**(2021) 04 OHC CK 0010**

**Orrisa High Court**

**Case No:** MACA NO. 774 Of 2016

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| National Insurance Company Ltd. & Others | | APPELLANT |
| | Vs | |
| S. Divya & Others | | RESPONDENT |

**Date of Decision:** April 5, 2021

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 168, 168(1), 173
- Motor Vehicles Act, 1939 - Section 92A, 92B

**Hon'ble Judges:** Biswanath Rath, J

**Bench:** Single Bench

**Advocate:** G.Mishra, D.K.Patra, A.Dash, J.Biswal, J.R.Deo, .K.K.Das, P.K.Pradhan

**Final Decision:** Dismissed

**Judgement**

Biswanath Rath, J

1. MACA No.593 of 2016 is at the instance of the Claimants seeking enhancement of the award amount involving judgment in MAC No.113 of 2011,

whereas MACA No.774 of 2016 is at the instance of the Insurance Company involved herein involving the same judgment involving both computation

aspect as well as calculation of future prospects.

2. For the common facts involving both the Appeals, on single hearing of both sides further on consent of both learned counsel for the Parties, the

same are decided by this common judgment.

3. Background involving the case is that the Claimants being the legal heirs claimed compensation to the tune of Rs.32,00,000/- on account of death of

the deceased on a vehicular accident caused by the offending Truck bearing Regn. No.AP-05-TT-5665 on 15.12.2010 on N.H.5 in the Balugaon

Bazaar. The Claimants further pleaded that on 15.12.2010 at about 8 P.M. when the deceased was proceeding to perform his duty by a bicycle on left

side of the road near Balugaon Bazaar on N.H.5 the offending Truck came in high speed also in rash and negligent manner and dashed against the

deceased from his backside. Said vehicle ran over him resulting death of the deceased at the spot itself. Postmortem was also conducted. There is

material that the cause of death was accident. On the premises that the deceased was hardly 39 years of age and being engaged as a Technician,

Grade-I (Elect/Traction Distribution) under the East Coast Railways, Khurda Road and was earning salary of Rs.24,315/- per month at the relevant

point of time, the claim petition was put up claiming Rs.32,00,000/-. The Owner of the registered vehicle did not contest the proceeding and set ex

parte. Opposite Party No.2, the Insurance Company therein contested the case by filing objection and asking the Claimants to prove the case through

documents. The Insurance Company also contested the case on the premises that they are not liable to pay compensation.

4. Based on the pleading, the Tribunal framed the following Issues :-

I) Whether due to rash and (or) negligent driving of the driver of the offending vehicle bearing registration no.AP-05-TT-5665 the accident took place and in that

accident the deceased, Late S.Jagadeswara Achary, succumbed to injuries ?

II) Whether the petitioners are entitled to get the compensation. If so, what would be the extent ?

III) Whether both the Opposite Parties or either of them are/is liable to pay the compensation ? and

IV) To what relief(s), if any, the petitioners are entitled to ?â€

5. The Claimants to satisfy their case examined two witnesses. Opposite Party No.2 examined none. Claimants exhibited Exts.1 to 18 to support their

case, whereas the Insurance Company, Opposite Party No.2 therein exhibited Exts.A to F. Based on the pleading, the evidence as well as the

material support and the submissions of both the Claimants and the Insurance Company, the 1st Additional District Judge-cum-1st M.A.C.T., Cuttack

(herein after called as â€œTribunalâ€) after holding all the Issues in favour of the Claimants allowed the Claim Case ex parte against Opposite Party

No.1Â thereinÂ andÂ onÂ contestÂ againstÂ Opposite Party No.2,Â the Appellant herein thereby directing the Insurance Company to pay

compensation of Rs.49,83,355/- with simple interest @ 7% per annum with effect from the date of filing of the claim application, i.e., 5.3.2011 along

with cost of Rs.1000/-, however giving right to recover from the registered owner of the offending vehicle.

In the said order, the Tribunal also adopted a pattern to utilize the compensation amount in a manner keeping in view the best interest of the Claimants.

It is needless to submit here answering Issue Nos.II to IV, the Tribunal has come to hold that there was valid insurance covering the accident but

there remains a doubt on the validity of the Driving Licence on the date of accident for non-cooperation of the Driver and thus the direction also

contained a scope for right to recovery.

