IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

ON THE 10th OF JULY, 2024

MISCALLENOUS APPEAL No.2350 OF 2020

(Smt. Sushila Dhurve and Other Vs.
Sukhlal Dhurve and Others)

(BY SHRI VINIT KUMAR MISHRA– ADVOCATE FOR THE APPELLANT)

(BY SMT. AMRIT KAUR RUPRAH* – ADVOCATE FOR THE RESPONDENT-INSURANCE COMPANY*)

This appeal coming on for admission this day, the court passed the following:

ORDER

With the consent of both learned counsel for the parties, heard finally at motion stage.

2. This appeal has been filed by the claimant/appellant under Section 173 (1) of the Motor Vehicles Act, 1988 against the award dated 07.03.2020 passed in MACC. No.1800/2018 (*Smt. Sushila Dhurve and Others Vs. Sukhlal Dhurve and Others)* by MACT, Jabalpur seeking enhancement of compensation.

3. Learned counsel for the appellants, after referring to para-17 of impugned award and relying upon ***Sebastiani Lakra and Ors Vs. National Insurance Company Ltd and Anr,*** reported in ***AIR 2018 SC 5034,*** submits that learned Tribunal has wrongly deducted amount of family pension from monthly salary of deceased. Further, after referring to para-19 of impugned award, it is urged that Tribunal has wrongly held that appellants No.5 and 6 were not dependent on deceased as they are major. Further, it is also urged that Tribunal has not awarded any consortium to appellants No.2 to 7. On above grounds, it is urged that compensation awarded by the Tribunal be suitably enhanced.

4. Learned counsel on behalf of respondent-Insurance Company, after relying upon ***Bhakra Beas Management Board Vs. Kanta Aggarwal (Smt) and Others, (2008) 11 SCC 366***, submits that Tribunal has rightly deducted amount of family pension from monthly income of deceased. It is also urged that appellants No.5 and 6 being major son of deceased cannot be treated as dependent on deceased. Therefore, Tribunal has rightly held that they were not dependent on deceased. Further, it is also urged that Tribunal has not deducted any amount for income tax. Therefore, compensation awarded by the Tribunal is just and proper and no enhancement is required. Hence, appeal filed by appellants be dismissed.

5. I have heard learned counsel for the parties and perused the record of the case.

6. Perusal of rival submissions of the parties reveal that in the instant case, following issues arise for determination before this Court:-

(i) whether a major son is entitled to receive compensation in case of death of his father in an accident arising out of use of motor vehicle under Motor Vehicles Act, 1988 ?

(ii) what is "just" compensation and whether it can be a bonanza/windfall ?

(iii) while calculating compensation under Motor Vehicles Act, 1988, what deductions are permissible and whether family pension can be deducted ?

(iv) whether Income Tax is liable to be deducted while calculating compensation under Motor Vehicles Act, 1988 ?

(v) whether any enhancement is required in the compensation awarded by the Tribunal, if so, the amount ?

7. <u>ISSUE NO (i) Whether a major son entitled to receive compensation in case of death of his father in an accident arising out of use of motor vehicle under Motor Vehicles Act, 1988</u>:-

8. Perusal of para-19 of impugned award reveals that learned Tribunal has held that appellants Girish and Ashish cannot be treated as dependent on deceased as they are major sons. Now question arises as to whether solely on the ground that appellants No.5 and 6 are major sons, they cannot be treated as dependent on deceased ?

9.For deciding above issue, it would be appropriate to refer/quote relevant provisions of law as well as decisions of Hon'ble Apex Court and of this Court.

10. Hon'ble Apex Court in ***Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, (1987) 3 SCC 234,*** has held as under:-

> "**13.** 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……. 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……...We express our approval of the decision in ***Megjibhai Khimji Vira v. Chaturbhai Taljabhai [AIR 1977 Guj 195]*** 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.
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> **15…….T**he 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 representative" in section 110-A of the Act should be given a wider meaning & it should not be confined to the spouse, parent & children of the deceased."

11. Issue before Hon'ble Apex Court in ***Manjuri Bera Vs. Oriental Insurance Co. Ltd {2007 ACJ 1279 (SC)*** was that whether a married daughter could maintain a claim petition in terms of section 166 of the Act & whether she was entitled to any compensation as she was not dependent upon the deceased, deciding above issue, Hon'ble Apex Court held that even a married daughter is a legal representative & she is certainly entitled to claim compensation.

12. Hon'ble Apex Court in ***Montford Brothers of St. Babriel and Anothers Vs. United India Insurance and Another, (2014) 3 SCC 394***

(Three judge Bench), after referring & relying upon para 13 of Gujrat SRTC (supra), has held as under:-

> **"9.** The Act does not define the term "legal representative" but the Tribunal has noted in its judgment and order that clause (c) of Rule 2 of the Mizoram Motor Accidents Claims Tribunal Rules, 1988, defines the term "legal representative" as having the same meaning as assigned to it in clause (11) of Section 2 of the Code of Civil Procedure, 1908, which is as follows:
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> "
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> 2. (11) 'legal representative' means 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;"
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> **10.** From the aforesaid provisions it is clear that in case of death of a person in a motor vehicle accident, right is available to a legal representative of the deceased or the agent of the legal representative to lodge a claim for compensation under the provisions of the Act. The issue as to who is a legal representative or its agent is basically an issue of fact and may be decided one way or the other dependent upon the facts of a particular case. But as a legal proposition it is undeniable that a person claiming to be a legal representative has the locus to maintain an application for compensation under Section 166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue.
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> **12.** Para 13 of the Report of ***Gujarat SRTC case [(1987) 3 SCC 234*** reflects the correct philosophy which should guide the courts interpreting the legal provisions of beneficial legislations providing for compensation to those who had suffered loss……..
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> **13**. From the aforesaid quoted extract it is evident that only if there is a justification in consonance with principles of justice, equity and good conscience, a

> dependent of the deceased may be denied right to claim compensation……...
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> **14**. On behalf of the appellants it has been rightly contended that the proceeding before the Motor Vehicles Claims Tribunal is a summary proceeding and unless there is evidence in support of such pleading that the claimant is not a legal representative and therefore the claim petition be dismissed as not maintainable, no such plea can be raised at a subsequent stage and that also through a writ petition. The objection filed on behalf of the Insurance Company, contained in Annexure P-2, does not raise any such objection nor is there any evidence led on this issue…….”

