

**Sumer Singh Vs. Sidhartha**

**Sumer Singh Vs. Sidhartha**

**SooperKanoon Citation :** [sooperkanoon.com/679769](http://sooperkanoon.com/679769)

**Court :** Delhi

**Decided On :** Feb-29-2000

**Reported in :** II(2000)ACC8; 2001ACJ2044; 2000VAD(Delhi)1; 85(2000)DLT544; 2000(54)DRJ255

**Judge :** K. Ramamoorthy, J.

**Appeal No. :** FAO. No. 271 of 1983

**Appellant :** Sumer Singh;master Sidhartha;sumer Singh

**Respondent :** Sidhartha;oriental Fire and General Insurance Co. Ltd.;arun Jain and Oriental Fire and General I

**Advocate for Def. :** Mr. S.C. Nigam, Adv.

**Advocate for Pet/Ap. :** Mr. Sanjiv Behl, Adv

**Judgement :**

ORDER

**K. Ramamoorthy, J.**

1. The above six appeals have arisen out of the judgment rendered by the Motor Accident Claims Tribunal, hereinafter called the Tribunal, awarding compensation to the claimants, in the petitions for compensation filed on account of the accident which took place on the 14th of December, 1976 at about 6.30 a.m. in Sarvodaya

Enclave.

2. The claim petition No.78/78 was filed by Arun Jain. The claim petition No.79/80 was also filed by Arun Jain, and the claim petition No. 80/80 was filed by Master Sidhartha and Smti Padmini.

3. The person who was driving the car was Anil Kumar, who died on account of the accident the next day of the accident. His widow, Smt. Padmini Anil Kumar and his minor son, Sidhartha filed the claim petition No. 80/78 claiming a sum of Rs.5 lakhs. The Tribunal awarded a compensation of Rs.1,27,400/-.

4. Challenging the order of the Tribunal, the driver, Sumer Singh, of the truck, which was responsible for the accident according to the claimants, and the owner of the truck had filed FAO. 271/83. Shri Devinder Kumar Jain is the father of the deceased Anil Kumar.

5. The claimants came forward with a case that the deceased Anil Kumar Jain was 28 years of age at the time of accident. He had passed B.Com. from Shri Ram College of Commerce of Delhi University. He was a wholetime worker in Marale Re armament Force of India, with its Headquarters at Asia Plateau, Panchgani, Maharashtra. According to the claimants, he was provided free boarding and lodging, conveyance, and which could be quantified minimum Rs.1,200/ per month. The deceased, Anil Kumar, had widely travelled to, so far, Australia, Paupa, New Guinea, Hong Kong, New Zealand and Thailand and other places. He was also working as insurance agent and getting a nearly Rs. 2,500 to Rs. 3,000/- p.m. The widow, Padmini Anil Kumar, was pregnant at the time of the accident and the son was born after the death of Anil Kumar Jain. The deceased would have lived up to 80 years and would have earned 7 to 8 lakhs of rupees.

6. In the same car driven by Anil Kumar, there were other occupants, Virender Kumar Jain and Manju Jain. Virender Kumar Jain and Manju Jain had died on the spot at the time of the accident. Arun Kumar Jain and Manoj Jain in petition No.78/78 claimed compensation on the death of their mother, Smt. Manju Jain. In petition No. 79/78, they claimed compensation on the death of their father, Virender Kumar Jain.

7. FAO. 272/83 is filed by Sumer Singh and Shri Shanti Sarup Bharti, the driver and the owners respectively of the truck involved in the accident. They filed appeal with reference to the claim by respondents 1 & 2 in the appeal on the death of Ms.Manju Jain, where a sum of Rs.18,500/- was awarded by the Tribunal.

8. FAO.273/83 is with reference to the claim in petition No.79/78.

9. FAO.309/83 is an appeal by Arun Kumar Jain and Manoj Kumar Jain claiming higher compensation.

10. FAO.310/83 is again by Arun Kumar Jain and Manoj Kumar Jain.

11. FAO.311/83 is filed by Sidhartha, S/o Anil Kumar, and Smt.Padmini Anil Kumar, widow of Anil Kumar, claiming higher compensation.

