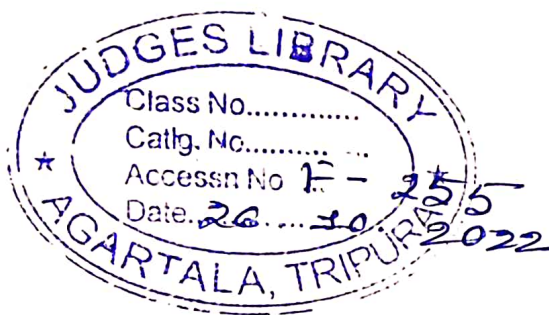


The Fatal Accidents Act, 1855

[Act 13 of 1855]

with

Case Law



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The Fatal Accidents Act, 1855

[Act 13 of 1855]

[27th March, 1855]

An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong

Preamble.—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:

¹[**1. Short title and extent.**—(1) This Act may be called the Fatal Accidents Act, 1855.

(2) It extends to the whole of India ²[* * *]

Notes.—The Act has been enforced in Sikkim w.e.f. 31-12-1984 vide Noti. pub. in 1985 CCL-III-68.

³[**1-A.] Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.**—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.

⁴[* * *] 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;

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 divided amongst the before-mentioned parties, or any of them, in such shares as the court by its judgement or decree shall direct.

1. Inserted by Part B State (Laws) Act, 1951, S. 3 and Sch.
2. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).
3. Renumbered by Part B State (Laws) Act, 1951, S. 3 and Sch.
4. The words "And it is enacted further that" were repealed by the Repealing and Amending Act, 1914 (10 of 1914), Sch. II.

CASE LAW ► Scope.—The Act enacts an exception to the general rule that a right of suit in connection with a personal cause of action dies with the death of such person, *State of Rajasthan v. Parwati Devi*, AIR 1966 Raj 210. See also *Manjulagoari v. Gowardhandas Harjiwandas Raval*, AIR 1956 Nag 86.

The rights of action under Sections 1-A and 2 of the Act are quite distinct and independent. If a person taking benefit under both the sections is the same, he cannot be permitted to recover twice over for the same loss, *Gobald Motor Service Ltd. v. R.M.K. Veluswami*, (1962) 1 SCR 929 : AIR 1962 SC 1, 6, 7, 8. See also *M.A. Rahim v. Sayari Bai*, AIR 1973 Mad 83.

Motor Vehicles Act provides forum and procedure for claim for compensation but Fatal Accidents Act contains substantial law as to compensation modifying the common law, *Dewan Hari Chand v. M.C.D.*, AIR 1981 Delhi 71 : (1981) 83 PLR 24(D). See also *Oriental Fire & General Insurance Co. Ltd. v. Kamal Kamini Das*, AIR 1973 Ori 33.

Provisions of Legal Representatives Suits Act, 1855 and Fatal Accidents Act operate in different fields, *Rajjan v. Indrapal*, 1981 ALJ 258.

Motor Vehicles Act does not specify the heads under which compensation is to be awarded. For that the court has to fall back on the Fatal Accidents Act, *Karnataka SRTC v. A.R. Satishchandra*, 1981 ACJ 138.

► **Determination of compensation.**—The general principle is that the pecuniary loss can be ascertained only by balancing on one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained. The burden is certainly on the plaintiffs to establish the extent of their loss. *Gobald Motor Service Ltd. v. R.M.K. Veluswami*, (1962) 1 SCR 929 : AIR 1962 SC 1, 4, 5, 6.

In ascertaining pecuniary loss caused to the relations mentioned in Section 1-A, it must be borne in mind that these damages are not to be given as solatium but are to be given with reference to a pecuniary loss. The damages should be calculated with reference to a reasonable expectation of pecuniary benefit from the continuance of life of the deceased, *C.K. Subramania Iyer v. T.K. Nair*, (1969) 3 SCC 64.

Compulsory damages under Section 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2, the measure of damages is the economic loss sustained by the estate, *C.K. Subramania Iyer v. T.K. Nair*, (1969) 3 SCC 64.

Any gain derived by dependants independently of the death cannot be deducted from the compensation. Deductions made on account of service fund contribution, Contributory Provident Fund are not permissible deductions from the total amount of compensation payable, *Puransingh Fattesingh Osahan v. Murlilal Chandiram Pinjani*, (1997) 1 Mah LJ 809.