13. Above issue has also been dealt by Hon’ble Apex Court in ***National Insurance Company Limited Vs. Birender and Others, (2020) 11 SCC 356***. Hon’ble apex Court, after referring and relying upon ***Manjuri Bera (supra)***, held as under:-

> **“12.** The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependent on the deceased, would be still covered by the expression “legal representative” of the deceased. This Court in ***Manjuri Bera (2007) 10 SCC 643*** had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the legal representative concerned. Notably, the expression “legal representative” has not been defined in the Act. In ***Manjuri Bera, (2007) 10 SCC 643*** the Court observed thus: (SCC pp. 647-48, paras 9-12)
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> > “9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal

representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

11. According to Section 2(11) CPC, "legal representative" means 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……...

12. As observed by this Court in ***Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique AIR 1989 SC 1589*** the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in ***Gujarat SRTC v. Ramanbhai Prabhatbhai, (1987) 3 SCC 234,*** a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

13. In para 15 of ***Manjuri Bera, (2007) 10 SCC 643,*** while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of S.H. Kapadia, J., as his Lordship then was, it is observed that there

> is distinction between "right to apply for compensation" and "entitlement to compensation". **The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate.** Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of Respondents 1 and 2 (claimants) even though they are major sons of the deceased and also earning.
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> **14.** It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. **Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only……**."

14. Further, it is well established that even if legal heir of deceased is not dependent on deceased, still such legal heir is entitled to receive compensation, as held by Hon'ble Apex Court in ***New India Assurance Company Limited Vs. Vinish Jain (2018) 3 SCC 619***, ***National Insurance Company Vs. Birendra and others (Supra)*** and by Division Bench of this Court in ***M.P. State Road Transport Corporation Vs. Sohan Lal 2000 ACJ 186.***

15. In the instant case, admittedly on the date of accident, appellants No.5 and 6 were major sons of deceased but there is nothing on record to show that they were earning and were having independent source of income. Hence, if factual position of the case is examined in the light of legal principles referred in the preceding paras, then, in this Court's considered

opinion, appellants No.5 and 6 are to be treated as dependent on deceased for the purpose of entitlement of compensation.

16. Thus, in the instant case, there are seven dependents. Hence, in view of law laid down **Smt. Sarla *Verma vs. Delhi Transport Corporation and Another, AIR 2009 SC 3104***, one fifth is to be deducted for personal and living expenses.

17.<u>ISSUE NO. (ii) What is 'just' compensation and whether it can be a bonanza/windfall ?</u>

18. Above issue has been dealt with by Hon'ble apex court in a catena of cases.

19. Hon'ble Apex Court in ***Helen C. Rebello (Mrs) and Others Vs. Maharashtra State Road Transport Corporation and Another, (1999) 1 SCC 90,*** has held as under:-

> "**28**. ……...he word "just", as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having the force of law. In Law Lexicon, 5th Edn., by T.P. Mukherjee "just" is described:
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> > "The term 'just' is derived from the Latin word justus. It has various meanings and its meaning is often governed by the context. 'Just' may apply in nearly all of its senses, either to ethics or law, denoting something which is morally right and fair and sometimes that which is right and fair according to positive law. It connotes reasonableness and something conforming to rectitude and justice, something equitable, fair (vide p. 1100 of

> Vol. 50, Corpus Juris Secundum). At p. 438 of Words and Phrases, edited by West Publishing Co., Vol. 23 the true meaning of the word 'just' is in these terms:
>
> 'The word "just" is derived from the Latin justus, which is from the Latin jus, which means a right and more technically a legal right-a-law. Thus "jus dicere" was to pronounce the judgment; to give the legal decision. The word "just" is defined by the Century Standard Dictionary as right in law or ethics and in Standard Dictionary as conforming to the requirements of right or of positive law, in Anderson's Law Dictionary as probable, reasonable, Kinney's Law Dictionary defines "just" as fair, adequate, reasonable, probable; and justa cause as a just cause, a lawful ground. Vide Bregman v. Kress [81 NYS 1072 : 83 App Div 1] NYS at p. 1073.' "

29. Thus, we have no hesitation in concluding that the Tribunal, while computing the compensation under Section 110-B of the 1939 Act, has a wider discretion than what it had under the 1855 Act. Various provisions of this Act indicate the legislature's intent conferring visible benefit on the claimant by securing compensation……..All these and such other provisions are clearly beneficial legislation, hence should be interpreted in a manner which confers benefit and not which usurp its benefit."

20. Hon'ble Apex Court in ***United India Insurance Co. Ltd. and Others Vs. Patricia Jean Mahajan and Others, (2002) 6 SCC 281,*** *has held as under:-*

> "**12**. **<u>It thus makes it clear that it is for the Tribunal to arrive at an amount of compensation, which it may consider to be just in the facts and circumstances of the case.</u>** This Court however has been of the view that structured formula as provided under the Second Schedule would be a safe guide to calculate the amount of just compensation. Deviation though permissible, may only be resorted to for some special reasons to do so……..

