

(1981) 05 DEL CK 0053

In the Delhi High Court

Case No : Letter Patent Appeal No. 88 of 1969

Amarjit Insurance Co. Ltd. and Others

APPELLANT

Vs

Vanguard insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 12-05-1981

Acts Referred:

Citation : (1981) ACJ 495 : AIR 1982 Delhi 1 : (1981) ILR Delhi 191

Hon'ble Judges : Prakash Narain, C.J;S. Ranganathan, J

Bench : Division Bench

Advocate : G.S. Vohra, Ajit Singh and H.S. Dhir, for the Appellant;

Judgement

Prakash Narain, C.J.

(1) These two cross appeals are directed against the judgment of a learned Single Judge of this court deciding the question of compensation payable to the heirs and legal representatives of one Ajit Singh, who was killed as a result of being run over by a motor truck. The accident occurred on June 13, 1963. The truck belonged to M/s. Gopal Singh Ghanshyam Dass, appellant in L.P.A. No. 101 of 1969, and respondent No. 3 in L.P.A. No. 88 of 1969. The truck was being driven by Bakshi Ram, respondent No. 2 in L.P.A. No. 88 of 1969 and respondent No. 1 in L.P.A. No. 101 of 1969. The vehicle was insured with M/s. Vanguard Insurance Co. Ltd., respondent No. 1 in L.P.A. No. 88 of 1969 and the second appellant in L.P.A. No. 101 of 1969. The legal representatives and heirs of Ajit Singh deceased are Smt. Amarjit Kaur, widow of Ajit Singh, Harcharan Kaur and Rajinder Kaur, minor daughters of Ajit Singh, and Manmohan Singh, Darsh Deep Singh and Rabinder Singh, minor sons of Ajit Singh. They are appellants in L.P.A. No. 88 of 1969 and respondents 2 to 7 in L.P.A. No. 101 of 1969.

(2) Smt. Amarjit Kaur and her children applied to the Motor Accidents Claims Tribunal under Section 110-A of the Motor Vehicles Act, 1939, hereinafter referred to as the Act, for award of compensation for the death of Ajit Singh alleging that it was due to the rash and negligent driving of the motor truck that

Ajit Singh got run over and died. It was submitted that Ajit Singh's monthly income at the time of his death was Rs. 1200 P.M., he was 40 years of age, he was running a motor workshop and planning to put up a factory, being a qualified and experienced mechanical engineer, thus having great prospects in life. It was further alleged that he purchased a plot measuring 20001 sq. yards with the intention of putting up his factory and was in correspondence with his brother to join him in this venture. His gross income was Rs. 3000 to Rs. 4000 P.M. He was having a good standard of life and educating his children in a good school. Taking all these circumstances into view damages to the extent of Rs. 3 lakhs were claimed.

(3) The Tribunal on the basis of the evidence adduced before it came to the conclusion that the loss of pecuniary advantage to the family of Ajit Singh was to the extent of Rs. 31,800 on an expectancy- of life for Ajit Singh for a further period of 15 years. After coming to the conclusion that the normal expectancy of life would be up to the age of 60 years but keeping in view the uncertainties of life, 5 years had to be deducted from the period of 20 years. From this amount of Rs. 31,800 further 10 per cent was deducted by the Tribunal on the principle that, Rs. 31,800 would have been received by the family in 15 years but a lump sum payment was now to be made. Admittedly, Amarjit Kaur had received Rs. 14,000 on account of an insurance policy on the life of Ajit Singh. Tills amount was also deducted from the compensation assessed. The Tribunal, Therefore, made an award of Rs. 8,620 in favor of Amarjit Kaur and her children payable by the insurance company, the driver of the track and the owner of the truck. Appeals were preferred both by Amarjit Kaur and her children on the one hand and the insurance company and the owner of the truck on the other to the High Court. These cross appeals were disposed of by a common judgment given by a learned Single Judge of this court on April 1, 1969. The learned Single Judge enhanced the compensation payable and awarded a net compensation of Rs. 23,895 limiting the liability of the insurance company to Rs. 20,000. Both sides being aggrieved have filed the present appeals under Clause X of the Letters Patent.

