

(1982) 07 GUJ CK 0010

In the Gujarat High Court

Case No : First Appeal No. 1587 of 1979 cross with First Appeal No. 30 of 1980

Arunaben and Others

APPELLANT

Vs

Mehmoodbhai Imamali Kaji and Others

RESPONDENT

Date of Decision : 06-07-1982

Acts Referred:

Fatal Accidents (Amendment) Act, 1959 — Section 2
Fatal Accidents (Amendment) Act, 1976 — Section 4
Fatal Accidents Act, 1855 — Section 1A, 2
Motor Vehicles Act, 1939 — Section 110B

Citation : AIR 1983 Guj 10 : (1982) GLH 1010 : (1983) 1 GLR 156

Hon'ble Judges : R.J. Shah, J; P.D. Desai, J

Bench : Division Bench

Advocate : R.N. Shah, for the Appellant; M.D. Pandya and G.M. Amin, for the Respondent

Judgement

P.D. Desai, J.—These two cross-appeals are directed against the same award made in a motor accident claim case and they can be conveniently disposed of by this common judgment.

2. The accident giving rise to the claim occurred on July 7, 1977 at about 10 A. M. near village Tajpur on the Ahmedabad-Khedbrahma road. Two vehicles were involved in the accident. One of the vehicles was a passenger bus bearing registration No. GTH. 5496 owned by the Gujarat State Road Transport Corporation (second respondent in First Appeal No. 1587 of 1979). The other vehicle was a motor-truck bearing registration No. GTK. 2068 owned by one Ranchhodbhai Visabhai Patel (third respondent in First Appeal No. 1587 of 1979). The deceased, aged about 30 at the time of the accident, was an employee of the Gujarat State Road Transport Corporation and he was at the material time on actual duty as a conductor on the passenger bus. It appears that the passenger bus was required to be taken in the reverse direction at the site of the accident and that the deceased had alighted from the bus in order to assist the driver while reversing the vehicle. While the vehicle was in the reverse motion, the

deceased was crushed between the vehicle and the motor-truck which was parked on the side of the road. The deceased was removed to the Civil Hospital, Ahmedabad, where he died within a few hours.

3. The widow, minor daughter, father and mother of the deceased jointly instituted a claim petition against the driver and owner of the passenger bus and the driver and owner of the motor-truck claiming damages in the sum of Rs. 80,000/-. The Tribunal, which tried the claim petition, awarded total compensation in the sum of Rs. 22, 875/- with interest at the rate of 6 per cent per annum from the date of the institution of the claim petition till realization and proportionate costs. Be it stated that though the operative part of the award does not contain a specific direction with regard to the award of interest and of costs, the Tribunal has held in para 23 of the award that the awarded amount must be paid with interest at the rate and for the period mentioned above and, in para 24, the Tribunal has held that the claim was required to be allowed in part with proportionate costs. Under the circumstances, the omission to give a specific direction with regard to the payment of interest and costs in the operative part of the award must be regarded as inconsequential and the concerned claimants must be taken to have been held entitled to interest and costs as specified in the award. The Tribunal found that the father was not entitled to any share in the compensation as he was not "the heir of deceased". The principal amount of compensation was, therefore, apportioned between the widow, the minor daughter and mother as follows:--

Rs. 10,000/- ... widow. Rs. 10,000/- ... minor daughters. Rs. 2,875/- ... mother.
Rs. 22,875/- ... total

Although there is an omission to give a specific direction in the operative part of the award with regard to the apportionment of the amount allowed as interest and costs on the awarded sum, each one of the persons held entitled to a share in the compensation must be held to have been declared entitled to the proportionate interest and costs on the sum apportioned to her. The Tribunal held the driver and owner of the passenger bus (Gujarat State Road Transport Corporation) and the driver and owner of the truck jointly and severally liable to satisfy the award.

