CHAPTER 1

INTRODUCTION
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LAW AS AN INSTRUMENT OF SOCIAL JUSTICE:

It is very well accepted that justice rendered in the courts of law is not natural justice but justice according to law. And it is also admitted that some amount of rough justice is unavoidable in every legal system. But it should not result in a miscarriage of justice. How rough the justice is, despite upon the particular system in operation. First I shall try to discuss in brief the introduction to the Fatal Accidents Act in England and then the cases which think are open to criticism.

Fatal accident legislation has originated in England. This was in year 1846. It is also known as lord Campbell’s Act, after the mover of the Bill. Undoubtedly it is a good piece of legislation. It caught the imagination of the people so much that it came to be reproduced in almost all the common law. Within a period of nine years it has found in the statute book of India much earlier than the Penal Code, Contract Act etc. How far the people of India have reaped the fruits of this benevolent
old enough to become sufficiently well known. And the judiciary in India is no more in a stage of infancy to say that it is ill-equipped to deliver the goods to the people. I do not mean to suggest that everything is misfired but the judicial trends are sufficiently disturbing.

As far back as 1808 Lord Ellenborough has laid down in the well-known case of Baker v. Bolton¹ that the death of a human being cannot be complained of in a civil court ². In the wake of the industrial revolution fast moving vehicles and other incidents of industrialization, which became more and more pronounced in the years to come, began to take a heavy toll of human life. The legislation in England became alert to the situation. The result is the Fatal Accidents Act of 1846. The Act did not abolish the rule in Baker v. Bolton,¹ but it provided for an altogether different cause of action which is often explained by referring to the words of Lord Blackburn in S Seward v. The Vera Cruz².

1. (1808) 1 Camp 493.

2. (1884) 10 AC 59 (70) (HL). This principle has been reaffirmed by the House of Lords in Admiralty Commissioners v. S.S. America, 1917 AC 38.
new in its species, new in its quality, new in its principle, in every way new.

The main question under the Act is: The nature of the cause of action, beneficiaries is very important. Section I of the 1846 Act which is literally reproduced in the Indian Act says,

"Whomsoever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect in such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof than and in every such case the person who would have been liable if death had not ensured shall be liable to an action 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."

The section recognizes a right to recover damages (in the dependents mentioned in the Act) if—

1. Death of the deceased has been caused by wrongful act, neglect or default;

2. Provided the wrongful act, neglect or default is such if the deceased had not been killed, he would have maintained an action
The words "wrongful act, neglect or default" are of wide import but they are to be understood in the context of the legislation. The very title of the Act, Fatal Accidents Act is a suggestion to this effect. The rule in Baker v. Bolton ¹ is still a good law. The cause of action is recognized not in the deceased himself or his representatives but in the dependents of the deceased mentioned in the Act. And it is generally accepted that loss of dependency is the crux of the legislation. In Wallis v. Commonwealth ² the claim of the widow of the deceased was not allowed because the very basis of the legislation, that is dependency had disappeared with her remarriage.

The legislation has wisely restrained from laying down many rules for the calculation of dependency. It has left it to the discretion of the judiciary. There is certainly an element of rough justice. The courts have however worked out a beaten path. Guidance for the calculation of dependency is laid down in the leading cases like Davies v. Powell Duffy Associated Collieries Ltd.³.

1. (1808) 1 Camp 493.
2. (1946) 73 CLR 105.
3. 1942 AC 601: (1942) 1 All ER 657 (HL).
Nance v. British Columbia Electric Railway Co. Ltd., Taff Vale Railway Co. v. Jerkins etc. The substance of these decisions, for the sake of simplicity, may be expressed in the following way:

