

(2014) 03 AHC CK 0193

Allahabad High Court (Lucknow Bench)

Case No: First Appeal From Order No. 103 of 2014

Prabandhak U.P. Rajya
Sadak Parivahan
Nigam

APPELLANT

Vs

Smt. Rabia Begum
and Others

RESPONDENT

Date of Decision: March 3, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 158, 163A, 166, 168, 170(b)
- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 2(i)

Citation: (2015) 3 ACC 841 : (2015) ACJ 1492 : (2014) 3 ADJ 154 : (2014) 2 ALJ 753 : (2015) 108 ALR 439 : (2016) 1 AnWR 121 : (2014) 2 ESC 871

Hon'ble Judges: Devi Prasad Singh, J; Ashok Pal Singh, J

Bench: Division Bench

Advocate: Akhter Abbas, Advocate for the Appellant; Shobha Ram Pandey, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Devi Prasad Singh, J.

We have heard learned counsel for the appellant and the learned counsel for the claimant respondents. Instant appeal u/s 173 of Motor Vehicles Act (in short the Act), has been preferred against the impugned award dated 18.10.2013 passed by Motor Accident Claims Tribunal/ADJ, Court No. 1, Lucknow, in a Motor Accident Claim Petition No. 98 of 2009.

2. Late Bashir Ali who was travelling in a Jeep U.P. 43T/1289 for city and district Gonda on 5.12.2008, at about 8.00 a.m. in the morning on Gorakhpur-Lucknow National Highway near Kashi Vishwanath Petrol Pump in village Poore Tiwari Ka

Purwa, suffered an accident with Bus No. U.P. 93T/0181 belonging to appellant. It is alleged that the said Bus was being driven rashly and negligently resulting in collision with Jeep causing accident in question. In consequence of the accident, the Jeep was overturned and Bashir Ali suffered serious injuries. He succumbed to injuries during course of treatment at district hospital, Gonda. At the time of death, Bashir Ali was aged about 48 years, working in Diesel Loco Shed, Gonda as Assistant Mechanic on the salary of Ra. 10000/- per month. While preferring claim petition, respondent claimants pleaded that accident occurred because of rash and negligent driving of the Bus in question.

3. Tribunal framed following issues during the course of trial:

1. Whether, on 5.12.2008, at about 8.00, deceased Bashir Ali was going to resume duty in city Gonda in the Jeep and the accident occurred near village Poore Tiwari Ka Purwa with the Bus of Raath Depot No. U.P. 93T/0181, which was driven rashly and negligently resulting in collision with Jeep and in consequence thereof, Bashir Ali suffered with grievous injuries and succumbed to it when he was carried on for treatment to hospital?

2. Whether, on the aforesaid date, time and place, the driver of the Bus bearing No. U.P. 93T/0181 was having valid and effective driving licence/permit?

3. Whether the aforesaid accident occurred on account of contributory negligence of the driver of Jeep No. U.P. 43T/1289, in case yes, then its effect?

4. Whether the claimants are entitled for any compensation in case yes, then its quantum?

5. Whether the offending Vehicle No. UP93T0181 was insured on the date and time of the accident with O.P. No. 3 Reliance General Insurance Co.?

4. Parties have led oral and documentary evidence in support of their rival contentions. On behalf of the appellant respondent, it was pleaded before the Tribunal that the accident occurred on account of rash and negligent driving of the Jeep when it had tried to overtake the bus. The driver of the Jeep and the Company which has insured it has not been made party.

5. During the course of trial, the Tribunal considered the evidence led by the parties at length and recorded finding that the accident occurred because of rash and negligent driving of the bus and rejected the contention of the appellant respondent that it was outcome of contributory negligence caused by the driver of the Jeep (supra) and awarded compensation of Rs. 7,99,000/-.

6. Sri Akhtar Abbas while assailing the impugned award, raised two fold arguments. Firstly, that it is a case of contributory negligence and secondly, the compensation awarded is excessive since wife of the deceased employee, has been given compassionate appointment which has been not considered by the Tribunal.