The Motor Vehicles Act, 1939 does not lay down any specific provision as to how compensation has to be calculated. The principles governing the calculation of compensation thereunder have been laid down by judicial precedents and those principles are equally applicable to a case arising under the Fatal Accidents Act, 1855, *Puransingh Fattesingh Osahan v. Murlilal Chandiram Pinjani*, (1997) 1 Mah LJ 809.

Manner of arriving at the damages is to ascertain the net income of deceased for support of himself and his dependents after deducting certain amounts. Calculation necessarily to be in realm of hypothesis, *Abha Yadav v. Municipal Corpn. of Delhi*, (2003) 10 AIC 683 (Del).

► **Maintainability of claim.**—It is not a condition precedent to the maintenance of an action under the Fatal Accidents Act, 1846 (9 & 10 Vict C 93), that the deceased should have been actually earning money or money's worth or contributing to the support of the plaintiff at or before the date of the death provided that the plaintiff had a reasonable expectation of pecuniary benefit from the continuance of the life, *C.K. Subramania Iyer v. T.K. Nair*, (1969) 3 SCC 64.

Under this section death need not be the direct result of the injury caused, *Governor General of India v. Bhanwari Devi*, AIR 1961 All 14.

The mere fact that one of the claimants did not put forth his claim does not deprive other claimants of their right to compensation under the Act, *Himachal Government Transport v. Joginder Singh*, (1970) 72 PLR 42.

Under the Fatal Accidents Act, 1855 there are two separate and distinct causes of action, which are maintainable in consequence of a person's death. There is the dependant's claim for the financial loss suffered and there is a claim for injury, loss or damage, which the deceased would have had, had he lived, and which survives for the benefit of his estate, *New India Assurance Co. Ltd. v. Charlie*, (2005) 10 SCC 720 : 2005 SCC (Cri) 1657.

► **Mental agony.**—The claimant is not entitled to any compensation for mental pain, *Gyarsi Devi v. Sain Dass*, AIR 1982 Raj 30.

While considering a claim for compensation upon the death of an infant the possibility of contribution towards parents after marriage should be considered, *Chhaganlal v. Gujarat SRTC*, AIR 1981 Guj 226 : 22 Guj LR 549.

► **Entitlement to compensation.**—A husband is entitled to claim damages on ground of loss of consortium due to death of his wife caused by accident, *Jaswant Kaur v. Shri Rath Ram*, (1970) 72 PLR 932.

Right of persons entitled to receive compensation under Fatal Accidents Act is not affected by Sections 100 and 110-A of Motor Vehicles Act, *Motile v. Guru Bachman Singh*, 1980 ACJ 462.

Under Section 357(1)(c) CrPC the whole or any part of the fine recovered from a convicted person may be applied in paying compensation under Fatal Accidents Act to the heirs of the deceased, *Palaniappa v. State of T.N.*, (1977) 2 SCC 634 : 1977 SCC (Cri) 397.

An illegitimate child is entitled to compensation over the death of his father, *Sushil Kumar v. Karnataka SRTC*, 1981 ACJ 1. See also *Gurmit Singh v. Ajit Singh*, AIR 1977 P&H 381.

An executor or an administrator a representative of the deceased is also entitled to make claim on behalf of the heirs mentioned in the section, *N.I. Transport Insurance Co. v. Amrawati*, AIR 1966 Punj 288 : 67 PLR 386.

► **Alternative suit.**—Mere acceptance of compensation under Workmen's Compensation Act would not constitute bar to his right to file a suit under Fatal Accidents Act unless it is shown that the claimant had knowledge of his right to elect between two remedies, *Neopoleon Fernandes v. Union of India*, 78 Bom LR 337.

A workman making claim under Workmen's Compensation Act can alternatively file suit under Section 1-A of the Fatal Accidents Act, *Union of India v. Satyabai*, AIR 1966 Pat 130 : 1965 BLJR 564.

There is no provision under the Fatal Accidents Act, 1855 to constitute any tribunal for adjudicating any "action" or "suit" under the said Act. In absence of such provision empowering the State Government to constitute any tribunal, the person(s) aggrieved have right to seek for remedy by filing suit in the appropriate



civil court, having jurisdiction over the matter, *State of Tripura v. Sridhan Choudhury*, (2003) 8 AIC 121 (Gau) : AIR 2003 Gau 66.

