

PETITIONER:
GUJARAT STATE ROAD TRANSPORT CORPORATION, AHMEDABAD.

Vs.

RESPONDENT:
RAMANBHAI PRABHATBHAI & ANOTHER

DATE OF JUDGMENT 11/05/1987

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
SINGH, K.N. (J)

CITATION:
1987 AIR 1690 1987 SCR (3) 404
1987 SCC (3) 234 JT 1987 (2) 384
1987 SCALE (1) 1027
CITATOR INFO :
R 1987 SC 2158 (14)
RF 1991 SC 1769 (10, 11)

ACT:
Motor Vehicles Act, 1939--Section 110A--'Legal representatives'--Who are Not to be confined to spouse, parent and children of the deceased.

Civil Procedure Code, 1908--Section 2 (ii)--'Legal representative'--Who is.

Words and Phrases--'Legal representative'--Meaning of.

HEADNOTE:

The respondents-brothers of the deceased-instituted a petition before the Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1939, claiming compensation for the death of their brother in an accident on the ground that they were the heirs and legal representatives of the deceased. The Tribunal awarded a compensation of Rs.32,000 to the claimants, and directed the Gujarat State Road Transport Corporation to pay the said amount to the claimants. The appeal of the Gujarat State Road Transport Corporation under Section 110D of the Act was dismissed by the High Court.

In the special leave petition to this Court it was contended that the Tribunal and the High Court were in error in awarding compensation in favour of the brothers of the deceased, since in law they were not entitled to any compensation under the provisions of the Fatal Accidents Act, 1855, and it was submitted that the provisions in Chapter VIII of the Motor Vehicles Act, 1939 were merely procedural in character under which an alternative forum is created for deciding the question of compensation payable in respect of injuries and death caused on account of motor vehicles accidents, that they have not modified in any manner the substantive law governing the said question, and, therefore, the principles contained in the law of torts as modified by the Fatal Accidents Act, 1855, alone would govern the said question even now.

Dismissing the special leave petition, this Court

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HELD: 1. Where a pedestrian, without negligence on his part, is injured or killed by a motorist whether negligently

or not, he or his legal representatives, as the case may be, should be entitled to recover damages if the principle of social justice should have any meaning at all. [416C]

2. To a limited extent relief has been granted under Section 92A to the legal representatives of the victims who had died on account of motor vehicle accidents. Compensation of Rs. 15,000 can be claimed without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law stands modified. [416H, 417A-B]

3. The brother of the person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110A of the Act if he is a legal representative of the deceased. [422C]

4. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110A to 110F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110A of the Act have to be done in accordance with well-known principles of law. [421F-H, 422A]

5.1 Clause (b) of sub-section (1) of Section 110A of the Act provided that the application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of Section 110A provides 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 of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. [419A-B]

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5.2 The expression 'legal representative' has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines 'legal representative' as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. [419C-D]

5.3 A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. [419D]

5.4 A legal representative in a given case need not necessarily be a wife, husband, parent and child. [420B]

In an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensa-

tion relying upon the provisions of the Fatal Accidents Act, 1855, which has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicle accidents. [422A-B]

5.6 The fact that the Parliament declined to take any action on the recommendation of the Law Commission to define the expression 'legal representative' suggests that Parliament intended that the expression 'legal representatives' in Section 110A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased. [422G]

6.1 Although Chapter VIII of the Act provides for an alternative forum for realisation of compensation payable on account of motor vehicles accidents, these provisions are not merely procedural. They substantially affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new", the right given to the legal representatives under the Act to file an application for compensation for death due to motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies. [415G, 420E-F]

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6.2 While the Fatal Accidents Act, 1855 provides that a suit shall be for the benefit of the wife, husband, parent and child of the deceased, Section 110A(1) of the Motor Vehicles Act, 1939 says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. Section 110A(1) in a way is a substitute for the provisions of Section 1-A of the Fatal Accidents Act, 1855. Similarly, Section 110B which authorises the Claims Tribunal to make an order determining the amount of compensation which appears to it to be just, and specifying the person or persons to whom the compensation shall be paid takes the place of the third paragraph of Section 1-A of the Fatal Accidents Act, 1855 which provides that in every such action, the court may 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 application shall be brought. [420A-C]