12. With reference to the death of Anil Kumar Jain, the FAO.271/89 and FAO.311/83 have to be considered together.

13. I shall now take up the claim of Sidhartha, and Padmini Anil Kumar, arising out of the death of Anil Kumar Jain. The Tribunal, considering the evidence, placed on record before it, framed the following issues in petition No.80/78:-

1. Whether the deceased Shri Anil Kumar received fatal injuries in accident caused on 14.12.76 due to rash and negligent driving of truck No.TMB/DLL-8951 on the part of the respondent No.3?

2. Whether the petitioners are the legal representatives of the deceased?

3. Whether the petition is bad for mis joinder and non joinder of necessary parties?

4. Whether the petitioners have no cause of action and petition is not maintainable for the reasons stated in the preliminary objections?

5. Whether the accident was caused due to negligence of the driver of Car No.DLI-6993?

6. Whether the petitioners have no cause of action against respondent No.2?

7. To what amount of compensation, if any, are the petitioners entitled and from which of the respondents?

14. In respect of the death of Manju Jain, FAO.272/83 and FAO.309/83 have to be considered together.

15. In petition No.78/78, the following issues were framed by the Tribunal:-

1. Whether the deceased Smt. Manju Jain received fatal injuries in accident caused on 14.12.76 caused due to rash and negligent driving of truck No.TMB/DLL-8951 on the part of the respondent No.3?

2. Whether the petitioners are the legal representatives of the deceased?

3. Whether the petition is bad for mis joinder and non joinder of necessary parties?

4. Whether the petitioners have no cause of action and petition is not maintainable for the reasons stated in the preliminary objections of the WS?

5. Whether the accident was caused due to negligence of the driver of Car No.DLI6993?

6. Whether the petitioners have no cause of action against respondent No.2?

7. To what amount of compensation, if any, are the petitioners entitled and from which of the respondents?

16. With reference to the death of Virender Kumar Jain, the matter was considered by the Tribunal in petition No.79/78 and the appeals are FAOs.273 & 310/83. The Tribunal framed the following issues:-

1. Whether the deceased Virender Kumar Jain received fatal injuries in accident caused on 14.12.76 caused due to rash and negligent driving of truck No.TMB/DLL-8951 on the part of the respondent No.3?

2. Whether the petitioners are the legal representatives of the deceased?

3. Whether the petition is bad for mis joinder and non joinder of necessary parties?

4. Whether the petitioners have no cause of action and petition is not maintainable for the reasons stated in the preliminary objections of the WS?

5. Whether the accident was caused due to negligence of the driver of Car No.DLI-6993?

6. Whether the petitioners have no cause of action against respondent No.2?

7. To what amount of compensation, if any, are the petitioners entitled and from which of the respondents?

17. The main question taken up by the Tribunal was, whether the driver of the truck No.TMB/DLL-8951. was rash and negligent, and whether the driver of the car No.DLI-6993 was negligent in driving the car, and this question was discussed on Issues 1 & 5 in all the three cases.

18. On the fateful day, in the morning(14th of December, 1976), Virender Kumar Jain, his wife, Manju Jain, were traveling in the car No.DLI-6993 driven by Anil Kumar Jain. They left from Sarvodaya Enclave for new Delhi Railway Station. Anil Kumar Jain was driving the car so that Virender Kumar Jain and Manju Jain could catch the train from New Delhi Railway Station which was to leave for Andhara Pradesh. At about 6.30 a.m. at Safdarjung Crossing, the truck No.TMB/DLL-8951 was coming from the right side. The truck and the car had a collision which was the cause for the death of three persons.

19. The question posed by the Tribunal was, as I had noticed above, whether the driver of the truck was responsible or the driver of the car was responsible for the accident. On behalf of the claimants, one Mr. S.S. Jolly was examined as PW-1. Lala Kanchi Mal Jain was examined as PW-3. Mr. R.D. Mathur was examined as PW-3. Mr. A.N. Bhatia was examined as PW-4. Mr. D.K. Jain was examined as PW-5. PW-6 was Smt. Padmini. Manoj Kumar Jain was examined as PW-7. Mr.Kanwal Singh Singh, Sub-Inspector was examined as PW-8. Mr. Shis Pal was examined as PW-9. Dr.T.D. Dogra, who conducted the post mortam examination, was examined as PW-10. Brij Lal, Sub-Inspector was examined as PW-11.