6. Contesting the judgment, the Insurance Company assailed the judgment primarily on the question of quantum and has taken the following ground :

â€œC. For that the quantum of compensation has been computed on the basis of monthly salary of deceased of Rs.24,115/- (excluding P.T. of Rs.200/-) by completely

ignoring that the said gross salary includes certain allowances amounting to Rs.4,600/- per month like transport allowances, travelling allowance etc. which are purely

personal in nature and not meant for the benefit of family of the deceased. Thus, the learned tribunal failed to take into account the aforesaid aspect and as such the

impugned award deserves to be modified.

D. For that the learned Court below failed to appreciate Indira Srivastavaâ€™s case and has illegally taken into account the perks of the deceased while awarding a

bonanza in favour of the claimant.

F. For that since there is absolutely no evidence to show that the deceased had any permanent job/occupation and fixed income, the decision of the learned Tribunal

to make further addition of 50% to the income on the head of future prospects is erroneous and not in consonance with the settled position of law and as such the

impugned award is liable to be set aside.

G. For that the learned court below failed to appreciate that the wife of the deceased has subsequently got compassionate appointment in a similar post and thus the

awarded amount is liable to be substantially reduced keeping in mind the decision in the case of Vimal Kanwar.

H. For that the learned tribunal failed to appreciate that compensation awarded must be reasonable compensation and the same should not be a bonanza in favour of

the claimants. In the instant case the compensation awarded is grossly high and thus the impugned award is liable to be set aside. The Honâ€™ble Supreme Court in

the case of State of Haryana V. Jasbir Kaur reported in (2003) 7 SCC 484 has held that compensation awarded should not be a bonanza.â€

7. Similarly Claimants in their Appeal for enhancement of the compensation on different score alleged that the Tribunal committed error in not granting

compensation on the head of loss of estate and took help of the decision of the Honâ€™ble apex Court in 2015 (1) TAC 337. Through Ground No.III,

the claimants taking support of the decision in 2015(1) TAC 673 SC, 2013(3) TAC 697 SC etc. again claimed on the head of loss of love and

affection. Through Ground No.IV, the Claimants also claimed towards loss of consortium of Rs.1,00,000/-. The Claimants also taking reference to the

decisions of the Honâ€™ble apex Court in 2014 (I) TAC 369 SC and 2014(I) TAC 727 contended that the Tribunal also failed in not granting cost of

litigation.

8. Advancing his submission, Sri G.Mishra, learned senior counsel for the Insurance Company taking this Court to Ground Nos.C, F & H attempted to

take help of the decisions of the Honâ€™ble apex Court in Sebastiani Lakra & others vrs. National Insurance Company Ltd. & another : AIR

2018 SC 5034. Taking this Court to Paragraph-21 of the said decision, Sri Mishra, learned senior counsel claimed that there should be at least some

deduction on the head of future prospects taking into account the high rate of compensation already granted by the Tribunal and further taking into

consideration the development during pendency of the Case to the effect that during pendency of the Case, Wife of the deceased has been provided

with an appointment under the Rehabilitation Assistance Scheme. Sri Mishra, learned senior counsel, therefore contended that the fact of future gain

to the family on account of death of the deceased by way of service should have also been kept in mind of the Tribunal while granting compensation

and future prospects. It is in this view of the matter, Sri Mishra prayed for interference in the impugned award in respect of compensation as well as

future prospects and the award should be modified accordingly.

9. Similarly, while opposing the contention of Sri G.Misra, learned senior counsel for the Appellant on the head of future prospects and took help of

some decisions of Honâ€™ble apex Court in Vimal Kanwar & Others vrs. Kishore Dan & Others : 2013(3) TAC 6 (SC) (Paragraph-20),R eliance

General Insurance Company Ltd. vrs. Shashi Sharma & Other s: (2016) 9 SCC 627, National Insurance Company Ltd. vrs. Rekhaben &

Others : (2017) 13 SCC 547 (Paragraphs-22 & 23) and also took aid of the decision in Sebastiani Lakra & Others vrs. National Insurance

