

(1990) 01 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No's. 101 and 117 to 122 of 1982 and Cross-objection
No's. 7, 2, 6, 4 and 3 of 1983

Arvind Singh Mann

APPELLANT

Vs

Himachal Road Trans. Corpn. and Others

RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Himachal Pradesh Passengers and Goods Taxation Act, 1955 — Section 3A
Motor Vehicles Act, 1939 — Section 110A

Citation : (1990) ACJ 647 : (1991) 2 ShimLC 230

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Inder Singh, A.G., K.D. Sood, Devinder Gupta and Deepak Gupta,
Kedar Ishwar, for the Appellant; D.K. Khanna, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—These appeals arise out of the same accident and common award. They were heard together and are being decided by a common judgment.

2. Briefly, the facts are that bus No. HPN 594, owned by the Himachal Road Transport Corporation (hereinafter referred to as "the Corporation"), was being driven by a driver. As soon as the bus reached a place 3 kilometres away from Mandi towards Shimla on 28.8.1980, it met with an accident at 3.30 a.m. According to the claimants, the accident was due to the rash and negligent acts of the respondents. The driver of the vehicle was driving it at an excessive speed. He was negligent as well besides being under the influence of liquor.

3. On the other hand, the respondents had denied the rashness and negligence attributed to the driver. They say that the accident was on account of the sudden failure of the lighting system in the bus which could not be discovered by use of reasonable care. The defect, they contended, was latent one which no human being could have previously anticipated. According to them, the fuse suddenly got melted plunging the bus in utter darkness. In addition to this, the weather

was foggy. It also contributed to the accident, although the vehicle was in a roadworthy condition.

4. On the pleadings of the parties, the Tribunal framed number of issues in various claim petitions. These issues are similar, therefore, one set of issues framed in claim petition No. 8 of 1981 is as under:

(1) Whether bus No. HPN 594 met with an accident due to rash and negligent driving by its driver resulting in the death of Lal Singh as alleged? OPP.

(2) Whether the petitioners are entitled to compensation? If so, to what amount and from whom? OPP.

(3) Relief

5. After allowing the parties to adduce evidence, the Tribunal decided both the issues against the Corporation and awarded different amounts to the claimants by way of compensation. F.A.O. No. 101 of 1982 has been preferred by Arvind Singh Mann for enhancement of compensation whereas all other appeals have been filed by the Corporation. F.A.O. No. 101 of 1982 will be taken up for decision at an appropriate stage of this judgment. However, the appeals filed by the Corporation are being discussed first in view of the nature of challenge made by the Corporation.

6. On the question of negligence, it is contended that the bus was being driven rashly and negligently by the driver who was also under the influence of liquor. The respondents say that the accident was due to the sudden failure of the lighting system in the bus. Witnesses like Joginder Singh, PW 8, and Joginder Singh, PW 9, who were occupants of the ill-fated bus, state that the bus was being driven at a high speed. There is evidence that the driver halted the bus at Swarghat and purchased a bottle of liquor. Some say that it was consumed half by the driver himself and some say that it was consumed by both the driver and the conductor of the bus. The Corporation has tried to prove that the bus crossed this place at 11.45 p.m., by which time the liquor vend located at the place does not remain open. The Tribunal appears to have concluded that the purchase of liquor at this time and its consumption, as alleged, is illogical in the absence of cogent evidence. This finding of the Tribunal does not appear to be correct. It is a fact that there is a traffic barrier at Swarghat and vehicles stop there for some time. Even if it is assumed that the liquor vend could not remain open by this time, it is not improbable that the driver could have procured a bottle of liquor and consumed the same either himself or along with the conductor. Further, the statements of the witnesses on this aspect cannot be disbelieved since they had no reason to come forward with such a false plea.

