(2011) 07 KL CK 0180

High Court Of Kerala

Case No: Writ Petition (C) . No. 32550 of 2010

S. Abdul Salam and Others — APPELLANT

Vs

Union of India and Another — RESPONDENT

Date of Decision: July 20, 2011

Acts Referred:

- Carriage by Air Act, 1972 - Section 4A, 5, 5(1), 6A, 8
- Constitution of India, 1950 - Article 22, 26, 41
- Motor Vehicles Act, 1988 - Section 140, 142, 163A

Citation: (2011) 3 KLJ 662 : (2011) 3 RCR(Civil) 847 : (1999) 3 RCR(Civil) 847

Hon'ble Judges: P.R. Ramachandra Menon, J

Bench: Single Bench

Advocate: Kodoth Sreedharan, for the Appellant; P. Parameswaran Nair (Asst. SG); H.D. Nanavati (Sr.); Joseph Kodianthara (Sr.) Binu Mathew ; E.K. Nandakumar ; Mathews K. Uthuppachan and Terry. V. James, for the Respondent

Final Decision: Allowed

Judgement

P.R. Ramachandra Menon. J.

1. Does the law reckon the poor folk travelling in an ill-fated plane and losing their lives in an accident, along with mighty rich, as the ''Children of a Lesser God'', with regard to the eligibility to obtain the statutory compensation payable under the Carriage by Air Act 1972, as amended by the Carriage by Air (Amendment) Act, 2009 (Act 28 of 2009) incorporating the relevant provisions under the III Schedule in conformity with the Montreal Convention adopted on 28.05.1999, is the point involved. The history of civil aviation industry in the world is said as traceable to the 18th century, when a hot air balloon was designed, proclaiming the starting of balloon flights, followed by construction of airships in the 19th century and the ''first flight'' by the Wright Brothers in 1903. The concept of Air crafts and Air travel however was not alien to Indian society, in view of the reference to ''Pushpaka

Vimana'' in the ''Ramayana'' by Saint Valmiki, though it was beyond the dreams of the rest of the world, till then. India also joined hands with the West, when the Tata''s historic flight from Karachi to Mumbai was inaugurated on 15.10.1932. In the course of developments in all spheres, India made her presence felt, by subscribing her signature to various international instruments governing the liability of Air Carriers for injury or death of passengers or destruction, loss or damage of baggage or cargo and losses caused by delay in international carriage of passengers, baggage and cargo, ratifying the Warsaw Convention on 1929, the Hague Protocol 1955 and lastly, the Montreal Convention 1999, giving effect to the same by way of appropriate legislations, such as, Indian Carriage by Air Act 1934, The Carriage by Air Act 1972 and Act 28 of 2009 introducing the 3rd Schedule and other amended provisions to the existing Act.

2. The petitioners are ''members of the family'' of the deceased Mohammed Rafi, who lost his life in the Air crash occurred at the Bajpei International Airport, Mangalore, Karnataka State on 22.05.2010 involving an International Carrier belonging to the second respondent, a Government Company owned by the first respondent/Union of India. In fact, the deceased was working in the United Arab Emirates and was returning home, in the ill-feted ''Air India Express'' plane owned by the erstwhile Air India Corporation Ltd., now the second respondent National Aviation Company of India Ltd (pursuant to the merger with the Indian Airlines). The international flight originated from Dubai International Airport, UAE and the destination was the International Airport, Mangalore in India. It was a Boeing 737 8HG (Registration VT-AXB) performing the flight IX-812, which took off in the early hours on 22.05.2010 and during the course of landing at the Table-top runway'' of the International Airport, Mangalore, overshot the runway and fell into a gorge sustaining the crash. 158 persons carried in the Aircraft, out of the total 160 passengers and 8 crew, sustained a horrifying death and the deceased involved in this case was one among them. The local police registered a crime and submitted FIR to the JFCM Court, Mangalore on 22.05.2010. Enquiry and investigation by different authorities including those under the Air Craft Act, 1934 was set in motion.

3. While settling the compensation for lives and limbs of the passengers and damage sustained to the property, the petitioners who are the parents and sisters/brothers of the deceased submitted a claim in the prescribed form for the due amount payable under the Act The second respondent disbursed a sum of Rs. 10 lakhs by way of ''Interim Compensation'' as contemplated under Rule 28 of the the III Schedule and negotiations were going on with regard to the balance payable. The petitioners, like many others, stood for the satisfaction of the minimum statutory liability of ''One lakh SDR''-(Special Drawing Rights) as provided under Rule 21(1), read with and 17(1) of the Third Schedule and Section 5(1) of the Act. It is contended that the second respondent put forth an unconscionable demand, allegedly at the instance of their Insurers, to come to a settlement for a total sum of Rs. 35 lakhs "in full and final settlement" of the claim and asked the petitioners to

sign on the dotted lines, which was not palatable to them. They chose to approach this Court by filing this writ petition for declaration and enforcement of their rights, referring to the mandate of the Montreal Convention.

4. The crux of the contentions in the writ petition is that the Air crash was solely on account of the lapse on the part of the Pilot (who is indicated as snoring at the relevant time, when the plane was about to land) and in turn, the sheer negligence on the part of the Second respondent Airlines. As such, strict liability is sought to be established upon the Airlines, in view of the relevant provisions of law, however stating that the claim of the petitioners would stand confined to the statutory extent.

5. The second respondent has filed a counter affidavit virtually conceding the factual position, that the matter has to be dealt with as per the provisions of the Carriage by Air Act, 1972, as amended by the Montreal Convention of 1999 (incorporated under the III Schedule to the Act), to the exclusion of all other law in force in India. The scope of the relevant provision, particularly with regard to the extent of liability under the Rule 21(1) of the III Schedule, providing for an amount of ''One lakh SDR'' stipulated therein is sought to be interpreted as not the minimum amount of compensation payable, but the maximum limit ''upto which'' the liability can be cast upon the Carrier. It is contended that the compensation payable is ''not equal'' in all cases and that, it is subject to proof as to the ''extent of damage sustained''. Referring to the fact that the deceased was aged 24 years and was employed as a ''salesman'' in a Super Market, earning a salary of 2000 AED (Rs. 25000/- per month), the maximum compensation payable was contended as much below Rs. 35 lakhs and accordingly, Rs. 35 lakhs was offered as the compensation payable in "full and final settlement", which was not acceptable to the petitioners. Explaining the scheme of the provisions in the Act/Rules, it is pointed out that the liability of the Carrier, as specified under Rule 21 has been bifurcated, whereby it has been stipulated in sub-rule(1) that, upto a compensation limit of ''One lakh SDR'', the Carrier will not be eligible to set up any defence referring to the absence of negligence, while such a defence is possible in respect of the extent of compensation payable above ''One lakh SDR'', as given under sub-rule (2). This, according to the second respondent, does not mean that the amount of ''One lakh SDR'' payable in the case of death or bodily injury under sub rule (1) of Rule 21 is automatic and contends that the same is payable only subject to proof of the damage sustained because of the injury/death of the person concerned. Viewed in the said circumstance, the amount of Rs. 35 lakhs offered to be paid to the petitioners is stated as reasonable and a ''just compensation'', simultaneously adding that many of the cases have already been settled by paying the eligible compensation varying from case to case, some of which stand above ''One lakh SDR'', based on the facts and circumstances.