20. The Tribunal had to consider the defense of the driver and the owner of the truck that the driver of the car was rash and negligent. And in this behalf, the Tribunal referred to the evidence of PW-9, Mr. Shis Pal. The driver of the truck was examined as R.3.W.1. The Tribunal held that the liability should be apportioned between the truck driver and the car driver in the ratio 75:25. The Tribunal had also noticed the fact that the truck driver, Sumer Singh, was convicted by the trial court, who was acquitted in the appeal and that had no bearing on the question as laid down by this Court in 'Smt. Nirmala Sharma & Others Vs . Raja Ram & Another', : AIR1982 Delhi233 .

21. Mr. Shis Pal, PW-9, who claimed to have witnessed the accident, had stated that the truck was coming at a very high speed and the car was hit by the truck in such a way which had caused a great impact killing three people in the car. A suggestion was put to him that the truck was coming at a slow speed. The Tribunal had also referred to the site plan prepared by the investigating officer, which was exhibited as PW-8/1. The Tribunal had also noted the width of the Ring Road and the Aurbindo Road. The Tribunal had assumed that the site plan PW-8/1 did not give a correct picture about the width of the Aurbindo Road and the Ring Road. According to the Tribunal, in the site plan, Aurbindo Road is shown to be wider than the Ring Road. The Tribunal thought that this aspect would be very relevant to decide the question that who was rash and negligent in driving, whether the truck driver or the driver of the car.

22. From the narration of events by the Tribunal, it is clear that the car coming from Sarvodaya Enclave had crossed almost half of the Ring Road and by the time truck had come, the collision became imminent. The evidence of R.3.W.1, the driver of the truck, would become very relevant and the Tribunal itself had stated:

'As against this, the respondent No.3 examined himself as R.3.W.1 and states that on 14.12.76, he was driving truck No.DLL-8951 and was proceeding from Lajpat Nagar to Dhaula Kuan. The speed of his truck was 30 to 35 kms. per hour. According to him the horn was functioning properly. The time was about 6 AM and head lights of the truck were on. When he reached Safdarjung Crossing there was amber light only to caution the driver. He started crossing after seeing all sides of

the road and when he reached more than half of the crossing, one car came from Mehrauli side. He states that the car make ambassador came at a speed of 60 to 65 km per hour and had come from his left side. The front right side of the car struck his truck near the diesel tank portion on the left side body. After the accident, the truck came to a halt at a distance of 5 to 10 yards from the place of impact. He further deposes that this accident occurred when the truck had reached near signal light pole on the other side of the crossing. He further states that in order to avoid the accident, he steered his truck towards right but the accident could not be avoided. According to him, the front portion of the car was badly damaged and the car turned in the same direction in which his truck was proceeding. The rear right window of the car struck against the rear left tyre of his truck, as a result of which one lady sitting in the rear side of the car came out and fell down on the road. He further states that the light of the car were off when it came and dashed against the truck. In cross-examination, he deposes that it was still dark and there was not much traffic on the road. He had started from Lal Kuan on Badarpur Mehrauli Road and had come to ring road via Kalkaji Road. He deposes that on the Ring Road also, he was coming at a speed of 30 to 35 kms per hour right from Lajpat Nagar. He stated that the maximum speed of truck can be 80 km per hour but he never drive his truck at a speed of more than 35 km per hour. He denied the suggestion that since it was open road and there was no traffic, he was driving his truck at a fast speed. He further states that before coming to the crossing, he had lowered down the speed to 30 km per hour. He states that he entered the crossing after looking both sides but he did not notice any car coming from Mehrauli side. He denied the suggesting that the car had already entered the crossing when the truck came at a fast speed and dashed against the car. He also denied the suggestion that the tuck hit the front portion of the car. He further denied the suggestion that actually the truck was at a fast speed and that he tried to pass the crossing before the car. He further states that after the impact, the car came to halt on the spot itself after taking turn after the impact. The diesel tank of the truck was badly damaged but there was no other damage to the truck. He denied the suggestion that there was no light or horn in the truck. He also denied the suggestion that he did not blow any horn before entering the crossing. He further states in the crossxamination that he noticed the

car for the first time when the truck was at a distance of 5 to 7 paces from the traffic pole on the other side of the crossing. He states that the truck stopped at a distance of 10 to 15 yards from the crossing after the impact.'