7. Further examination of the matter, in the light of the evidence on record, discloses that the bus was being driven at a high speed so much so that it hit the hillside at occasions. The road at the place of accident is quite broad. It could accommodate free movement of two buses simultaneously. The rashness and the

negligence of the driver of the vehicle is quite clear when despite this kind of road it went from the left to the right side of the road and hit the parapet before rolling down into the khad. The defence of the Corporation that the weather was foggy and the lighting system of the vehicle failed, is completely unacceptable. This defence is based on no clear and cogent evidence. It appears to be an assumption drawn from the assessment of a Committee that examined the causes of the accident. Such a conclusion can be drawn by anyone since the lighting system was bound to fail after the rolling down of the vehicle into the khad. The Tribunal is right in coming to the conclusion that in case the driver had been vigilant and alert, the accident could have been avoided. Even if it is accepted that the weather was foggy, more care was expected from the driver of the vehicle. Secondly, even if there was sudden failure of lights, the driver had enough time to immobilize the vehicle by applying the brakes immediately. The vehicle was moving on the extreme left side of the road. There was sufficient space between the left side of the road and the place from where it fell into the khad. The driver had sufficient time to stop the vehicle during this period. These facts clearly demonstrate his rashness and negligence in driving the vehicle. This point is decided against the Corporation and the submissions of Mr. D.K Khanna, who vehemently argued the matter for the Corporation, are totally unacceptable. After losing the challenge on the aspect of negligence, Mr. D.K. Khanna concentrated his attack on the second argument, which is as under:

8. Ex gratia payments made by the Corporation as well as those made under the Himachal Pradesh Passenger Insurance Scheme (as amended upto date), framed under the Himachal Pradesh Passengers and Goods Taxation Act, 1955, are deductible from the total amount of compensation awarded by the Tribunal. In other words, these amounts are to be taken into consideration by the Tribunal while awarding the compensation to the claimants u/s 110-A of the Motor Vehicles Act, 1939. Looking to the importance of the matter, the Advocate General and other learned counsel were requested to assist the court and place their views. They were kind enough to appear and render their valuable assistance, which I gratefully acknowledge.

9. In the State of Himachal Pradesh, there exists legislation called the Himachal Pradesh Passengers and Goods Taxation Act, 1955. Under this Act, the Government of Himachal Pradesh notified on November 18, 1977 a Scheme called "the Himachal Pradesh Passenger Insurance Scheme". It is necessary to reproduce this scheme since counsel for the parties referred to the same quite extensively during the course of their submissions:

1. Establishment of Fund.--(a) There shall be established a fund known as "Passenger Insurance Scheme Fund" which shall be operated upon by the Commissioner Transport or such other officer as may be authorised by a notification in the Official Gazette by the State Government in this behalf.

(b) The amount collected u/s 3-A of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 shall be credited to this Fund.

(c) The State Government shall make Rules for the administration of this Fund.

2. Risk Covered.--The Government shall cover the risk to the ex gratia payment as laid down in the Schedule for death or disablement of the bona fide passenger travelling in stage carriage or contract carriage registered and/or licensed in the State of Himachal Pradesh to carry passengers for hire or reward and whose originating or destination point is in the State of Himachal Pradesh, and who have paid the fare, passenger tax and insurance surcharge and on whose behalf the said payments have been made and who are covered under the Scheme for the victims in the accidents and arising out of and directly or solely from the accidents of the stage carriage or contract carriage as hereinabove mentioned are being plied to carry passengers for hire or reward. All bona fide passengers travelling in the stage carriage or contract carriage as hereinabove mentioned and whose destination or starting point falls within the State of Himachal Pradesh shall be entitled to the ex gratia payment for death or disablement caused in an accident within the territory of Himachal Pradesh and as laid down in the Schedule.

3. Mode of settlement/payment of the ex gratia payment payable to the victims of accidents.--(a) The District authorities, Himachal Road Transport Corporation or private transport company shall send a report in writing of the accidents to the Commissioner Transport, Himachal Pradesh immediately and supply the following data:

(i) The complete particulars of the accidents, like date, time and place;

(ii) The particulars of the vehicle involved in the accident, like chassis number, engine number and registration number;

(iii) The names of the passengers involved in the accidents and other data regarding their place of residence or business, if available;

(iv) The District authorities shall always be ready and willing to co-operate for any assistance or information or details available with them and required by the Commissioner Transport for the expeditious ex gratia payment to the passengers in the accidents.