16. What thus emerges from the above decisions is that the court must adhere to the system of multiplier in arriving at the proper amount of compensation, and also with a view to maintain uniformity and certainty……..**The multiplier, as would be evident from the observations quoted earlier, may differ in the peculiar facts and circumstances of a particular case as according to the example cited, where a bachelor dies at the age of 45, the age of his dependent parents may be relevant for selecting a proper multiplier. Meaning thereby that a multiplier less than what is provided in the Schedule could be applied in the special facts and circumstances of a case**……..

17. In ***Jyoti Kaul v. State of M.P.,[JT (2000) 7 SC 367]*** this Court again referring to the decision in the case of Susamma Thomas [(1994) 2 SCC 176] reiterated…….. **It has also been observed that the question as to what multiplier should be applied would depend upon various facts and circumstances of the case, hence the multiplier may change to some degree.**

18…….. **We have already seen that in the decisions referred to, in the earlier part of this judgment it is clearly stated that except in very rare cases, multiplier system should not be deviated from……..** **The choice of multiplier may differ to some degree as observed in the case of Jyoti Kaul [JT (2000) 7 SC 367] depending upon various facts and circumstances of the case.** Though, normally the multiplier as indicated in the Second Schedule should be applied as it is as found to be a safe guide for the purpose of calculation of amount of compensation……The learned Single Judge of the High Court considering the age of the deceased and his dependents and the provisions of the Second Schedule and the decision of this Court in the case of ***Trilok Chandra [(1996) 4 SCC 362]*** took the view that the application of multiplier of 10 would be appropriate in the present case. The Division Bench in appeal has laid much stress on the fact that according to the decision in ***Susamma Thomas [(1994) 2 SCC 176] and Trilok Chandra [(1996) 4 SCC 362]*** there should not be any deviation in the method of working out the amount of compensation applying multiplier method. **There**

is nothing wrong in the statement of the above propositions as indicated by the Division Bench. Different method can be resorted to only in rare and exceptional cases……... It is true as also noticed by the High Court that the Second Schedule should be taken as a guide, **but it does not mean that no deviation in the figure of the multiplier itself, would be permissible in any case whatsoever. Normally, the Second Schedule may provide a guide for application of multiplier but for valid and proper reasons, different multiplier can be applied, indeed not exceeding 18 in any case on the upper side……..** By applying a multiplier other than the scheduled multiplier does not mean that any method other than multiplier method has been applied. **For some special reasons, some deviation from the scheduled multiplier can be made.**

19……...The main question, which strikes us in this case is that in the given circumstances the amount of multiplicand also assumes relevance. The total amount of dependency as found by the learned Single Judge and also rightly upheld by the Division Bench comes to 2,26,297 dollars. Applying multiplier of 10, the amount with interest and the conversion rate of Rs 47, comes to Rs 10.38 crores and with multiplier of 13 at the conversion rate of Rs 30 the amount comes to Rs 16.12 crores with interest. These amounts are huge indeed. Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much under compensated as well, in the background of the country where most of the dependent beneficiaries reside. Two of the dependants, namely, parents aged 69/73 years live in India, but four of them are in the United States. **Shri Soli J. Sorabjee submitted that the amount of multiplicand shall surely be relevant and in case it is a high amount, a**

lower multiplier can appropriately be applied. We find force in this submission.. …….. **Some deviation in the figure of multiplier would not mean that there may be a wide difference between the multiplier applied and the scheduled multiplier** which in this case is 13. The difference between 7 and 13 is too wide. As observed earlier, looking to the high amount of multiplicand and the ages of the dependants and the fact that the parents are residing in India, in our view application of multiplier of 10 would be reasonable and would provide a fair compensation i.e. a purchase factor of 10 years. We accordingly hold that multiplier of 10 as applied by the learned Single Judge should be restored instead of multiplier of 13 as applied by the Division Bench. **We find no force in the submission made on behalf of the claimants that in no circumstances the amount of multiplicand would be a relevant consideration for application of appropriate multiplier.**
…….

20. The court cannot be totally oblivious to the realities…….**but in cases where the gap in income is so wide as in the present case income is 2,26,297 dollars, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible. Therefore, a deviation from applying the multiplier as provided in the Second Schedule may have to be made in this case.** Apart from factors indicated earlier the amount of multiplicand also becomes a factor to be taken into account which in this case comes to 2,26,297 dollars, that is to say an amount of around Rs 68 lakhs per annum by converting it at the rate of Rs 30. By Indian standards it is certainly a high amount. Therefore, for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand. A deviation would be reasonably permissible in the figure of multiplier even according to the observations made in the case of ***Susamma Thomas [(1994) 2 SCC 176]***
…….

21. The purpose to compensate the dependants of the victims is that they may not be suddenly deprived of the source of their maintenance and as far as possible they

> **may be provided with the means as were available to them before the accident took place. It will be a just and fair compensation.** But in cases where the amount of compensation may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. In such cases, the amount of multiplicand becomes relevant. The intention is not to overcompensate.
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> **22. We therefore, hold that ordinarily while awarding compensation, the provisions contained in the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as the one in hand, which may fall in the category having special features or facts calling for deviation from the multiplier usually applicable.**
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> **43. The Motor Accidents Claims Tribunal…….shall apply the multiplier of 10……..."**

21. Hon'ble Apex Court in **National Insurance Co. Ltd. Vs. Indira Srivastava and Others,** ***(2008) 2 SCC 763*** *,* has held as under:-

> **"17……...**What would be "just compensation" must be determined having regard to the facts and circumstances of each case……...
>
> **25.** The expression "just" must also be given its logical meaning. **Whereas it cannot be a bonanza or a source of profit** but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration."