6. The petitioners have filed a reply affidavit, mostly reiterating the contentions raised in the writ petition, however producing some additional documents including the ''Speech'' of the Minister for Civil Aviation, Govt. of India, while piloting the Bill dated 30.04.2008 resulting in the amendment of Carriage by Air Act. Referring to the contents of ''FDR'' and ''CVR'' (Flight Data Recorder and Cockpit Voice Recorder respectively), it is stated in the said reply affidavit that the enquiry/investigation conducted by the competent authorities revealed that the mishap was only because of the culpable negligence on the part of the Pilot and as such, the second respondent/Airlines cannot shirk its liability and responsibility with regard to compensation payable under any circumstance. The manner of interpretation, as sought to be adopted by the second respondent with regard to the extent and instance of liability, referring to the ''proof of damages'', is stated as unfounded, with reference to the relevant provisions of law and judgments, asserting that the respondents cannot compel the petitioners to issue a discharge voucher accepting a sum of Rs. 35 lakhs offered "in full and final satisfaction" and that the aforesaid amount, which forms the admitted liability, might be ordered to be disbursed forthwith.

7. In the course of the proceedings, pursuant to a query raised by this Court as to the basis on which compensation would be assessed by the second respondent in the event of the death of a ''child or a non-earning member'', in any given case following an Air accident, a ''Brief Note'' was submitted (dated NIL) signed by the learned Counsel for the second respondent, which, among other things, makes a reference to the manner of fixation of compensation under the M.V. Act and the decision rendered by the Apex court in Arunkumar Agarwal & Anr. vs. National Insurance Co. Ltd., JT 2010 (7) SC 304 granting Rs. 6 lakhs as compensation payable in the case of death of a ''Housewife'', treating her notional income as Rs. 5000/- per month, which is stated as not on the higher side. Para 5 of the said Note reads as follows:

Nevertheless in the present case, having regard to the fact that already a sum of Rs. 10,00,000 had been given as interim compensation under Article 28of the Montreal Convention to enable the family members to get over their immediate needs (Rs. 5,00,000/- in the case of children under 12) and bearing in mind that some adhoc figure would necessarily have to be given (since in such cases there would be no data to ascertain the financial loss) it was recommended by the lawyers representing Air India and its insurers that in no case should the total compensation payable in this case (inclusive of the interim payment) be less than an adhoc sum of Rs. 25,00,000, and this recommendation was accepted by Air India and its insurers

In view of acceptance of the proposal, stated as made by Air India, that in no case should the total compensation payable including the interim payment be less than Rs. 25 lakhs, pursuant to further deliberations, the second respondent was fair enough to disburse an additional sum of Rs. 10 lakhs to the petitioners by way of

interim payment, which is stated as received by the learned counsel for the petitioners as well.

8. The circumstances contemplated under different International Conventions, such as Warsaw Convention 1929, Hague Protocol and Montreal Convention, 1999, coupled with the different enactments made by the Govt. of India at different points of time, were explained by Mr. Kodoth Sreedharan, the learned Counsel for the petitioners. Reference was also made to several judicial precedents rendered by the Apex Court and the High Courts in India (though not on the specific point) and also the decisions rendered by the Courts of foreign countries. Similarly, Mr. Joseph Kodianthra, the learned Sr. Counsel appearing for the second respondent sought to explain the scope of the relevant provisions of law and the inference made by the Indian and Foreign Courts with reference to the related/relevant aspects. This Court had also the privilege of hearing Mr. H.D. Nanavathi, the learned Counsel from M/s. Mulla and Mulla, Mumbai, who is stated as having participated in the negotiations representing the second respondent throughout and whose name has been referred to in various proceedings forming part of the materials on record.

9. The learned Counsel appearing for the second respondent very fairly conceded in the course of arguments, that the plea as to the ''absence of negligence'', set forth in the counter affidavit, is not pressed any further, in the light of the subsequent events/developments and that the actual extent of liability u/s 5(1), read with the relevant Rules of the Third Schedule, particularly Rules 17 and 21, i.e., the quantum of compensation payable alone is disputed.

10. The learned Counsel appearing on behalf of both the sides are of the same opinion, that the issue to be resolved depends solely upon the interpretation to be made as to the mandate of Rule 21(1), whether the amount of ''One lakh SDR'' stated as payable to each passenger in respect of death under Rule 17(1) is the ''minimum'' and whether the claimants are absolved from the liability to substantiate the ''damage sustained'' (following the death of the passenger) with reference to various aspects such as age, employment, dependency and other relevant factors. As such, no fact adjudication is found necessary in this case; nor does the factum of Negligence becomes relevant to fix the liability, as the same stands admitted.

11. For solving the issue as above, it has become necessary to probe into the evolution of law with regard to the liability of Carriers at an international level and legislations made by the Govt. of India at different points of time, to conform to the law. Even in the early decades of the 20th Century, the liability of an Air Carrier in respect of ''International carriage'' of passengers, baggage and cargo was a subject matter of active consideration of many countries, including India (though under British Rule at that time). Taking note of the requirements of the relevant aspects and the law prevailing in different countries for transportation of passengers and cargo through Air across nations, it was felt essential to evolve some common

norms to be accepted and acted upon by such countries to promote such transport in furtherance to the development of business and to maintain stronger relationships. It was accordingly, that the ''Warsaw Convention'' of 1929 was given shape to and India turned to be a signatory to the same. The said Convention was given effect to in India by enactment of the Indian Carriage by Air Act, 1934 (Act 20 of 1934) in regard to international carriage and the provisions of the Act were extended to the ''domestic carriage'' as well, subject to certain exceptions, adaptations and modifications as per the Notification issued in 1964. The Convention provided that, when an accident occurred during international carriage by Air, causing damage to a passenger or the cargo, there was a presumption of liability on the Carriers, who, however could not be held liable, if they proved that they or their agents had taken all necessary measures to avoid damage or that it was impossible for them to take such measures. Striking a balance, the extent of liability on such presumption was fixed on the Carrier, limiting the same to ''1,25,000 Gold Francs'' in respect of death of each passenger; while there was no limitation of liability, if the damage was caused by the wilful misconduct of the Carrier.

12. While so, a diplomatic conference was convened at ''Hague'' in September 1955 at the instance of the International Civil Aviation Organisation, whereby the provisions of Warsaw Convention 1929 were amended and the extent of presumed liability mulcted on the Carrier was enhanced from Rs. 1,25,000 Gold Francs, per passenger, to Rs. 2,50,000 Gold Francs, per passenger; besides providing for simplification of the documents for carriage and also making the Carrier liable, where the damage was caused by an error in piloting or in handling the Air Craft or in navigation. On ratifying the Hague Protocol, by the required number of States, the same was brought into force among the ratifying States on 01.08.1963. It was in furtherance to the steps taken by the Govt. of India to give effect to the ''Hague Protocol'' as well, being a signatory to the same, Act 69 of 1972 (Carriage by Air Act, 1972) was brought into force w.e.f. 15.05.1973, after receipt of the assent of the President of this Republic on 19.12.1972.