7. So far as the contributory negligence is concerned, while refuting the contention of appellant respondent, the Tribunal relied upon the statement of PW-2 Peer Mohammad who is an eye-witness. PW-2 Peer Mohd., has made statement that accident occurred because of rash and negligent driving of the Bus of the appellant. The emphasis given by the Tribunal on the statement of PW-2, seems to be correct appreciation of evidence. The Tribunal has rightly relied upon the case in [Jiju Kuruvila and Others Vs. Kunjamma Mohan and Others,](#), where their lordships of Hon"ble Supreme Court held that the statement of eye-witnesses present at the scene of occurrence ordinarily, may not be discarded while relying upon site plan. The Tribunal noted that DW-1 Rajendra Singh driver of the Bus admitted in his statement that the Jeep was being driven keeping to the left side of the road. The Tribunal has considered the statement of DW-2 Madan Mohan Tiwari who accepted that the accident occurred when both the vehicles were coming towards each other from reverse direction. However, the Tribunal held that the driver of the Bus has not taken necessary care while plying his vehicle on the road. The Tribunal disbelieved the statement of the driver of the Bus on the ground that he had failed to identify the number of truck which was being alleged to be plied adjacent to the Jeep (supra). He stated that he informed the police station concerned but the copy of the report lodged by the driver of the Bus in the police station was not produced in the Court. In consequence thereof, the Tribunal disbelieved the statement given by the driver of the Bus.

8. In absence of any cogent and trust worthy evidence, the Tribunal has not relied upon the defence set up by the appellant that it is a case of contributory negligence. The burden was on the part of the appellant respondent to establish that the driver of the Jeep was equally responsible in causing the accident in question. Since the appellant respondent failed to discharge his burden to establish the case of contributory negligence, the Tribunal has decided the issue No. 1 in positive and issue No. 3 in negative.

9. The observation made and finding recorded by the Tribunal, seems to be correct in view of recent judgment of Hon"ble Supreme Court in [Jiju Kuruvila and Others Vs. Kunjamma Mohan and Others,](#). Their lordships of Hon"ble Supreme Court held that merely on the basis of post mortem report or scene mahazar (naksha nazari) inference may not be drawn with regard to the contributory negligence. Relevant paras. 20.5 and 20.6 of the said judgment are reproduced as under:

20.5. The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or

corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

20.6. Post Mortem report, Ext. A5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half-full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence, Ext. A5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident. The mere suspicion based on Ext. B2, "Scene Mahazar" and the Ext. A5, post mortem report cannot take the place of evidence, particularly, when the direct evidence like PW.3, independent eyewitness, Ext. A1 (FIR), Ext. A4 (charge-sheet) and Ext. B1 (F.I. statement) are on record.

10. Coming to second limb of argument of the learned counsel for the appellant that since after death of the husband, the dependent of the deceased has been given compassionate appointment, non-consideration of this fact while considering the compensation, is fatal. Learned counsel relied upon the case in [Bhakra Beas Management Board Vs. Smt. Kanta Aggarwal and Others,](#).

11. On the other hand, respondent's counsel while defending the impugned award would submit that the compensation has been awarded in pursuance of statutory provisions contained in Motor Vehicles Act. Keeping in view the number of dependents, it is submitted that apart from the widow wife, the deceased survived by six children making total dependency to 7.

12. In [Chairman, Rajasthan State Road Transport Corporation and Others Vs. Smt. Santosh and Others,](#), their lordships of Hon"ble Supreme Court considered the object and purpose of the Act and emphasised that statutory provisions be implemented in their letter and spirit for the purpose of awarding compensation.