(b) The Commissioner Transport or any officer authorised by the State Government, on receipt of the intimation about the accident, shall make all endeavour to complete their investigation or enquiry about the identity of the passengers involved in the accident or of the dependants or next of kin of the deceased passenger and shall make ex gratia payment of the amounts specified in the Schedule, as soon as possible and without delay.

(c) The dependants or next of kin of deceased passenger, who shall be entitled for the ex gratia payment, shall include and mean the wife, husband, parents and children, if any, of the passenger whose death shall have been caused in the accident.

4. Schedule for the amounts of ex gratia payment.--(a) In case of death, the amount of ex gratia payment shall be Rs. 15,000/- in respect of one passenger above the age of 12 years.

(b) In case of permanent total disablement, the amount of ex gratia payment shall depend upon the nature of disability and as mentioned in the Annexure.

(c) In case the passenger involved in the accident is below the age of 12 years, the benefits of ex gratia payment would be reduced to 50 per cent of the limit mentioned in Sub-clauses (a) and (b) of this clause.

5. Exclusions.--(a) The Government shall not cover the passengers who are hanging outside the bus/stage carriage or sitting on its roof.

(b) The Government shall not be liable and called upon to make ex gratia payment to the passengers travelling in the bus involved in the accident not being plied for hire or reward.

(c) It shall not attach or attract any liability of the Government towards the passengers involved in the bus/stage carriage accidents under the Motor Vehicles Act, 1939 or the Fatal Accidents Act, 1855 or any other law for the time being in force or may be enforced from time to time.

(d) The indemnity provided in the Scheme shall not apply or extend to any loss or damage or liability directly or indirectly, proximately or remotely connected or arising out of the accidents occasioned by or contributed to by or traceable to or arising out of or in connection with the following:

(i) War, invasion, the act of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war;

(ii) Mutiny, civil commotion, assuming the proportions of or amounting to a popular rising, military rising, rebellion, revolution, insurrection military or usurped power or any act of any person setting on behalf of or in connection with any organisation with activities directed towards the overthrow by the force of the Government, de jure or de facto to the influencing of it by terrorism or violence or by the direct or indirect consequences of any of the said occurrences.

(iii) Any liability arising out of any accident directly or indirectly caused or contributed to by or arising from ionising, radiations, or contamination by radiation from any nuclear explosion or fuel or from any nuclear waste from the combustion of nuclear fuel or caused by or arising from nuclear weapons/materials.

6. Indemnity of State Government.--After the Government have made the ex gratia payment as specified in the Scheme and to the person found entitled by the Government to receive such payment as per their information, enquiry and under bonafide belief, the Government shall not be liable for making the ex gratia payment to any other person who may later on represent himself to be the legal heir/legal representative of the deceased passenger.

10. This Scheme was further amended as under:

(1) In the preamble of the Government notification No. TPT-627/76, dated 18.11.1977, published in the Himachal Pradesh Rajpatra (Extraordinary) dated 19.11.1977,--

(a) for the words "Insurance of Passengers" the words "payment of ex gratia grant to passenger" shall be substituted;

(b) after the figure, alphabet and word "3-A of wherever these occur, the words "the Himachal Pradesh Passengers and Goods Taxation Act, 1955 added by" shall be inserted; and

(c) for the words "Passenger Insurance Scheme" wherever these occur, the words "Scheme for the payment of ex gratia grant to a passenger" shall be substituted;

(2) In the headline of the Scheme for the words "PASSENGER INSURANCE SCHEME", the words "SCHEME FOR THE PAYMENT OF EX GRATIA GRANT TO A PASSENGER" shall be substituted;

(3) In sub-para (a) of the paragraph 1 of the Scheme, for the words "Passenger Insurance Scheme Fund"; the words "Fund for the Payment of Ex Gratia Grant to the Passengers" shall be substituted.

(4) The word "insurance" occurring in paragraph 2 of the Scheme shall be omitted.