► **Legal representative.**—Legal representative means the legal heirs of the deceased who can also represent the estate of the deceased, *Dewan Hari Chand v. MCD*, 1981 ACJ 131 (Delhi) (Dictionary meaning relied on). See also *Bijay Dumar v. Dinanath*, 1981 ACJ 250.

A person who is neither an heir of the deceased nor one of the persons enumerated in Section 1-A of the Fatal Accidents Act, he cannot be considered to be a legal representative of the deceased within the meaning of Section 110-A of the Motor Vehicles Act, *Motilal v. Guru Bachan Singh*, 1980 ACJ 462.

► **Who can file claim for damages.**—Suit for damages can be filed only by a person who is dependent of the deceased, *Ramesh Chandra v. M.P. SRTC*, AIR 1982 MP 165.

Application for compensation filed by the father of the deceased in a representatives capacity on behalf of all the legal representatives is maintainable, *Bijay Kumar v. Dinanath*, 1981 ACJ 250.

Application by father of deceased shall be deemed to be on behalf of the mother also, *Kasturi Lal v. Prabhakar Martand Patki*, AIR 1971 MP 145.

The expression "child" means offspring. Therefore in calculating the benefit of a son or daughter one should not stop at 18, the age of majority, *P.B. Kader v. Thatchamma*, AIR 1970 Ker 241.

Right of children to get compensation cannot be defeated because of remarriage of their mother, *Manjulagoari v. Gowardhandas*, AIR 1956 Nag 86.

► **Brother and sister of the deceased.**—Besides the persons mentioned in Section 1-A of the Fatal Accidents Act the other persons who happen to be legal representatives have also a right to file an application under Motor Vehicles Act and they have also got a right to claim compensation for the loss of dependency as well as for the loss of estate of the deceased. Section 110-A of the Motor Vehicles Act override the provisions of Fatal Accidents Act, *State v. Dole Ram*, 1981 ACJ 219. Similar view has been taken in *Kamla Devi v. Kishan Chand*, 1970 ACJ 310 (MP); *Megjibhai Khimji Vira v. Chaturbhai Taljabhai*, 1977 ACJ 253 (Guj); *Bhagwatidin v. Gheesalal*, 1980 ACJ 116 (MP). *Distinguishes Jeet Kumari Poddar v. Chittagong Engg. and Electric Supply Co. Ltd.*, AIR 1947 Cal 195; *Bishan Das v. Ram Labhaya*, AIR 1916 Lah 133; *M. Ayyappan v. Moktar Singh*, 1969 ACJ 439 (Mys). Dissents from *Dewan Hari Chand v. MCD*, 1973 ACJ 87 (Del).

In *B.P. Kader v. Thatchamma*, AIR 1970 Ker 241; *Bishan Das v. Ram Labhaya*, AIR 1916 Lah 133 and *Jeet Kumari v. Chittagong E & ES Co. Ltd.*, it was held that brothers and sisters are not entitled to compensation. But in these cases provisions of Motor Vehicles Act were never considered and the cases were decided under Fatal Accidents Act. In *M. Ayyappen v. Moktar Singh*, 1969 ACJ 439 (Mys) it was held that the term "legal representative" in M.V. Act includes persons referred to as representatives of the deceased in Section 1 of the Fatal Accidents Act. In *Dewan Hari Chand v. MCD*, 1973 ACJ 87 (Delhi) it was held that the brother of the deceased has no right to receive compensation. But this case has been distinguished in *Karnataka SRTC v. Peerappa Parasappa*, 1979 ACJ 229 (Kant) and *Bhagwatidin v. Gheesalal*, 1980 ACJ 116 (MP). In *Kamla Devi v. Kishun Chand*, 1979 ACJ 310 (MP) it was laid down that provisions of the Fatal Accidents Act are applicable to the proceedings under Section 110-A of the M.V. Act. This authority was again considered in *Bhagwatidin v. Gheesalal*, 1980 ACJ 116 (MP) and the same was distinguished. In *Budha v. Union of India*, AIR 1981 MP 151 it was held that brother of the deceased is not legal representative for the purpose of claiming compensation under M.V. Act in view of the definition of the term in Section 1-A of the Fatal Accidents Act [overrules 1980 MPCJ 95 cases of Gujarat and Madras High Courts reported in *Megjibhai Khimji Vira v. Chaturbhai Teljabhai*,

AIR 1977 Guj 195 and *Mohd. Habibullah v. K. Seethammal*, AIR 1967 Mad 123 not followed in view of certain observations of Supreme Court in *Minu B. Mehta v. Balkrishna Ramchandra Nayar*, (1977) 2 SCC 441 : AIR 1977 SC 1248].