13. In [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,](#), their lordships of Hon"ble Supreme Court after considering earlier judgments, emphasised for uniformity and consistency in awarding compensation. Their lordships of Hon"ble Supreme Court observed as under:

41. Tribunals/Courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of M.V. Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the

table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling u/s 166 and not u/s 163A of MV Act. In cases falling u/s 166 of the MV Act, Davies method is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

14. In [M. Mani Vs. Divisional Manager, New India Assurance Company Ltd. and Another,](#) while considering the quantum of compensation, disability of the injured working as Coolie was taken into account. Hon"ble Supreme Court considered the past, present and future working capacity of the Coolie and reiterated the ratio of earlier judgments in [Raj Kumar Vs. Ajay Kumar and Another,](#) for grant of compensation. Hon"ble Supreme Court considered various factors which may be taken into account for grant of compensation including pecuniary damages as well as non-pecuniary damages, to quote relevant para. 10 from the judgment of M. Mani (supra):

10. In Raj Kumar's case, this Court identified the heads under which compensation is required to be awarded to the victim of motor accident. Paragraphs 6, 7 and 8 of that judgment are extracted below:

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure,

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses--Item (iii)--depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages--Items (iv), (v) and (vi)--involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability--Item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability.

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor

accident, they can be permanent disabilities for the purpose of claiming compensation.

15. The conditions which may be looked into while awarding compensation, has been specified by Hon"ble Supreme Court in the aforesaid case of Raj Kumar. It does not include any subsequent development like appointment on compassionate ground or alike condition.

16. In [K. Suresh Vs. New India Assurance Company Ltd. and Another,](#), their lordships of Hon"ble Supreme Court in para. 10 of the said judgment, held as under:

10. It is noteworthy to state that an adjudicating authority, while determining quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the tribunal or a Court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be adhered.

17. In [Neerupam Mohan Mathur Vs. New India Assurance Co.,](#), their lordships of Hon"ble Supreme Court relied upon a number of cases right from Sarla Verma (supra) and Raj Kumar (supra) and awarded compensation with regard to pecuniary damages and non-pecuniary damages in the following manner:

18. Having regards to the fact that the Tribunal and the High Court have not allowed reasonable amount for different pecuniary and the non-pecuniary damages, we, therefore, with a view to do complete justice to the claimant re-determined the amount of compensation on the following terms:

18. In [G. Ravindranath @ R. Chowdhary Vs. E. Srinivas and Another,](#), while considering an appeal for enhancement of compensation, their lordships of Hon"ble Supreme Court held that enhancement of compensation shall be allowed if it is found that authority did not give due weightage to evidence produced by the appellant and overlooked the documentary evidence of expenses incurred by claimant. Hon"ble Supreme Court considered the grounds on which the compensation on pecuniary damages may be awarded, to quote:

13. It is settled law that compensation in personal injury cases should be determined under the following heads: Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

14. In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

19. In [Rajesh and Others Vs. Rajbir Singh and Others](#), a three Judges Bench of Hon'ble Supreme Court while emphasizing for broader outlook to award compensation, held that Courts should not succumb to niceties or technicalities. Their lordships of Hon'ble Supreme Court relying upon the case of Sarla Verma (supra), held that just compensation means adequate compensation.

While considering the competence to award compensation in excess to what is claimed in application u/s 166 of the Act, Hon'ble Supreme Court in paras. 8 to 12, 16 to 18 has made following observations:

8. Since, the Court in Santosh Devi's case actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In Sarla Verma's case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be

no addition thereafter.

10. Whether the Tribunal is competent to award compensation in excess of what is claimed in the Application u/s 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. At Paragraph 10 of Nagappa's case (supra), it was held as follows:

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be "just". There is no other limitation or restriction on its power for awarding just compensation.

The principle was followed in the later decisions in Oriental Insurance Company Limited v. Mohd. Nasir and another and in Ningamma and another v. United Indian Insurance Company Limited.

11. Underlying principle discussed in the above decisions is with regard to the duty of the Court to fix a just compensation and it has now become settled law that the Court should not succumb to niceties or technicalities, in such matters. Attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

12. There is another reason why the Court should award proper compensation irrespective of the claim and, if required, even in excess of the claim. After the amendment of the Act by Act No. 54 of 1994 with effect from 14.11.1994, the Report on motor vehicle accident prepared by the police officer and forwarded to the Claims Tribunal under Sub-section (6) of Section 158 has to be treated as an Application for Compensation.