(5) The amendments made vide paras (1), (2), (3) and (4) of this notification shall and shall always be deemed to have been made with effect from the day on which surcharge was levied u/s 3-A of the Himachal Pradesh Passengers and Goods Taxation Act, 1955.

11. The Himachal Pradesh Passengers and Goods Taxation Act, 1955 was amended by the Himachal Pradesh Passengers and Goods Taxation (Amendment) Act, 1977 (Act No. 1 of 1978) with effect from February 3/4, 1978 which brought about certain changes being reproduced hereinunder for the sake of proper understanding and appreciation of the matter in hand:

1. Short title and commencement.--(1) This Act may be called the Himachal Pradesh Passengers and Goods Taxation (Amendment) Act, 1977.

(2) It shall come into force at once.

2. Amendment of Section 2.--For Clause (f) of Section 2 of Himachal Pradesh Passengers and Goods Taxation Act, 1955 (15 of 1955) (hereinafter called "the principal Act") the following Clause (f) of Section 2 of the said Act shall be substituted, namely:

(f) "owner" means the owner of motor vehicle, used for carrying passengers or transporting goods in or through the territory of the State of Himachal Pradesh,

and includes,--

- (a) the de facto and de jure owners;
- (b) any person for the time being incharge of such vehicle;
- (c) any person responsible for the management of the place of business of such owners;
- (d) the Government or Corporation constituted under the Road Transport Corporation Act, 1950 (64 of 1950).

3. Addition of Section 3-A.--After Section 3 of the principal Act, the following Section 3-A, along with its heading, shall be added, namely:

3-A Levy of surcharge.--Notwithstanding anything contained in Sub-section (1) of Section 3 of the Act, from and after the commencement of this section, there shall further be levied and paid to the State Government a surcharge on the tax payable by every passenger carried by a stage/ contract carriage for each journey at a rate of 20 per cent subject to a minimum of 5 paise in any one case, the amount of surcharge being calculated to the nearest multiple of 5 paise by ignoring 2 paise or less and counting more than 2 paise as 5 paise, for the purpose of insurance of a passenger under the scheme to be prepared and notified by the State Government in the Official Gazette.

(Emphasis mine)

4. Amendment of Sections 4, 5, 6, 9, 12, 14-B, 15 and 21.--In Section 4 (excepting first proviso) and Sections 5 (1), 6,9,12,14-B, 15 and 21 of the principal Act for the word "tax", wherever it occurs, the words "tax and surcharge" shall be substituted.

5. Amendment of Section 22.--In Section 22 of the principal Act, the following amendments shall be made, namely:

(a) for the word "tax", wherever it occurs, words "tax and surcharge" shall be substituted; and

(b) for Clause (a) of Sub-section (2) the following Clause (a) of Sub-section (2) shall be substituted:

(a) prescribing the manner in which and the intervals at which tax and surcharge shall be paid under Sections 3,3-A and 4".

12. Before referring to the precise submissions of the counsel for the parties, it is important to know the position relating to damages that could be made use of by any eligible claimant. Suffice it is to say that at the initial stages, such claims could be initiated in ordinary civil courts. However, the statutory law governing the assessment and payment of compensation to the claimant for personal injuries or for dependency and for loss to the estate came for the first time in the shape of Sections 1-A and 2 of the Fatal Accidents Act, 1855 (Act No. XIII of

1855) that came into being from 27th March, 1855. Preamble to the same says as under:

Whereas no action or suit is now maintainable in any court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often times right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him...

Section 1-A reads as under:

1-A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.--Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased; and in every such action or suit the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the court by its judgment or decree shall direct.

Further, Section 2 enacts:

2. Not more than one suit to be brought.-- Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint.

Claim for loss to estate may be added.-- Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

13. It is clear that the rights under these two provisions are quite clear, distinct and independent. u/s 1-A, the damages are payable to one or the other relations mentioned therein whereas Section 2 envisages payment of compensation for loss to the estate of the deceased on account of the act of the tortfeasor. As a matter of fact, Section 1-A is, in substance, a reproduction of the English Fatal Accidents Acts, 9 and 10 Viet. Ch. 93, known as the Lord Campbell's Act. Section

2 corresponds to one of the provisions in the English Law Reform (Miscellaneous Provisions) Act, 1934.