22. Hon'ble Apex Court in para-8 of ***Sarla Verma Vs. Delhi Transport Corporation and Another, AIR 2009 SC 3104,*** has held as under:-

> **"**8……..Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit……."

23. Hon'ble Apex Court in ***Reshma Kumari and Others Vs. Madan Mohan and another*** , ***2013 ACJ 1253 (Three Judge Bench),*** has held as under:-

> "18. The noticeable observations in ***Patricia Jean Mahajan (2002 ACJ 1441 (SC),*** are that, (1) for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand and (2) a deviation would be reasonably permissible in the figure of multiplier in appropriate cases.
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> 29…… The expression, 'just' means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously 'just compensation' does not mean 'perfect' or 'absolute' compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case."

24. Hon'ble Apex Court in ***Reliance General Insurance Company Limited Vs. Shashi Sharma and Others, (2016) 9 SCC 627, (Three Judge Bench),*** has held as under:-

> "**17.** Be that as it may, the term "compensation" has not been defined in the 1988 Act. By interpretative process, it has been understood to mean to recompense the claimants for the possible loss suffered or likely to be suffered due to sudden and untimely death of their family member as a result of motor accident. Two cardinal principles run through the provisions of the Motor Vehicles Act of 1988 in the matter of determination of compensation. **Firstly, the measure of compensation must be just and adequate; and**

> **secondly, no double benefit should be passed on to the claimants in the matter of award of compensation.** Section 168 of the 1988 Act makes the first principle explicit. Sub-section (1) of that provision makes it clear that the amount of compensation must be just. The word "just" means—fair, adequate, and reasonable. It has been derived from the Latin word "justus", connoting right and fair. In para 7 of ***State of Haryana v. Jasbir Kaur, (2003) 7 SCC 484,*** it has been held that the expression "just" denotes that the amount must be equitable, fair, reasonable and not arbitrary. In para 16 of ***Sarla Verma v. DTC, (2009) 6 SCC 121***, this Court has observed that the **compensation "is not intended to be a bonanza, largesse or source of profit"**. That, however, may depend upon the facts and circumstances of each case, as to what amount would be a just compensation."

25. Hon'ble Apex Court in para-57 of ***National Insurance Company Limited vs. Pranay Sethi and Others, AIR 2017 SC 5157, (5 Judge Bench),*** has held has under:-

> "**57.** Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non- violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". ……..The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be

made for grant of just compensation having uniformity of approach. **There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum.** ……."

26. Hon'ble Apex Court in ***Sebastiani Lakra And ors Vs. National Insurance Company Ltd and Anr , AIR 2018 SC 5034 (Three Judge Bench),*** has held has under:-

"**5.** Section 168 of the Motor Vehicles Act, 1988 (for short 'the Act') mandates that "just compensation" should be paid to the claimants. Any method of calculation of compensation which does not result in the award of 'just compensation' would not be in accordance with the Act. The word "just" is of a very wide amplitude. The Courts must interpret the word in a manner which meets the object of the Act, which is to give adequate and just compensation to the dependents of the deceased……..

21. However, since the claimants are getting quite an advantage, we feel that the MACT was right in not taking into consideration the future prospects in the peculiar facts and circumstances of the case. Therefore, though we are not inclined to deduct the amount payable to the claimants, we feel that in the peculiar facts and circumstances of the case, they are not entitled to claim another amount @ of 15% by way of future prospects. The payment of the amount under the EFB Scheme more than offsets the loss of future prospects. This, in our opinion, would be 'just' compensation."

27. Hon'ble Apex Court in the case of ***Krishna and Others Vs. Tek chand and others passed in SLP (c) No.5044 of 2019 , decided on 05.02.2024,*** has held as under:-

" **6.** We find that the observations of this Court in ***Sebastiani Lakra (supra)*** distinguishing the case of **Shashi Sharma (supra)** clearly applies to the case in hand. It is observed that the amount of Rs.31,37,665/-

> (Rupees Thirty One Lakhs, Thirty Seven Thousand and Six Hundred and Sixty Five only) was paid to the dependents of the deceased-employee who are the petitioners herein under the aforesaid Rules since the said Rule was by way of compassionate assistance owing to the sudden death of the employee in harness for any reason whatsoever including as a result of a road traffic accident. This is in order to compensate the loss of the bread earner of the family who dies in harness the case of a motor vehicle accidents, when negligence is proved, loss of dependency is compensated for the very same reason. **In our view, there cannot be a duplication in payments or a windfall owing to a misfortune. In another words, on the death of the person in harness, owing to a road traffic accident the dependents of a deceased cannot be doubly benefited as opposed to those who are dependents of a deceased who dies owing to illness or any other reason under the Rules formulated by the Haryana Government."**

PURPOSE/OBJECT OF COMPENSATION:-

28. Further, while calculating compensation, tribunal must have regard to/ keep in mind the basic/fundamental underlying purpose/object of award of "compensation". Hon'ble Apex Court in ***United India Insurance Co. Ltd. and Others Vs. Patricia Jean Mahajan and Others, (2002) 6 SCC 281,*** *has held as under:-*

> **"21. The purpose to compensate the dependants of the victims is that they may not be suddenly deprived of the source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place.** It will be a just and fair compensation…….... **The intention is not to overcompensate**."

29. Hon'ble Apex Court in ***National Insurance Company Limited vs. Indira Srivastav and Others, (2008) 2 SCC 763,*** has held as under:-

"**18.** In Rathi Menon v. Union of India [(2001) 3 SCC 714] this Court, upon considering the dictionary meaning of compensation held: (SCC pp. 722-23, paras 24-25)

"**24**. ……...Though the word 'compensation' is not defined in the Act or in the Rules it is the giving of an equivalent or substitute of equivalent value. In Black's Law Dictionary, 'compensation' is shown as

'equivalent in money for a loss sustained; or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; or recompense in value for some loss, injury or service especially when it is given by statute'.