16. In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal/Court has a duty, irrespective of the claims made in the Application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation.

17. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and

guidance to children and funeral expenses. It may be noted that the sum of Rs. 2,500/- to Rs. 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of Rs. 5,000/- to Rs. 10,000/-. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award at least rupees one lakh for loss of consortium."

18. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "Funeral Expenses". The "Price Index", it is a fact has gone up in that regard also. The head "Funeral Expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "Funeral Expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs. 25,000/-.

20. One other three Judges Bench of Hon"ble Supreme Court in a case in [Reshma Kumari and Others Vs. Madan Mohan and Another, ,](#) their lordships of Hon"ble Supreme Court reiterated the principle with regard to addition made to income of deceased towards future prospects depending upon kind of employment remuneration damages and age of deceased. It has further been held that unlike cases u/s 166 of the Act, no proof is required u/s 163A relating to strict or fault liability. Reiterating the principle flowing from Sarla Verma Hon"ble Supreme Court considered the guiding factors for determination and awarding of just compensation u/s 166 of the Act. It has been held that proceeding u/s 163A and 166 of the Act deal with different facts and circumstances and the claimants have to chose either of one.

Hon"ble Supreme Court reiterated the principle enunciated in Sarla Verma (supra) and provided in paras. 30, 31 and 32 as guiding principles for appropriate deduction for personal and living expenses. Their lordship held that percentage of deduction on account of the personal and living standard may vary with reference to different members of family and personal and living expenses of the deceased need not exactly be corresponding to the number of dependants, to quote paras. 40 and 41:

40. As regards deduction for personal and living expenses, in Sarla Verma, this Court considered Susamma Thomas, Trilok Chandra and Fakeerappa and finally in paras. 30, 31 and 32 of the Report held as under: (Sarla Verma case, SCC p. 136

30.....Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father, is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of

dependants.

21. In another recent judgment in [Kishan Gopal and Another Vs. Lala and Others,](#), Hon"ble Supreme Court, in the event of death of a 10 years child, who was assisting his parents in agricultural occupation, assessed Rs. 30,000/- p.a., as multiplicand notationally. Their lordships granted interest at the rate of 9% per annum on the ground that the Insurance Company for about 21 years, kept the matter pending without setting, legitimate claim. It has further been held that where age of deceased is 10 years, taking young age of parents namely, the mother who was about 36 years old at the time of accident, multiplier of 15 can be applied to the multiplicand in view of Sarla Verma case (supra). Their lordships noted the inaction of the Insurance Company whereby, the statement of witness was not rebutted. Further appeal was found to be not maintainable since the Insurance Company has not obtained permission from the Tribunal u/s 170(b) of Motor Vehicles Act to contest the case on the defence of the insured.

22. Hon"ble Supreme Court (supra) further held that in view of case in [Lata Wadhwa and Others Vs. State of Bihar and Others,](#), compensation determined for the children of all age groups could be double of what is stated in Schedule II to the Motor Vehicles Act, as the determination made was grossly inadequate and further made that the loss of children is irrecoupable and no amount of money could compensate the parents.

23. Much emphasis has been given by the appellant's counsel from the cases whereby, Hon"ble Supreme Court held that Tribunal has to consider the extent of compensation, appointment while awarding compensation in the event of death of injured. The judgment is of two Hon"ble Judges of Hon"ble Supreme Court. However, in a case in [Vimal Kanwar and Others Vs. Kishore Dan and Others,](#), their lordships of Hon"ble Supreme Court held that salary receivable by dependant claimant upon compassionate appointment due to victim's death, does not come within the purview of Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The observations made by Hon"ble Supreme Court in the case of Vimal Kanwar (supra) (two Hon"ble Judges Bench), is reproduced as under:

19. The aforesaid issue fell for consideration before this Court in [Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another,](#). 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. The following was the observation and finding of this Court:

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 correlation 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 correlation 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 correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation 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.