Company Ltd. & another : (2019) 17 SCC 465 (Paragraphs-12 to 18), Sri K.K.Das, learned counsel for the Claimants on reiteration of the Grounds

as indicated herein above in the Claimantsâ€™ Appeal bearing MACA No.593 of 2016 contested the impugned judgment on the premises that

widowâ€™s compassionate appointment and getting salary/some benefits on the death of her husband not to be deducted from gross income while

calculating compensation. Similarly on the challenge of the Insurance Company on the aspect of future prospects taking aid of the decision of the

Honâ€™ble apex Court in National Insurance Company vrs. Pranaya Sethi & Others : (2017) 16 SCC 680 (Paragraph-59.3), Sri Das, learned counsel

for the Claimants submitted that there is just consideration by the Tribunal and such judgment should not be interfered with. Coming to claimantsâ€™

Appeal making a claim on account of consortium taking help of a decision of the Honâ€™ble apex Court in New India Assurance Company vs.

Somwati & Others : (2020) 9 SCC 644 (Paragraphs-40 & 41), Sri Das, learned counsel for the Claimants attempted to justify his claim on loss of

consortium. Taking help of the decision in Syed Sadiq, etc. vrs. Divisional Manager, United India Insurance Co.: 2014(1) TAC 369 (SC)

(Paragraph-18), Sri Das also attempted to justify his claim on litigation expenses. It is in the above legal positions, Sri Das attempted to justify the

balance claim of the Claimants and also to satisfy that there is no legality in the claim of the Insurance Company, and thus contended on interfering

with the impugned award, this Court should only increase and or grant the compensation on the above head in favour of the Claimants.

10. Considering the rival contentions of the Parties, this Court finds, there is no dispute with regard to the accident causing death of the deceased.

There is also no dispute with regard to the wage aspect involving the deceased, further there also remains no dispute with regard to the offending

vehicle causing accident resulting in death of the deceased and the offending vehicle has the valid Insurance at the time of accident. The Claimants

side when claiming increase in the compensation on the head of consortium, litigation expenses and loss of estate, the Insurance Company is claiming

interference in the award, firstly on the ground of high grant of compensation on future loss aspect and also on the ground of mode of calculation by

the Tribunal taking into consideration the salary and expenditure on the family members by the deceased and illegal inclusion of certain amount should

have been excluded, further on the ground that the Tribunal has not taken into account the fact of Wife of the deceased getting into a compassionate

appointment, particularly through Ground No.G. Here the Insurance Company against Ground No.G is also taking help of the decision in Vimal

Kanwar(supra).

At this stage, taking into consideration the citations cited at bar by both the sides, this Court finds the Honâ€™ble apex Court in the case of Helen C.

Rebello (Mrs.) and others v. Maharashtra State Road Transport Corporation & Anr.: (1999) 1 SCC 90, while dealing with the concept of

pecuniary advantage, the Honâ€™ble apex Court has come to hold that Provident Fund, Pension, Insurance and similarly any cash, bank balance,

shares, fixed deposits etc. are all a â€œpecuniary advantageâ€ receivable by the heirs on account of oneâ€™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 â€œPecuniary Advantageâ€ liable for deduction. This Court takes into account paragraph-35 of the aforesaid

judgment, which reads as herein below :

â€œ35. 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 co-relation 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 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 insurer indemnifies to pay the sum to the heirs, again in terms

of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death.

Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, 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 co-relation 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 similar and same plane having nexus inter so between them and not to which, there is no

semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed

as against tort feasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of

death without making any contribution towards it then how can 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 received under the life insurance policy is contractual.â€

11. Similarly, in the case of Vimal Kanwar (supra), through paragraphs-20 and 29 to 33, the Honâ€™ble apex Court held that:

Â â€œ20. The second issue is â€œwhether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act

to be termed as â€œpecuniary advantageâ€ liable for deductionâ€.

â€œCompassionate appointmentâ€ can be one of the conditions of service of an employee, if a scheme to that effect is framed by the service leaving behind the

dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be

stated to be an advantage receivable by the heirs on account of oneâ€™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

dependents may be entitled for compassionate appointment but that cannot be termed as â€œPecuniary Advantageâ€ that comes under the periphery of Motor

Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor vehicles Act.