14. Before proceeding further, it is worthwhile to quote the following paragraphs from CK. Subramania Iyer v. T. Kunhi Kuttan Nair 1970 ACJ 110 (SC):

(5) The scope of Section 1 of the Campbell's Act was considered by the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd. (1942) AC 601. Dealing/ with the mode of assessment of damages under that section Lord Russel of Killowen observed:

The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately.

Lord Wright stated the law on the point thus:

"The general nature of the remedy under the Fatal Accidents Acts has often been explained. These Acts provided a new cause of action and did not merely regulate or enlarge an old one, as Lord Summer observed in Admiralty Commissioners v. S.S. Amerika (1917) AC 38 52. The claim is, in the words of Bowen, L.J. in the Vera Cruz (No. 2), (1884) 9 PD 96 101 for injuriously affecting the family of the deceased. It is not a claim which the deceased could have pursued in his own lifetime, because it is for damages suffered not by himself, but by his family after his death. The Act of 1846, Section 2 provides that the action is to be for the benefit of the wife or other member of the family, and the jury (or judge) are to give such damages as may be thought proportioned to the injury resulting to such parties from the death. The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered; Grand Trunk Rly. Co. of Canada v. Jennings 13 AC 800. The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death.

(Emphasis mine)

(6) In ascertaining pecuniary loss caused to the relations mentioned in Section 1-A, it must be borne in mind that these damages are not to be given as solatium but are to be given with reference to pecuniary loss. The damages should be calculated with reference to a reasonable expectation of pecuniary benefit from the continuance of the life of the deceased--see Franklin v. South East Railway Company 157, English Reports 3 H & N 448. In that case Pollock, C.B. observed:

We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough and such reasonable expectation

might well exist, though from the father, not being in need, the son had never done anything for him. On the other hand a jury certainly ought not to make a guess in the matter; but ought to be satisfied that there has been a loss of sensible and appreciable pecuniary benefit, which might have been reasonably expected from the continuance of the life.

(7) In *Toff Vale Railway Co. v. Jenkins* (1913) AC 1 the Judicial Committee observed that it is not a condition precedent to the maintenance of an action under the Fatal Accidents Act, 1846, that the deceased should have been actually earning money or money's worth or contributing to the support of the plaintiff at or before the date of the death provided that the plaintiff had a reasonable expectation of pecuniary benefit from the continuance of the life. Therein Lord Atkinson stated the law thus:

I think it has been well established by authority that all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the existence of this expectation is an inference of fact--there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can, I think, be drawn from circumstances other than and different from them.

(8) In an action under the Act, it is not sufficient for the plaintiff to prove that he lost by the death of the deceased a mere speculative possibility of pecuniary benefit. In order to succeed, it is necessary for him to show that he has lost a reasonable probability of pecuniary advantage. In *Barnrett v. Cohen* (1921) 2 KB 461 McCardie, J., speaking for the court, quoted with approval the following observations of Lord Haldane in his judgment in *Taff Vale Rly. Co. v. Jenkins* (supra):

The basis is not what has been called solatium, that is to say, damages given for injured feelings or on the ground of sentiment, but damages based on compensation for a pecuniary loss, but then loss may be prospective, and it is quite clear that prospective loss may be taken into account. It has been said that this is qualified by the proposition that the child must be shown to have been earning something before any damages can be assessed. I know of no foundation in principle for that proposition either in the statute or in any doctrine of law which is applicable; nor do I think it is really established by the authorities when you examine them... I have already indicated that in my view the real question is that which Willes, J. defines in one of the cases quoted to us, *Dalton v. South Eastern Rly. Co.* (1958) 4 CB (NS) 296 "Aya or No, was there a reasonable expectation of pecuniary advantage"?

Proceeding further the learned Judge referred to the observations of Pollock, CB.

in *Taff Vale Rly. Co. v. Jenkins* (supra):

It appears to me that it was intended by the Act to give compensation for damage sustained, and not to enable persons to sue in respect of some imaginary damage, and so punish those who are guilty of negligence by making them pay costs.