4. It might be stated at this stage that on the strength of the evidence on record, the Tribunal had assessed damages at Rupees 51,500/-. The loss of dependency benefit/ economic loss was computed at Rs. 48,000/- on the basis of the annual dependency of Rs. 4,800/- capitalized by the application of the multiplier of 10. To this was added a sum of Rs. 3,000/- for the loss of expectation of life and a sum of Rs. 500/- for the expenses incurred on obsequial ceremonies. However, the actual award came to be made for the lesser amount of Rs. 22, 875/- for two reasons. First, a sum of Rs. 21,000/-, which was deposited with the Commissioner for Workmen's Compensation by the Gujarat State Road Transport Corporation to meet its statutory liability arising on account of the fact that the deceased was its employee who had met with his death by an accident arising

out of and in the course of his employment, was deducted from the damages assessed as aforesaid, leaving a balance of Rs. 30,500. Secondly, the Tribunal was of the view that the claimants had derived "some benefit on account of the death of the deceased" by reason of the fact that the widow of the deceased was employed after the accident by the Gujarat State Road Transport Corporation on a salary of Rs. 17/- per day. Taking into consideration the wages of the deceased and the earning capacity and actual wages of the widow, the Tribunal was of the view that "it would be proper and reasonable to slice down 25% of the abovesaid compensation of Rs. 30,500/-". A further deduction in the sum of Rs. 7,625/- was accordingly made and the actual award came to be made in the sum of Rs. 22,875/-.

5. Both, the original claimants and the owner of the passenger bus, felt aggrieved by the award and have challenged the same to the present appeals. First Appeal No. 1587 of 1979 is instituted by the original claimants and First Appeal No. 30 of 1980 is instituted by the owner of the passenger bus. The claim in First Appeal No. 1587 of 1979 is in the sum of Rs 30,000/-, whereas in First Appeal No. 30 of 1980, the claim is in the sum of Rs. 22,875/-.

6. Though the impugned award is challenged in the respective Memos of Appeal on various grounds, all the challenges were not pressed at the hearing of the appeals. In the claimants' appeal, the challenge was confined to the following three grounds.

(1) The deduction of the sum of Rs. 7,625/- from the assessed damages by taking into consideration the wages earned by the widow as a result of the employment offered by the owner of the passenger bus is illegal and unjustified;

(2) The capitalization of the loss of dependency benefit/economic loss by adoption of the multiplier of 10 is illegal and unjustified; and

(3) The award for the loss of expectation of life should have been in the sum of Rs. 5,000/- (in place and stead of Rs. 3,000/-). In the appeal of the owner of the passenger bus, the challenge was confined to only one ground, viz., that the deduction made on account of the deposit of a sum of Rs. 21,000/- with the Commissioner for Workmen's Compensation should be set off against the liability of the said appellant alone and that the joint tortfeasors and, more particularly, the owner of the motor truck, should not get the benefit of the said deduction and that he should be made liable to satisfy the award disregarding such deduction.

7. In view of the restricted challenges as aforesaid in both the appeals, it is manifest that the decision on the issue of negligence and the consequential liability of the joint tortfeasors to pay damages has become final and conclusive. Broadly speaking, only two questions fall for consideration; first, whether the compensation awarded is just and proper and, secondly, whether the benefit of deduction to the extent of Rs. 21,000/- effected from the assessed damages on account of the deposit made by the Corporation with the Commissioner for

Workmen's Compensation is required to be given to the Corporation alone by setting off the same against the liability incurred by it under the award. We shall first consider the original claimants' challenge to the quantum of compensation which has been levelled under the three grounds set out above.

8. The deceased, as earlier stated, was an employee of the Corporation. K. D. Bhatt, Assistant Legal Adviser of the Corporation, was examined as a witness. His deposition is at Ex. 74. He deposed that it was the policy of the Corporation that when any employee died or became permanently disabled while in service and if there was no other earning member in his family, one of the members of the family of such employee was given direct appointment in a suitable post. In support of his version, the witness relied upon a copy of the General Standing Order No. 361 of 1973 issued on June 18, 1973, Ex. 75, to which it would be convenient to refer at this stage.