It means when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value."

30. Hon'ble Apex Court in ***Reshma Kumari and Others Vs. Madan Mohan and another, 2013 ACJ 1253 ,*** has held as under:-

"30…….. **The purpose of award of compensation is to put the dependents of the deceased, who had been 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**……."

31. ISSUE (iii) While calculating compensation under motor vehicle Act, 1988 what deductions are permissible and whether family pension can be deducted?

32. Hon'ble Apex Court in ***Helen C. Rebello (Mrs.) and Others Vs. Maharashtra State Road Transport Corporation and Another, (1999) 1 SCC 90 ,*** has held as under:-

"2. The question is, whether the life insurance money of the deceased is to be deducted from the claimants'

compensation receivable under the Motor Vehicles Act, 1939. ……...

32. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words "pecuniary advantage" from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the "pecuniary

advantage" resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the section states:

"… for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, …".

33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no corelation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident

may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.

34. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to be the “pecuniary gain” only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no corelation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any corelation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject to the contract to the contrary or any provisions of law.

35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under

the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No corelation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no corelation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any corelation. The insured (deceased) contributes his own money for which he receives the amount which has no corelation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is

statutory while the amount receivable under the life insurance policy is contractual.

36. As we have observed, the whole scheme of the Act, in relation to the payment of compensation to the claimant, is a beneficial legislation. The intention of the legislature is made more clear by the change of language from what was in the Fatal Accidents Act, 1855 and what is brought under Section 110-B of the 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of the 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides that where the death or permanent disablement of any person has resulted from an accident in spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to the claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is in addition to any other right to claim compensation in respect whereof (sic thereof) under any other provision of this Act or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit on the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute, then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have been given of this statute, evidenced by two distinct sets of decisions of the various High Courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount, should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these considerations, we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving a restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intents of the legislature under various provisions of the Motor Vehicles Act, 1939."

33. Hon'ble Apex Court in ***United India Insurance Co. Ltd. and Others Vs. Patricia Jean Mahajan and Others , (2002) 6 SCC 281,*** has held as under:-

> **"36.** We are in full agreement with the observations made in the case of ***Helen Rebello v. Maharashtra SRTC, (1999) 1 SCC 90*** that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to

receive irrespective of accidental death of Dr Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.

37. We therefore, do not allow any deduction as pressed by the Insurance Company on account of receipts of insurance policy and social security benefits received by the claimants."

34. Hon'ble Apex Court in ***Lal Dei and Others Vs. Himachal Road Transport , (2007) 8 SCC 319,*** has held as under:-

"**4.** It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In ***Helen C. Rebello v. Maharashtra SRTC (1999) 1 SCC 90,*** this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is al-

lowed. The order of deduction of the family pension is set aside……....”

35. Hon'ble Apex Court in ***Vimal Kanwar and Others Vs. Kishore Dan and Others, (2013) 7 SCC 476, after referring to para 35 of Helen C. Rebello (supra),*** has held as under:-

> **“15.** The issues involved in this case are:
>
> **15.1.** Whether provident fund, pension and insurance receivable by the claimants come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction,
>
> **15.2.** Whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction,
>
> **15.3. xxxx xxxxx xxxxxxxxxxxx xxxxxxxxxxxxxx**
>
> **15.4.xxxx xxxxx xxxxxxxxxxxx xxxxxxxxxxxxxx**
>
> **18**. The first issue is “whether provident fund, pension and insurance receivable by the claimants come within the periphery of the Motor Vehicles Act to be termed as ‘pecuniary advantage’ liable for deduction”.
>
> **19.** The aforesaid issue fell for consideration before this Court in ***Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90.*** In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a “pecuniary advantage” receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction.

> **20.** The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction".
>
> **21**. "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate appointment but that cannot be termed as "pecuniary advantage" that comes under the periphery of the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

36. Hon'ble Apex Court in ***Reliance General Insurance Company Limited Vs. Shashi Sharma and Others, (2016) 9 SCC 627,*** after referring to para 28 & 32 to 35 of ***Helen C. Rebello (supra) & Patricia Jean Mahajan (supra),*** has held as under:-

> **"11.** The decision in ***Gobald Motor Service Ltd. (1962) 1 SCR 929 of the three-Judge Bench*** of this Court has been carefully analysed and distinguished by the two-Judge Bench in ***Helen case (1999) 1 SCC 90*** . In that, the dictum in Gobald Motor case (1962) 1 SCR 929 was in relation to the provisions regarding quantum of damages payable in terms of Sections 1 and 2 of the Fatal Accidents Act, 1855,

which are held to be materially different. On the other hand, the provision of the Motor Vehicles Act, 1939 enlarges the scope for computation of compensation amount. The Court in Helen case held that the observation in Gobald case cannot be the basis to claim deduction of amount receivable by the dependants of the deceased from whatever source, in the context of the provisions of the Motor Vehicles Act as in force. Even the decision in ***Sheikhupura Transport (1971) 1 SCC 785]*** has been explained and distinguished on the same lines.

12. The question is : whether the principle expounded by the two-Judge Bench in ***Helen,*** in paras 32 to 35, in particular, can be doubted? In that case, the Court was called upon to answer as to whether it will be permissible to disallow the deduction of amount receivable by the dependants of the deceased towards "Life Insurance Policy", from the amount of compensation payable under the provisions of the Motor Vehicles Act……..

