

# The Fatal Accidents Act, 1855

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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:

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

(2) It extends to the whole of India <sup>2</sup>[\* \* \*]

<sup>3</sup>[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.

<sup>4</sup>[\* \* \*] 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.

**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*, 1965 SCC

1. Ins. by Act 3 of 1951, S. 3 and Sch. (w.e.f. 1-4-1951).

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).

The Act has been enforced in Sikkim w.e.f. 31-12-1984.

3. Renumbered by Act 3 of 1951, S. 3 and Sch. (w.e.f. 1-4-1951).

4. The words “And it is enacted further that” omitted by Act 10 of 1914, S. 3 and Sch. II (w.e.f. 17-3-1914).

OnLine Raj 1, See also *Manjulagoari v. Gowardhandas Harjiwandas Raval, Mt. Manjulagoari v. Gowardhandas Harjiwandas Raval*, 1954 SCC OnLine MP 102.

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*, 1961 SCC OnLine SC 36, See also *M.A. Rahim v. Sayari Bai*, 1972 SCC OnLine 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, *Oriental Fire and Genl. Ins. Co. Ltd. v. Kamal Kamini Das*, 1971 SCC OnLine Ori 3.

Provisions of Legal Representatives Suits Act, 1855 and Fatal Accidents Act operate in different fields, *Rajjan v. Indrapal*, 1981 SCC OnLine All 75.

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, *K.S.R.T.C. v. A.R. Satishchandra*, 1980 SCC OnLine Kar 29.

► **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*, 1961 SCC OnLine SC 36.

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*, 1996 SCC OnLine Bom 506.

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*, 1996 SCC OnLine Bom 506.

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 Corporation of Delhi*, 2003 SCC OnLine Del 662.

► **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 in Council v. Bhanwari Devi*, 1960 SCC OnLine All 88.

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 Das*, 1981 SCC OnLine Raj 28.

While considering a claim for compensation upon the death of an infant the possibility of contribution towards parents after marriage should be considered, *Patel Hirabhai Chhaganlal v. Gujarat State Road Transport Corporation, Gita Mandir, Ahmedabad*, 1981 SCC OnLine Guj 19.

► **Entitlement to compensation.**—Right of persons entitled to receive compensation under Fatal Accidents Act is not affected by Sections 100 and 110-A of Motor Vehicles Act, *Moti Lal v. S. Guru Bachan Singh*, 1979 SCC OnLine All 57.

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. K.S.R.T.C.*, 1980 SCC OnLine Kar 104, See also *Gurmit Singh v. Ajit Singh*, 1977 SCC OnLine P&H 69.

► **Alternative suit.**—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. Satyabati*, 1965 SCC OnLine Pat 38.

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*, 2002 SCC OnLine Gau 46.

► **Legal representative.**—Legal representative means the legal heirs of the deceased who can also represent the estate of the deceased, *Dewan Hari Chand v. Municipal Committee of Delhi*, 1980 SCC OnLine Del 157 (Dictionary meaning relied on), See also *Bijay Kumar Mahaseth v. Dinanath Jha*, 1980 SCC OnLine Pat 53.

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, *Moti Lal v. S. Guru Bachan Singh*, 1979 SCC OnLine All 57.

► **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. Madhya Pradesh State Road Transport Corporation*, 1982 SCC OnLine MP 71.



Application for compensation filed by the father of the deceased in a representative's capacity on behalf of all the legal representatives is maintainable, *Bijay Kumar Mahaseth v. Dinanath Jha*, 1980 SCC OnLine Pat 53.

Application by father of deceased shall be deemed to be on behalf of the mother also, *Kasturi Lal v. Prabhakar*, 1968 SCC OnLine MP 9.

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*, 1969 SCC OnLine Ker 91.

Right of children to get compensation cannot be defeated because of remarriage of their mother, *Mt. Manjulagoari v. Gowardhandas Harjiwandas Raval*, 1954 SCC OnLine MP 102.

► **Legal representatives 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 of Himachal Pradesh v. Dole Ram*, 1981 SCC OnLine HP 3.

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 SCC OnLine Mad 2715.

► **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.

The determination of compensation based on multiplier method is the best available means and the most satisfactory method and must be followed invariably by tribunals and the courts, *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65 : (2013) 3 SCC (Cri) 826.

► **Computation of Compensation.**—While computing compensation, the approach of the tribunal or a court has to be broad based and sometimes it would involve some guesswork as there cannot be any precise formula to determine the quantum of compensation, *S. Manickam v. Metroplitan Transport Corpn. Ltd.*, (2013) 12 SCC 603 : (2014) 2 SCC (L&S) 588 : (2014) 4 SCC (Cri) 435.

► **Period of Limitation.**—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. Also, when a suit for compensation is filed under the Fatal Accidents Act, 1855, the same has to be filed within the period of two years as prescribed under Article 82 of the Limitation Act, 1963, *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 [\* \* \*]<sup>5</sup>:

**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 claim for, and recover any pecuniary loss to the estate of the deceased occasioned

5. The words "and that every such action shall be brought with in twelve calendar months after the death of such deceased person" omitted by Act 9 of 1871, S. 2 and Sch. I (w.e.f. 24-3-1871).

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*, 1991 SCC OnLine Ker 105.

▶ **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 Co-operative Insurance Society Ltd. v. Bhartiben*, 1978 SCC OnLine Guj 28.

▶ **Assessment of damages.**—Loss to the dependants and loss to the estate should be jointly considered if the claimants are the same, *Union Co-operative Insurance Society Ltd. v. Bhartiben*, 1978 SCC OnLine Guj 28.

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. Municipal Committee of Delhi*, 1980 SCC OnLine Del 157.

**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, <sup>6</sup> [\* \* \*] 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.

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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" omitted by Act 10 of 1914, S. 3 and Sch. II (w.e.f. 17-3-1914).