As deceased being the only son of his parents and bread-winner of the family, if had been alive, would have contributed considerably for marriage of sister hence, sister of deceased, dependant of deceased, *United India Insurance Co. Ltd. v. D. Vasantha*, (2013) 5 CTC 469 (Mad) (DB).

► **Compensation - Purpose of award of.**—The purpose of award of compensation is to put the dependants of the deceased, who has been the bread-winner of the family, in the same position financially as if he had lived his natural span of life. It is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures here and there as many imponderable factors and unpredictable contingencies have to be taken into consideration. Obviously, award of damages in each case would depend on the particular facts and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor, *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65 : (2013) 3 SCC (Cri) 826.

► **Determination of compensation.**—For determination of compensation, multiplier method is the best and most satisfactory method for determination of compensation. Hence, must be followed without exception, *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65 : (2013) 3 SCC (Cri) 826.

Tribunals and High Courts are statutorily bound to award just compensation. Just compensation cannot be bonanza. Liberal approach must be taken for award of compensation under relevant laws. Adjudicatory authority has to take note of sufferings of injured person including his inability to lead full life, his incapacity to enjoy normal amenities and his ability to earn. Courts/Tribunals must have broad based approach and may indulge in some guesswork in determining quantum of compensation, *S. Manickam v. Metropolitan Transport Corpn. Ltd.*, (2013) 12 SCC 603 : (2014) 2 SCC (L&S) 588 : (2014) 4 SCC (Cri) 435.

► **Cause of action.**—Cause of action underlying Section 1-A, sounds in tort, *Damini v. Jodhpur Vidyut Vitran Nigam Ltd.*, (2017) 9 SCC 443.

► **Applicability of Limitation Act, 1963.**—Once a specific period of limitation is referable to any of the entries in Schedule to Limitation Act, 1963, then the residuary Article 113 cannot be invoked. In this case, for a suit for damages under Fatal Accidents Act, 1855, which is an action in tort, Article 82 provides for a specific period of limitation viz. two years from date of death of deceased. Part VII of Schedule in which Article 82 falls, deals with "suits relating to tort". Therefore, when a suit for compensation is filed under Fatal Accidents Act, same has to be filed within two years as prescribed under Article 82 of Limitation Act, 1963. It is also to be noted that there is no particular period of limitation under Fatal Accidents Act, 1855. Therefore, suit under Section 1-A of Fatal Accidents Act, 1855 has to be filed within two years, *Damini v. Jodhpur Vidyut Vitran Nigam Ltd.*, (2017) 9 SCC 443.

2. Not more than one suit to be brought.—Provided always that not more than one action or suit shall be brought for, and in respect of, the same subject-matter of complaint [* * *]⁵:

Claim for loss to estate may be added.—Provided that, in any such action or suit, the executor, administrator, or representative of the deceased may insert a

5. Repealed by the Limitation Act, 1871 (9 of 1871).

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.

CASE LAW ▶ Alternative remedy.—Section 19 of the Workmens' Compensation Act, 1923 does not abrogate the remedy of civil suit available under the Fatal Accidents Act, *Minerals and Chemicals v. Thevan*, (1992) 2 LLJ 769.

▶ **Who can file claim for damages.**—Damages for loss caused to the estate of the deceased cannot be claimed by a person who has no legal right to succeed the estate, *Union Coop. Insurance Society v. Bhartiben*, AIR 1979 Guj 121.

▶ **Assessment of damages.**—Loss to the dependants and loss to the estate should be jointly considered if the claimants are the same, *Union Coop. Insurance Society v. Bhartiben*, AIR 1979 Guj 121.

Where the income of the deceased was not such as to add accretion to the estate after maintaining the family, the question of loss to the estate does not arise, *Dewan Hari Chand v. MCD*, 1981 ACJ 131.

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

4. Interpretation-clause.—The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is say, ⁶ [* * *] the word “person” shall apply to bodies politic and corporate; and the word “parent” shall include father and mother, and grandfather and grandmother; and the word “child” shall include son and daughter, and grandson and grand-daughter, and step-son and step-daughter.

6. The words “words denoting the singular number are to be understood to apply also to a plurality of persons or things, and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and” were *repealed* by the Repealing and Amending Act, 1914 (10 of 1914), Sch. II.