9. The General Standing Order bears the following caption :

"To consider absorption of son/daughter of an employee when he retires from the services of the Corporation."

The text of the General Standing Order mentions at the outset that in all the Units of the Gujarat State Road Transport Corporation, recruitment to the posts in Class III and IV categories was being made by issuing an advertisement or by procuring names of qualified candidates from the Employment Exchanges. Reference is next made to the Resolution of the Corporation passed on Dec. 14, 1972 which provided for the appointment of a member of the family of a retired employee under certain circumstances. Then follows the underquoted passage which is material :--

"Similarly, if an employee of the Corporation dies or becomes permanently disabled while in service and there is no other earning member in the family, one member of his/her family can directly apply for a suitable post in S. T., when names for such vacancy are called for from the Employment Exchange, subject to the condition that his/ her name is registered in the Employment Exchange and is on the Live Register in the Employment Exchange. Such applicant will be given preference and the Appointing Authority will be competent to appoint him/her straightway in an existing vacancy in Class III and IV posts, subject to the condition that the applicant possesses the required qualifications etc., for the post and is otherwise suitable on merits. Such cases will be placed for post facto approval before the Selection Committee concerned." The extracted portion of the General Standing Order makes it clear that if an employee of the Gujarat State Road Transport Corporation died or became permanently disabled while in service, one member of the family of such employee could directly apply for a suitable post when names for filling the vacancy in such post are called for from the Employment Exchange, subject to the conditions that:--

(1) there is no other earning member in the family, and

(2) the name of such member of the family is registered in the Employment Exchange and it continues to be on the live register.

If and when such an application is received, the appointing authority would be competent to give a preference to the applicant and to appoint him/her straightway in an existing vacancy in a Class III or IV post, subject to the conditions that :

(1) the applicant possessed the requisite qualifications, and

(2) he/she was otherwise suitable on merits.

10. It would thus appear that the benefit intended to be conferred under the General Standing Order is qualified or limited in character and that it does not confer an unrestricted right of appointment upon a member of the family of an employee dying or becoming permanently disabled while in service. In substance and reality, it only provides for a preference being given in the matter of appointment to a Class III or IV post to such a family member (in case there is no other earning family member) if he fulfils the requisite conditions, namely, if he possesses the requisite qualifications and is otherwise found suitable on merits. Besides, such benefit is extended irrespective of whether the death or disablement of the employee is the result of the tortious act for which the employer is directly or vicariously liable.

11. Reverting now to the evidence of witness Bhatt, he testified that the widow of the deceased (the first appellant) had made an application on or about May 4, 1978 seeking employment on the ground that there was no other earning member in the family. On a consideration of the said application, she was offered employment as a special case. At the time of the trial, the widow was working as a clerk at the Dehgam Depot of the Corporation. She had still not completed the requisite period of 180 days and, therefore, she was employed as a daily rated workman. The witness deposed that after the expiry of the period of 180 days, the widow would be employed as a regular employee. The wages of the widow at the time of the trial were Rs. 378-80 per month, after making a deduction to the extent of Rs. 44-80 for insurance. The witness further deposed that the widow was appointed on a post which was higher than the post of a conductor. Her pay scale was higher than that of her deceased husband. Under cross-examination, the witness stated that the widow was absorbed in service on Aug. 18, 1978 and that the deceased could have been given appointment on a post in the same pay scale provided he could have passed the departmental examination.

12. The first appellant, in the course of her deposition at Ext. 55, stated that she was working as a temporary clerk at Dehgam bus depot of the Corporation on daily wages. Her wages at the time of the trial were Rs. 17/- per day. She was offered employment for all the days of the month excluding Sundays and public holidays. She denied the suggestion that she was offered employment because her husband had expired while on duty.