(4) On the pleadings of the parties two primary questions which arose for determination before the Tribunal were whether the death of Ajit Singh was caused by rash and negligent driving of the truck without any contributory negligence on the part of Ajit Singh and if it was so held, what was the quantum of compensation payable to Amarjit Kaur and her children. Both the Tribunal and the learned Single Judge came to the conclusion, and in our opinion rightly, that Ajit" Singh died as a result of rash and negligent driving of the truck. There was a difference of approach between the Tribunal and the learned Single Judge in the manner and mode of computation of the compensation to be awarded. In the appeals before us it is only the second question which has been argued.

(5) Section 110-A of the Act speaks of an application being moved for grant of "compensation arising out of an accident". The Act thus does not speak of

Damages. Why we mention this is because there is a difference in the connotation of these two terms. The distinction is not "commonly understood and may be called a somewhat subtle difference. Nevertheless there is a distinction between compensation to be awarded or a claim for damages being granted. Damages are given for an injury suffered. Compensation is by way of atonement for the injury caused with intent to put either the injured party or those who may suffer on account of the injury in position as if the injury was not caused by making pecuniary atonement. The distinction is fine but nevertheless there. Therefore, when the legislative intent is to grant compensation, computation of the same, as if computation is being made for grant of damages, would not be a wholly correct approach. McGregor on Damages (Thirteenth Edition) comments on this aspect. According to it "The object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he has suffered. The heads or elements of damage recognised as such by the law are divisible into two main groups; pecuniary and non-pecuniary loss". According to McGregor no distinction is drawn between the three words damage, loss or injury. Lord Blackburn in *Livingstone v. Rawyards Coal Co.*, (1880) 5 AC 25, defined the measure of damages as "that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation." In English Law this rule enunciated by Lord Blackburn has been consistently referred to and cited with approval. In respect of torts and/or with regard to contract it may be possible to apply this rule but then as Lord Halsbury L.C. observed in *re: The Mediana* (1900) AC 113, "How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. . . . But nevertheless the law recognises that as a topic upon which damages may be given". In England, Therefore, though compensation and damages have often been treated as synonymous terms, observations have been made which suggest that, perhaps, there would be a distinction between the two terms. The Legislature in India has deliberately not used the English term of "damages" but has used the term "compensation". A meaning, Therefore, has to be given to this term though some times it may be difficult to distinguish between what may be called damages and what may be regarded as compensation. An example may, perhaps, highlight this distinction. The death of a person by an accident may not result in any pecuniary loss whatsoever to his heirs as, for instance, a rich unemployed man with no prospects of employment being killed. The well-to-do family of that man may not miss the deceased in the sense of pecuniary loss. Nevertheless an intangible loss is there by a member of the family being taken away. Surely it cannot be said that no compensation would be payable as a result of such death caused by an accident. We shall further dilate on this aspect when we come to deal with one of the contentions raised on behalf of Amarjit Kaur and her children in the context of reductions made from the gross compensation ordered to be payable, both by

the Tribunal and the learned Single Judge.

(6) Having agreed with the findings of the Tribunal about the negligence of the driver driving the motor truck, the learned Single Judge while considering how compensation payable for death caused by negligent motor driving is to be determined suggests two possible ways. First, the compensation may be determined according to the existing principles of law. Secondly, it may be determined by the legislature providing for a different system of compensation such as one based on insurance or some other policy. The learned Judge observed that the principle adopted both in England and in India have been based on the rule of "Justice, equity and good conscience", which have been "generally interpreted to mean the rules of English Law, if found applicable to the Indian Society and circumstances", *Waghela v. Sheikh*, (1887) IA 89. He goes on further to observe that, "The English Law itself has been constantly developing both by judicial decisions and statutory changes. In India also the common law of England, as applied to India, has been modified by legislation." He referred to the AIR 1937 354 (Nagpur) , and commented that the doctrine of common employment of the common Law of England having been abolished by statutes in England could no longer "be applied in India also. In his view, the enactment of Section 110A to 110F in the Motor Vehicles Act did not embody any change in the Common Law with regard to compensation payable in this branch of the Law of torts. These provisions only provide a cheaper remedy by moving an application to the Tribunal instead of civil action under the Law of torts. In his opinion, Therefore, compensation had to be computed, as in English Law, for such damages as the court or Tribunal "may think proportionate to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought". The learned Single Judge relied on *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, . He noticed with approval the observations of the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.*, (1942) A.C. 601, in which it was observed that in calculating the loss caused by the death "any benefit accruing to a dependent by reason of the relevant death must be taken into consideration. . . . the balance of loss or gain of a dependent by the death must be ascertained "Therefore, the learned Single Judge has primarily relied on *Gobald Motor Service Ltd.* in computing the compensation payable by first ascertaining the loss of Amarjit Kaur and her children. With respect, we would like to observe that in computing damages it would be a proper approach to take. Whether in computing compensation some other principle should also be adopted is a matter on which we will comment hereafter.

