(REPORTABLE)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 9654 /2016
(Arising out of SLP (Civil) No. 14312/2013)

Reliance General Insurance Co. Ltd. .....Appellant
Vs.
Shashi Sharma & Ors. .....Respondents

WITH

C.A. No. 9655 of 2016 @ SLP(C) No. 14377 of 2012, C.A. No. 9657 of 2016 @ SLP(C) No. 14379 of 2012, C.A. No. 9659 of 2016 @ SLP(C) No. 26344 of 2012, C.A.No. 9661 of 2016 @ SLP(C) No. 11343 of 2014, C.A. No. 9663-9664 of 2016 @ SLP(C) No. 14995-14996 of 2014, C.A.No. 9666 of 2016 @ SLP(C) No. 15320 of 2014, C.A.No. 9669 of 2016 @ SLP(C) No. 15343 of 2014, C.A.No. 9671 of 2016 @ SLP(C) No. 18308 of 2014, C.A.No. 9677 of 2016 @ SLP(C) No. 18574 of 2014, C.A.No. 9674 of 2016 @ SLP(C) No. 19924 of 2014, C.A.No. 9673 of 2016 @ SLP(C) No. 1539 of 2015, C.A.No. 9672 of 2016 @ SLP(C) No. 28423 of 2014, C.A.No. 9675 of 2016 @ SLP(C) No. 28201 of 2016 @ CC No. 21664 of 2014, C.A.No. 9670 of 2016 @ SLP(C) No. 29208 of 2014, C.A. No. 9667-9668 of 2016 @ SLP(C) No. 25185-25186 of 2015, C.A.No. 9665 of 2016 @ SLP(C) No. 19592 of 2012, C.A.No. 9662 of 2016 @ SLP(C) No. 35412 of 2013, C.A. No. 9660 of 2016 @ SLP(C) No. 15870 of 2014,C.A.No. 9658 of 2016 @ SLP(C) No. 1934 of 2016, C.A.No. 9656 of 2016 @ SLP(C) No. 36135 of 2015, C.A.No. 9676 of 2016 @ SLP(C) No. 28202 of 2016 @ CC No. 2735 of 2016.

J U D G M E N T

A.M. KHANWILKAR,J.

Delay condoned.

2. Leave granted.

3. These matters have been placed before a three Judges' Bench in terms of order dated 7th October, 2015. This order has not formulated

any specific question to be answered by the larger Bench.

4. The leading appeal challenges the judgment of the Single Judge of the High Court of Punjab and Haryana at Chandigarh dated February 13, 2013 in FAO No.503/2012. That appeal was filed by the respondents (in appeal arising from SLP (Civil) No.14312/2013) against the Award of the Motor Accident Claims Tribunal, Jind, in MACT Case No.136 dated 3rd November 2011. The said respondents had filed a claim petition after the death of Dr. Ashwini Sharma caused due to a motor accident on 24th October 2010 in front of Main gate of General Hospital at Jind. He succumbed to the injuries sustained in that accident. The Tribunal partly allowed the claim petition. A sum of Rs.4,50,000/- was awarded as compensation to the claimants being the dependants of deceased Dr. Ashwini Sharma; with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization. The Tribunal directed the appellant-Insurance Company to pay the compensation amount as determined in the award to the claimants. The claimants, being aggrieved by the quantum of compensation fixed by the Tribunal and in particular deduction of compensation amount received by them from other source, preferred appeal before the High Court. The High Court, relying on the decision of Division Bench of the same High

Court dated December 21, 2012, in the case of ***Reliance General Insurance Company Ltd***. Vs. ***Purnima & Others***,[1] acceded to the contention of the claimants that the amount receivable by the dependents of the deceased under the Haryana Compassionate Assistance to the dependents of the Deceased Government Employees Rules, 2006 (hereinafter referred to "Rules of 2006") cannot be deducted from the quantum of compensation fixed by the Tribunal. On that finding, the High Court allowed the appeal of the respondents in the following terms:

> "In view of the above, a sum of Rs.89,24,604/- (Rs.1,00,957/- - 15% thereof being Rs. 15,143 = Rs.85,814/- - 1/3rd thereof being Rs.28,605/- = Rs.57,209 x 12 =Rs.6,86,508/- x 13 = 89,24,604) towards loss of dependency, Rs.15,000/-towards loss of consortium of the 1st appellant, Rs.15,000/- towards loss of estate, Rs.10,000/- towards funeral expenses and Rs.5,000/- towards transportation expenses, in aggregate a sum of Rs.89,60,604/- with interest @ 7.5% for the enhanced portion of the compensation from the date of petition till the date of realization is awarded. The rate of interest applied and the mode of apportionment done by the Tribunal stands confirmed."