13. The main question, which falls for consideration against the background of the aforesaid evidence, is whether the Tribunal acted in accordance with law in taking into consideration the wages earned by the first appellant and in effecting a deduction to the extent of 25% and in the sum of Rs. 7,625/-from the amount of compensation assessed as payable.

14. It is true that while assessing damages for the financial loss arising out of the death resulting from an accident, one of the deductions which is required to be made is in respect of the pecuniary benefit, if any, received by the dependants/heirs in consequence of the death. The first question which must be considered in such a case is: What are the sums, if any, which the dependants/heirs, in fact, received as a result of the accident but which they would not have received if there had been no accident. The second question is whether such sums, if any, or some of them are required to be deducted in law while assessing the compensation. Even prior to the decision of the House of Lords in *Parry v. Cleaver* 1970 AC 1, which has been followed in our Court (see *Life Insurance Corporation of India and Another Vs. Kasturben Naranbhai Vadhia and Others*, and *Ahmedabad Municipal Transport Service and Another Vs. Manekben and Others*,), it was the settled legal position at the common law that in two large classes of cases such sums are to be disregarded -- the proceeds of insurance and sums coming by reason of benevolence. Those are considered to be collateral benefits which could not be deducted from the assessed damages because in one case, the benefit was bought by the deceased by his own money under a contract with the insurer and in the other it was derived from the benevolence of friends or relations or of the public at large. In *Parry v. Cleaver*, the principle was extended and applied to the case of disablement or ill-health pension payable by the employer to an employee who was compulsorily retired on account of accident injury. It was held that such pension, whether discretionary or payable as of right and whether contributory or non-contributory, did not have to be taken into account against the last salary but will be deductible only from the last retirement pension. In *Cunningham v. Harrison* (1973) 1 QB 942, the annual ex gratia payments for life made by the employer to the injured plaintiff were held by the Court of Appeal to be non-deductible in an action for damages at the common law.

15. It would be relevant to mention, however, that these types of receipts were not disregarded in the United Kingdom in dealing with damages under the Fatal Accidents Act, 1876 (Lord Campbell's Act) until the law was altered by the Fatal Accidents Act, 1959 which provided in Section 2 that any insurance money, benefit, pension or gratuity which has been or will or may be paid as a result of the death shall not be taken into account, "Benefit" was defined as meaning benefit under the National Insurance Acts and payment by a friendly society or trade union. Section 4 of the Fatal Accidents Act, 1976 substantially re-enacts this provision.

16. In assessing damages in personal injury cases or cases instituted under the

Fatal Accidents Act, 1855 (which is modelled on Lord Campbell's Act), it would be worthwhile for us to take note of the advancement made in this field in the United Kingdom as a result of the liberal judicial approach and progressive legislative policy. In our country, no statutory provision regulates the deduction of benefits in assessing damages in both the categories of cases. Under the circumstances, the general principles laid down by the English Courts in that behalf in the common law actions would furnish useful guidance in personal injury cases. In fatal accident cases, where the claim for damages is u/s 1A and/or Section 2 of the Fatal Accidents Act, 1855, though the law has not been amended so as to incorporate therein the legislative advancement made in the United Kingdom, the progressive public policy as reflected in the legislative alterations made in the country from which the statute has been adopted must largely enter into our consideration, especially because Section 110-B of the Motor Vehicles Act, 1939 empowers the Tribunal to "make an award determining the amount of compensation which appears to it to be just" and what is "just" may be legitimately judged in the light of the prevailing view in the same field in the filial though foreign jurisdiction.