Ascertain the annual income of the deceased. If he is a salaried man or businessman, i.e. a man with regular income no problem arises. If one does not have a regular income, or the services rendered cannot be quantified in terms of money; or if there were bright chances of supporting the dependents in near future, etc. the court will have to decide how many more years he would have extended this help to the dependents. This is ascertained by having regard to the age, condition of his health and the type of general vicissitudes, he would have been expressed in his profession. By some such enquiry the court will arrive at a multiple. In any case, it should not be more than 15 multiples. Otherwise it may result in gross injustice to the defendant and his family. Deduction has to be made for what the deceased would have spent in himself from the annual income. While multiplying the annual dependency by the number of multiples effect a further deduction is necessary because the whole amount is given at a time.
The court has to further ascertained with regard to each dependent, how long he would have continued to be the dependent. This varies according to the age, conditions of employment in the country, chances of remarriage (in case of a widow) etc. Then dependency is distributed according to the condition of each dependent. This is indeed rough justice, but at least there is a method in it.

The Fatal Accidents Act, 1855, has reproduced Lord Campbell's Act in India. The Act also permits the representative of the deceased to inset in the action a claim for any pecuniary loss to the estate of the deceased. The two heads of claim are different in their legal character and incidents though they arise out of the same facts. One is recoverable for the benefit of the persons mentioned in the Act while the other goes to the benefit of the estate. Claim under the second head also include damages for physical suffering and mental agony and for the loss of expectation of life.

Reported cases on Fatal Accidents Act are not very many in India. The few cases reported have arisen from motor and rail accidents. Surprisingly the benefits of the Act have been extended even to murder, cases.
For instance in Jagannathsingh v. Pragi Kinwar one Mr. Jai Ram was murdered. In fact he was shot dead by the defendants. The suit was instituted by Jai Ram’s widow for damages for the loss of company and support under the Fatal Accidents Act. The court below found that the defendants had caused the death of Jairam and the suit was maintainable and the plaintiff was awarded a sum of Rs. 2000. On appeal the feeble contention of the appellant’s counsel that the action was not covered by the legislation was categorically set aside. Bhargava, J. setting aside his contention observed:

"The appellant’s learned counsel has contended that the remedy provided by the Act must be confined to an action for the injury caused to the deceased and in respect of which he could have maintained an action in case he had survived; but the intention of the Legislation was to provide an independent remedy by way of compensation for loss suffered by the family of the deceased. The wrongful act by which death is caused is clearly an actionable wrong."

1. AIR 1949 All 448.
The right given by the Act to the family to obtain compensation for such an actionable wrong is quite independent of the right which the deceased would have had in case he had survived it can be exercised "notwithstanding the death of the person injured".

Yet in another case, i.e. in Manjulagoari v. Gowardhandas Harjiwandas Raval a father murdered his own son. He was convicted. In a suit under the Fatal Accidents Act, the son's widow succeeds. In this case it was neither continued nor doubted that such an action is maintainable, under the Act. While interpreting the words, 'wrongful act, neglect or default ' a certain amount of rough justice may come into play when persons are killed under fast moving vehicles but to extend the benefits of legislation to the dependents of the murdered man is certainly outside the purview of this legislation.2

1. AIR 1956 Nag. 86.

2. This is the message which the author tried to convey to his advocate friends in India through his article in AIR 1978, so that they may drive home the perversity of justice effected by the decisions by launching civil suits under the Act, after every successful murder trial.
It is also interesting to examine some of the decisions on the calculation of dependency. It is good to remember at this stage the nature of the cause of action under the Act, new in its species, new in its quality, new in its principle and in every way new. It would be better if this cause of action had tried separately. But the Indian legislation clubbed this with the loss caused to the estate of the deceased because of his death. In any case the issue of negligence is unavoidable. Indian Court practice is to decide motor accidents claims also in the same suit. Besides this the Indian courts doctrine “for convenience sake” permits them to decide all the appeals arising out of the same situation the same judgment. As a result the element of rough justice takes precedence. In M.P.S.R.T. Corpn. V. Sudhakar 1 a bus accident resulting in deaths and injuries to people had taken place. Sudhakar’s wife Smt. Usha and her young child aged one year were killed on the spot. Smt. Indubala Vhandari and her young son Shaileshkumar aged about two and half years received severe injuries. Similarly Vasudeo Vyas also received severe injuries on account of the boiling water from the radiator. As a result

1. AIR 1968 MP 47.
these injured persons made claims before the Claims Tribunal. Sudhakar claimed compensation for the injuries caused to him as also for the death of his wife and young son. The Court thought that it would be convenient to deal with these appeals in different loss 1.