(7) On the question of computation learned counsel for Amarjit Kaur and her children has raised the following points:

(1) Future prospects of Ajit Singh have not been correctly taken into account by fixing his income at only Rs. 750 P.M.

(2) The working age fixed at 15 years is too short. It should have been 20 years.

(3)The amount of Rs. 175 P.M. deducted from Rs. 750 as personal expenses of Ajit Singh was incorrect. According to Amarjit Kaur Ajit Singh used to give her Rs. 800 P.M. for household expenses.

(4)No deduction from the gross amount of compensation payable could be made for insurance amount received by Amarjit Kaur.

(5)One-third valuation of the industrial plot purchased by Ajit Singh was not the correct approach in computing the heritable interest left by him in the said plot.

(6)The dependency principle adopted was not correctly applied.

(7)Certain other deductions made, like deductions for lumpsum payment, were not justified.

(8) Ajit Singh was proved to be a matriculate .He had a Diploma of Engineering as apprentice fitter machinist. He was employed first with the Central Tractor Organisation and later by a firm known as Kaiser engineers, Jamshedpur. His salary during employment was approximately Rs. 1000 P.M. In 1959 he started his own venture by opening a motor garage. It may be assumed that be was a competent motor mechanic, duly qualified and having a will to make a headway in life. It is on record that he intended to set up a factory for producing motor parts and in that regard he was trying to persuade his brother to invest s.ome money and join him in the venture (letter dated April 16, 1963, Exhibit Public Witness 12/1). It was in this context that he went in for an industrial plot costing Rs. 5000. The finding is, and we agree, that Ajit Singh had not yet paid the entire amount to become a full owner of the plot in the industrial area. Therefore, his intention to set up a factory must be regarded still in the realm of planning at a preliminary stage, in considering the future prospects or expectancy of Ajit Singh or his family. Amarjit Kaur and her children can thus claim only a very limited advantage from this contemplated venture, not fructifying by the death of Ajit Singh. The advantage, Therefore, fixed at Rs. 5000 vis-a-vis the plot cannot, be regarded as an incorrect computation. The question as to whether only one third of this value should have been allowed is a separate question.

(9) The next aspect is with regard to the pecuniary loss to Amarjit Kaur and her children. To Amarjit Kaur her husband used to give Rs. 800 to 900 P.M. got household expenses. Assuming that she may have a tendency to somewhat exaggerate, the Tribunal and the learned Single Judge have come to the conclusion that she used to get Rs. 750 P.M. This would come to Rs. 9000 per year. Amarjit Kaur states that she was spending Rs. 800 to Rs. 900 P.M. Pecuniary loss, Therefore, to her and her children for 15 years comes to Rs. 1,35,000. We agree with her learned counsel that pegging her receipts at Rs. 750 for 15 years was not wholly justified keeping in view the age of the deceased, the manner in which he had given up a job of Rs. 1000 P.M. for opening his own workshop and his future plans of expenation. Ajit Singh was 40 years old when he died. Even people working on salaries, by and large, get a