17. Another question which sometimes arises is whether in determining the extent of the pecuniary loss, any deduction is required to be made for the potential earning capacity of the widow or her actual earnings derived from an occupation or employment taken up or resumed after the death. The question directly arose for consideration in *Howitt v. Heads*, (1972) 1 All ER 491. It was a case in which an action for damages was brought by the widow, aged 20, for the benefit of herself and her infant son on the death of her husband which occurred as a result of a road accident within three weeks of the marriage. The widow was employed before her marriage and she had continued working even after the marriage and was actually working at the time of the accident and for a few months thereafter till she delivered a posthumous child. The evidence at the trial showed that in all likelihood the widow would resume employment at some stage when it became convenient for her to make suitable arrangements for her son. *Cumming-Pruce, J.*, who decided the case, held that no deduction in respect of the widow's capacity to earn was required to be made, although he was satisfied as a matter of probability that she would fairly soon be obtaining a significant degree of financial independence. In taking that view, the learned Judge relied upon two decisions of the High Court of Australia (*Goodger v. Knapman* (1924) SASR 347 and *Usher v. Williams* (1955) 60 WALR 69). The argument in *Goodger's* case was that a reduction for the widow's prospective earnings was required to be made by reason of her being relieved from the heavier part of her domestic duties and thereby set free to go out and earn something on her own account. The argument was rejected with the following observation :

"I do not accede to the suggestion, as I am unable to see how liberty to work can reasonably be brought within the description of a pecuniary advantage she has derived from the death of her husband. Any money she might earn would be the result of her labour, not of his death."

In Usher's case, a similar argument with regard to deduction was made by propounding the theory that the husband's death had released a flood of earning capacity. The theory was rejected with the following observations :

"In my opinion the plaintiff's ability to earn is not a gain resulting from the death of her husband The widow's ability to work was always there and she could perhaps, as women do, particularly in professions, have preferred to work after marriage. The same argument that is put forward for The defendants could be applied to any woman who goes out to work through necessity to support herself and her children following her husband's death and if it can be applied to the widow there is no reason why it should not be used to diminish or extinguish the children's claims in a case where, by her efforts, she is able to support them as well as her husband did in his lifetime I therefore hold that the widow's earning capacity is not to be taken into account in diminution of damages."

This view has continued to be accepted in England not only for potential earnings but also for actual earnings before the trial (see *Davies v. Whiteways* (1975) QB 262 . It is true that in the Court of Appeal's decision in *Cookson v. Knowles* (1977) QB 913, Lord Denning, speaking for the Court, has thrown some doubt on this position by saying that while it may be argued that the widow, who was not employed at the time of the accident, is not bound to go out to work so as to reduce the award, "we are not so sure about this". It must be remembered, however, that *Cookson v. Knowles* was a case where the wife had been working before as well as after the death for some time so that her earnings were already contributing to the family pot. It is in view of those facts that Lord Denning held that the dependents were not deprived of the contribution provided by the wife and that, therefore, her prospects of going out to work and earning money could not be disregarded. In terms, it was held :

"But, when her earnings before his death come into the family pool so also her earning capacity after his death must be taken into account."

18. It appears that as in the United Kingdom and Australia, so in New Zealand, the view prevails that the dependant's own income is not relevant because such income is not a benefit in consequence of the death but a consequence of the dependant's own work or investment (see *Kemp & Kemp, The Quantum of Damages*, Vol. 1, 1975 Edition, page 366).

19. No decision of an Indian Court having a bearing on the point under consideration has been brought to our notice, but having regard to the view which prevails in foreign countries in similar jurisdiction, the proper principle to apply would appear to be that in determining the pecuniary loss to the dependants, no deduction should be made for the earning capacity or the actual earnings of the widow arising from her gainful employment taken up after the accidental death of her husband, because such income is not a benefit in consequence of the death but is the result of her own labour.

20. Viewed against the aforesaid background, the deduction to the extent of

25% made by the Tribunal in the instant case from the assessed damages on the ground that the widow had received some benefit on account of the death of the deceased by procuring employment in the Corporation must be held to be unwarranted in law. Be it noted in this connection that the widow here was not working for gam before the death of her husband. She took up the employment only after . his accidental death. The question, therefore, of her earnings coming into the family pool and contributing towards her own maintenance and that of the other dependants prior to the husband's death does not arise. The situation is thus not akin to that which obtained in *Cookson v. Knowles* (1977 QB 913) and no deduction can be made even on that ground, assuming without deciding that the earning in such a case would be deductible.