(10) The mode of assessment of damages is not free from doubt. It is beset with certain difficulties. It depends on many imponderables. The English courts have formulated certain basis for calculating damages under Lord Campbell's Act. The rules ascertained by the English courts are set out in *Winfield on Torts*, 7th Edn. at pp. 135 and 136 as follows:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a number of years' purchase. That sum, however, has to be taxed down by having regard to the uncertainties, for instance, that the widow might have again married and thus ceased to be dependent and other like matters of speculation and doubt. The number of years' purchase is left fluid, from twelve to fifteen has been quite a common multiple in the case of a healthy man, and the number should not be materially reduced by reason of the hazardous nature of the occupation of the deceased man. These principles are, however, only appropriate where the deceased was the bread-winner of the family. Obviously, they cannot be applied, for example, where the claim is in respect of a mere expectation of pecuniary benefit from the deceased or where the deceased's contribution to the family was in kind and not in cash. In truth, each case must depend upon its own facts. In *Dolbey v. Godwin* (1955) 1 WLR 553 the plaintiff was the widowed mother of the deceased, an unmarried man 29 years of age, and he had contributed substantially for her upkeep. The Court of Appeal held that it would be wrong to assess the damages on the same basis as if the plaintiff were the widow of the deceased, principally on the ground that it was likely that he would have married in due course and that then his contributions to his mother would have been reduced.

(11) The mode and manner of ascertainment of damages in fatal accident cases came up for consideration in *Nance v. British Columbia Electric Rly. Co. Ltd.* (1951) AC 601. In that case Viscount Simon formulated the following tests for ascertaining the damages. (1) First estimate what was the deceased man's expectation of life if he had not been killed when he was; and (2) What sums during those years he would have probably applied to the support of the dependant. In fixing the expectation of life of the deceased regard must be had not only to his age and bodily health but premature termination of his life by a later accident. In estimating future provision for his dependant the amounts he usually applied in this way before his death are obviously relevant, and often the

best evidence available though not conclusive, since if he had survived, his means might have expanded or shrunk, and his liberality might have grown or wilted. After making the calculations on the basis of the two tests, his Lordship observed that deduction must further be made for the benefit accruing to the dependant from the acceleration of his interest in his estate and further allowance must be made for the possibility that the dependant himself might have died before he died.

(12) In *Gobald Motor Services Ltd. v. R.M.K. Veluswami* 1958 ACJ 179 Supreme Court held that the actual extent of the pecuniary loss to the aggrieved party may depend on the data which cannot be ascertained accurately but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss 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 source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained. Therein it was further observed that where the courts below have, on relevant material placed before them, ascertained the amount of damages under the head of pecuniary loss to the dependants of the deceased, such findings cannot be disturbed in second appeal except for compelling reasons.

(Emphasis mine)

15. Principles relating to the assessment of compensation have also been exhaustively discussed by this court in *H.P. Road Transport Corporation v. Pandit Jai Ram* 1980 ACJ 1.

16. The law on the point may be summed up thus: compulsory damages u/s 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule, parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition, they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the appellate court should be slow in disturbing the findings reached by the courts below, if they have taken all the relevant facts into consideration.

[See: C.K. Subramania Iyer v. T. Kunhi Kuttan Nat 1970 ACJ 110 (SC)].

17. The Motor Vehicles Act, 1939 (Act No. 4 of 1939) provides a special forum to adjudicate cases for compensation by a Tribunal u/s 110. Section 110-A deals with an application for claiming the compensation whereas Section 110-B is a provision that deals with the award of compensation by the Tribunal. The procedure to be followed by the Tribunal for awarding the compensation has been prescribed u/s 110-C and Section 110-D deals with the appeals from the award of the Tribunal. It is necessary to reproduce Section 110-B of the Act.

110-B. Award of the Claims Tribunal.--On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 109-B, may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 92-A in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter VI1-A.