13. Drastic changes were later brought about in the international sector of Civil Aviation with regard to liability to pay compensation in respect of damage caused to the person and property of the passengers, as per ''Montreal Convention''. Though, several countries realized the necessity to have such changes to promote transport in furtherance to developmental measures and became signatory to Montreal Convention and though India was a signatory to both the earlier conventions - i.e. Warsaw Convention and Hague Protocol, it took nearly two decades for India to take a firm decision to subscribe to the Montreal Convention and to bring forth necessary legislation to give effect to the same. After realizing the facts and figures, the necessity to take a positive step in this regard was felt, lest, the Indian citizens/passengers undertaking such international travel should be adversely affected and stand discriminated. It was accordingly, that the Carriage by Air (Amendment) Bill, 2007 was introduced in the Lok Sabha on 04.05.2007, which was

referred to the concerned Committee constituted for examination and reporting. The Committee considered the Bill and finalized the report, after hearing the views of various stakeholders and the nodal Ministry i.e. Ministry of Civil Aviation. The Bill was sought to enable the Government to accede to the Montreal Convention for the unification of certain Rules for International Carriage by Air; so that, India was put at par with major countries of the world in this regard, particularly since the existing provisions as to the limits of liability were found to be totally inadequate and a ''Socio-economic study'' conducted by the International Civil Aviation organizations revealed the necessity to have revised levels of compensation, modernizing the existing liability provisions.

14. By virtue of the Montreal Convention, a ''two-tier'' liability regime was introduced for the first time, providing compensation in terms of ''SDR'' (Special Drawing Rights). As per the first tier, in the case of death or bodily injury, the liability of the Carrier was limited to ''One Lakh SDR'', per passenger, making the Carrier subject to strict liability, regardless of fault. For proven damages above ''One lakh SDR'', though there was no pre - specified limits of liability, the Carrier was declared as not liable to such extent, if it was proved that the damage was not caused by its negligence or other wrongful act or omission. Simultaneously, enhancement was also made on the compensation in respect of damage caused to baggage/cargo.

15. The earlier Convention, i.e. Warsaw System, provided ''four choices'' of jurisdiction for filing a claim by the passenger or legal heirs, namely, (1) the place where the ticket was issued or the contract of carriage was made (2) principal place of business of Carrier, (3) the place of destination of the passenger, and (4) the place of the domicile of the Carrier. The Montreal Convention 1999, added a ''5th jurisdiction'', i.e. the ''place of domicile of the passenger'', provided the Airline had a presence there. This fact highlighted in the Bill enabled an Indian National to file his claim in India, even if the journey was undertaken outside India and the ticket was purchased outside India, provided the Carrier had a presence in India. It provided for simplified and modernised documents of carriage (passenger ticket and way bill); thus enabling utilization of electronic data processing in the Air Transport Industry. The Montreal Convention 1999 sought to establish much needed uniformity and predictability of the Rules relating to the international carriage of passengers, baggage and cargo, protecting the interest of passengers by introducing the modern ''two-tier'' liability system and providing for the swift recovery of proven damages, without the necessity to have lengthy litigation, simultaneously enabling the Airline operators to achieve substantive operational savings, through the use of electronically generated simplified documents of carriage and efficient risk management, is data processing in the Air Transport Industry. The Montreal Convention 1999 sought to establish much needed uniformity and predictability of the Rules relating to the international carriage of passengers, baggage and cargo, protecting the interest of passengers by introducing the modem ''two-tier'' liability system and providing for the swift

recovery of proven damages, without the necessity to have lengthy litigation, simultaneously enabling the Airline operators to achieve substantive operational savings, through the use of electronically generated simplified documents of carriage and efficient

16. The Committee, while considering the Bill, observed that the Montreal Convention had already been ratified by about 86 countries; out of which 25 were having direct air-links with India, including routes having high traffic density such as U.S.A., U.K., U.A.E. Kuwait, Qatar, Bahrain, Saudi Arabia, Japan, Austria, France, Germany, Holand and Italy. It was observed that, in such a situation, non-assertion of the Convention by India could give rise to a situation involving serious discrimination among passengers in the same flight; with regard to the compensation. To cite an example, those passengers whose journey originated in the U.S.A. or the U.K. would be entitled for a much higher compensation, compared to those whose journey originated in India, which would, by and large, go against the interest of Indian passengers. It was in the said circumstances, that necessary legislative action was required to give effect to the provisions of the Montreal Convention in India, causing amendments to the Carriage by Air Act 1972, by including a new schedule therein as the "Third Schedule", besides incorporating such other relevant provisions in the Act.

17. It is discernible from Ext. R2 (c) proceedings of the Committee, produced by the second respondent along with their counter affidavit, that the Committee in its meeting held on 02.07.2007, heard the views of the Secretary, Ministry of Civil Aviation on the Bill, besides hearing the views of the various stakeholders, such as, the second respondent, Jet Airways, Travel Agents Association of India, Travel Agents Federation of India and the Air Cargo Agents Association of India on 31.08.2007. It was after hearing the version of all concerned, that the report was finalized by the Committee. Pursuant to further steps, the Bill was piloted by the Minister for Civil Aviation (vide Ext. P11 Speech dated 30.04.2008), projecting the salient features. The Bill was passed by both Houses and necessary amendment to the Statute was effected as per Carriage by Air (Amendment) Act, 2009 (Act 28 of 2009) and India became a signatory to the Montreal Convention accordingly.

18. Coming to the case on hand, the issue pertains to the actual compensation payable to the petitioners, due to the death of the deceased. Since there is no dispute with regard to the law governing the field, i.e. terms of the Montreal Convention 1999, accepted by India giving shape to the Carriage by Air Act, 1972, as amended, incorporating the ''3rd Schedule'', the discussion has mainly to be with specific reference to the relevant provisions, such as Section 5of the Act read with Rules 17, 20, 21, 26 and 28 of the 3rd Schedule.

19. Section 5of the ''Act'' casts liability in the case of death, the relevant portion of which reads as follows:

5. Liability in case of death:-(1) Notwithstanding anything contained in the Fatal Accidents Act, 1855 or any other enactment or rule of law in force in any part of India, the rules contained in the First Schedule, the Second Schedule and the Third Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger.

(2) the liability shall be enforceable for the benefit of such of the members of the passenger''s family as sustained damage by reason of his death. Explanation: In this sub-section, the expression "member of a family" means wife or husband, parent, step-parent, grand parent, brother, sister, half-brother, half-sister, child, step-child and grand-child.

Provided that in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

Section 6A, incorporated by virtue of Act 28 of 2009, stipulates that, any sum in ''Special Drawing Rights'' mentioned in Rule 21 and 22 of Third Schedule'' shall, for the purpose of any action against a Carrier, be converted into ''Rupees'' at the rate of exchange prevailing on the date on which the amount of damages to be paid by the Carrier is ascertained by the Court in accordance with the provisions of Rule 23 of the Third Schedule. The relevant provisions of the Act have been made applicable equally to domestic carriage as well, on notification issued by the Central Government in the official Gazette, applying the rules contained in the concerned Schedules as specified. As mentioned herein before, the scheme of the Statute is such that, the rules contained in the ''First Schedule'' deal with the situation as applicable under the Warsaw Convention to the extent as given effect to by way of legislation as per the Indian Carriage by Air Act, 1934; while the ''Second Schedule'' covers the rules applicable pursuant to the Hague Protocol and embodied under Carriage by Air Act, 1972 to the extent they are applicable, as the case may be. The rules contained in the Third Schedule'' along with Section 4Aand 6Aand sub-section (3) of Section 8were brought into force pursuant to Act 28 of 2009, with intent to give effect to the Montreal Convention, whereby substantial changes were brought about as to the extent of liability and incidental aspects, also introducing a ''two-tier'' formula for granting compensation for the first time.
20. The liability of the Carrier and extent of compensation for damages is specifically dealt with under Chapter III of the Third Schedule. Rule 17, making the Carrier liable for damages sustained in case of death or bodily injury of a passenger and reads as follows:

"17. (1) The carrier shall be liable for damages sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

(2) The carrier shall be liable for damages sustained in case of destruction or loss, or of damage to checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier shall not be liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage has resulted from its fault or that of its servants or agents.