21. True it is that an attempt was made on behalf of the Corporation to establish that the appointment was offered to the widow as a "special case", presumably with a view to urging that the Corporation, conscious as it was of being a tortfeasor. wanted to make up to the dependants the loss which it had caused them. The effort, in other words, appeared to be to persuade the Court that the widow's earnings now used to support her and the other dependants should be taken into account, as the "benefit" or "gains" resulting from the death of the deceased on the basis that they were in the nature of payments voluntarily made by a tortfeasor in an attempt to mitigate the damage caused by him. It is not possible to agree with this line of reasoning. In the first place, as earlier pointed out, the earnings of the widow were the result of her own labour. They were not in the nature of a gratuitous payment made by an employer, who is liable in tort for the death of an employee, to the widow of such an employee. In the next place, there is no evidence to suggest that the widow was offered the employment by the Corporation because it was conscious of being vicariously liable for the tortious act resulting in the death of the deceased. The evidence, on the contrary, points in the other direction inasmuch as there has been a persistent attempt to deny any liability for the accidental death. In the last place, the General Standing Order, Ext. 75, which records the policy decision covering employees of the Corporation dying or becoming permanently disabled while in service, is of general application. In other words, the benefit of employment under the said policy decision is available irrespective of whether the death or disablement of an employee is the direct result of the tortious act of the Corporation or any one or more of its employees. Besides, all that the General Standing Order does is to give a preference in the matter of appointment to a Class III or IV post if the candidate possesses the requisite qualifications and is otherwise found suitable on merits. Under these circumstances, it is impossible to equate the appointment of the widow as a measure consciously taken with the end in view of making up to the dependants the loss occasioned on account of the tortious act for which the Corporation was vicariously liable.

22. For the foregoing reasons, we are of the view that the deduction of the sum of Rs. 7,625/- from the assessed damages effected by the Tribunal on the ground that the claimants had derived some benefit on account of the death of the

deceased by reason of the fact that the widow of the deceased was employed after the accident by the Corporation requires to be disallowed and that the sum deducted accordingly will have to be added back to the damages awarded by the Tribunal.

23. The deceased was aged 30 when he met with his unfortunate death. He was the bread-winner of the family. Under those circumstances, the Tribunal could not have legitimately adopted the multiplier of 10 for the purpose of capitalizing the loss of dependency benefit/economic loss. In the case of persons who are in thirties, it is a common practice to adopt the purchase factor of 15 years. Under the circumstances, the damages under the said head ought to have been assessed at Rs. 72,000/- (Rupees 4,800 X 15 = Rs. 72,000/-) in place and stead of Rs. 48,000/- (Rs. 4,800 X 10 = Rs. 48,000/-). The sum of Rs. 24,000/- would, therefore, be awardable as additional damages for the loss of dependency benefit/ economic loss.

24. The conventional award for the loss of expectation of life should have been in the sum of Rs. 5,000/- and not Rs. 3,000/-. since there has been an upward revision in the assessment of damages under the said head.

25. On the basis of the foregoing discussion, appellants Nos. 1, 2 and 4 in First Appeal No. 1587 of 1979 are held entitled to the following additional compensation under different heads :--

Rs. 7,625-00 ... Addition back of the wrongful deduction effected by the Tribunal. Rs. 24,000-00 ... Loss of dependency benefit/economic loss. Rs. 2,000-00 ... Loss of expectation of life. _____ Rs. 33,625-00

However, the claim in appeal having been restricted to Rs. 30,000/-, the actual additional award will be in the sum of Rupees 30,000/- only. The amount of additional compensation awarded accordingly will be apportioned between appellants Nos. 1, 2 and 4 in the proportion of 44%, 44% and 12% respectively which broadly is the basis adopted by the Tribunal for apportioning the amount awarded by it between those appellants. It may be clarified that the basis of the Tribunal's apportionment has not been challenged before us in the appeal.