29. Admittedly, the date of birth of deceased Sajjan Singh being 1st February, 1968; the submission that he would have continued in service up to 1st February, 2026,

if 58 years is the age of retirement or 1st February, 2028, if 60 years is the age of retirement is accepted. He was only 28 years 7Â½ months old at the time of death. In

normal course, he would have served the State Government minimum for about 30 years. Even if we do not take into consideration the future prospect of promotion

which the deceased was otherwise entitled and the actual pay revisions taken effect from 1st January, 1996 and 1st January, 2006, it cannot be denied that the pay of

the deceased would have doubled if he would continued in services of the State till the date of retirement. Hence, this was a fit case in which 100% increase in the

future income of the deceased have been allowed by the Tribunal and the High Court, which they failed to do.

30. Having regard to the facts and evidence on record, we estimate the monthly income of the deceased Sajjan Singh at Rs.9,000 Ã- 2 = Rs.18,000/- per month. From

this his personal living expenses, which should be ⅓rd, there being three dependants has to be deducted. Thereby, the â€˜actual salaryâ€™ will come to

Rs.18,000/â€" - Rs.6,000/- = Rs.12,000/- per month or Rs.12,000/- Ã- 12 = Rs.1,44,000/- per annum. As the deceased was 28Â½ years old at the time of death the

multiplier of 17 is applied, which is appropriate to the age of the deceased. The normal compensation would then work out to be Rs 1,44,000/-Ã- 17 = Rs.24,48,000/-

to which we add the usual award for loss of consortium and loss of the estate by providing a conventional sum of Rs.1,00,000/-; loss of love and affection for the

daughter Rs.2,00,000/-, loss of love and affection for the widow and the mother at Rs.1,00,000/- each i.e. Rs.2,00,000/- and funeral expenses of Rs.25,000/-.

31. Thus, according to us, in all a sum of Rs.29,73,000/- would be a fair, just and reasonable award in the circumstances of this case.

32. The rate of interest of 12% is allowed from the date of the petition filed before the Tribunal till payment is made.

33. RespondentNo.3 is directed to pay the total award with interest minus the amount (if already paid) within three months. The appellant No.2 daughter who was

aged about 2 years at the time of accident of the deceased has already attained majority; money may be required for her education and marriage. In the circumstances,

we direct respondent No.3 to deposit 25% of the due amount in the account of appellant No.1 the wife. Out of the rest 75% of the due amount, 35% of the amount be

invested in a Nationalized Bank by fixed deposit for a period of one year n the name of the daughter-appellant No.2. Out of the rest 40% of the due amount, 20% each

be invested in a Nationalized Bank by fixed deposit for a period of one year in the name of the appellant Nos.1 and 3, the wife and the mother respectively.â€

It is apt to note here that this decision is also already reported in (2013) 7 SCC 476.

12. In the case of Reliance General Insurance Company Ltd. (supra), through Paragraph-14, the Honâ€™ble apex Court while taking note of

observations in Paragraph-35 of the decision in Helen C. Rebello (supra) in Paragraphs-15, 17 and 18 observed as follows :

â€œ15. The principle expounded in this decision in Helen C. Rebello case [Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90 : 1999 SCC (Cri) 197] 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 â€œpecuniary advantageâ€ 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 [United India Insurance Co.

Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 : 2002 SCC (Cri) 1294] , to reject the argument of the Insurance Company to deduct the amount receivable by the

dependants of the deceased by way of â€œsocial security compensationâ€ and â€œlife insurance policyâ€.

17. Be that as it may, the term â€œcompensationâ€ 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 â€œjustâ€ means - fair, adequate,

and reasonable. It has been derived from the Latin word â€œjustusâ€, connoting right and fair. In para 7 of State of Haryana v. Jasbir Kaur [State of Haryana v. Jasbir

Kaur, (2003) 7 SCC 484 : 2003 SCC (Cri) 1671] , it has been held that the expression â€œjustâ€ denotes that the amount must be equitable, fair, reasonable and not

arbitrary. In para 16 of Sarla Verma v. DTC [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , this Court has observed that the

compensation â€œis not intended to be a bonanza, largesse or source of profitâ€. That, however, may depend upon the facts and circumstances of each case, as to

what amount would be a just compensation.