Now the Learned Judge of the Madhya Pradesh High Court, P.K. Tare and Surajbhan, were called on to decide damages of the death of one year old child (the issue of the wife is discussed in the latter part of the Article.) It was contended though meekly that the damages for the death of the child of one year is speculative and so they should not be allowed. The Learned Judge observed 2:

"The contentions of the learned counsel for the appellant are that no damages whatsoever should be awarded in the case of death of a child, as the probable benefit would be merely speculative. We are unable to accept this contention. It is true that there may be many ifs and buts in the case of a child giving pecuniary benefits to its parents and after completing its own education. But we are unable to accept the contention that no damages whatsoever should be

1. Attempt has been made to put this in the language of the court.

2. AIR 1968 MP 47, 52.
awarded in the case of death of a child. The loss is undoubtedly there. In the present case, as is clear from the evidence on record. Mrs.Kotasthane was a healthy woman, aged 23 years. Even from the Photograph Ex. P-6, it is clear that the child was very healthy. Even Sudhakar is a healthy young man. He has suffered not only the physical injuries, but also mental agonies regarding the death of his wife and his only child. (Emphasis supplied)

The learned Judges did not say why they were unable to accept the contention. Of course, there is an obligation on the part of the learned counsel to supply the court with authorities in support of his contention. And at the same time the court is bound to explain (at least it is a healthy tradition) why it cannot accept the contention. The italicized portion of the judgment would disclose the irrelevancy and the quality of judgment, so far as the Fatal Accidents Act is concerned. The court however brought down the amount of damages for the death of the child of one year from Rs.7500 to Rs. 5000.
Concord of India Insurance Co. Ltd. v. C.K. Subramonia Iyer and Govt. of India v. Jeevaraj are two other cases where the claims for the death of children under Fatal Accidents Act were involved. In both cases the victims were infants of 8 and 9 years studying in schools. In the first case the High Court set aside the award of the court below saying that there was a mere speculative possibility of benefit but not a reasonable probability of pecuniary advantage. In the second case the court awarded Rs.5000. But the Court’s observations are equally interesting:

Where the evidence was that the deceased a boy of 8 years studying in Std.III in Junior Basic School was bright, quite healthy and very smart and used to be at the top of his class throughout, was devoted to his parents and affable in nature, Rs. 5000 was held to be reasonable sum.

The above observations only show that a favorably disposed court has to pick up some impressive evidence to award damages. Jai Singh v. Mansha Ram was a case where the victim was an adolescent of 17

1. AIR 1964 Ker 209  
2. AIR 1963 HP 37.  
3. AIR 1974 Mys. 17
years, studying in school. The court awarded Rs. 7680 on the proof that
the deceased was running a tea shop in his leisure time and thereby
carning about two rupees a day.

In cases where the victims are below five years the claims
are not usually allowed. In such cases parents do suffer an irreparable
loss, especially in India where family planning is implement-ed, but it is
not the object of this legislation to bring such cases within its pale. Such
claims are rare and in England have almost disappeared after Barnett v.
Cohe'. In that case the court observed:

In the present action the plaintiff has not satisfied me that he
had a reasonable expectation of pecuniary benefit. His child was
under 4 years. The boy was subject to all risks of illness, disease,
accident and death. His education and upkeep would have been a
substantial burden to the plaintiff for many years if he had lived.

1. (1921) 2 KB 461.
An opinion is therefore expressed that the above decisions in India do not admit any general pattern in awarding damages under the Fatal Accidents Act (where the victims are children) and some are even open to criticism.