26. Turning now to the appeal presented by the owner of the passenger bus, the submission made before us is wholly justified. The deposit of the sum of Rs. 21,000/- has been made by the said appellant with the Commissioner for Workmen's Compensation in the discharge of the liability under the Workmen's Compensation Act, 1923 incurred by it because the accident arose out of and in the course of the employment of the deceased. The said sum, therefore, can be set off only against the damages which the said appellant is liable to pay under the impugned award. The pecuniary benefit accordingly derived by the dependants/heirs flows out of the statutory liability of the employer and while effecting deduction on that count, corresponding credit can only be given to the employer whose liability to satisfy the award must be held to have been reduced

pro tanto. The Tribunal was, therefore, in error in making an overall reduction to the extent of Rs. 21,000/- in the damages awarded by it and, in the process, in giving the benefit of reduction also to the joint tort-feasor namely, the owner of the motortruck. The award of the Tribunal in this regard will, therefore, require suitable modification.

27. As a result of the foregoing discussion, we pass the following order in these two appeals:--

First Appeal No. 1587 of 1979

The appeal fully succeeds, so far as appellants Nos. 1, 2 and 4 are concerned, but it is dismissed qua appellant No. 3 as it is not pressed. Appellants Nos. 1, 2 and 4 are held entitled to additional compensation in the sum of Rs. 30,000/- together with interest at the rate of 6% per annum from the date of the institution of the claim petition till deposit/payment, with costs throughout. The second and third respondents are held jointly and severally liable to satisfy the award. The respondents will deposit the said sum in the Tribunal within eight weeks from today. The additional compensation which has been awarded hereunder is apportioned between appellants Nos. 1, 2 and 4 in the proportion of 44%, 44% and 12% , respectively. The Tribunal will work out the actual amount falling to the share of each appellant on the basis of such apportionment and pay to each of such appellant the amount falling to her share together with proportionate interest and costs. So far as the minor second appellant is concerned, the total amount falling to her share will be paid to the first appellant on the condition that such amount will be deposited in a fixed deposit with a nationalised bank for a period of 15 years or till the minor attains majority, whichever is later, and subject to the further conditions that the fixed deposit receipt will not be encashed before the due date of maturity nor any loan will be raised against the same during the currency of the fixed deposit, save and except with the permission of the Tribunal. The interest accruing due on the fixed deposit periodically will be payable to the first appellant directly to be utilized by her for the maintenance of the minor. So far as the first appellant is concerned, a sum of Rs. 2,500/- will be unconditionally paid to her out of the total amount falling to her share. The balance amount will be paid to her on the condition that such amount will be deposited in a fixed deposit with a nationalised bank for a period of 15 years and subject to the further conditions that the fixed deposit receipt will not be encashed before the due date of maturity nor any loan will be raised against the same during the currency of the fixed deposit, save and except with the permission of the Tribunal. The interest accruing due on the fixed deposit periodically will be payable to the first appellant directly. The Tribunal will ensure that these conditions imposed in the cases of the first and second appellants are duly complied with by the first appellant. The entire amount falling to the share of the fourth appellant will be paid to her unconditionally. There will be no order as to the costs of the appeal, so far as the third appellant is concerned.

First Appeal No. 30 of 1980:

The appeal fully succeeds. The benefit of deduction effected on account of the deposit of the sum of Rs. 21,000/- with the Commissioner for Workmen's Compensation enures in favour of the appellant alone. Therefore, as between the two joint tort-feasors, namely, the appellant and respondent No. 6, the liability to satisfy the total award made in favour of respondents Nos. 1, 2 and 4 stands apportioned in such a manner that whereas the sixth respondent will be liable to satisfy the whole award, the appellant will be liable to satisfy the full award less the sum of Rs. 21,000/-. There will be no order as to the costs of this appeal.