13. This decision in Helen case has analysed the legal position regarding the application of the general principle for estimating damages under the common law. It has also noted the distinguishing features between the provisions of the Fatal Accidents Act, 1855, before its amendment by Act (3 of 1951) and thereafter. It then found that in Gobald case (1962) 1 SCR 929 the Court decided the issue placing reliance on English decisions—as the provisions applicable at that time were similar to Section 9 of the English Fatal Accidents Act, 1846. The Court was neither called upon to determine damages under the Motor Vehicles Act, 1939 nor consider as to any form of deductions are justified under the Motor Vehicles Act. The Court noted that the language of Section 110-B of the 1939 Act (corresponding to Section 168 of the 1988 Act) is different from Section 1-A of the Fatal Accidents Act, 1855. It held that Section 110-B of the 1939 Act empowers the Tribunal to determine the compensation which appears to it to be "just". The Court held that this provision widens the scope for determination of compensation, which is neither permissible under the Indian Fatal Accidents Act, 1855 nor under the English Fatal Accidents Act, 1846. The Court then went on to analyse the deci-

sions of this Court and held that there is a deliberate departure in the language of the 1939 Act, revealing the intent of the legislature to confer wider discretion on the Tribunal. Therefore, the decisions based on the principles applicable to previous law cannot be invoked while adjudicating the compensation payable to the claimant under the Motor Vehicles Act.

15. The principle expounded in this decision in Helen C. Rebello case (1999) 1 SCC 90 is that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under the Motor Vehicles Act. Further, the "pecuniary advantage" from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act of 1939, and must apply proprio vigore to the corresponding provisions of the Motor Vehicles Act, 1988. This principle has been restated in the subsequent decision of the two-Judge Bench in Patricia Jean Mahajan case (2002) 6 SCC 281] , to reject the argument of the Insurance Company to deduct the amount receivable by the dependants of the deceased by way of "social security compensation" and "life insurance policy".

18. The principle discernible from the exposition in Helen C. Rebello case (1999) 1 SCC 90 is that if the amount "would be due to the dependants of the deceased even otherwise", the same shall not be deductible from the compensation amount payable under the 1988 Act. At the same time, it must be borne in mind that loss of income is a significant head under which compensation is claimed in terms of the 1988 Act. The component of quantum of "loss of income", inter alia, can be "pay and wages" which otherwise would have been earned by the deceased employee if he had survived the injury caused to him due to motor accident. If the dependants of the deceased employee, however, were to be compensated by the employer in that behalf, as is predicated by the 2006 Rules—to grant compassionate assistance by way of ex gratia financial assistance on compassionate grounds to the dependants of the deceased government employee who dies in harness, it is unfathomable that the de-

> pendants can still be permitted to claim the same amount as a possible or likely loss of income to be suffered by them to maintain a claim for compensation under the 1988 Act.

37. Hon'ble Apex Court in ***Sebastiani Lakra and Ors Vs. National Insurance Company Ltd and Anr, AIR 2018 SC 5034,*** *after referring to* ***Shashi Sharma (Supra), Helen C. Rebello (Supra), Patricia Jean Mahajan (Supra) & Vimal Kanwar (Supra),*** *has held as under****:-***

> ***"6.*** The traditional view was that while assessing compensation, the Court should assess the loss of income caused to the claimants by the death of the deceased and balance it with the benefits which may have accrued on account of the death of the deceased. However, even when this traditional view was being followed, it was a well settled position of law that the tortfeasor cannot not take benefit of the munificence or gratuity of others.
>
> **12**. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures etc.. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in ***Perry v. Cleaver (1969) ACJ 363,*** the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrong doer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the 1969 ACJ 363 claimants only on account of death of the deceased in a motor vehicle accident.

> **17.** The issue before us is whether we should deduct the amount being received by the family members under the EFB Scheme while calculating the loss of income.
>
> **18.** The EFB Scheme is totally different from the rules which were under consideration of this Court in Shashi Sharma case (supra). Under this Scheme, the nominee or legal heir(s) of the deceased employee have to deposit the entire amount of gratuity and all other benefits payable to them on the death of the employee."

38. Hon'ble Apex Court in ***Krishna and Ors Vs. Tek Chand & Ors (SLP (c) on 5044 of 2019 decided on 05.02.2024),*** after referring to ***Shashi Sharma (Supra) , Helen C. Rebello (Supra) , Sebastani (Supra)*** has held in para-6 as under**:-**

> "**6.** We find that the observations of this Court in ***Sebastiani Lakra (supra) distinguishing the case of Shashi Sharma (supra)*** clearly applies to the case in hand. It is observed that the amount of Rs.31,37,665/- (Rupees Thirty One Lakhs, Thirty Seven Thousand and Six Hundred and Sixty Five only) was paid to the dependents of the deceased-employee who are the petitioners herein under the aforesaid Rules since the said Rule was by way of compassionate assistance owing to the sudden death of the employee in harness for any reason whatsoever including as a result of a road traffic accident. This is in order to compensate the loss of the bread earner of the family who dies in harness. In the case of a motor vehicle accidents, when negligence is proved, loss of dependency is compensated for the very same reason. ***In our view, there cannot be a duplication in payments or a windfall owing to a misforture. In another words, on the death of the person in harness, owing to a road traffic accident the dependents of a deceased***

> ***cannot be doubly benefited as opposed to those who are dependents of a deceased who dies owing to illness or any other reason under the Rues formulated by the Haryana Government."***

39. Hon'ble Apex Court in ***Bhakra Beas Management Board Vs. Kanta Aggarwal (Smt) and Others, (2008) 11 SCC 366,*** after referring to ***Helen C. Rebello (Supra), Patricia Jean Mahajan (Supra)*** *has held as under****:-***

> **"13.** Learned counsel for the respondent supported the judgment and additionally submitted that appeal of Respondent 1 is pending. In normal course, when two appeals are directed against the common judgment, both the appeals should be heard by the same Bench of the High Court. <u>But we find that the High Court had lost sight of the fact that the benefits which the claimant receives on account of the death or injury have to be duly considered while fixing the compensation.</u> It is pointed out that Respondent 1 was getting Rs 4700 p.m. and a residence has been provided to her and actually the compassionate appointment was given immediately after the accident."