raise in their salary as they advance in years. In a country where automobiles are constantly on the increase, it cannot be said that the income of the family would have remained static for the next 15 years. It is proved on record that Ajit Singh had four very young children who were being given comparatively expensive education. As the children grew up the expenses would have increased both on education and upkeep. Instead of spending only Rs. 8000 or Rs. 9000 in 1963, in next 10 or 15 years it could reasonably be expected that Amarjit Kaur would have been spending much more on herself and her children and in running the family. Public Witness 11, the Accountant, had deposed that there had been regular increase in the income of Ajit Singh every year. A figure of Rs. 4000 P.M. being the income of Ajit Singh was deposed to by his brother, A.W. 12. Ajit Singh also had one-third share in another garage, as deposed to by Amarjit Kaur. He had plans to put up a factory. In our opinion, Therefore, on a rough and ready estimate it could be said that Ajit Singh, in due course of time, would have earned much more than he was earning in 1963 and would have thus given more spending money to his wife and spent much more on his children. Pegging the income at Rs. 750 P.M. for the next 15 years, Therefore, cannot be regarded as justified. What his income would have been in future is difficult to say but taking into consideration his qualifications, expectancy and prospects, it could well be said that on an average future income can be computed at Rs. 1000 P.M. For 15 years, Therefore, the figure would come to Rs. 1,80,000. The Tribunal had dispelled this contention by observing that future prospects of setting up a factory had to be discounted in the absence of any capital with Ajit Singh. Regarding increase in income, the Tribunal held that in the absence of definite evidence the same could not be ascertained with any certainty or with reasonableness. Future increases in income can never be found out with any certainty except in the case of people employed on a time-scale salary. These have to be gauged from all the circumstances of the case. In the present case there is sufficient evidence to make a conservative estimate in the manner in which we have done. We will, Therefore, fix the future income available for utilisation by Amarjit Kaur and her family at Rs. 1000 P.M.

(10) This brings us to the question of whether future income should be computed for 15 years or for at least 20 years. Learned counsel for Amarjit Kaur and her children has urged that in view of the expectancy of life having increased in our country, it could reasonably be assumed that Ajit Singh would have been in a position to earn money and spend on his family till he attained the age of 60 years. We do not find anything wrong in this assumption. Why we agree with the Tribunal and the learned Single Judge having taken only a period of 15 years more is because not only one has to keep in view possible future accidents in life but also the dependency of the children. Ajit Singh had four children 3 sons aged 12 years, 7 years and an infant and one daughter, aged 9 years. He had one adopted daughter, aged 17 years. This was in 1963. In normal circumstances the two daughters would have got married between the ages of 18 and 23 years and gone away. The son, aged 12 years in 1963 would have been in a position to

earn his own livelihood in 9 or 10 years. The two younger sons would have also grown up and at least in 13 or 14 years one more son would have been of the age to earn his OWE. livelihood. Therefore, a deduction of 5 years from the normal remaining working age of Ajit Singh cannot be called unjustified. Accordingly, we agree with the Tribunal and the learned Single Judge that 15 years period was a reasonable period to fix for computation of compensation payable to Amarjit Kaur and her children.

(11) The next question is whether there was justification for deducting Rs. 175 P.M. with regard to the personal expenses of Ajit Singh. In view of our having fixed Rs. 1000 P.M. as the expectancy in future of Amarjit Kaur and her children, this point does not survive for consideration.

(12) We do not find anything wrong in deduction of one third value of the plot of Rs. 5000 on the principle of benefit of the acceleration of interest- The value of the plot has been fixed at Rs. 5000. As we have said, nothing more can be regarded as the loss of Amarjit Kaur and her children vis-a-vis the industrial plot. Had Ajit Singh been alive, he may have set up a factory. With his death it is only the land which is available and to it cannot be added the prospects of putting up a factory on that plot. Therefore, Rs. 1666 have been rightly deducted from this interest of Rs. 5000.

(13) Nothing much has been urged on the other points. The main thrust has whether Rs. 14,000 insurance amount could be deducted from the gross compensation computed. We need not, Therefore, comment upon those and uphold the findings of the learned Single Judge.

(14) We now come to the question as to whether the sum of Rs. 14,000 received by Amarjit Kaur on account of insurance policy could be deducted from the gross compensation.