18. The principle discernible from the exposition in Helen C. Rebello case [Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90 : 1999 SCC (Cri) 197] is that if the

amount â€œwould be due to the dependants of the deceased even otherwiseâ€, 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 â€œloss of incomeâ€, inter alia, can be â€œpay and wagesâ€ 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 Rulesâ€"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 dependants 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.â€

13. There is further reiteration of the above view in the case of National Insurance Company Ltd.(supra), through Paragraphs- 13 to 23 has come to

observe as follows :

â€œ13. In these cases, compensation is claimed against the tortfeasor who may be the driver or owner of the vehicle or the insurer. In respect of an accident in which

the tortfeasor is found to be liable, the owner or the driver of the vehicle or the insurer, as the case may be, may alone be held responsible for the payment of such

compensation since the accident has resulted in the injury or death which gives rise to the claim of the claimants. No other party is involved in it. And certainly not

the employer who may offer compassionate appointment to the dependants of the injured/deceased.

14. While awarding compensation, amongst other things, the Tribunal takes into account the income of the deceased and calculates the loss of such income after

making permissible deductions to compensate the injured claimant for the loss of earning capacity in case of an injury, and to compensate the claimants dependent

on him in case of death. Thus, the income of the deceased or the injured, which the claimants have lost due to the inability of the deceased or the injured to earn or to

provide for them is a relevant factor which is always taken into consideration. The salary or the income of the claimant in case of death is generally not a relevant

factor in determining compensation primarily because the law takes no cognizance of the claimant's situation. Though in case of an injury, the income of the claimant

who is injured is relevant. In other words, compensation is awarded on the basis of the entire loss of income of the deceased or in a case of injury, for the loss of

income due to the injury. What needs to be considered is whether compassionate appointment offered to the dependants of the deceased or the injured, by the

employer of the deceased/injured, who is not the tortfeasor, can be deducted from the compensation receivable by him on account of the accident from the tortfeasor.

Certainly, it cannot be that the one liable to compensate the claimants for the loss of income due to the accident, can have his liability reduced by the amount which

the claimants earn as a result of compassionate appointment offered by another viz. the employer.

15. The submission on behalf of the appellant in these cases is that the salary of the claimants receivable on account of compassionate appointment must be

deducted from the compensation awarded to them. Reliance is placed in this regard on the judgment of this Court in Bhakra Beas Management Board v. Kanta

Aggarwal [Bhakra Beas Management Board v. Kanta Aggarwal, (2008) 11 SCC 366 : (2009) 1 SCC (Cri) 154] in which compensation was claimed against the employer

of the deceased who was also the owner of the offending vehicle i.e. the tortfeasor. The tortfeasor offered employment on compassionate grounds to the widow of

the deceased i.e. the claimant. In the facts and circumstances of the case, this Court took the view that the salary which flowed from the compassionate appointment

offered by the tortfeasor, was liable to be deducted from the compensation which was payable by the same employer in his capacity as the owner of the offending

vehicle. We find this decision as being of no assistance to the appellant in the cases before us. In the present cases, the owner of the offending vehicle is not the

employer who offered the compassionate appointment. As observed earlier, it is difficult to see how the owner can contend that the compensation which he is liable

to pay for causing the death or disability should be reduced because of compassionate employment offered by another. In any case, it is difficult to determine how

much the person offered compassionate appointment would earn over the period of employment which is not certain, and deduct that amount from the compensation.

16. At this juncture, it would be apposite to refer to some of the decisions rendered by this Court. In Helen C. Rebello v. Maharashtra SRTC[Helen C. Rebello v.

Maharashtra SRTC, (1999) 1 SCC 90 : 1999 SCC (Cri) 197] , the insurance company had claimed that the amount which was received by the claimant on account of life

insurance was liable to be deducted from the compensation which is payable to the claimants. This contention was rejected by this Court in the following words:

(SCC pp. 112-13, paras 36-37)

â€œ36. 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.

37. Accordingly, we set aside the impugned judgment dated 9-9-1985 and restore the judgment of the Tribunal dated 29-9-1980 and hold that the amount received by

the claimant on the life insurance of the deceased is not deductible from the compensation computed under the Motor Vehicles Act. The respondent concerned shall

make the payment accordingly, if not already paid in terms thereof.â€

17. Similarly, in United India Insurance Co. Ltd. v. Patricia Jean Mahajan [United India Insurance Co. Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 : 2002 SCC (Cri)

1294] , this Court held that the amount received by the claimants on account of social security from an employer must have a nexus or relation with the accidental

injury or death, in order to be deductible from the amount of compensation. Hence, this Court refused to deduct the said amount from the amount of compensation

receivable on account of the motor accident.