(3) If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger shall be entitled to enforce against the carrier the rights, which flow from the contract of carriage."

However, there is a saving clause as given under Rule 20, which says that, if the Carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the Carrier shall be wholly or partly exonerated from its liability to the claimant, to the extent such negligence or wrongful act or omission has caused or contributed to the damage. When by reason of death or injury of a passenger, compensation is claimed by a person other than the passenger, the rule provides for exonerating the Carrier wholly or partly from its liability, to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. It is further provided under Rule 20 that the said rule applies to all the liability provisions of the rules including sub rule (1) of Rule 21.

21. The vital provision, which is relevant and sought to be interpreted by the contesting parties differently, which fixes the manner and extent of liability, is Rule 21, which is extracted below for the purpose of convenience of reference.

21. (1) For damages arising under sub-rule(1) of rule 17 not exceeding one lakh Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

(2) The carrier shall not be liable for damages arising under sub-rule(1) of rule 17 to the extent that they exceed for each passenger one lakh Special drawing Rights if the carrier proves that--

(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a Third party."

What was in the mind of the legislators while providing for the ''two-tier'' system of compensation payable, whether the amount of ''One lakh SDR'' payable for each

passenger in respect of the specific contingency, stipulating that the Carrier shall not be able to exclude or limit its liability, is the minimum amount to be categorised as ''No fault liability'' or if any defence is open to the Carrier, other than the question of negligence, to exclude or limit such initial liability under ''first tier'' (to the extent of ''One lakh SDR'') forms the basic question to be analysed.

22. The contention/stand of the second respondent is that the scope and extent of liability under Rule 21(1) has to be read and understood in the light of the stipulations under sub rule (2) as well, which prescribes that liability, if any, arising under sub rule (1) of Rule 17; to the extent they exceed ''One lakh SDR'' for each passenger, cannot be shifted to the shoulders of the Carrier, if such damage was not due to negligence or other wrongful act or omission of the Carrier or its servants or agents or that such damage was solely due to the negligence or other wrongful act or omission of a third party, as separately given under clause (a) and (b) of sub rule (2) of Rule 21. According to the learned counsel for the second respondent, the said rule means that, the ''two-tier liability system'' introduced under the ''Third Schedule'' is only to the effect that, with regard to the first phase of liability of ''One lakh SDR'', the Carrier cannot have the defence of negligence and that is all; which in no way dispenses with necessity to prove the extent of damage sustained.

23. It is contended that the deceased in the instant case was employed only as a ''Salesman'', with an average monthly salary of about Rs. 25,000/- and considering the age of the deceased and eligibility of the petitioners/members of the family, the amount of Rs. 35 lakhs offered from the part of the Carrier is more than a handsome figure, adding that the Carrier is not liable to satisfy ''One lakh SDR'' in every case of death irrespective of other relevant factors to be considered. It is also contended that, if the version of the claimants is accepted that the amount of compensation mentioned in Rule 21(1), read with Rule 17(1) as referred to therein, is to be read and understood as the "minimum compensation" payable in each case, then such extent of liability (One lakh SDR) will have to be satisfied by the Carrier in all cases involving ''death'' as well as any ''bodily injury'' (even involving an injury to a little finger), which cannot be the intention of the legislation, submits the learned Counsel.

24. The contention of the second respondent is sought to be branded as puerile by the petitioners, pointing out that there is absolutely no obscurity in the provisions, as this was the mandate of the Montreal Convention, whereby the necessity to provide compensation to the persons concerned was highlighted, providing "uniformity and certainty" in the international sector. The necessity for India to become a signatory to the Montreal Convention was highlighted by the Committee, which was constituted to study and report on the Bill proposed, which in turn was explained by the concerned Minister when the Bill was piloted in the House. It was after considering all the relevant aspects, that Act 28 of 2009 was brought about, providing necessary amendment to the statute bringing the Third Schedule'' and

such other provisions in support thereof. It is contended that the sum of ''One lakh SDR'' stipulated in Rule 21 (1) read with Rule 17(1), is an abstract figure, which is liable to be paid by the Carrier in case of death or bodily injury (to such great extent). To put it more clearly, the contention of the petitioners that the proof, as to the extent of damage sustained is only with regard to the extent of bodily injury sustained and if it is total, the claimant is entitled to have ''One lakh SDR''; with regard to which there cannot be any compromise. In the case of death, nothing requires to be proved as the extent of damage is complete and hence the entire extent of ''One lakh SDR'' is liable to be paid by the Carrier, which cannot be restricted, excluded or limited, as mentioned in the rule itself [Rule 21(1)].

25. In support of the above proposition, reference is made to Rule 26, which reads as follows:

26. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of these rules.

Reference is also made to Rule 28 of the ''Third Schedule'' by both the sides, which stipulates that notwithstanding anything contained in any other law for the time being in force, where the Aircraft accident results in death or injury of passengers, liability is cast upon the Carrier to make ''advance payments'' without delay to the persons entitled for meeting their immediate needs; simultaneously making it clear that such advance payments shall not constitute a recognition of liability and may be set off against any amounts subsequently paid as damages by the Carrier. When the petitioners contend that such stipulation under Rule 28 is in view of the eligibility of the parties concerned to claim compensation for more than ''One lakh SDR'' and hence without prejudice to the right of the party concerned to raise the dispute, the second respondent contends that the said provision gives an idea that the party concerned will have to plead and establish the extent of damage with liberty to have advance compensation in the meanwhile and therefore that the amount of ''One lakh SDR'' mentioned in Rule 21(1) is not automatic.

26. The liability to pay damages is the concept of tort which has been recognised almost throughout the World giving shape to appropriate legislation. The word ''damage and damages'' as given in the HALSBURY''S LAWS OF ENGLAND (paragraph 802 of Vol. 12(1) of 4th Edition) is as follows:

"802. ''Damage'' and ''damages''. ''Damage'' may be defined as the disadvantage which is suffered by a person as a result of the act or default of another. ''Injuria'' is damage which gives rise to a legal right to recompense; if the law gives no remedy, there is ''damnum absque injuria'', or damage without the right to recompense. The meaning of ''damage'' in a statute is a matter of construction. When determining the damage suffered by a plaintiff, the courts will look at the reality of the situation to

assess the loss which has in fact been sustained. ''Damages'' are the pecuniary recompense given by process of law to a person for the actionable wrong that another has done him.

Damages may, on occasion, be awarded where the plaintiff has suffered no ascertainable damage: damage may be presumed. Actions claiming money other than those based on contract, tort or equity, are not actions claiming damages and consequently fall outside the scope of this title. Actions claiming money under a statute are not actions for damages unless the action is also an action in tort or for breach of contract".

The earlier concept was based on the principle under the Maxim "Actio personalis moritur cum persona" which means that a personal action dies with the person, who has suffered the damage. In course of time, the law was developed by way of judicial precedents and several legislations, which were termed as ''survival statutes'' and thus came into existence the Fatal Accidents Act and the like. The law took its turn with various enactments in India as well, even in the Pre-independence period and thereafter, gave shape to the statutes like M.V. Act 1939 (now replaced by M.V. Act 1988 w.e.f. 01.07.1989), Workmen''s Compensation Act (now replaced by the Employees'' Compensation Act w.e.f. 22.10.2009). As mentioned already, the subject of compensation payable by Air Carriers has been taken care of by the Warsaw Convention 1929, the Hague Protocol, 1955 and the Montreal Convention 1999, which were given effect to in India by the Indian Carriage by Air Act 1934, the Carriage by Air Act 1972 and Act 28 of 2009, amending the Carriage by Air Act 1972 incorporating the ''Third Schedule'' and such other provisions (in the Act) which govern this field as on date.