18. Mr. D.K. Khanna submits that the compensation to be awarded to the claimants is just compensation. Therefore, according to him, the compensation awarded must be such which represents the balance between the loss suffered due to the death of the deceased and the pecuniary advantage from whatever sources coming to the dependants by reason of the death, meaning thereby, the balance of loss and gain to the dependants by the death must be ascertained. In order to support this argument, reference was made to GobaldMotor Service, Ltd. v.RM.K. Veluswami 1958 ACJ 179 Davies v. Powell Duffryn Associated Collieries Ltd. (1942) AC 601 Patel Hirabhai Chhaganlal v. Gujarat State Road Transport Corporation 1982 ACJ 180 (Gujarat) and Madhya Pradesh State Road Transport Corporation v. Sudhakar 1967 ACJ 90 . Referring to the Scheme of the State Government, it was contended that the amounts payable are to be taken into consideration by the Tribunal and the total amount arrived at by it must be reduced by the amount payable under the Scheme. Similarly, ex gratia payment made by the Corporation must also be deducted. The submissions made by Mr. D.K. Khanna have been supported by Mr. Deepak Gupta also.

19. On the other hand, Mr. Inder Singh, learned Advocate General for the State of Himachal Pradesh, submits that the amount under the Scheme has been increased from time to time. The Scheme has been initiated by the State for the benefit of passengers and not for the benefit of tortfeasors. Elaborating his

submissions further, it is contended that this Scheme is statutory and contractual relationship between the passenger and the Government comes into being as soon as surcharge is paid by anyone who travels by that vehicle. Out of this relationship, a right is created to claim it and the Government has to pay it according to the provisions of the Scheme which is exhaustive and deals with every aspect of the matter. One feature of the Scheme is that the factum of accident is only to be ascertained and payments to persons mentioned in the Scheme follow as a matter of course. It was also contended that in case the Government wanted, it could have specifically provided for the inclusion of the payments under the Scheme in the total amount of compensation paid in the case by the Motor Accidents Claims Tribunal.

20. I see great force in the submissions of the learned Advocate General and other counsel supporting these submissions in this matter. Perusal of the Scheme demonstrates quite clearly that it was meant to ameliorate quickly the loss of the passengers. The idea is to minimize their loss and grief on account of the accident in addition to create confidence in them to travel in the vehicles covered by the Scheme. In order to achieve this object, small amount by way of surcharge on the tax under the Act is collected to form the Scheme and the Government has taken the liability to pay the compensation to the passengers irrespective of the fact whether the amount collected by this method is or is not equal to the amount of compensation payable by the State in a particular case of accident. The argument of the learned Advocate General that payments under the Scheme have been named "ex gratia" is incorrect since it is a statutory Scheme and the amounts are claimable as a matter of right. This submission of the learned Advocate General is correct in view of the aforesaid conclusions. It appears that the Government with intention to save this kind of payment from inclusion towards the total amount of compensation by the Tribunal, named it "payment of ex gratia grant to the passengers" in place of "insurance of passengers". This change, in my opinion, does not in any way change the basic nature and effect of the Scheme. It still remains a Scheme for the insurance of passengers and the payments in the event of occurrence of accident may be named ex gratia payments since ex gratia payments are not dependent on proof of the negligence.

21. Mr. Khanna submitted that judicial pronouncements which exclude inclusion of payments like insurance, pension, family pension, gratuity, provident fund etc. are based upon the principle of contractual relationship of the deceased before his death but this principle does not apply to payments under the Scheme and those made by the Chief Minister out of the Chief Minister's fund since there is no contractual relationship. I have already held that contractual relationship comes into force between the passenger and the Government as soon as tax by way of surcharge is paid on the travelling ticket purchased by the passenger. The argument that no contract as envisaged under the Indian Contract Act comes into being, is not acceptable in view of the nature of the transaction that takes place between the passenger and the State and no protest has ever been raised

by any of the travellers against charging the amount of surcharge. Mr. Deepak Gupta, Advocate, submits that certain categories like students and freedom fighters etc. do not pay the same, is of no consequence since the liability to pay the same, in the absence of this payment by these categories, is eliminated by the State which bears the liability to pay it in case any such situation arises. There is no doubt about the payments made by the Corporation or by the Chief Minister out of Chief Minister's fund since they are made gratuitously and are not to be taken into consideration while awarding the compensation.