6.3 Persons for whose benefit such application can be made and the manner in which the compensation awarded may be distributed amongst persons for whose benefit the application is made are dealt with by Sections 110A and 110B and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855, insofar as motor vehicle accidents are concerned. [420D]

Megjibhai Khimji Vira and another v. Chaturbhai Taljabhai and others, AIR 1977 Gujarat 195 affirmed;

Budha v. Union of India and Ors., [1981] M.P. 151 overruled;

Minu B. Mehta and Another v. Balkrishna Ramchandra Nayan and Another, [1977] 2 S.C.R. 886; Rylands v. Fletcher, [1868] L.R. 3 H.L. 330, 340; P.B. Kader and others v. Thatchamma and others, A.I.R. 1970 Kerala 241; Dewan Hari Chand and Others v. Municipal Corporation of Delhi and another, A.I.R. 1973 Delhi 67; Perumal v. Ellusamy Reddiar, [1974] ACJ 182 (Mad); Vanguard Insurance Co. Ltd. v. Hanumantha Rao, [1975] ACJ 344 (Andhra Pradesh); Mohammed Habiullah and another v. K. Seethammal, A.I.R. 1967 Mad. 123; Veena Kumari Kohli v. Punjab Roadways, [1967] ACJ 297 (Pb.) and Smt. Ishwar Devi Malik v. Union of India, A.I.R. 1969 Delhi 183, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 2802 of 1987.

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From the Judgment and Order dated 24.12. 1986 of the Gujarat High Court in F.A. No. 1379 of 1986.

S.K. Dholakia, R.C. Bhatia and P.C. Kapur for the Petitioner.

C.S. Vaidyanathan for the Respondents.

The Order of the Court was delivered by

VENKATARAMIAH, J. The question involved in this case is whether a brother of a person who is killed in a motor vehicle accident can claim compensation in a proceeding instituted before a Motor Accidents Claims Tribunal established under the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'). The High Court of Gujarat has upheld such a claim in this case. This Special Leave Petition is filed against the judgment of the High Court questioning the correctness of the said decision.

The brief facts of the case are these. On account of the negligence on the part of the driver of a bus belonging to the petitioner, the Gujarat State Road Transport Corporation, Ahmedabad, a boy named Bhanubhai, aged 14 years, was run over by the bus resulting in his untimely death. Ramanbhai and Dineshbhai, who were the brothers of the deceased, instituted a petition before the Motor Accidents Claims Tribunal (Auxiliary), Vadodara, claiming compensation for the death of their brother alleging that they were the heirs and legal representatives of the deceased. The Tribunal awarded a sum of Rs.32,000 as compensation to the claimants and directed the Gujarat State Road Transport Corporation to pay the said amount to the claimants. Against the award of the Tribunal, the Gujarat State Transport Corporation filed an appeal before the High Court of Gujarat under section 110D of the Act. That appeal was dismissed. This Special Leave Petition is filed against the judgment of the High Court.

The only point canvassed before us in this Special Leave Petition is that the Tribunal and the High Court were in error in awarding compensation in favour of the brothers of the deceased, since in law they were not entitled to any compensation under the provisions of the Fatal Accidents Act, 1855 and in support of the said contention, reliance was placed by the petitioner on the decision of the Madhya Pradesh High Court in Budha v. Union of India and others, A.I.R. 1981 M.P. 151. In the present case the High Court of Gujarat while passing its order has preferred to follow its own decision in Magjibhai

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Khimji Vira and another v. Chaturbhai Taljabhai and others, A.I.R. 1977 Gujarat 195 in which it had held that all the heirs and legal representatives of the deceased could maintain the claim petition under section 110-A of the Act and had awarded compensation in favour of the nephews of the deceased. On account of the divergence of opinion prevailing in the High Courts on the question involved in this case we have found it necessary to give reasons in support of our decision on this Special Leave Petition.