18. The facts of the case in Vimal Kanwar v. Kishore Dan [Vimal Kanwar v. Kishore Dan, (2013) 7 SCC 476 : (2013) 3 SCC (Civ) 564 : (2013) 3 SCC (Cri) 583 : (2013) 2

SCC (L&S) 759] are similar to the facts of the cases in hand. The contention in the said case was that the amount of salary receivable by the claimant appointed on

compassionate ground was deductible from the amount of compensation which the claimant was entitled to receive under Section 168 of the Motor Vehicles Act,

1988. This Court rejected the said contention and observed as follows: (SCC p. 485, para 21)

â€œ21. â€œCompassionate appointmentâ€ 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 has 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

â€œpecuniary advantageâ€ 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.â€

19. In Reliance General Insurance Co. Ltd. v. Shashi Sharma [Reliance General Insurance Co. Ltd. v. Shashi Sharma, (2016) 9 SCC 627 : (2016) 3 SCC (Cri) 713 : (2017) 1

SCC (L&S) 90] , this Court permitted the deduction of the amount receivable by the claimant under the scheme of the 2006 Rules framed by the State of Haryana

which provided a grant of compassionate assistance by way of ex gratia financial assistance on compassionate grounds to the members of the family of a deceased

government employee who died while in service/missing government employee.

20. The financial assistance was a sum equal to the pay and other allowances that were last drawn by the deceased employee in the normal course without raising a

specific claim for periods up to 15 years from the date of the death of the employee if the employee had not attained the age of 35 years, and lesser periods of 12 years

and 7 years depending on the age of the employee at the time of death. The family was eligible to receive family pension only after the period of financial assistance

was completed. The Court held that ex gratia financial assistance was liable to be deducted on the ground that the claimant was eligible to it on account of the same

event in which the compensation was claimed under the Motor Vehicles Act, 1988 i.e. the death of the employee.

21. This case seems to superficially support the case of the appellant Insurance Company before us. However, on a deeper consideration, it does not. In Reliance

General Insurance [Reliance General Insurance Co. Ltd. v. Shashi Sharma, (2016) 9 SCC 627 : (2016) 3 SCC (Cri) 713 : (2017) 1 SCC (L&S) 90] , the family of the

deceased employee became entitled to financial assistance of a sum equal to the pay and other allowances that were last drawn by the deceased for a certain period

after his death, even without raising a specific claim. In other words the family became entitled to the pay and allowances that the deceased would have received if he

would have not died, for a certain period of time. This financial scheme resulted in paying the family the same pay and allowances for a certain period and thus in

effect clearly offsetting the loss of income on account of the death of the deceased. Thus, the amount of financial assistance had to be excluded from the loss of

income, as to that extent there was no loss of income, and the compensation receivable by the family had to be reduced from the amount receivable under the Motor

Vehicles Act.

22. In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the

deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they receive in the form of their salary, would be

earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, we are of

the view that the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them

under the Act.

23. In the cases before us, compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on

compassionate grounds to the dependants of the deceased/injured. The source from which compensation on account of the accident is claimed and the source from

which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources. Since the tortfeasor has not offered

the compassionate appointment, we are of the view that an amount which a claimant earns by his labour or by offering his services, whether by reason of

compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tortfeasor under the Act.

In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount

which is liable to be paid either by the owner/the driver of the offending vehicle or the insurer.â€

14. In the case of Sebastiani Lakra & others (supra), through Paragraph-12 therein has come to observe as follows :

â€œ12. The law is well-settled that deductions cannot be allowed from the amount of compensation either on account 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 dependants or the legal heirs of the deceased on account of his death in a motor

vehicle accident. The claimants/dependents are entitled to â€˜just compensationâ€™ 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.â€

15. In New India Assurance Company (supra), through Paragraphs-40 and 41 dealing with loss of consortium, i.e. spousal consortium, parental

consortium, filial consortium has come to observe as follows:

