 439-A—Constitution of India 1950—Articles 21