40. A **three judge bench of** Hon'ble Apex Court in ***Shashi Sahrma (supra)*** has explained & clarified ***Bhakra Beas Management Board (supra)*** & *has held as under****:-***

> **"10.** Besides the abovenoted stand of the Insurance Companies, the other incidental question to be considered is whether there is any conflict of opinion between the coordinate Benches (of two Judges) of this Court, in ***Bhakra Beas Management Board*** on the one hand, and that of ***Helen C. Rebello*** and ***Patricia Jean Mahajan*** on the other.
>
> **16.** In ***Bhakra Beas Management Board, (2008) 11 SCC 366*** , ostensibly, it may appear that a departure has been made in allowing deduction of the pecuniary advantage received by the claimants from other source on

account of death of her husband. However, on a closer analysis of the said decision, two aspects become prominent. Firstly, the grievance of the appellant Board was that the claimants had filed an appeal before the High Court for enhancement of compensation of amount, which was still pending. However, the appeal preferred by the Board against the same decision was dismissed by the High Court. The grievance of the appellant was essentially about the inappropriate approach of the High Court in dismissing its appeal. That can be discerned from the observation in para 13 of the reported decision. From the observation found in para 14 of the reported decision, it is seen that the High Court judgment has been held to be clearly unsustainable. That must be understood as disapproving the approach of the High Court in dismissing the appeal filed by the appellants, though cross-appeal filed by the claimants for enhancement of compensation amount was pending before it. The second aspect is that, the Court, to do complete justice between the parties and for bringing quietus to the long pending litigation (14 years) between them, including to dispose of appeal of the claimants pending before the High Court, passed an order for full and final settlement of all the claims inter partes. That can be discerned from paras 13 and 14, which read thus : (SCC pp. 372-73)

“13. The learned counsel for the respondent supported the judgment and additionally submitted that appeal of Respondent 1 is pending. In normal course, when two appeals are directed against the common judgment, both the appeals should be heard by the same Bench of the High Court. But we find that the High Court had lost sight of the fact that the benefits which the claimant receives on account of the death or injury have to be duly considered while fixing the compensation. It is pointed out that Respondent 1 was getting Rs 4700 p.m. and a

residence has been provided to her and actually the compassionate appointment was given immediately after the accident.

14. In view of what has been stated above, the High Court's judgment is clearly unsustainable. However, the accident took place more than 14 years back and it would not be desirable to send the matter back to the Tribunal for fresh consideration. A sum of rupees five lakhs has been deposited vide this Court's order dated 1-11-2004. We are of the considered view that in view of the background facts, it is just and proper that the sum of rupees five lakhs already deposited shall be permitted to be withdrawn by the claimants in full and final settlement of the claim relatable to the death of the deceased. It is for the Tribunal to fix the quantum of fixed deposit and the amount to be released to the claimants."

(emphasis supplied)

Thus understood, ***Bhakra Beas case (2008) 11 SCC 366*** is not an authority of having taken a contra view than the view expressed in ***Helen C. Rebello (1999) 1 SCC 90*** and ***Patricia case (2002) 6 SCC 281***. As a matter of fact, ***in para 11 of the reported decision in Bhakra Beas case (2008) 11 SCC 366***, ***paras 32 to 34 of Helen C. Rebello case (1999) 1 SCC 90*** have been reproduced in their entirety. No observation is found in the entire decision, to have doubted the correctness of the dictum in ***Helen C. Rebello (1999) 1 SCC 90 and Patricia case, (2002) 6 SCC 281".***

ISSSUE NO.(IV)-<u>Whether Income tax is liable to be deducted while calculating compensation under Motor Vehicles Act, 1988?</u>

41. Hon'ble Apex Court in ***National Insurance Co. Ltd Vs. Indira Srivstava and Others, (2008) 2 SCC 763,*** has held as under:-

> "19……. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."

42. Hon'ble Apex Court in **Smt. Sarla *Verma vs. Delhi Transport Corporation and Another, AIR 2009 SC 3104*** , has held as under:-

> "**10.** Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation……...

43. Hon'ble Apex Court in ***Reshma Kumari and Others Vs. Madan Mohan and another 2013 ACJ 1253*** has held as under:-

> "36……**..** Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax……..."

44. Hon'ble Apex Court in ***Vimal Kanwar and Others Vs. Kishore Dan and Others (2013) 7 SCC 476*** has held as under:-

> **15.** The issues involved in this case are:
>
> **15.1. xxxxx xxxxx xxxxx**
>
> **15.2. xxxxx xxxxx xxxxx**
>
> **15.3.** Whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act, and…….
>
> **15.4. xxxxx xxxxx xxxxx**

22. The third issue is "whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act".

23. In ***Sarla Verma*** this Court held: SCC p. 133, para 20)

> "20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation."
>
> This Court further observed that: (SCC p. 134, para 24)
>
> "24. … Where the annual income is in taxable range, the words 'actual salary' should be read as 'actual salary less tax'."
>
> Therefore, it is clear that if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary……..."

45.Hon'ble Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others, AIR 2017 SC 5157,*** has held as under:-

> "46……."income" means actual income less than the tax paid……..."