27. Incidentally, it will be worthwhile to take a look at the concept of the so called ''No fault liability'', which in fact was never there in the statute book (M.V. Act) in India till 1982. Considering the alarming increase of road accidents day by day, the necessity to enact the Law by the State providing for ''No fault liability''; through legislation was highlighted and the State was alerted in this regard for the first time by the Supreme Court in N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, . The Bench comprising of the Honourable Dr. Justice V.R. Krishna Iyer and Honourable Mr. Justice D.A. Desai was categoric, as discernible from the observations in paragraph (3) of the said verdict, which is extracted below:

"Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to

niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practiced by tribunals. We must remember that judicial tribunals are State organs and Article 41of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

The Government woke up from its slumber and accepting the verdict in the right spirit and perspective, the concept of ''No fault liability'' was introduced by incorporating Section 92Aas per the MV (Amendment) Act 1939(Act 47 of 1982) w.e.f. 01.10.1982, providing for payment of a minimum compensation of Rs. 15,000/- to the claimants in respect of road traffic accident, making it clear that such amount was to be paid by the owner/Insurer of the vehicle without any regard to the question of negligence. The quantum of liability u/s 92Awas subsequently enhanced and as provided u/s 140of the present Act (the Motor Vehicle Act 1988), it is Rs. 50000/- in the case of death and Rs. 25,000/- in the case of permanent disablement.

28. After introduction of the scheme for payment of compensation evolving the concept of ''No fault liability'', as per Section 92Aof the M.V. Act 1939 (w.e.f. 01.10.1982) there arose a dispute as to whether the said benefit was prospective or retrospective. It was held by a Division Bench of this Court that the provision was only procedural and hence the benefits shall be extended to all cases irrespective of the date of accident. This however was overruled by a Full Bench of this Court in Neeli v. Padmanabhan Pillai, 1992 (2) KLT 807 (FB) holding that it was a new concept of compensation created by the Statute outside the Tort system and hence it amounted to a substantive law modifying the liability under the Law of Torts, whereby one need not plead or prove negligence to avail the benefit thereunder. Being a substantive law, it was held that the provision was only prospective and cannot apply to the accidents that occurred prior to 01.10.1982.

29. The extent of ''No fault liability'' compensation was subsequently enhanced in respect of death or permanent disablement provided u/s 140of the new M.V. Act 1988 (w.e.f. 01.07.1989). Permanent disablement has necessarily to be the one as specified u/s 142of the M.V. Act 1988 to become eligible for compensation under

this head. The scope of Section 140of the M.V. Act 1988 providing for ''No fault liability'' compensation happened to be interpreted in two different ways, by two Division Benches of this Court taking contrary views as given in Thomas v. Mathew, 1995(2) KLT 260 and in The New India Assurance Co. Ltd. Vs. P. Leela and Others, . After discussing the facts, figures, relevant provisions of law and the binding judicial precedents, a Full Bench of this Court observed in 1999 (3) KLT 425 (Oriental Insurance Co Ltd. v. Santha) that Sec. 140 is enacted as a piece of welfare legislation and also as a measure of social justice in order to meet, to some extent, the responsibilities of a society to death or injuries caused in road accidents. It was also observed that this was intended to take care of wives, infants and other dependents and to prevent their destitution by providing immediate relief to the persons of the victim and as such, the question as to who is at fault, when the accident occurred etc. were alien to the determination of a claim under ''No fault liability''. Accordingly the decision rendered by a Division Bench of this Court in 1995(2) KLT 260 (cited supra) to the contrary was overruled explaining the mind of law makers in bringing about the provision with a social obligation.

30. The concept of ''No-fault liability'' gathered momentum, when the number of road traffic accidents increased day by day and different Tribunals set up under the Motor Vehicles Act in India and for that matter, the concerned High Courts as well, adopted different norms for fixing the compensation payable. So as to have uniformity and certainty in this regard, at least to a specified extent and also with intent to assure a certain level of compensation, irrespective of the factum of negligence, the State, as a welfare measure, thought it necessary to amend the Act and accordingly, Section 163 A along with the ''Second Schedule'' was introduced w.e.f. 14.11.94, whereby the payment of compensation on the basis of ''structured formula'' was stipulated for the death or permanent disablement, to the extent as provided therein, reckoning appropriate ''multiplier'' based on the age of the victim and also the proper ''multiplicand'' as to the monthly income. Even persons having no income were also to be compensated, treating notional income as Rs. 15,000/ per annum; while fixing the maximum income as Rs. 40,000/ per annum.

31. The attempt of this Court is only to analyze the intention of the legislature, when drastic changes were brought about by way of Act 28 of 2009, incorporating the ''Third Schedule'' to the Carriage by Air Act 1972, fixing a ''two-tier'' Scheme of liability, as provided under Rule 21 and such other supporting provisions. In other words, it has to be presumed that the concept of ''damage'' and payment of ''damages'' under the principle of tort was moving along a particular track to ensure payment of a minimum compensation, subject to the satisfaction of eligibility norms.

32. Coming back to the field of Air accidents, there was an occasion for a Single Bench of Andhra High Court to consider such a casualty involving death of a passenger and the compensation payable in Kandimallan Bharathi Devi and Others

Vs. The General Insurance Corporation of India, . This of course was prior to the introduction of the Third Schedule, when the situation was governed by the Second schedule of the Carriage by Air Act 1972. The issue involved in the above case was whether, the statutory liability under the said Act could be reduced, if some collateral benefit had already accrued, out of the death of the passenger on an international carriage. The liability of the Carrier was admitted and so also the liability of the respondent/insurer to satisfy it on behalf of the Carrier. The case was governed by the rules set forth in the Second Schedule to the Carriage by Air Act, 1972 and as such, the maximum compensation payable under the Act was Rs. 2,50,000/- Gold Francs (equivalent to about Rs. 1,75,000/-). Though the respondents offered to satisfy the liability to the tune of Rs. 1,20,000/-, the offer was subsequently withdrawn. During the course of the trial before the Civil Court, the respondents, while admitting the liability to pay damages for the loss of life of the passenger, pleaded ''set off'' in respect of Rs. 2 lakhs received by the claimant from the Personal Accident Insurance Policy and contended that the liability under the Act stood discharged. It was also pleaded that the claimant had actually suppressed the factum of receipt of the amount obtained under the Personal Accident Insurance Policy and hence the contract had become void, in view of fraud played on the respondents.

33. After discussing the relevant provisions of the Act/Rules, it was observed that Section 5of the Act specifically excluded the Fatal Accidents Act and also contained a ''non - obstante clause'' providing for payment of compensation in respect of casualties, as prescribed under the Act/Rules. It was also observed that even the Fatal Accidents Act did not contain any provision, so as to invoke a ''set off'' in respect of the amount payable under a different cause of action arising out of the Personal Accident Insurance Policy. The signing of Warsaw Pact on 12.10.1929 by the signatories/countries (termed as High Contracting Parties) with a view to codify the rules in vogue in different countries and to have common or uniform rules relating to liability for the damages by common carnage involving international carriage by Air, as amended by the Hague Protocol 1955 and the incorporation of ''First'' and ''Second Schedules'' respectively under the Indian Carriage by Air Act 1934, replaced by the Carriage by Air Act, 1972 to meet the circumstances, were specifically referred to. It was after elaborate discussion of the object of the statute brought into effect in tune with the terms of Warsaw Pact and Hague Protocol (subject to modifications as provided therein), that the decision was rendered by the Court holding that the amount stipulated under the Statute was the "minimum amount" payable as per the scheme of the Statute in respect of the death of the passenger concerned and that the same was not liable to be reduced or set off in respect of collateral benefits payable under the Personal Accident Insurance Policy. Even though it was held that the appellant was actually entitled to have damages of Rs. 1,75,000/- fixed under the Act, observing that the claim of the appellant stood confined to Rs. 1,15,000/-, the latter figure was allowed and the suit was decreed

accordingly with interest as specified.