(15) Learned counsel appearing for Amarjit Kaur and her children contends that deduction of the amount of insurance money of Rs. 14,000 is not justifiable. In any case, he submits that only payment with regard to life policy could be deducted if at all, and not the amount received towards the accident aspect where death is caused on account of an accident. The contention is that the benefit arising out of the life insurance policy cannot go to a tortfeasor. As opposed to this contention Mr Dhir, appearing for the opposite parties, contends that by a long chain of decisions insurance moneys have always been deducted from the amount of compensation assessed and, Therefore, the sum of Rs. 14,000.00 has rightly been deducted from the compensation adjudged to be paid to Amarjit Kaur and her children. He has relied on various decisions which we may now notice.

(16) In Parkash Vati and Others Vs. The Delhi Dayal Bagh Dairy Ltd., , a Bench of the Punjab High Court upheld the trial Court's decision deducting the proceeds of life policies of the deceased. There is no reasoning to be found in paragraph 8 of the report except an observation that financial gain by the widow on account of

the death of her husband has to be taken into consideration in arriving at the figure of any loss suffered by her. Further more, it is noticed that the plaintiff's counsel did not press his claim vis-a-vis this deduction in the appeal preferred by the plaintiff.

(17) In *Veena Kumari Kohli Vs. Punjab Roadways and Others*, , a learned Single Judge of the Punjab High Court also upheld deduction of the life insurance policy amount by following the bench decision in *Parkash Vati's* case without any further reasoning.

(18) In *Manjula Devi Bhuta and Another Vs. Manjusri Saha and Others*, , a Bench of the Madhya Pradesh High Court also upheld the deduction of life insurance policy but, again, without any reasoning.

(19) In *Ishwar Devi Malik and Others Vs. Union of India and Others*, , a Bench of this Court negated the contention that the benefit arising out of life insurance should be deducted vis-a-vis the five applicants, other than the wife. on the ground that it was not known whether it was life insurance implicate or whether the deceased was insured for accidents also, whether the insurer nominated any particular individual, and whether the amount was duly claimed and collected by any of all of the applicants. Why the deduction was allowed from the claim of the wife is not commented upon except that one may read the rule that pecuniary advantages and disadvantages from the accidental death have to be weighed and assessed.

(20) In *Unique Motor and General Insurance Co. Ltd. Vs. Smt. Krishna Kishori and Others* , a Single Judge of the Punjab and Haryana High Court rejected the contention challenging the deduction of the insurance money but without any rationale behind it. In fact, in this case the learned Judge did not interfere because, in his opinion, the net compensation as awarded was more than ample.

(21) In *Smt. Sushila Devi and Others Vs. Ibrahim and Another*, , their Lordships of the Madhya Pradesh High Court upheld the deduction of the insurance money bill we do not find any reasoning or discussion for doing so.

(22) In *Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others*, , a Bench of In the Bombay High Court noticed the change of law in England covered by the enactments pertaining to fatal accidents. Their Lordships noticed that insurance money was considered to be such pecuniary advantage coming to the dependents by reason of the death of a person that it was held liable to be deducted under the common law from the amount of compensation payable under the Fatal Accidents Act of 1846. This situation was reversed first by Fatal Accident (Damages) Act of 1908 and improved further for the benefit of the claimants by Law Reforms (Personal Injuries) Act of 1948 and altered drastically by the Fatal Accidents Act of 1959 ensuring that various kinds of insurance and pensionary benefits are not excluded from the compensation payable by the tortfeasors. Their Lordships observed that claims for compensation arising out of fatal accidents in India are still determined mainly by