On account of the close association which came to be established between India and Great Britain owing to the British rule which lasted for over two centuries, in the High Courts established in India the English Common Law

which was based on principles of justice, equity and good conscience came to be applied wherever they were called upon to award damages or compensation for civil wrongs committed by the defendants in the suits. The application of the English Common Law, however, had to conform to Indian circumstances and conditions which necessarily involved a selective application of the English Law in India. "The adoption of the rules of English Law by the Indian Courts" observes M.C. Setalvad in his 'Common Law in India' (The Hamlyn Lectures, Twelfth Series, Page 53) "was neither automatic nor uncritical. Although they started with a presumption that a rule of English Law would be in accordance with the principles of justice, equity and good conscience, they bore in mind the reservation which was later expressed by the Privy Council in the words 'if found applicable to Indian society and circumstances.'" In the course of the application of the principles of the English Law of Torts in India the Indian courts came to recognise and apply the maxim action personalis moritur cum persona--a personal action dies with the parties to the cause of action. An action for a tort had to be begun in the joint lifetime of the wrongdoer and the person injured. The development of railways in England, led to a great upsurge in the number of accidents, many of which were fatal. When it was realised that the cause of action for recovery of damages for the death of a person caused by the wrongful act of another person did not survive on the death of the person to his legal representatives in England as a measure of law reform the Fatal Accidents Act, 1855 was passed for compensating the families of persons killed by accidents. That Act provided that "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, then and in every such case the person who would have been liable if death had not ensued shall be

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liable to an action for damages, notwithstanding the death of the person injured". The said Act further provided that "every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before mentioned parties in such shares as the jury by their verdict shall find and direct." Within a few years after the passing of the said English Fatal Accidents Act, 1846, the Fatal Accidents Act, 1855-came to be passed on the 27th of March, 1855 in India. This Act contains in all five sections. Its preamble runs thus:

"Whereas no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect, or default, may have caused the death of another person, and it is often-times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him. It is enacted as follows:-"

Sections 1A and 2 of that Act which are

relevant for our present purpose read thus:

"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.

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;

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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 amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be cleivided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.

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." (emphasis added)

The comparison between the English Fatal Accidents Act, 1846 and the Indian Fatal Accidents Act, 1855 shows that they are almost identical insofar as the persons for whose benefit action for compensation could be brought on the death of a person, and they are, wife, husband, parent and child of the deceased. The English law was, however, modified insofar as the above question was concerned by the Fatal Accidents Act, 1959. Section 1 of that Act provides that the persons for whose benefit and by whom an action may be brought under the Fatal Accidents Act, 1846 shall include any person who is, or is the issue of a brother, sister, uncle or aunt of the deceased person and in deducing any relationship for the purposes of the said Act it further provides that (a) an adopted person should be treated as a child of the person or the persons by whom he was adopted and not of the child of any other person; and subject thereto (b) any relationship by affinity should 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 a child; and (c) an illegitimate

person should be treated as a legitimate child of his mother and reputed father. After the above Act was passed in 1959 in England there came to be appointed a Commission, called the Royal Commission on Civil Liberty and Compensation for Personal Injury under the Chairman-

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ship of Lord Pearson in the year 1973 to consider to what extent, in what circumstances and by what means compensation should be payable in respect of personal injury (including ante-natal injury) suffered by any person (a) in the course of employment; (b) through the use of a motor vehicle or other means of transport; (c) through the manufacture, supply or use of goods or services; (d) on premises belonging to or occupied by another or (e) otherwise through the act or omission of another where compensation under the present law is recoverable only on proof of fault or under the rules of strict liability having regard to the cost and other implications of the arrangements for the recovery of compensation, whether by way of compulsory insurance or otherwise. During the period when the Royal Commission was still collecting evidence to prepare its Report the Fatal Accidents Act, 1976 which was a consolidating Act incorporating the provisions of the Fatal Accidents Acts 1846 to 1959 was brought into force on September 1, 1976 in England. The Royal Commission submitted its report in March, 1978. After considering the evidence placed before it on the law prevailing in many of the countries the Pearson Commission recommended as follows:

"399. Claims for damages following death may be made under the present law on behalf of the relatives of the deceased and on behalf of his estate.

The relatives' claim for pecuniary Loss.

400. An action may be brought on behalf of certain dependent relatives of the deceased for pecuniary loss (lost dependency) under the Fatal Accidents Acts in England, Wales and Northern Ireland. In Scotland, the equivalent action is for loss of support and funeral expenses under the Damages (Scotland) Act 1976.

The entitlement to claim.