â€œ40. We may also notice the three-Judge Bench judgment of this Court relied upon by the learned counsel for the appellant i.e. Sangita Arya v. Oriental Insurance

Co. Ltd. [Sangita Arya v. Oriental Insurance Co. Ltd., (2020) 5 SCC 327 : (2020) 3 SCC (Civ) 254 : (2020) 2 SCC (Cri) 905] The counsel for the appellant submits that this

Court has granted only Rs 40,000 towards â€œloss of consortiumâ€ which is an indication that â€œconsortiumâ€ cannot be granted to children. In the above case,

Motor Accidents Claims Tribunal has awarded Rs 20,000 to the widow towards loss of consortium and Rs 10,000 to the minor daughter towards â€œloss of love and

affectionâ€. The High Court has reduced [Oriental Insurance Company Ltd. v. Sangita Arya, 2016 SCC OnLine Utt 970] the amount of consortium from Rs 20,000 to Rs

10,000. Para 16 of the judgment is to the following effect: (Sangita Arya case [Sangita Arya v. Oriental Insurance Co. Ltd., (2020) 5 SCC 327 : (2020) 3 SCC (Civ) 254 :

(2020) 2 SCC (Cri) 905], SCC p. 330, para 10)

â€œ10. The consortium payable to the widow was reduced [Oriental Insurance Company Ltd. v. Sangita Arya, 2016 SCC OnLine Utt 970] by the High Court from Rs

20,000 (as awarded by MACT) to Rs 10,000; the amount awarded towards loss of love and affection to the minor daughters was reduced from Rs 10,000 to Rs 5000.

However, the amount of Rs 5000 awarded by MACT towards funeral expenses was maintained.â€

41. This Court in the above case confined its consideration towards the income of the deceased and there was neither any claim nor any consideration that the

consortium should have been paid to other legal heirs also. There being no claim for payment of consortium to other legal heirs, this Court awarded Rs 40,000 towards

consortium. No such ratio can be deciphered from the above judgment that this Court held that consortium is only payable as a spousal consortium and consortium

is not payable to children and parents.â€

16. In the case of National Insurance Company Ltd. Vrs. Birender and others : (2020) 11 SCC 356 through Paragraphs-19 and 21, while taking

into account deduction of the amounts from compensation held only tax amount can be deducted. This Court takes note of the observation of the

Honâ€™ble apex Court through paragraphs-19 and 21, which reads as follows :

19. Reverting to the determination of compensation amount, it is noticed that the Tribunal proceeded to determine the compensation amount on the basis of net

salary drawn by the deceased for the relevant period as Rs.16,918/- per month, while taking note of the fact that her gross salary was Rs.23,123/- per month

(presumably below taxable income). Concededly, any deduction from the gross salary other than tax amount cannot be reckoned. In that, the actual salary less tax

amount ought to have been taken into consideration by the Tribunal for determining the compensation amount, in light of the dictum of the Constitution Bench of

this Court in para 59.3 of Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205].

21. Be that as it may, the Tribunal, for excluding the amount received by the deceased as family pension due to demise of her husband, had noted in para 26, as under:

â€œ26. The learned counsel for the claimants further requested that about to family pension being drawn by the deceased also be calculated for the purpose of

assessing the compensation. This contention and assertion of the learned counsel for the claimants does not carry any conviction with the Tribunal because the

deceased was getting family pension in her own right as the widow of the deceased and cannot be termed as her income for the purpose of computing the amount of

compensation.â€

The High Court, without reversing the said finding, proceeded to include the amount of Rs 7000 per month received by the deceased as pension amount after the

demise of her husband. We are in agreement with the view taken by the Tribunal and for the same reason, have to reverse the conclusion recorded by the High Court

to include the said amount as loss of dependency. That could not have been taken into account, as the same was payable only to the deceased being widow and not

her income as such for the purpose of computing the amount of compensation.â€

17. In another recent decision in the case of Erudhaya Priya Vrs. State Express Transport Corporation Ltd. : 2020 SCC Online SC 601, dealing

with even in the case of permanent disability in paragraph-14 has come to hold as follows:

â€œWe are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also

be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co.

Ltd. case (supra), more specifically para 59.3, considering the age of the appellant, would be 50% of the actual salary in the present case.