34. The crucial contention raised by the second respondent is that, though they do not dispute the liability of the Carrier to pay compensation in respect of the death or bodily injury to a passenger (without any defence on the question of negligence upto a limit of ''One lakh SDR''), the actual compensation payable has necessarily to be based on the "extent of damages sustained" because of the death or such bodily injury, to be proved by adducing evidence by the claimant. In other words, the question is whether the Statute does contemplate any such exercise to be pursued by the claimant or can it be said that the extent of compensation payable upto ''One lakh SDR'' in the case of death or bodily injury is based on any other condition, than the one as prescribed under Rule 17 of the Third Schedule of the Act.

35. As mentioned herein before, the Act 28/2009 (Amendment Act) was brought into force in India with intent to give effect to the Montreal Convention. Though the Montreal Convention, prescribing ''two-tier'' structure of compensation in respect of the casualties was signed by many countries as early as in 2003, it took nearly 6 years before India became a signatory to the same through necessary legislations, by way of Act 28/2009. As made clear in the statutory prescriptions, the rules contained in the Third Schedule'' are part of the law in this regard. With this in mind, on a closer scrutiny of Rule 17 (1), it conveys in unequivocal terms that the Carrier shall be liable "for damages sustained in case of death or bodily injury of a passenger" upon condition only that the accident which caused the death or injury took place on board the Aircraft or in the course of any of the operations of embarking or disembarking. The law contemplates only two conditions, as mentioned above and nothing else. It is with reference to this basic provision that the ''two-tier'' liability has been fixed under Rule 21, particularly under sub-rule (1) of Rule 21, that the Carrier shall not be liable to exclude or limit its liability to the extent of ''One lakh SDR''. The sanctity of the provision is reiterated in Rule 26 as well, when the law stipulates that any provision tending to relieve the Carrier of the liability or to fix a lower limit than that which is laid down in the rules, shall be null and void.

36. Going by the above provisions, it is very clear that the Carrier is not in a position to exclude or limit the liability upto a limit of ''One lakh SDR'', even though there is no negligence on the part of the Carrier or staff. In other words, there is no defence at all, as provided in the Statute, to avoid or limit the liability, referring to absence of negligence. When the Carrier is made liable even in a case where there is no negligence upto an extent of ''One lakh SDR'', the purpose of the law/provision is unambiguous, that the law makers actually intended to extend atleast the said amount as the ''minimum'' to be made available to the victim/claimant, without demur. If this be the position, there cannot be any onus for the claimant to prove the extent of loss or damage in respect of ''Death'' as the extent of injuries becomes complete when ''Death'' takes place.

37. The contention of the second respondent appears to be that the said respondent/Carrier is entitled to have the exemption with reference to age/income/earning capacity of the persons concerned, which concept appears to be alien to the scheme of the Montreal Convention and also to the Act/Rules in India. No such dichotomy can be presumed in view of the conspicuous absence of any provision to suggest anything in this regard and the relevant provision of law has to be read and understood as it is and nothing can be contributed by the Court. Nowhere has it been prescribed either in the Act (particularly u/s 5) or in the Rules of the ''Third Schedule'' that the payment of compensation as contemplated under the Act/Schedule shall be worked out with reference to the age/earning capacity/income/loss of dependency/loss of future prospect/loss of marriage prospectus or on such other counts, which are otherwise available in the common law.

38. The Carriage by Air Act is a special statute by itself, taking care of the situation, particularly in the light of the steps being taken by India to join hands with other countries, to give effect to various international conventions such as Warsaw, Hague and Montreal. This is with intent to have "uniformity and certainty" in the related spheres, particularly when the international flights operated by various Carriers across different countries in the world, carrying passengers from different countries and in the event of casualties, all such victims have necessarily to be treated on an equal platform, providing atleast the minimum extent of compensation, both in the case of persons and property. When the statute does not refer to payment of compensation with reference to age/income/loss of dependency etc., it can never be connected to any such considerations upto the level of ''One lakh SDR, beyond which, it will be for the claimants to substantiate the position as to have higher amounts and it will, of course, be open to the Carrier as well, to put forth their defence as to the absence of negligence and the lack of liability to pay any amount over and above ''One lakh SDR''.

39. The issue has to be viewed in a different angle as well. Section 5of the Act prescribing the liability in the case of death starts with a ''non-obstante clause''. The said provision says that, notwithstanding anything contained in the Fatal Accidents Act, 1855 or any other enactment or rule of law in force in any part of India, the rules contained in the First Schedule, the Second Schedule and the Third Schedule shall, in all cases to which those rules apply, determine the liability of a Carrier in respect of the death of a passenger. Assume for a moment, that there is a law enacted by the State for working out the compensation with reference to age/income/dependency etc., which, however does not have any significance, being contrary to the provisions of the Act/Rules contained in the Schedules as mentioned above, in view of the non-obstante clause. If this is the position, how ''common law'' principles can be applied notwithstanding the non - obstante clause u/s 5, is a matter to be explained by the second respondent, in which they have failed. Even if it is an omission on the part of the law makers, such gaps cannot be filled up by this

Court applying the principles of ''casus omissus'' as explained by the Apex Court in the decision reported in Smt. Kanta Devi Vs. Union of India (UOI) and Another, . In short, the law has to be read and understood as it is, without contributing anything to lead to a different situation, not intended by the law makers.

40. No doubt, it is for the claimant to prove the ''extent of injury'' to substantiate the damage caused for getting the compensation as claimed. The contention raised by the second respondent that, if ''One lakh SDR'' is taken as the minimum/''No Fault Liability'', the said amount has to be given in all cases, whether it involves ''death'' or even a ''cut injury'' to the little finger or some damage to the toe, does not gather much weight, as the law does not say so. Proof as to the extent of damage caused by the injury, becomes irrelevant when the injury leads to death, taking away the life of the victim and as such, nothing further requires to be proved in this regard. Since the same cause of action in respect of a minor child travelling in an ill-fated plane of the second respondent from India to London and return from London to India enables the party concerned to file claims at different places (in view of the enabling provision in this regard), there may be conflict of laws. The scope of application of correct law has been explained by Dicey and Morris in their Conflict of Laws, 14th Edition. It was pursuant to a conscious exercise, that different countries across the world, who undertake international travel, gathered around a common table leading to the Warsaw Convention which was given effect to in India as well, as per the Indian Carriage by Air Act 1934, followed by the modifications as per the Hague Protocol leading to Carriage by Air Act, 1972 and then by the Montreal Convention, giving shape to the Amendment Act 28/2009. What is intended in sum and substance, is "uniformity and certainty", at least to a specified extent, so as to treat everybody alike and to provide necessary compensation; more so, when air traffic accidents are seldom. By virtue of the mandate under Rule 50 of the Third Schedule, it is stipulated in tune with the international convention, that necessary insurance coverage has also to be provided to meet the requirement and it is taking into cognizance the said extent of risk, that the ''Ticket Fare'' has been fixed including the element of Insurance Premium as well.