23. The investigating officer was examined as PW-8. It was he who had prepared PW-8/1, the site plan about the dimensions of the road. A reading of the evidence of the driver of the truck and PW-1 would show that the driver of the truck was coming at a very high speed and the driver of the car coming from Sarvodaya Enclave had crossed half of the Ring Road before the truck because of its high speed had interdicted the car, as it were, and had caused the accident and the car hit by the truck had swerved, and, therefore, it is the diesel tank of the truck which was found damaged. If the truck had gone at a normal speed as suggested by the driver, assuming the driver of the car was negligent, the impact would not have been so great to cause the death of occupants of the car. The accident was, it could easily be visualised, due to the truck hitting the car. therefore, it could be easily inferred that it was owing to the rash and negligence of the driver of the truck, the accident had occurred.

24. I am quite unable to accept the reasoning of the Tribunal that the driver of the car was responsible for the accident to the extent of 25%. While assessing the situation, one has to take into account the propensities of the drivers of the truck and the persons who were driving their own vehicles. The late Anil Kumar, who was driving the car, was not a professional driver. He had to drive the car to take Virender Kumar Jain and Smt.Manju Jain to New Delhi Railway Station to see them off. Normally, the Court has to consider the normal course of human conduct. Such persons would not drive the car at such a speed which could be characterised as rash and negligent. The truck coming from Lajpat Nagar was coming on the Ring Road. It was almost at the dawn at the peak of winter season in Delhi. He had not noticed the coming of the car which was on his left hand side and the moment he noticed the car, he could not do anything, and, therefore, the collision became unavoidable. The accident, as noticed by the Tribunal, had not occurred on the left side of the Ring Road from the side of the Truck. The truck was seen at the right side of the Ring Road. The truck, while hitting the car, had come to its right. therefore, the position, as found by the investigating officer, PW-

8, is to be considered. From this, it could be seen that if the driver of the truck had not come at a very high speed in the early morning, the accident would not have occurred. therefore, it was the driver of the truck who was driving the truck in a rash and negligent manner and it cannot be said that the driver of the car was driving the car in a rash and negligent manner. The view taken by the Tribunal that the liability could be apportioned at 75:25 between the truck driver and the car driver cannot be sustained, and that finding is set aside.

25. This would take me to the claim of compensation made by Sidhartha and Padmini. This is dealt with by the Tribunal in paragraph 27 of its judgment. PW-2, Lala Kanchi Mal Jain, the uncle of the deceased was examined. PW-2 stated that Anil Kumar Jain was 28-1/2 years old at the time of accident. The normal span of life in the family was 75 years. The deceased was doing a lot of work. Having regard to the nature of work done by him, he was capable of earning Rs.5,000/- per month plus perks. The deceased was maintaining a car and was having a very decent standard of living. Padmini Devi, the widow of Anil Kumar, was examined as PW-6. She deposed that she and her husband had come from Maharashtra in November, 1976 for the purpose of attending some marriage in Delhi. On the 14th of December, 1976, Anil Kumar had go to the New Delhi Railway Station to see off his uncle and it was at that time the accident took place. She had also deposed to the work done by the deceased and his way of life and his potential for earning. The widow had said that Anil Kumar had insured his life for Rs.60,000/-. From all this evidence, the Tribunal had fixed monthly income of the deceased at Rs.1,000/- p.m. Out of this, the Tribunal had deducted 1/3 for the personal expenses of the deceased and the dependency was fixed at Rs.800/- per month for the wife and the child. The Tribunal had noticed the fact that the normal life in India is about 70 years. The Tribunal had applied 20 years multiplier and fixed the compensation at Rs.1,92,000/-. The Tribunal has reduced this by 25% because the liability was apportioned and it was fixed at Rs.1,44,000/-. The Tribunal had deducted 15% on account of lumpsum payment of uncertainties of life. After having made the directions, the Tribunal had also directed for Rs.5,000/- for compensation for loss of expectation of life. Thus, the Tribunal had fixed the compensation at Rs.1,27,400.