An Abdulkadar Ebrahim Sura v. Kashinath Moreshwar Chandani ¹ Patel, J. of the Bombay High Court allowed damages under section 1 of the Fatal Accidents Act. The Learned Judge observed ²:

Inasmuch as the section does not limit the claim only to pecuniary losses, but enables the claimant to make the claim in respect of the injury sustained by the claimant, it seems to us that the applicants are entitled to make a claim on this ground also.

The applicants say that they have lost the company of their wives. The Applicants are fairly old and having regard to the benefit that they would have got from the association of their wives, it would not be out of place to assess damages on this ground at Rs. 500 each.....

1. AIR 1968 Bom. 267.

2. Ibid. P. 270.
For this the learned Judge relied upon the observations of Scrutton, J. in Berry v. Humm & Co.¹ However Scrutton J.'s observations have nothing to do with the loss of consortium, but with services rendered gratuitously by a relative. There the learned Lord observed:

I can see no reason in particular why such pecuniary loss should be limited to the value of money lost, or the money value of things lost, as contribution of food or clothing and why I should be bound to exclude the monitory incurred gratuitously by a relative, if there was a reasonable proposal of their being rendered freely in future but for death.

In fact the Calcutta High Court in the leading case of Jeet Kumari Poddar v. Chittagong E. & E. Supply Co. Ltd.² and the Assam High Court in Nand Singh v. Abhyabala Debi³ have held that sympathetic damages for the loss of companionship etc. are not relevant under Fatal Accidents Act.

1. (1915) 1 KB 627.

2. AIR 1947 CAL 195.

3. AIR 1955 Assam 157.
In M.P.S.R.T. Corp. v. Sudhakar the deceased was the wife of the plaintiff. She was aged 23 years and was working as a physical Instructress. In awarding damages of Rs. 50,000 the court allowed 35 multiples. The court observed:

For six years, she might have earned less than maximum. Therefore, for those six years, we might put her income at Rs. 200 per months. But regarding the remaining period of her service, namely, 29 years, she could as well be expected to earn at the maximum of Rs. 250 per month. Thus, the loss of earning to the family would be Rs. 200 per month for six years and 260 per month for 29 years. Thus, normally, she could have earned Rs. 96,600. Giving allowance for her own expenses, in round figures, the family has been deprived of an income of Rs. 50,000 on account of the death of Mrs. Usha Kotasthane

Courts in England have said that the maximum multiples that may be allowed under the Act is 15. Otherwise it may result in injustice to the defendant and his family. Allowing 35 multiples is certainly wrong. There are judgments where 20 multiples were allowed.

1. AIR 1968 MP 45, 54.
In Jagannath Singh v. Pragi Kunwar the claim itself was Rs.2000. It was in fact a case where the main breadwinner of the family was killed whereas in Sudhakar Case where his wife was killed, the claim appears to be more than a lakh. In any case the vicious circle that claims are low because awards are discouraging and awards are low because the claims are low must be broken.

On the whole experience with the application of fatal accidents legislation in India is not very happy. Like every other piece of legislation, Fatal Accidents Act has not reached the people of India as it was expected. Number of reported cases under the Act justifies this conclusion. Being a well-meaning legislation its awareness should have been widespread.

1. AIR 1949 ALL 448.
2. AIR 1968 MP 47, 54.

M.P.S.R.T. Corp. v Sudhakar.

3. One more shocking thing which was learnt casually from the Chief Justice of a High Court is that they rarely have time to think seriously about the proper evaluation of the plaintiff’s violated right.
Whenever a piece of legislation from outside is produced, it is necessary to recast it so to suit the Conditions in India. The judiciary in India is very much under the influence of codes. Drafting of Section I of the Act is not very happy so far as India is concerned. People in India are likely to go by the strict letter of the law. Defects of this nature are very likely when one tries to express everything in one go. Perhaps such a method is alright for the British system. The expression ‘wrongful act’ or neglector default may include all killings. But that is not what the legislation aimed at. And again some rough statutory guidelines for the assessment of damages would have served a good purpose.