41. During the course of hearing, this Court asked a specific question to the learned Counsel for the second respondent, as to how the payment of compensation in the case of a minor child, an unemployed youth and an aged/retired person is worked out and as to the norms, if any in this regard. No specific answer was forthcoming, but for a ''Note'' submitted by the learned Counsel stating that, taking note of the relevant facts and circumstances, the Lawyers of the Carrier and Insurers have recommended a minimum of Rs. 25 lakhs. If the compensation is to be fixed in the case of such non-earning persons with reference to the structured formula as available in the case of M.V. Act or based on some other common law principle, the amount could never be more than a few lakhs. Here it is stretched to a minimum of Rs. 25 lakhs, as conceded by the second respondent, but the formula remains a mystery. The possible explanation could only be, "as a matter of grace". But the

compensation payable under the Act is not a ''matter of grace'' but shall be on vested rights and hence to be worked out accordingly.

42. Absolutely no binding judicial precedent has been brought to the notice of this Court by the second respondent that the compensation in respect of the death of a passenger under the Carriage by Air Act 1972 and covered by Warsaw/Hague/Montreal convention, as the case may be, has to be worked out with reference to the victim''s age, loss of income/loss of dependency or such other particulars. What is the extent of compensation payable under the Warsaw Convention as stipulated under Article 3(1) of the First Schedule of Carriage by Air Act 1932 (British enactment) had come up for consideration in Preston & Anr. v. Hunting Air Transport Ltd. reported in 1956(2) W.L.R. 526 = 1956(1) Q.B. 454. Two aspects were considered and decided therein. The first one is, whether, non-mentioning of agreed halting places in the passenger ticket, enabled the claimant to contend that the liability could not be restricted under Article 22, but was to be effected as unlimited under Article 26, which was answered in the negative. The next point was that, as the Carrier''s liability under Article 17was for "damage sustained in the event of death of a passenger" and not for the financial loss so sustained, the plaintiffs (minor children) were also entitled to be compensated for their loss of mother''s care, in addition to the financial loss they faced following her death.

43. In the celebrated decision in Sidhu & Ors. v. British Airways reported in 1997 (1) All Eng 193, the plane during flight from. London to Kolalampur via Kuwait, landed in Kuwait where war had begun just hours ago. Some of the passengers went to the transit launch, when they were abducted by Iraqi invaders leading to custody for two weeks. The belated claim filed by the passenger after two years was dismissed holding that no common law rights did exist, as the situation was taken care of by a special statute. Applying the reasoning in the above two cases and taking note of the fact that the statutory provisions/prescriptions are rather similar/alike giving effect to the very same conventions, so long as the Carriage by Air Act 1972 as amended by the Amendment Act 28/2009 does not prescribe anything as necessary to prove the age/income/loss of earning or dependency for claiming the compensation of ''One lakh SDR'', no reference can be made to any such yardstick as available in common law. The position will be catastrophic, if the proposition mooted by the second respondent is accepted, when the claimants/members of the family of a reasonably employed Indian as in the instant case, who loses his life along with a similarly employed person from abroad, may be offered only peanuts; whereas the members of the family of the latter, may be compensated paying ''One lakh SDR'' without hesitation. It is to curb this menace and to attain "uniformity and certainty" that a conscious decision was taken by all the ''High Contracting Parties'' in the concerned International conventions, to which India is also a party, finally culminating in the Carriage by Air Act, 1972, as amended. The scope of the legislation has to be respected accordingly; more so when the purpose of legislation

is also to avoid possible litigation, Court proceedings and delay in adjudication, by providing a common uniform assured extent, in view of the common cause.

44. In this context, it is also relevant to note that the unit of account for international settlements was stipulated as Gold Francs from 1930 to 2003. After the Montreal Convention, the same was replaced by ''SDR''. Section 6Aof the Act (as amended) provides for conversion of Special Drawing Rights. They are International foreign exchange reserve assets allocated to nations by the International Monitory Fund and represents a claim to foreign currency, for which it may be exchanged in times of need. The ''SDR'' is defined in terms of basket of currencies including U.S. Dollars, Euro, Japanese Yen and British Pound. This by itself shows that the necessity to provide a uniform measure of compensation was felt essential to maintain a uniform standard and adjudication of litigations on the basis of given facts and circumstances, adopting a uniform norm. It was to give effect to the same in a better manner, that a ''two-tier'' structure of payment of compensation was brought about as per the Montreal Convention and in turn by the Act/Third Schedule in India as well.

45. In Geetha Jathani & Ors. v. Airport authority of India Ltd., 2004 CPJ 106 NC, a minor foreign child suffered a horrifying death while getting out of the Escalator, in the course of undertaking an air-travel in the premises of the Airport of India. After considering the facts and circumstances, the full compensation of Rs. 2,50,0000/- Gold Francs was ordered by the National Commission constituted under the Consumer Protection Act, with reference to the Second Schedule of the Carriage by Air Act 1972 (as the incident was prior to the adoption of Montreal Convention and Act 28/2009). The reasoning given by the National Commission is appealing, wherein a comparative study of the compensation as prescribed under the Statute and the one that could be aspired with reference to other relevant parameters based on the structured formula of compensation under the M.V. Act, has been given.

46. It is to be noted that ''Air travel'' on most occasions, as undertaken by the deceased in the instant case, may be as a matter of necessity, as there is no other effective mode of conveyance between two countries. Air tickets are purchased by the Poor and the Rich alike, paying the same ticket fare (but for the inter-class variation as Economy/Business/Executive, in terms of facilities offered), irrespective of the capacity to pay. The Air fares paid by the Rich and the Poor constitute the same extent of contribution to be earmarked for procuring the requisite insurance taken by the Carrier and when it comes to the question of payment of compensation, neither the Carrier nor the Insurer can differentiate the passengers segregating them as Rich and the Poor, to be given different extent of compensation with regard to the basic extent of liability i.e., ''One lakh SDR''. A millionaire may desire more and may be entitled as well, on proving the credentials, but this is not the position of the Poor, who cannot desire anything more than that he deserves. By virtue of recognition of the common norms in the various

international conventions and the law laid down by the countries, all such people have been brought on a common pedestal with regard to the payment of compensation, at least, to the extent of ''One lakh SDR''. No other interpretation is possible, more so, since interpretation of international conventions has to be with reference to the specific scope and purpose and the terms of the Convention will prevail over any other law, as specifically stipulated under Article 55 of the Montreal Convention. The need to have ''purposive interpretation'' has been highlighted on many an occasion by our Apex Court, including in the decision in Motor Owners'' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, . It has been made clear by the Supreme Court that when language is ambiguous or has more than one meaning, Courts must sympathetically and imaginatively discover the true purpose and object of the provisions, clearing the doubts and mitigating the hardships, harshness or unfair consequences. The need to have Purposive interpretation of International conventions has also been highlighted in the decision in Morris v. KLM Royal Dutch Airlines, 2002 (2) WLR 578

47. As mentioned already, the Insurance Premium forming part of the each passenger ticket fare does not draw any distinction between the Rich and Poor. The Policy is issued by the Insurer to the Carrier in a uniform manner and not after knowing whether the passenger is an Indian or a Foreigner or whether a Child or an Earning person or for that matter, whether he is Rich or Poor. Insurers are also aware of the legal position as to the statutory duty of the Carrier to satisfy the liability to the prescribed extent and it is after considering all the relevant aspects, that the risk is under-written and Policy is issued accepting the premium, assuring to meet any such contingency to the extent as covered under the Statute. Rule 50 of the Third Schedule requires the Carrier to maintain adequate insurance coverage to meet their liability under the provisions of the said Rules and as to the burden to furnish evidence in this regard. Rule 49 says that any clause contained in the contract of carriage and all special agreements entered into before the damage occurred, by which the parties purport to infringe the Rules laid down by the said Rules, whether by declining the law to be applied or by altering the Rules as to jurisdiction, shall be null and void.