5. The High Court has adopted the same reasoning to disallow deduction of compensation amount received by the claimants as per Rules of 2006 in the respective companion cases listed for analogous hearing. The sole contention advanced by the appellants - Insurance Companies, in these appeals, is that, the High Court has erred in law

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1 F.A.O No.1322 Of 2010

in disallowing the deduction of amount received by the concerned claimants under the Rules of 2006, from the quantum of compensation amount payable to the claimants under the Act of 1988.

6. As the High Court has relied on the decision of the Division Bench of the same High Court in **Purnima's** case (supra), it is apposite to first advert to that decision. That decision was rendered on a reference made to a larger Bench, on a question which has been canvassed by the appellants - Insurance Companies even in the present appeals, in view of the conflicting decisions of Single Judges of the same High Court in the case of **Oriental Insurance Co.** vs. **Saroj Devi** [2] and in the case of **New India Assurance Co.** vs. **Smt. Santosh**[3]. The question considered by the Division Bench was: "whether the compensation received from the Government under the Haryana Compassionate Assistance to the Defendants of Deceased Governments Employees Rules, 2006 (or otherwise) is to be deducted from the total compensation, which is payable to the dependents of the deceased, who dies in an accident, while computing financial benefits through ex-gratia payments by the Government?" The Division Bench analysed the scheme and intent of the Rules of 2006

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2 2012 (1) PLR 761

3 2010 (4) PLR 780

and held that the said Rules have been framed by the Governor of Haryana in exercise of powers conferred by proviso to Article 309 of the Constitution of India; these Rules not only have statutory force, but must be treated at par with the Statute enacted by the Legislature; these Rules purport to assist the family of the deceased to tide over hardship caused as a result of the employee dying in harness (not merely because of motor accident) or who goes missing or whose whereabouts are not known, by providing ex-gratia financial assistance to the family of the deceased employee; this financial assistance to the dependents of the employee who dies in harness, has no correlation with the cause of death of the employee due to motor accident. In other words, on mere death of the employee dying in harness, be it natural death or due to illness or otherwise the Rules of 2006 would become applicable; and as a result of which the family of the deceased employee is entitled to receive financial assistance from the employer. The Division Bench held that the scheme of financial assistance postulated in Rules of 2006, is a service benefit which accrues to the dependents of the deceased and is in the domain of service matter/benefit given to the employee as a result of the service rendered by the deceased employee. The benefit accruing to the dependents of the deceased is in the nature of enhanced pension given as per the provisions of the Pension/Family Pension Scheme,

recognizing the fact that the pension is normally given for meritorious, long and faithful service by the employee. The Division Bench relying on the exposition of two Judges' Bench decision of this Court in **Helen C. Rebello (Mrs.) & Ors.** vs. **Maharashtra State Road Transport Corporation & Anr.**[4] and also in **United India Insurance Co.** vs. **Patricia Jean Mahajan & Ors.**[5]**,** held that the tortfeasor or Insurance Companies cannot get their liability excused or reduced because the deceased's family would receive financial assistance from an alternative source (employer) by reason of the death of the deceased. It held that deductions are admissible from the amount of compensation in case the claimant receives the benefit as a consequence of injuries sustained which otherwise he would not been entitled to; and does not cover cases when the payment received is not dependent upon an injury sustained on meeting with an accident. That the assistance received under Rules of 2006 is not dependent upon the death of an employee arising out of a motor accident only. Thus, it has no correlation with the manner in which the death occurs. Accordingly, the Division Bench held that the Insurance Company is not entitled to claim deduction of the amount given to the dependents under the Rules of 2006, while calculating the

4 1999 (1) SCC 90

5 2002 (6) SCC 281

compensation amount payable under the Motor Vehicles Act.

7. The Insurance Companies, on the other hand, have relied on the decision of two Judges' Bench of this Court in **Bhakra Beas Management Board** vs**. Kanta Aggarwal (Smt.) & Ors.**[6]**,** to contend that the plea of the appellant in that case that the claimants have received financial assistance from other source due to the death of her husband - by way of salary amount on account of compassionate appointment and also residence provided to her was deductible, has been accepted by this Court; and was so deducted while determining a just compensation amount payable under the Motor Vehicles Act. Reliance is also placed on the dictum of three Judges' Bench in **Gobald Motor Service Limited** vs. **R.M.K.Veluswami** [7], which, according to the Insurance Company, permits deduction of benefits such as compensation received by the dependents of the deceased from the employer. Reliance is also placed on two Judges' Bench decision in the case of **Sheikhupura Transport Co. Ltd.** vs. **Northern India Transport Insurance Co.**[8]; another two Judges' Bench judgment in the case of **Vimal Kanwar & Ors.** vs. **Kishore Dan & Ors.**[9]. Reliance is then placed on another decision of two Judges'