401. Claims under the Fatal Accidents Acts may be made on behalf of the deceased's spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, and in the case of the last four relatives--their issue. Relationships by marriage are treated as blood relationships; a legally adopted child is treated as a natural child; and an illegitimate child is treated as the legitimate child of his mother and reputed father. 'Half' and 'step' relationships

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are treated as full relationships.

402. In Scotland, those entitled to claim damages for loss of support also include all ascendants and descendants; any person accepted by the deceased as a child of his family (whether or not legally adopted); and a divorced spouse. The full list, contained in Schedule I to the Damages (Scotland) Act, 1976, is as follows:

a. any person who immediately before the deceased's death was the spouse of the de-

- ceased;
- b. any person who was a parent or child of the deceased;
- c. any person not falling within paragraph-b above who was accepted by the deceased as a child of his family;
- d. any person who was an ascendant or descendant (other than a parent or child) of the deceased;
- e. any person who was, or was the issue of, a brother, sister, uncle or aunt of the deceased; and
- f. any person who, having been a spouse of the deceased, had ceased to be so by virtue of a divorce.

403. We think that there is a good case for extending the present entitlement in England, Wales and Northern Ireland to conform with Scots law. We agree with the Law Commission that a child accepted by the deceased and maintained by him as a 'child of the family', even though not legally adopted, has at least as good a claim to damages for lost dependency as, say, a step child; and that where a divorced spouse can demonstrate dependency on the deceased (if, for example, he or she has been awarded maintenance payments) he or she should also be able to claim damages. The inclusion under Scots law of all ascendants and descendants further means that claims by a dependent great-grandparent or great-grandchild can be considered. Although the likelihood of such claims is in practice remote, we see no reason why they should in principle be excluded.

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404. We recommend that the relatives entitled to claim damages for lost dependency in England, Wales and Northern Ireland should be the same as those entitled to claim damages for loss of support under the Damages (Scotland) Act, 1976."

From the recommendation of the British Royal Commission. which is extracted above, it is seen that the Royal Commission recommended that the area of entitlement to damages following death should be expanded so as to include a larger number of relatives. In our country the Fatal Accidents Act, 1855 has remained unamended. but we have still to consider the effect of the amendment of the Act, i.e., Motor Vehicles Act, 1939 on the Fatal Accidents Act, 1855. But, before examining the relevant provisions of the Act it is necessary to refer to the 85th Report of the Law Commission of India on claims for compensation under Chapter VIII of the Act which was submitted as late as May, 1980. The Law Commission of India after taking into consideration the differences of opinion prevailing in the various High Courts on the question of the persons who should be entitled to claim compensation on the death of a person, recommended that the entitlement to such compensation should be confined to the spouse, parent and children of the deceased as specified in the Fatal Accidents Act, 1855 overlooking the amendments made in England and other countries by expanding the list of relatives who are entitled to claim compensation on the death of a person. It is surprising that the Law Commission of India recommended that the provisions of the Fatal Acci-

dents Act, 1855 should be adhered to insofar as the persons who were entitled to claim compensation was concerned. We shall now proceed to consider the effect of the amendment of the Act insofar as the question of compensation payable on the death of a person as a result of a motor vehicle accident is concerned.

It is submitted that the provisions in Chapter VIII of the Act to which we shall presently refer are merely procedural in character under which an alternative forum is created for deciding the question of compensation payable in respect of injuries and death caused on account of motor vehicles accidents and that they have not modified in any manner the substantive law governing the said question. In other words it is argued that the principles contained in the Law of Torts, as modified by the Fatal Accidents Act, 1855, alone would govern the said question even now. In support of the above submission reliance is placed on the decision of this Court in *Minu B. Mehta and Another v. Balkrishna Ramchandra Nayan and Another*, [1977] 2 S.C.R. 886. In 415