reference to principles underlying the Fatal Accidents Act, 1855, analogous to English Act of 1846. In their opinion, "in the absence of any statutory provisions analogous to the above referred to English enactments of 1908, 1948 and 1959, it should be difficult to find any basis or trace any rationale not to deduct such life policy amount when on the face of it, these amount to pecuniary advantages and are received by the dependents by reason of the death of the bread winner victim". They disagreed with the view that receipt of such amounts were collateral benefits, taken by the High Courts of Gujarat, Punjab and Haryana and Delhi in *Life Insurance Corporation of India and Another Vs. Kasturben Naranbhai Vadhia and Others*, in *Sood and Company Vs. Sorjit Kaur and Others*, and in *Bhagwanti Devi and Others Vs. Ish Kumar and Others*, respectively. Their Lordships of the Bombay High Court also noticed that the judgments of some other High Courts, in particular Patna High Court, support deduction only of such policy amounts as are subscribed to meet accident contingencies and not other policy amounts. Particular reference was made to *Orissa Road Transport Co. Ltd. Vs. Sibananda Patnaik and Others*, where this court held that the deduction only of a portion and not of the entire policy amount could be allowed. Acceleration of interest is noticed as one of the grounds permitting whole or part of an insurance money to be deducted provided it was possible to split the amount. If it was not, the opinion given is that the whole amount should be deducted as there is no statutory change brought about in law in India, unlike in England.

(23) In *Prem Devi Pandey and Others Vs. Dayal Singh and Others*, a learned Judge of this court allowed deduction of pension on the ground that widow would not have got this pension but for the death of her husband and so, it is necessarily a pecuniary gain to her on account of death. Deduction of provident fund and gratuity was not allowed for the reason that this amount would have come to the legal representatives even if the deceased had collected it on his superannuation. Therefore, no pecuniary gain occurred due to the premature death. However, the principle of acceleration of pecuniary gain could be applied and proportionate amount had to be reduced. On the question of insurance policy the learned Judge observed that the amount due on maturity of the insurance policy would have been received by the deceased only if he had paid the remaining Installments on the policy. That the legal representatives get the insured amount on account of earlier death without payment of future premium is definitely a pecuniary gain and had to be deducted.

(24) In *Parvatamma and Others Vs. Syed Ahmed and Others*, a Bench of the Karnataka High Court noticed the distinction pointed out by D.B. Lal, J. in *Mrs. Rita Arora and Others Vs. Salig Ram and Others*, and by Anand, J. in *Bhagwanti Devi and Others Vs. Ish Kumar and Others*, between benefit arising on account of death and amounts payable at death, in other words, benefits arising as a result of death as opposed to benefits arising independently of death but payable on death. Their Lordships disagreed with the distinction pointed out by the two learned Judges quoted with approval McGregor on Damages in para 15 of the

report in which reads :

"However in dealing with these cases, it remains a difficult matter to lay down any test, which will embrace all of them, of whether a benefit following the death does or does not result from the death. The insidious maxim "post hoc, propter hoc" must here as everywhere be guarded against, but the limits of its operation remain difficult to - define. Although the language *causa causans* and *causa sine qua non* has sometimes been relied on, it has been said by Pearce L.J. in *Jenner v. Allen* West "that this distinction does not help. Any analysis of the case law can therefore only be a general guide : the approach to each new case must remain empirical."

(25) Mr. Vohra has invited our attention to some judgments in support of his contention that the insurance policy money is not deductible at all and if at all deductible, only a part of it is deductible either by applying the principle of acceleration of receipt of that benefit or better still by excluding either the portion of insurance money which pertains to life policy or the one which pertains to accident policy.

(26) We have already noticed the judgment of this court rendered by brother H. L. Anand, J. in *Bhagwanti Devi and Others Vs. Ish Kumar and Others*, . We may only add that the learned Judge commenting upon "the question as to whether life insurance moneys should be deducted observed that these benefits are in the nature of *quid pro quo* and have relation to the savings effected by the deceased besides having their genesis either in contract or in past service and good conduct and these benefits could not be said to be benefits arising out of the death of a person in the sense in which the action for damages or inheritance could be related to such an event. In his opinion, such a conclusion would be justified even on the principles enunciated by the Supreme Court in the case of *Gobald Motor Service* (Supra).

(27) We may straightway, therefore, refer to *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, . This case, no doubt, lays down the principle that the pecuniary loss to the dependents can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources come to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained. All the same, it has to be noticed that the pecuniary advantage which has to be set off against pecuniary loss is that advantage which comes "by reason of the death" and not all pecuniary advantage.

(28) In *Hirji Virji Transport and Others Vs. Basiranbibi and Others*, , their Lordships of the Gujarat High Court went on the principle of same deduction for lumpsum payment or acceleration of interest.