(c) The third and the last aspect is the interest rate claimed as 12%â€

18. Now coming to decide on the claim of the Insurance Company in their challenge to grant of compensation @50% of future prospect in spite of a

service being provided to the family members of the deceased through a catena of decisions taken note hereinabove, this Court finds the settled

position remain to be employment under the provisions of compassionate appointment scheme since provided by virtue of an agreement between an

employee and employer remain excluded from the compartment of compensation and there cannot be any deduction on this head. Be it stated here

that even though Insurance Company has filed appeal on the above ground based on their objection in the written statement neither the Insurance

Company choose to ask the Tribunal to frame any issue on such aspect nor as it appears, they led any evidence on this aspect. Consequently reading

of the judgment also discloses that there is no submission even on this aspect, thus this Court observes, a pleading not asked to be considered through

framing of issue and in absence of at least evidence on such scoring amounting to abandonment of such aspect and cannot be taken into consideration

even otherwise. Be that as it may, for the settled position of law, this Court negative the plea of the Insurance Company to reduce the compensation

amount taking into consideration the compensation amount through future prospect by taking into account the employment of one of the family

members of the deceased through rehabilitation assistance scheme.

19. Similarly, coming to claim of Insurance Company for deduction on other accounts, for the catena of decisions of the Honâ€™ble apex Court

reproduced hereinabove, this Court finds none of the grounds agitated by the Insurance Company remains sustainable in the eye of law. This Court

therefore observes the appeal at the instance of the Insurance Company, i.e. MACA No.774 of 2016 has to be simply dismissed and as such, MACA

No.774 of 2016 stands dismissed.

20. Coming to the claim of the learned counsel for the claimant involving appeal, i.e. MACA No.593 of 2016, this Court finds even though the claimant

party is entitled to compensation under the head of loss of estate, loss of love and affection, loss of consortium as well as some amount towards

litigation expenses, from the discussions in the judgment, learned Tribunal while computing the compensation even though discussed the compensation

towards funeral expenses and granted a sum of Rs.1,00,000/- (Rupees one lakh), for the opinion of this Court, taking into account the grant of

compensation of Rs.48,83,355/- (Rupees Forty eight lakhs eighty three thousand three hundred fifty five) only, apart from the bereaved family got the

premature superannuation benefits on the head of the deceased and also an employment under rehabilitation assistance scheme, this Court observes

grant of Rs.1,00,000/- towards funeral expenses be considered as compensation towards funeral expenses, loss of estate as well as loss of love and

affection. In the above view, this Court is not inclined to grant any further amount on the above heads except directing to treat grant of Rs.1,00,000/-

(Rupees one lakh) only towards funeral expenses as expenses on the head of loss of estate and for loss of love and affection as well as loss of

consortium.

21. It is in this view of the matter, this Court dismisses both the appeals thereby confirming the judgment of the First Additional District Judge-cum-1st

Motor Accident Claims Tribunal, Cuttack involving MAC No.113 of 2011. Before parting with the judgment, this Court likes to observe, since the

Insurance Appeal was mostly involving an attempt to reduce the compensation while entertaining such appeals, the High Court should remain careful

and looking to the limited challenge issue direction for at least release of 75% of the compensation amount along with interest to protect the interest of

the bereaved family. Release of balance amount may be subject to final outcome involving litigation in this Court.

22. For the dismissal of both Appeals, this Court directs the Insurance Company to deposit the whole amount along with interest as awarded by the

Tribunal within a period of one and half months from the date of judgment and considering that Claimant nos.2 to 4 have already gone major in the

meantime, the Tribunal is directed keeping in view that the award was passed in the year 2016 and the Claimants are entitled to interest @7% p.a.

from 05.03.2011, the matter is remitted back to the Tribunal for modifying its order on the aspect of manner of release in favour of Claimant no.1 and

the amount required to be kept under Fixed Deposit in respect of all the respondents and also the amount now to be released in favour of Claimant

no.1, wife of the deceased by undertaking the entire exercise within a period of three weeks from the date of receipt of copy of the judgment. The

matter is remitted back only for the purpose of re-calculation of the whole compensation and for determination of the mode of release and Fixed

Deposit in respect of the Claimants.

23. With the above direction, both the Appeals are dismissed. There shall be no order as to cost.