that case that Court affirmed the finding of the High Court that the motor vehicle accident which was the cause of the death in that case had happened on account of the negligence of the driver of the vehicle and hence damages were payable to the claimant therein and at page 894 this Court observed that the said finding was sufficient to conclude the judgment but the Court felt that it was desirable to deal with the question of law that had been dealt with at considerable length by the High Court as to whether it was incumbent on the claimant to prove negligence on the part of the driver of the motor vehicle before he would be entitled to compensation. The High Court had in the course of its judgment after upholding that the driver was negligent, observed that having regard to the changed conditions of modern society where a large number of motor vehicles were put on road thus exposing innocent third parties to grave accidents very often resulting in injuries to their lives and limbs, it was necessary in public interest to take the view that proof of negligence was unnecessary on the part of the drivers of the motor vehicles before claiming compensation. The learned Judges of this Court were, however, of the view that the above observation was inconsistent with the law of the land and that no damages could become payable without proof of negligence on the part of the driver of the motor vehicle involved in the accident. They further observed that the provisions of Chapter VIII of the Act were merely procedural and had not altered the substantive law. With great respect it should be observed that the observations of this Court on the above question were in the nature of obiter dicta since as already stated there was no necessity to go into the question whether proof of negligence on the part of the driver of the motor vehicle was necessary or not to claim damages under Chapter VIII of the Act because it had been found both by the High Court and this Court that such negligence had been in fact established. In the case before us, however, it is necessary to examine the provisions of Chapter VIII of the Act to ascertain whether there has been any modification by necessary implication of the provisions of the Fatal Accidents Act, 1855 insofar as the persons who are entitled to claim compensation on account of motor vehicles accidents, is

It is true that Chapter VIII of the Act provides for an alternative forum for realisation of compensation payable on account of motor vehicles accidents but as we shall present-

ly show it is not correct to say that the said provisions in Chapter VIII of the Act are merely procedural.

When the Fatal Accidents Act, 1855 was enacted there were no

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motor vehicles on the roads in India. Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in *Rylands v. Fletcher*, [1868] LR. 3 H.L. 330, 340. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission Chapter VIIA was introduced in the Act. Sections 92-A to 92-E of the Act are to be found in Chapter VIIA. Section 92-E of the Act provides that the provisions of Chapter VIIA shall have effect notwithstanding anything contained in any other provision of the Act or of any other law for the time being in force. Section 92-A of the Act provides that where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section. The amount of compensation which is payable thereunder in respect of the death of any person is a fixed sum of fifteen thousand rupees and the amount of compensation payable under it in respect of the permanent disablement of any person is a fixed sum of seven thousand and five hundred rupees. Sub-section (3) of section 92-A of the Act provides that in any claim for compensation under sub-section (1) of section 92-A, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. It is thus seen that to a limited extent relief has been granted under section 92-A of the Act to the legal representatives of the victims who have died on

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account of motor vehicles accidents. Now they can claim Rs. 15,000 without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modi-

fied. The special provisions contained in section 109-A to section 109-C of the Act providing for a scheme for granting relief to victims or the legal representatives of victims of 'hit and run' motor vehicle accident cases is another novel effort on the part of the Government to remedy the situation created by the modern society which has been responsible for introducing so many fast moving vehicles on roads. Now we shall analyse the provisions of Chapter VIII of the Act which deals with the insurance of motor vehicles against third party risk. Sections 93 to 111-A are in that Chapter. The Act insists that the owner of a motor vehicle should take out an insurance policy to cover third party risk except in some specified cases. Section 102 of the Act provides that notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance has been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of Chapter VIII of the Act shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer. The death of an owner of a motor vehicle which is involved in a motor vehicle accident in whose favour a certificate of insurance has been issued is thus no longer a bar to the survival of any cause of action arising out of the said event. Section 110 of the Act provides for the establishment of Claims Tribunals. It provides that a State Government may by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals for such areas as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Section 110-F of the Act bars jurisdiction of Civil Courts where any Claims Tribunal has been constituted for any area to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. On the occurrence of any motor vehicles accident, an application for compensation arising out of it can be made before the Claims Tribunal. Section 110-A of the Act which is material for the purpose of this case reads thus:

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"110-A. Application for compensation.--(1) An application for compensation arising out of an accident in 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 of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the applica-

tion.