(29) The Gujarat High Court in *Shakurmiya Imammiya Shaikh and Others Vs. Minor Surendra Singh Rup Singh and Others*, enunciated two principles with

regard to deductions from the amount which has been found to be the pecuniary loss to a claimant. The first one was that insurance policy amounts were collateral benefits which the deceased had bought with his own money. It was a benefit derived by way of prudent savings effected for his own benefit under a contract by the insured party whose benefit could never go to the tortfeasor. They noticed with approval the decision of the House of Lords in *Perry v. Cleaver*, 1969 A.C.J. 363. The second principle that was enunciated was that in order to arrive at a just compensation if the method followed was to reduce the normal expectancy of working life, i.e. the Davies Method, there could be no deduction for acceleration of receipt of financial benefit as it got squared up when in such a case only the multiplier of say 15 years is computed as the financial loss.

(30) In *Life Insurance Corporation of India and Another Vs. Kasturben Naranbhai Vadhia and Others*, , already noticed earlier, a Bench of the Gujarat High Court relying on "*Perry v. Cleaver* (Supra) held that pension amount or retirement-cum-gratuity benefit which had the insurance element could not be deducted from the amount found to be the financial loss of the claimant on a death by accident.

(31) A learned Single Judge of the Punjab and Haryana High Court in *Sood and Company Vs. Sorjit Kaur and Others* , set out with approval the two criteria enunciated in a bench decision of the same court in *Damyanti Devi and Others Vs. Sita Devi and Others* . These two criteria were as under :

"(1)the assets of which benefit was being taken by or was available to the family during his life time; (2) or the assets which were being created by the deceased out of his savings "to be utilised for the benefit of the members of the family on various occasions like marriage, higher education of the children etc. were to be kept out of consideration while determining the just compensation because such assets could not be said to confer undue or untimely benefits on the legal representatives because of the death of the person on whom they were dependent."

(32) A review of the judgments cited before us brings out the divergence of approach in the various High Courts well into focus. The primary conflict appears to be whether the law in India, which has been following the English common law, should be continued to be applied because there has been no statutory intervention, as observed by the Bombay High Court, or whether taking note of the change of law in England and by way of further development of this branch of law of torts, we should not adopt the principles enunciated, particularly by the Delhi and Gujarat High Courts, and fall in line with *Perry v. Cleaver* (Supra). In our opinion, keeping in view a very salient aspect that a tortfeasor should not be given the benefit of any moneys that may come into the hands of a claimant on account of the death of a near one and dear one, the proper approach would be to deny to the tortfeasor the right to claim a set off from the financial loss caused by his rash and negligent act. whether the liability be vicarious or direct, caused to the claimant. There is no statutory bar to adopt this progressive view. We are in respectful agreement with the distinction pointed out between whether the

moneys come into the hands of a claimant "at death" or "on account of death". Therefore, we hold that the amount of Rs. 14,000 deducted from the financial loss suffered by Amarjit Kaur and her children cannot be deducted from the amount of financial loss computed. It is at this stage that we might comment that the concept of mitigation of damages is relevant to the award of damages. This would not be so for award of compensation. Though the terms have been used interchangeably in many decisions, in our view, some meaning has to be given to the word "compensation" as the legislature has purposely adopted that term and not "damages".

(33) This brings us to the last point as to whether there should be scaling down by 33.113 per cent for lumpsum payment. The learned Single Judge has deducted 33.1/3 per cent on this account. The Bench decision of this court in *Hirji Virji Transport and Others Vs. Basiranbibi and Others*, , has clearly negated this view and has held that in lumpsum payment the scaling down to the extent of only 15 per cent is permissible.

(34) We are not impressed by the contention that interest on the amount found due should also be awarded in accordance with the principle in Section 314 of the Code of Civil Procedure. No doubt, Amarjit Kaur and her children have been denied some moneys for a long period , time but at the same. time the concept of payment of interest on damages or compensation has not been looked at with favor except where statutorily so provided.