26. Mr.S.C.Nigam, the learned counsel for Sidhartha and Padmini, submitted that the appellants should be entitled to compensation of Rs.25 lakhs. The learned counsel referred to the ruling of this Court in 'Delhi Transport Corporation Vs . Sudershan Yadav & Others' .

27. The learned Single Judge, in 'Delhi Transport Corporation Vs . Suder shan Yadav & Others' , referred to the circumstances under which the claim was made before the Tribunal in paragraph 2 of the judgment. The same reads as under:

'The respondents-claimants filed their claim petition under Section 110-A of Motor Vehicles Act, 1939, claiming compensation to the tune of Rs.6,00,000/- on account of death of their only son Ajit Singh in an Accident on 10.5.1980. The deceased had boarded the bus No.DHP 2061 on that day from Inter-State Bus Terminus(ISBT) at about 3 p.m. It is stated that when the deceased Ajit Singh was still on the footboard, the driver of the said bus started the bus suddenly without ensuring that all the passengers safely boarded the same. The bus was at a fast speed and took a sharp turn as a result of which the deceased was swung out and his head struck against another bus No.DLP 1598. The deceased received serious head injuries as a result of which he died in the hospital. It is further alleged that Mohinder Singh who was the driver of bus No.DLP 1598 did not keep the vehicle in proper manner and was thus negligent. The accident occurred mainly due to rash and negligent act of driving on the part of the driver of bus No.DHP 2061, Narain Singh. The deceased was the only son of the respondents and had passed B.E.(Mech) and was studying in MBA IIInd year and after completion of his course, he would have easily got a job for the initial salary of Rs.2,500/- per month. The deceased, it is stated, would have continued to provide financial help to the petitioners, who are his parents, at least for 30 years. On these pleadings, the respondentsclaim ants have claimed compensation for the sum of Rs.6,00,000/-.'

The Tribunal assessed the capacity of the deceased to earn at Rs.2,000/- per month and dependency at Rs.1,000/-. Dealing with this as pect, the learned Judge observed:

'In the present case, the deceased was a bright student of 24 years of age. He studied in the prestigious Institution of Engineering at Roorkee from where he

qualified and thereafter he joined MBA Course in Delhi University. The evidence has been placed on record to indicate that he had a bright future and would be in a position to earn a sum of Rs.2,500-3,000/- per month on completion of his course. Respondents-claimants are the parents of the deceased Ajit Singh and he was their only son. The precious life has been lost and there can be no compensation on this score. It is also relevant at the same time that one cannot lose sight of the practical realities of life. The parents often stay with their only son and are expected to be looked after by him in their old age. There was also likelihood of the deceased marrying in near future and his contribution and service to the parents would have been affected to a large extent but each relation has to be cared for and the parents do not fall in the category of that relationship which the children ignore in this country. The parents are often loved and cared for by their sons and are a source of strength in their old age. The facts of the present case highlight the unfortunate state of affairs where the parents have lost their only son who could be a source of strength to them emotionally as well as financially and he would have obviously sustained them in their lifetime. But the marriage brings with it additional responsibility of a wife and then children. The parents also are part of the family and their presence does not lose much significance. The Tribunal has also considered the history of longevity in the family and has adopted a multiplier of 16years on the facts of the present case. He has also found a sum of Rs.1,000/- per month as a reasonable amount for the deceased to contribute for the parents which would represent the monthly loss to the respondentsclaimants as well as loss to the estate of the deceased. The learned Judge has also noted that the assessment of earning capacity of the deceased was rather modest for a person for such Engineering and Management qualification which would enable him to find much more lucrative job. The present salary structure of similarly qualified persons is a pointer in this direction. There is vast increase in the salary and other perquisites. therefore, the Tribunal was not oblivious of the fact that the deceased had a bright future ahead of him. In this situation, the monthly loss which was assessed at Rs.1,000/- per month seems to be rather on the lower side. The Tribunal has not taken into account the future prospects of the deceased who was a bright student. It will, therefore, not be inappropriate to take a practical and liberal view of the prospects of the future and in estimating the gross income it

will be reasonable to estimate the loss of dependency by having regard to the prospects or advancement in the future career, when there is evidence on record. This process was endorsed by the judgment of the Supreme Court in General Manager, Kerala State Road Transport Corporation Vs . Susamma Thomas : AIR 1994 SC1631 . The multiplier of 16, however, on the facts of the present case, is not impugned before me.