(2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

Provided that where any claim for compensation under section 92A is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

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Clauses (b) and (c) of sub-section (1) of section 110-A of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of section 110-A provides 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 of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. The expression 'legal representative' has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines 'legal representative' as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. The proviso to sub-section (1) of section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent and (ii) that such application shall

be made on behalf of or for the benefit of all the legal representatives. Both the persons or person who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in section 110-A of the Act. This section in a way is a substitute to the extent indicated above for the provisions of section 1A of the Fatal Accidents Act, 1855 which provides 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

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been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased." While the Fatal Accidents Act, 1855 provides that such suit shall be for the benefit of the wife, husband, parent and child of the deceased, section 110-A(1) of the Act says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. A legal representative in a given case need not necessarily be a wife, husband, parent and child. It is further seen from section 110-B of the Act that the Claims Tribunal is authorised to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid. This provision takes the place of the third paragraph of section 1A of the Fatal Accidents Act, 1855 which provides that 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. Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by section 110-A and section 110-B of the Act and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855 in so far as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.

Amongst the High Courts in India there is a cleavage in the opinion as regards the maintainability of action under section 110-A of the Act by persons other than the wife, husband, parent and child of the person who dies on account of a motor vehicle accident. All these cases are considered by the High Court of Gujarat in its decision in *Magjibhai Khiraji Vira* and another v. *Chaturbhai Taljabhai* and others (supra). The first set of cases are those which are referred to in paragraph 5 of the above decision which lay down that every claim application for compensation arising out of a fatal accident would be governed by the substantive provisions of sections 1A and 2 of the 1855 Act and no dependent of the deceased other than the wife, husband, pa-

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rent or child would be entitled to commence an action for damages against the tort tensors. Amongst these cases are *P.B. Kader* and others v. *Thatchamma* and others, A.I.R. 1970

Kerala 241 and Dewan Hari Chand and others v. Municipal Corporation of Delhi and another, A.I.R. 1973 Delhi 67. The second group of cases are those referred to in paragraph 6 of the decision of the Gujarat High Court. They are Perumal v. Ellusamy Reddiar, [1974] ACJ 182 (Mad) and the Vanguard Insurance Co. Ltd. v. Hanumantha Rao, [1975] ACJ 344 (Andhra Pradesh). These cases lay down that while the compensation payable under section 1A of the Fatal Accidents Act, 1855 is restricted to the relatives of the deceased named therein the compensation payable under section 2 thereof may be awarded in favour of the representatives of the deceased who are entitled to succeed to the estate of the deceased. The third group of cases are those referred to in paragraph 7 of the judgment of the Gujarat High Court. They are Mohammed Habibullah and another v. K. Seethammal, A.I.R. 1967 Mad. 123; Veena Kumari Kohli v. Punjab Roadways, [1967] ACJ 297 (Pb.) and Smt. Ishwar Devi Malik v. Union of India, A.I.R. 1969 Delhi 183 which take the view that a claim for compensation arising out of the use of a motor vehicle would be exclusively governed by the provisions of sections 110 to 110-F of the Act and bears no connection to claims under the 1855 Act and the Claims Tribunal need not follow the principles laid down under the latter Act. Having considered all the three sets of decisions referred to above, Ahmadi, J. who wrote the judgment in Megjibhai Khimji Vira and another v. Chaturbhai Taljabhai and others (supra) came to the conclusion that an application made by the nephews of the deceased who died on account of a motor vehicle accident was clearly maintainable under section 110-A of the Act.

We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by section 110B of the Act amongst the legal representatives for whose

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benefit an application may be filed under section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira and another v. Chaturbhai Taljabhai and others, (supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under section 110-A of the Act if he is a legal representative of the deceased.

We have carefully gone through the decision of the High Court of Madhya Pradesh in Budha v. Union of India and

others (supra). We feel that the view taken in that decision is a narrow one and does not give full effect to the object with which sections 110-A and 110-B of the Act were enacted. We over rule the said decision.

Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend section 110-A of the Act by defining the expression 'legal representatives' in relation to claims under Chapter VIII of the Act as 'the spouse, parent and children of the deceased' as recommended by the Law Commission. The Law Commission had observed in its 85th report that it would be appropriate to assign to the expression 'legal representative' the same meaning as had been given to the expression 'representative' for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry-out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression 'legal representatives' in section 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression 'legal representatives' in section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.

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We, therefore, do not find any ground to interfere with the judgment of the Gujarat High Court against which this Special Leave Petition has been filed. The Special Leave Petition is dismissed.

N.P.V.
missed.

Petition dis-

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