46. Hon'ble Apex Court in ***Sebastiani Lakra and Ors Vs. National Insurance Company Ltd and Anr, AIR 2018 SC 5034*** has held as under***:-***

> **"22.** It is not disputed that the last drawn income of the deceased including DA was Rs.58,565/. On this amount, the deceased would definitely have been paying some income tax. Since exact calculations of the same has not been given, we deduct about Rs.2,565/ per month for this purpose."

47. Thus, from principles laid down in above cases, it is clearly established that if income of deceased is in taxable range, then, appropriate amount is to be deducted under the head of income tax and only after such deduction, remaining amount can be treated to be actual income of deceased.

FUNDAMENTAL/BASIC LEGAL PRINCIPLES/PARAMETERS GOVERNING DETERMINATION OF COMPENSATION:-

48. From decisions referred and quoted in preceding paras, following basic/fundamental parameters/principles can be culled out, which are to be kept in mind while determining compensation arising out of use of motor vehicle under Motors Vehicles Act :-

1. A claimant is entitled to receive "just" compensation, as discussed and elaborated in preceding paras and Court/Tribunal is duty bound to award the same;

2. So far as deductions are concerned, amount receivable at the time of death on account of some pecuniary contribution by deceased,i.e., amount of Insurance policy or due to deductions from salary/income of deceased i.e.,PPF cannot be deducted from compensation amount.

3. So far as pensionary benefits/family pension/gratuity/compassionate appointment etc. is concerned, in principle, the same cannot be deducted from compensation.

But with respect to above, following aspects/factors should also be kept in mind/should be taken into consideration while determining "just" compensation:-

(i). While determining "just" compensation, peculiar facts and circumstances of each case are also to be kept in mind/should be taken into consideration;

(ii). In the name of/in the garb of "just" compensation, it cannot be a bonanza/windfall/source of benefit/ there cannot be a duplication in payments/dependents of a deceased, who expired in a road accident, cannot be doubly benefited etc.;

(iii). Further, while determining "just" compensation, a Court/Tribunal is also required to keep in mind/take into consideration the underlying object/purpose of award of compensation;

(iv). In appropriate cases, lower multiplier may be applied/multiplicand/amount can be reduced. Even in ***Sebastiani Lakra (Supra)*** Hon'ble Court in para-21 held that since the claimants are getting quite an advantage, we feel that the MACT was right in not taking into consideration the future prospects in the peculiar facts and circumstances of the case;

49. ISSUE NO.(V) <u>Whether any enhancement is required in the compensation awarded by the Tribunal, if so, the amount</u>?

50. Now compensation would be calculated/determined in the light of above legal principles/parameters.

51. So far as income of deceased is concerned, as per (Ex.P/13) and para-16 of impugned award, on the date of accident, gross monthly income of deceased was Rs.60,695/- & gross annual income was

Rs.7,28,340/-. Further, from above monthly income of deceased, amount of professional tax as well as income tax is liable to be deducted. As per applicant witness Shishu Kumar Chourasia in the year 2017-2018, Rs. 44,403/- were deducted as income tax. Thus, after deducting amount of income tax and professional tax of Rs.46,899/- (Rs.44,403+2,496/-(Rs.208x12)), actual annual income of deceased comes Rs. 6,81,441/- (Rs.7,28,340/- - Rs.46,899/-). After deducting 1/5th for personal & living expenses, annual dependency comes to Rs.5,45,153/-.

52. As per depositions of applicant witnesses Sushila & Shishu Kumar Chourasia, appellant/claimant Sushila, wife of deceased, is receiving Rs.28,250/- as family pension & appellant/claimant Girish has got compassionate appointment. Further, periodic revision of pay/pension also takes place & D.A. is also increased periodically, including annual increment. Learned Tribunal has deducted amount of family pension but it has not deducted any amount with respect to compassionate appointment.

53. As per law laid down in Sarla Verma (supra), Reshma Kumari (supra) & Pranay Sethi (supra), looking to the age of deceased 15% is to be added as future prospects & multiplier of 11 is to be applied. & having regard to number of dependents (seven), 1/5th is to be deducted for personal and living expenses. Further, each appellant is also entitled to receive Rs.40,000/- as consortium. Appellants are also entitled to receive Rs.15,000/- for funeral expenses and Rs. 15,000/- for loss of estate. Hence, if compensation is calculated accordingly, then, total compensation comes to Rs.72,06,186/-,without adding any interest. In the facts

& circumstances of the case, this amount appears unjust & unreasonable.

54. In this court's considered opinion, if peculiar facts & circumstances of instant case are examined & assessed in the light of legal principles/parameters as discussed & referred in preceding paras, especially underlying object of compensation & that it can not be a bonanza/windfall/source of profit/claimant can not be doubly benefited etc., then, in the instant case compensation requires to be calculated by adding amount of family pension in the income of deceased but by applying lower multiplier of **9** & **without adding future prospects.** Hence, if compensation is calculated accordingly, then, total compensation comes to **Rs.52,16,377/--**(inclusive of amount under conventional heads as above). Compensation calculated as above fulfills the underlying object of compensation & it is "just" compensation in the peculiar facts & circumstances of the case.

55. Hence, appellants/claimants are entitled to receive **Rs.52,16,377/-**as compensation. Learned Tribunal has awarded Rs.36,59,839/- as compensation. Therefore, compensation stands enhanced by **Rs.15,56,538/-**

56. Enhanced amount (**Rs.15,56,538/-)** shall carry interest at the rate awarded by the Tribunal. Other findings of Tribunal shall remain intact.

57. Appeal filed by the appellants is partly allowed to the extent as

indicated above and disposed of accordingly.

(ACHAL KUMAR PALIWAL)
JUDGE

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