In view of the facts and circumstances of the present case, I am inclined to accept that the deceased would have easily contributed a sum of Rs.2,000/- which would represent monthly loss to the respondents and to the estate. therefore, the annual amount would come to Rs.24,000/- (Rs.2,000 x 12), which multiplied by 16 comes to Rs.3,84,000/-. I, therefore, assess the amount of damages in favor of the respondentsclaimants at Rs.3,84,000/-. This amount is in addition to a sum of Rs.10,000/- which has been awarded by the Tribunal for the loss of expectation of life.'

28. The Tribunal had completely ignored the potential of Anil Kumar to earn a considerable amount. Having regard to the family from which the deceased hailed, education, the work he was doing, his age and his capacity to earn rest of his life, one can easily fixed monthly income at Rs.3,000/- and deducting 1/3, dependency could be fixed at Rs.2000/-p.m. The Tribunal itself had applied the 20 years multiplier. Thus, the compensation will be Rs.2,40,000/-. The deduction made by the Tribunal on account of lumpsum payment of uncertainties of life cannot at all be sustained. That is a very unknown factor and that cannot form a component in assessing compensation.

29. In view of the discussions above, no question of contributory negligence would arise. Accordingly, the FAO.311/83 is allowed and FAO.271/83 filed by the driver and owner of the truck is dismissed.

30. The respondents in FAO.311/83 are directed to pay to the appellants in FAO.311/83 the sum of Rs.2,40,000/- with interest 12% p.a. from the date of filing of the claim petition till the date of payment.

31. The petitioners in claim petition 79/78, sons of Virender Kumar Jain, claim compensation on the death of their mother, Manju Jain. Here also the Tribunal had not taken note of the circumstances of the family and the financial position of the family, and assessed the loss of service of deceased, Manju Jain, only at Rs.150/- p.m. I am of view that it could be fixed at Rs.300/- p.m. Here also apportionment aspect is set aside. Applying the ten years multiplier, the amount would come to Rs.72,000/-. Towards the loss of expectation of service of deceased, Manju Jain, a sum of Rs.5,000/- was ordered by the Tribunal. That is affirmed. Consequently, the petitioners/appellants in petition No.79/78/FAO.309/83 shall be entitled to a sum of Rs.77,000/-. The respondents in FAO.309/83 shall pay to the appellants in FAO.309/83 a sum of Rs.77,000/- with interest @12% p.a. from the date of filing of the claim petition till the date of payment.

32. FAO.309/83 stands allowed and FAO.272/83 filed by the driver and owner of the truck stands dismissed.

33. Petition No.78/78 was filed by the sons of Virender Kumar Jain, Arun Kumar Jain and Manoj Kumar Jain. The Tribunal had referred to the business carried on by Virender Kumar Jain and also the business for which project reports had been prepared, and the potential of the business which had to be started by Virender Kumar. Having regard to the conspectus of the events noticed by the Tribunal, the loss of services of deceased, Virender Kumar Jain, was fixed at Rs.50,000/- is very much low. I am of the view that in the context of the overall view of the family and the affluence, the loss of services could be fixed at Rs.1 lakh. The Tribunal has awarded Rs.5,000/- for the loss of expectation of life. That is not interfered with by me. The apportionment aspect is set aside. The appellants in FAO.310/83 shall be entitled to a sum of Rs.1,05,000/-. The respondents in FAO.310/83 shall pay a sum of Rs.1,05,000/- to the appellants in FAO.310/83 with interest @ 12% p.a. from the date of filing of the claim petition till the date of payment.

34. FAO.310/83 stands allowed and FAO.273/83 filed by driver and owner of the truck stands dismissed.

35. There shall be no order as to costs.