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 dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dying 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 dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" 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.

24. Though the cases relied upon by the learned counsel for the appellant is held by two Hon"ble Judges Bench but the case of Vimal Kanwar (supra) is later judgment by two Hon"ble Judges Bench. Apart from the fact that the case of Vimal Kanwar is later judgment of the Hon"ble Supreme Court dealing with the issues involved, it is based on judgments of three Hon"ble Judges Bench of Hon"ble Supreme Court (supra) where, their lordships considered the items which may be considered by the Tribunals for awarding compensation under Motor Vehicles Act with regard to pecuniary and non-pecuniary damages. The judgment of larger Bench are binding precedents and Courts have to follow them.

25. It may be noted that two Hon"ble Judges Bench of Hon"ble Supreme Court, in the case of Bhakra Beas Management Board (supra), has relied upon the common law judgment of U.K., and the provisions contained in Section 168 of the Motor Vehicles Act, has not been considered whereas, in subsequent judgment including the judgment of three Hon"ble Judges Bench of Hon"ble Supreme Court (supra), the provisions contained in Section 166 and 168 of the Motor Vehicles Act, have been considered and interpreted while defining the pecuniary and non-pecuniary damages.

26. Otherwise also, case of Vimal Kanwar (supra) being later judgment and Motor Vehicles Act being beneficial legislation, it should be followed while assessing compensation under the Act.

27. To sum up:

1. Burden of proof with regard to contributory negligence shall be on the party who pleads for it. The contributory negligence should be proved like other issues. No inference may be drawn solely from Naksha Nazari or mere pleading on record.

2. Compassionate appointment is the service condition of an employee applied in case the scheme has been framed by the employer. It is not an advantage receivable by heirs on account of death and have co-relation of amount receivable under the statutes occasioned on account of accidental death. Compassionate appointments have nexus with the death of an employee during the course of service and not otherwise (supra).

3. The Tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for payment of compensation (supra). However, in case the Tribunals or the Courts depart from pleading on record with regard to quantum of compensation, then they have to assign reason based on cogent and trust worthy evidence as well as keeping in view the facts and circumstances of each case. The appointment on compassionate ground does not fall within the definition of pecuniary advantage which may come under the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The amount received on compassionate appointment, is not liable for deduction for determination of compensation under Motor Vehicles Act.

4. In view of redundancy of second schedule of the Motor Vehicles Act and judgment of Hon''ble Supreme Court (supra), an amount of Rs. 25,000/- may be awarded for funeral expenses and Rs. 1,00,000/- for the loss of consortium. The percentage of deduction of amount on account of personal and living expenses of the deceased, may vary with reference to different number of members in the family and the personal and living expenses of the deceased need not exactly be corresponding to the number of dependents.

5. In the event of deceased being survived by parents and siblings, the latter would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family.

However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to 1/3 and contribution to the family will be taken as 2/3.

Where, the deceased is married, the deduction towards personal expenses and living expenses should be 1/3, where number of dependents of the family is 2 or 3, 1/4, where number of dependents of the family is 4 to 6, the deduction may be 1/5 (supra).

6. In case, the deceased is a salaried person, upto 40 years of age an addition of 50% to the actual income of deceased while computing future prospects, may be made. The actual income should be income after paying tax if any. In the event of deceased being in the age group of 40-50 years, addition would be 30% and for persons above 50 years, it is not necessary to add an amount for future prospects.

In the event of deceased being self-employed or on fixed wages and where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 50% for victim below 40 years; 30% for victim between 40 to 50 years and 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable.

With regard to other self employed persons, an addition of 30% may be made in lieu of future prospects (supra).

Subject to the finding above, the appeal lacks merit and the impugned award is affirmed. Let the statutory amount deposited in this Court, be remitted to the Tribunal by the Registry forthwith say, within two weeks. Thereafter, Tribunal shall release the compensation in terms of award expeditiously say, within two months.

The appeal is disposed of accordingly.