48. The Carriage by Air Act, 1972 (as amended) being a special statute with intent to give effect to the Montreal Convention, does draw no distinction as to the ''first limb'' of compensation payable under Rule 21(1) of the Third Schedule, to the extent of ''One lakh SDR'' and the same is liable to be satisfied by the Carrier in respect of the death of any passenger establishing the sole requirement, i.e., the death arising in an accident while on Board the Aircraft or in the course of any of the operations of embarking or disembarking. As per the scheme of the Statute, it is open for the Carrier to agree for a higher liability than the liability provided under the relevant Schedule, but they cannot avoid or limit the liability by virtue of the mandate under Rules 21, 23 and 26 of the Third Schedule. A Millionaire, his Servant and a minor Child undertaking an Air travel losing their lives by virtue of an accident in the

course of such travel, the members of family of each of them are equally entitled to have the minimum extent of ''One lakh SDR'', beyond which the position may differ depending upon the credentials of each person; thus treating/equating the concept of ''No Fault Liability'' envisaged under the M.V. Act. In view of the law declared by the supreme court in Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, ''No fault Liability'' does not cease because of ''no dependency''; which on the other hand constitutes an abstract figure payable in all cases. Paragraph 20 of the said verdict added by Honourable Mr. Justice S.H. Kapadia, while concurring with the judgment delivered by Dr. Justice Arijit Pasayat on behalf of the Bench is relevant in this context, and is extracted below:

In my opinion, "no-fault liability", envisaged in Section 140of the said Act, is distinguishable from the rule of "strict liability". In the former, the compensation amount is fixed. It is Rs. 50,000 in cases of death [Section 140(2)]. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed amount/crystallised amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under "no-fault liability" in terms of section 140of the said Act. My opinion is confined only to the "no-fault liability" u/s 140of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988."

49. As stated already, India decided to be a signatory to the Montreal Convention, as she could not withdraw herself or stand apart in the process of development of healthy international relations and strong business commitments among different countries, with which India has to interact. The necessity to pursue further steps in this regard was explained by the Minister for Civil Aviation who piloted the Bill in the Lok Sabha in the year 2008. This Court further wanted to ascertain the mind of the Law makers, for which, the full text of the Parliamentary Debate was called for from the Library and examined.

50. The very introductory paragraph of the speech of the Minister of State, of the Ministry of Civil Aviation (Mr. Praful Patel), while piloting the Bill itself throws light as to the pressing circumstances to have ratified the Montreal Convention for providing higher compensation and to prevent Indian passengers from discrimination. Eloquent is the concluding paragraph as well, which is worthwhile to be considered in view of the point involved. The aforesaid paragraphs are extracted below.

As you are aware, during the last decade, there have been significant developments in the civil aviation sector bringing India to the core of the international civil aviation scenario. We have now in fact become a trend setter due to our size and impressive growth rates. To further place India on the ranks of global leaders, I propose this

legislation which will facilitate higher compensation and prevent Indian passengers from discrimination which they are facing right now.

In brief, the Convention seeks to increase the compensation levels for international passengers in the event of death or body injury or damage and delay to the passengers'' baggage and cargo. The current compensation which is there now is very low because it is based on 1955 levels. There is an aim to ratify that also. It also aims to bring Indian carriers and Indian passengers mainly on par with what compensation is paid to them by the international carriers in countries outside of India where the compensation levels in the event of either death or loss of baggage or cargo is much higher. Though we are a signatory to the International Civil Aviation Organisation Charter, the compensation levels to an Indian passenger, even if he is in overseas, are much less than what a foreigner would get paid if there is any loss of either life or injury or whatever be the issues. Therefore, it is basically to bring parity for an Indian passenger or an Indian carrier in line with the International Convention.

51. Nearly 23 members of the Parliament, including the former Civil Aviation Minister took part in the discussions and spoke extensively on the Bill. What was intended to be achieved by amending the Act in ratification of the Montreal Convention; what could be the extent of compensation claimable by the persons concerned from the Carrier in respect of their liability; what are the norms to be satisfied in this regard; in what way the Indian passengers and the carriers in India will be benefited and what is the actual liability sought to be mulcted upon the carriers by providing the ''two - tier system'' of payment of compensation brought in by the Montreal Convention etc., can be ascertained from the salient features of the proposed Bill discussed in the debate.

52. Various doubts/questions were raised in the above regard by the Members concerned seeking for clarification. It was understood by all concerned, as to the emergent requirement to have appropriate amendments, to ensure swift compensation for death or injury to an air traveller flying in India or out of India, in line with the international norms. The scope of the Bill also extended to bring compensation for damage to baggage and air cargo as well, at par with the provisions of the Montreal Convention 1999; in turn, helping to avoid lengthy litigations. Among the various questions asked by the Members, one question asked by Sri. Vijayendra Pal Singh, the M.P. from Bhilwara is very relevant, which is extracted below:

I would like to know from the Honourable Minister, is there any difference between the first class passengers, business class passengers and an ordinary class passenger under the Montreal Convention. Is the compensation different or all of them are to be given the same compensation?

On conclusion of the debate, the Minister replied in the following terms.

"It is not that a passenger in India can claim more compensation and a passenger in the United States or in France can expect lesser compensation. It has to be guided by the principle of equity. That is exactly why the extent of damages which have been provided has to be in uniformity with the international agreement which has been brought about by this Montreal Convention.

Sir, there have been some issues raised about providing a level playing field. There is some distinction between first class, Executive class and Economy class travel. I think, that at least is not an issue where we have been able to bring about unanimity. In any class of travel, a passenger is termed as equal. Whether it is loss due to accident, or injury or death or any other kind of compensation, it would not be given on different terms.

It was accordingly that the Bill was passed leading to the amendment by Act 28 of 2009 and India became signatory to the Montreal Convention as well.

53. From the above, it is clear, that the intention of law makers was to bring about parity in the matter of payment of compensation to the passengers, irrespective of class of travel, while providing for a ''two-tier system'' of compensation as adopted in the Montreal Convention. The ''first limb'' of compensation as stipulated under Rule 21(1) of the Third Schedule was with the said intent, to provide the same as the "minimum compensation" payable in respect of death or the bodily injuries, subject to satisfaction of the extent of damage. As mentioned herein before, since the extent of damage due to any injury cannot be anything more than Death, no further proof is necessary to have sanctioned the minimum compensation of '' Rs. 1 lakh SDR'' in the case of Death and this is the mandate of the Statute. In view of the above facts and circumstances, this Court is of the firm belief that the deceased in the instant case, who lost his life like several others, is not liable to be discriminated by the respondents, restricting the compensation with reference to his age, income or the dependency of the members of his family. It is declared that the petitioners are entitled to have a ''Minimum of One lakh SDR'' as compensation payable under the Statute, based on the Montreal Convention, treating the matter as ''No fault liability'', which can in no case be absolved or limited by the Carrier under any circumstance. The balance payable, after giving credit to the advance payment effected already, shall be disbursed to the petitioners, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.
The writ petition is allowed. In view of the higher extent of compensation involved, cost is declined.