6 2008 (11) SCC 366

7 1962 (1) SCR 929 = AIR 1962 SC 1,

8 1971 (1) SCC 785

9 2013 (7) SCC 476

Bench of this Court in **Oriental Insurance Co. Ltd.** vs**. Deo Patodi and Ors.**[10] for the principles to be reckoned to determine a just compensation payable under the Motor Vehicles Act. In substance, the contention of the Insurance Companies is that the claimants cannot be permitted to profiteer and receive double benefit on account of the death of their family member on the same head of "Loss of income" to them.

8. Besides the above noted stand of the Insurance Companies the other incidental question to be considered is whether there is any conflict of opinion between the coordinate Benches (of two Judges') of this Court, in the case of **Bhakra Beas Management Board** (supra) on the one hand, and that of **Helen C. Rebelo and Patricia J.Mahajan** (supra) on the other.

9. The decision in the case of **Gobald Motor Service Ltd.** (supra) of three Judges' Bench of this Court has been carefully analysed and distinguished by the two Judges' Bench in **Helen's case** (supra). In that, the dictum in **Gobald Motor's** case was in relation to the provisions regarding quantum of damages payable in terms of Sections 1 and 2 of the Fatal Accident Act, 1855, which are held to be

10 2009 (13) SCC 123

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

10. The question is: whether the principle expounded by the two Judges' Bench in **Helen's** case, in paragraphs 32 to 35, in particular, can be doubted? In that case the Court was called upon to answer as to whether it will be permissible to disallow the deduction of amount receivable by the dependants of the deceased towards "Life Insurance Policy", from the amount of compensation payable under the provisions of Motor Vehicles Act (in that case Sections 110B, 92A and 92B of the Act of 1939 corresponding to Sections 168, 140 and 141 of the Act of 1988). Paragraphs 32 to 35 read thus:

> "32. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to

change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that his Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not others forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words "pecuniary advantage" from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the "pecuniary advantage" resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. this would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tort feasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meager liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the section states:

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

33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he

would have received even apart from accidental death. Thus, such pecuniary advantage would have no corelation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.

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

35. Broadly, we may examine the receipt of the

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

(emphasis supplied)

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

1939, revealing the intent of the legislature to confer wider discretion on the Tribunal. Therefore, the decisions based on the principles applicable to previous law cannot be invoked while adjudicating the compensation payable to the claimant under the Motor Vehicles Act. In Paragraph 28, the Court observed thus:

> "28. ..... This show that the word "just" was deliberately brought it Section 110 B of the 1939 Act to enlarge the consideration in computing the compensation which, of course, would include the question of deductibility, if any. This leads us to an irresistible conclusion that the principle of computation of the compensation both under the English Fatal Accidents Act, 1846 and under the Indian Fatal Accidents Act, 1855 by the earlier decisions, were restrictive in nature in the absence of any guiding words therein, hence the courts applied the general principle at the common law of loss and gain but that would not apply to the considerations under Section 110-B of the 1939 Act which enlarges the discretion to deliver better justice to the claimant, in computing the compensation, to see what is just. Thus, we find that all the decisions of the High Courts, which based their interpretation on the principles of these two Acts, viz., the English 1846 Act and the Indian 1855 Act to hold that deductions were valid cannot be upheld. As we have observed above, the decisions even with reference to the decision of this Court in Gobald Motor Service where the question was neither raised nor adjudicated and that case also, being under the 1855 Act, cannot be pressed into service. Thus, these courts by giving a restrictive interpretation in computation of compensation based on the limitation of the language of the Fatal Accidents Act, fell into an error, as it did not take into account the change of language in the 1939 Act and did not consider the widening of the discretion of the Tribunal under Section 110-B. The word "just", as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, un-equitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having the force of law."

(emphasis supplied)

12. The principle expounded in this decision that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under the Motor Vehicles Act. Further, the "pecuniary advantage" from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken, is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act of 1939, and must apply *proprio vigore* to the corresponding provisions of the Motor Vehicles Act, 1988. This principle has been restated in the subsequent decision of two Judges' Bench in **Patricia S.Mahajan's case** (supra), to reject the argument of the Insurance Company to deduct the amount receivable by the dependents of the deceased by way of "social security compensation" and "Life Insurance Policy".