(35) The result of our above discussion is that the financial loss caused to Amarjit Kaur and her children comes to Rs. 1,80,000. From this amount there is to be no deduction for acceleration of interest as instead of computing loss of income for 20 years, loss has only been computed for 15 years. A sum of Rs. 1666 has to be deducted, as upheld by us vis-a-vis the interest in the industrial plot. This brings the figure to Rs. 1,78,334 or say by rounding off the figure at .Rs. 1,78,000. Amarjit Kaur had admitted that her income from the other workshop in which her husband had a share was Rs. 150 to Rs. 200 P.M. We may take a mean of this income at Rs. 175 P.M. This was certainly a direct gain to her on death of Ajit Singh. Therefore, for 15 years this income has also to be deducted. Thus, from Rs. 1,78,000 we have to deduct Rs. 31,500 which leaves a balance of Rs. 1,46,500. We have agreed with the figure of Rs. 750 P.M. fixed by the learned Single Judge as the amount that Ajit Singh used to give to his wife for family expenses. The family expenses would include kitchen expenses. We have, however, fixed Rs. 1000 P.M. as the financial loss to Amarjit Kaur and her children keeping in view possible increase in Income. It was on the basis of Rs. 1000 P.M. that we arrived at the figure of Rs. 1,80,000 for 15 years. Obviously, the expense to be incurred by way of family expenses on Ajit Singh personally has to be excluded. This amount one can legitimately fix at Rs. 200 P.M. as after all Ajit Singh was the man of the house and the bread winner. So, from Rs. 1,46,500 a sum of Rs. 200 P.M. for the next 15 years, coming to Rs. 36,000, has to be deducted. This brings down the figure to Rs. 1,10,500. As lumpsum

payment is to be made, there is to be a further deduction of 15 per cent in the amount of Rs. 1,10,500 which comes to a deduction of Rs. 16,575 bringing the amount payable to Rs. 93,925.

(36) During the course of arguments we had suggested to learned counsel for the insurance company and the owner of the motor truck if it could be agreed upon to pay a sum of Rs. 50,000 over and above Rs. 23,895 awarded by the learned Single Judge. Mr. Dhir after taking instructions said that he was unable to persuade his clients to agree to an increase of compensation by Rs. 50,000. Had he agreed the figure would have come to Rs. 73,895. On the basis of our judgment the figure comes to Rs. 93,925. So, by an arithmetical process there is a difference of a little over Rs. 20,000 and our first impression for an increase in compensation by at least Rs. 50,000 was not very far wrong.

(37) It is common case that the motor truck only had a third party insurance and the insurance company's liability is only Rs. 20,000. Accordingly, accepting the appeal of Amarjit Kaur and others (L.P.A. No. 88 of 1969) and dismissing the appeal of M/s. Vanguard Insurance Company and others (L.P.A. No. 101 Of 1969) we hold that M/s. Vanguard Insurance Company Ltd. is liable to pay jointly and severally to Amarjit Kaur and her children the sum of Rs. 20,000 by way of compensation subject to its rights under the policy of insurance regarding third party risk on the aforesaid motor truck. This is because the amendment to the Act increasing the third party liability of the insurance companies to Rs. 50,000 came into force only with effect from March 2, 1970 by the amending Act 56 of 1969 and, admittedly, the accident in the present case was prior to that date. A faint suggestion made during the course of arguments to the contrary relying on Maheshwari Transport Company and Another Vs. Pritam Kaur and Others, , cannot be accepted. We further hold that Bakshi Ram and M/s. Gopal Singh Ghanshyam Dass are liable to pay to Amarjit Kaur and her children jointly and severally the sum of Rs. 93,925 by way of compensation for the death of Ajit Singh on account of rash and negligent driving as the aforesaid motor truck belonged to M/s. Gopal Singh Ghanshyam Dass and which was being driven by Bakshi Ram. If the amount of Rs. 20,000 is paid by the insurance company, Bakshi Ram and M/s. Gopal Singh Ghanshyam Das would be liable to pay to Amarjit Kaur and her children only a sum of Rs. 73,925. The appellants in L.P.A. No. 88 of 1969 will also be entitled to their costs which we fix at Rs. 550, the same be recovered jointly and severally from the aforesaid three parties.