13. In the case of **Bhakra Beas Management Board** (supra), ostensibly, it may appear that a departure has been made in allowing deduction of the pecuniary advantage received by the claimants from other source on account of death of her husband. However, on a closer analysis of the said decision, two aspects become prominent. Firstly, the grievance of the appellant Board was that the claimants had filed

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

> "13. Learned counsel for the respondent supported the judgment and additionally submitted that appeal of respondent 1 is pending. In normal course, when two appeals are directed against the common judgment, both the appeals should be heard by the same bench of the High Court. But we find that the High Court had lost sight of the fact that the benefits which the claimant receives on account of the death or injury have to be duly considered while fixing the compensation. It is pointed

> out that Respondent 1 was getting Rs.4,700/-p.m. and a residence has been provided to her and actually the compassionate appointment was given immediately after the accident.
> "14. In view of what has been stated above, the High Court's judgment is clearly unsustainable. However, the accident took place more than 14 years back and it would not be desirable to send the matter back to the Tribunal for fresh consideration. A sum of rupees five lakhs has been deposited vide this Court's order dated 1-11-2004. We are of the considered view that in view of the background facts, it is just and proper that the sum of rupees five lakhs already deposited shall be permitted to be withdrawn by the claimants in full and final settlement of the claim relatable to the death of the deceased. It is for the Tribunal to fix the quantum of fixed deposit and the amount to be released to the claimants."
> (emphasis supplied)

14. Thus understood, it is not an authority of having taken a contra view than the view expressed in **Helen C. Rebello** and **Patricia's** case. As a matter of fact, in para 11 of the reported decision, paragraphs 32 to 34 of **Helen C. Rebello's** case has been reproduced in its entirety. No observation is found in the entire decision, to have doubted the correctness of the dictum in **Helen C. Rebello** and **Patricia's** case.

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

of determination of compensation. Firstly, the measure of compensation must be just and adequate; and secondly, no double benefit should be passed on to the claimants in the matter of award of compensation. Section 168 of the Act of 1988 makes the first principle explicit. Sub-section (1) of that provision makes it clear that the amount of compensation must be just. The word "just" means - fair, adequate, and reasonable. It has been derived from the Latin word "justus", connoting right and fair. In para 7 of ***State of Harayana & Anr. vs. Jasbir Kaur & Ors.***[11]**,** it has been held that expression "just" denotes that the amount must be equitable, fair, reasonable and not arbitrary. In para 16 of **Smt. *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.***[12], this Court has observed that the compensation "is not intended to be a bonanza, largesse or source of profit". That however may depend upon facts and circumstances of each case, as to what amount would be a just compensation.

16. The principle discernable from the exposition in ***Helen C.Rebello's case*** (supra) is that if the amount "would be due to the dependants of the deceased even otherwise", the same shall not be deductible from the compensation amount payable under the Act of 1988. At the same time, it must be borne in mind that loss of income

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11 (2003) 7 SCC 484

12 (2009) 6 SCC 121

is a significant head under which compensation is claimed in terms of the Act of 1988. The component of quantum of "loss of income", inter alia, can be "pay and wages" which otherwise would have been earned by the deceased employee if he had survived the injury caused to him due to motor accident. If the dependents of the deceased employee, however, were to be compensated by the employer in that behalf, as is predicated by the Rules of 2006 - to grant compassionate assistance by way of ex-gratia financial assistance on compassionate grounds to the dependents of the deceased Government employee who dies in harness, it is unfathomable that the dependents can still be permitted to claim the same amount as a possible or likely loss of income to be suffered by them to maintain a claim for compensation under the Act of 1988.

17. A perusal of the scheme of Rules of 2006 would reinforce the position that the dependents of the deceased Government employee are suitably compensated for a specified period by way of financial assistance in the form of ex-gratia payment on compassionate grounds equivalent to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim. Here, we may advert to the recital of the Rules of 2006, which reads thus:

> "No. G.S.R. 19/Const./Art.309/2006.-In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, The Governor of Haryana hereby makes the following rules <u>to grant the compassionate assistance by way of ex-gratia financial assistance on compassionate grounds</u> to members of the family of a

> deceased Government employee <u>who dies while in service/missing Government employee,</u> namely:-
> (emphasis supplied)

Rule 2 stipulates the objects of the Rules, namely, to assist the family of a deceased/missing Government employee of Group C and D category, in tiding over the emergent situation, resulting from the loss of the bread-earner while in regular service by giving financial assistance. Rule 3 of the said Rules provides for eligibility to receive financial assistance under the Rules. As per Rule 4, the eligible family members are required to submit an application in Form A for compassionate financial assistance. Rule 5, is of some significance which provides for the extent of financial assistance. The same reads thus:

> "5.(1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim.,-
> (a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty-five years;
> (b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years;
> (c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.
>
> (2) The family shall be eligible to receive family pension

> as per the normal rules only after the period during which he receives the financial assistance as above is completed.
> (3) The family of a deceased Government employee who was in occupation of a Government residence would continue to retain the residence on payment of normal rent/license fee for a period of one year from the date of death of the employee.
> (4) Within fifteen days from the date of death of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.
> (5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance."

18. Rule 6 pertains to pending cases of ex-gratia assistance, with which we are not concerned in the present appeals. But to complete the narrative, we may refer to the said provision. It postulates that all pending cases of ex-gratia assistance shall be covered under the new Rules (i.e. Rules of 2006). Further, the calculation of the period and payment shall be made to such cases from the date of notification of the new Rules. It further provides that the families will have the option to opt for the lump sum ex-gratia grant provided in the Rules, 2003 or 2005, as the case may be, in lieu of the monthly financial assistance provided under the new Rules.

19. Reverting back to Rule 5, sub-clause (1) provides for the period during which the dependents of the deceased employee may receive financial assistance equivalent to the pay and other allowances that was last drawn by the deceased employee in the normal course

without raising a specific claim. Sub-rule (2) provides that the family shall be eligible to receive family pension as per the normal Rules only after the period during which they would receive the financial assistance in terms of sub-rule (1). Sub-rule (3) guarantees the family of a deceased Government employee of a Government residence in occupation for a period of one year from the date of death of the employee, upon payment of normal rent/license fee. By virtue of sub-rule (4), an ex-gratia assistance of 25,000/- is provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner. Sub-rule (5) clarifies that house rent allowance shall not be a part of allowance for the purposes of calculation of assistance.

20. Rule 5 broadly deals with two aspects. Firstly, to compensate the dependents of the deceased Government employee by granting ex-gratia financial assistance on compassionate grounds for the loss of pay and other allowances for a specified period. The second part of Rule 5 is to compensate the dependents of the deceased Government employee by way of allowances and concessions - of retaining occupation of the Government residence on specified terms, of family pension and other allowance. As regards the second part, it deals with income from other source which any way is receivable by the

dependants of the deceased Government employee. That cannot be deducted from the claim amount, for determination of a just compensation under the Act of 1988.

21. The claimants are legitimately entitled to claim for the loss of "pay and wages" of the deceased Government employee against the tortfeasor or Insurance Company, as the case may be, covered by the first part of Rule 5 under the Act of 1988. The claimants or dependents of the deceased Government employee (employed by State of Haryana), however, cannot set up a claim for the same subject falling under the first part of Rule 5 - "pay and allowances", which are receivable by them from employer (State) under Rule 5 (1) of the Rules of 2006. In that, if the deceased employee was to survive the motor accident injury, would have remained in employment and earned his regular pay and allowances. Any other interpretation of the said Rules would inevitably result in double payment towards the same head of loss of "pay and wages" of the deceased Government employee entailing in grant of bonanza, largesse or source of profit to the dependants / claimants. Somewhat similar situation has been spelt out in Section 167 of the Motor Vehicles Act, 1988, which reads thus:

> "**167. Option regarding claims for compensation in certain cases.---** Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim

> for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."
>
> (emphasis supplied)

22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants / claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude

the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in ***Helen C.Rebello and Patricia Jean Mahajan's*** *cases* (supra).

23. A Priori, appellants must succeed only to the extent of amount receivable by the dependents of the deceased Government employee in terms of Rule 5(1) of the Rules 2006, towards financial assistance

equivalent to the loss of pay and wages of the deceased employee for the period specified.

24. As no other point arises for consideration, the appeals must succeed in part to the extent indicated above.

25. Accordingly, the appeals are partly allowed in the above terms with no order as to costs.

.....J.
(Ranjan Gogoi)

.....J.
(Prafulla C.Pant)

.....J.
(A.M.Khanwilkar)

New Delhi,
23rd September, 2016

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 26882/2013

National Insurance Co.Ltd. ....Petitioners

Vs.

Ramrajsinh Zala & Ors. .....Respondents

WITH C.A.No.8867/2012

O R D E R

The issue involved in these matters is not similar to the issue decided in the appeals disposed of by a separate judgment today, concerning the effect of benefit derived under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 by the dependants of the deceased Government employees. Hence, delinked. To be listed before an appropriate Bench.

.....J.
(Ranjan Gogoi)

.....J.
(Prafulla C.Pant)

.....J.
(A.M.Khanwilkar)

New Delhi,
23rd September, 2016