22. The Tribunal has to award just compensation. Although it is difficult to assess the same with exactness, however, every effort is to be made to arrive at a figure which appeals to the court to be just in the circumstances of that particular case. No cut and dried principles are there which can be made universally applicable. Assistance can be taken from standard books by celebrated authors, precedents by the apex court and the other decisions throwing light on the manner and method of assessing the same. According to Webster's Third New International Dictionary, the word "compensation" means "the act or action of making up, making good, or counterbalancing: rendering equal: amending". Black's Law Dictionary (Fifth Edition) gives the meaning as "equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another...". In the Oxford English Dictionary, the meaning of the term is given as "the action of compensating, or condition of being compensated; counterbalance, rendering of an equivalent requital, recompense...". Even otherwise, ordinarily, it means "anything given to make things equivalent; a thing given to or to make amends for loss, recompense, remuneration or pay".

23. It appears from the language of Section 110-B of the Motor Vehicles Act that the definition of compensation has been intended to be liberal and broad since it has left it to the determination of the Tribunal; and what amount of compensation is to be paid is that which appears to be just to the Tribunal. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi* 1980 ACJ 55 the Supreme Court observed as under.

The jurisprudence of compensation for motor accidents must develop in the direction of no fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

24. There is no doubt about payments like insurance, provident fund, gratuity, family pension etc. in view of the decisions of this court in *Rita Arora v. Salig Ram* 1975 ACJ 420 and *H.P. Road Transport Corporation v. Pandit Jai Ram* 1980 ACJ 1 (HP). Similar is the view of the High Court of Punjab and Haryana in *Bhagat Singh Sohan Singh v. Om Sharma* 1983 ACJ 203 High Court of Gujarat in *Life Insurance Corporation of India v. Legal representatives of deceased Naranbhai Munjabhai Vadhia*, 1973 ACJ 226 (Gujarat), High Court of Delhi in *Bhagwanti Devi and Others Vs. Ish Kumar and Others*, High Court of Rajasthan in

Smt. Chand Kanwar Vs. Mannaram and Others,

25. In Gobald Motor Services Ltd. v. R.M.K. Veluswani 1958 ACJ 179 the court was concerned with an appeal which arose out of a suit for damages under the Fatal Accidents Act, 1855. It did not deal with the provisions of Section 110-B of the Motor Vehicles Act. Secondly, it did not have the occasion to consider the principles which came up for consideration and decision in cases relating to payments like life insurance, provident fund, gratuity, family pension, ex gratia payments etc., which is a subsequent development. In case the submissions of Mr. Khanna are accepted, the result would be that the dependants would receive payments to a substantial extent either under all or any of these categories, thus minimizing or completely benefiting the tortfeasor from the payment of compensation to the claimants. That is neither the object nor can such an interpretation be given to these statutory provisions and the principles fundamental for the payment of compensation to the dependants in motor accident cases. Therefore, in addition to the reasons specifically given for excluding these payments from the compensation awarded by the Tribunal, I prefer to accept the principles enunciated in large number of judicial decisions which exclude abovesaid payments from the compensation awardable by a Tribunal since there are many similarities between these payments and the payments under discussion in this case. Therefore, even if it is accepted that there has to be a balance between the injury caused and the pecuniary advantages received by the dependants, these payments by the very nature thereof or by judicial decisions which specifically exclude them or by statutory enactments and by the history of the legislation and the Scheme and the intention of the framers to exclude such like payments from the compensation to be awarded by the Tribunal in a case or cases before it under the Motor Vehicles Act, 1939, have to be excluded.

26. Finally, even otherwise, it is well-known that in case of doubt whether any payment is to be included or excluded while awarding compensation to the claimants, the benefit must be settled in favour of the claimants. In view of the aforesaid discussion, I am convinced on this aspect as well that the Corporation has failed to discharge the burden for claiming these deductions from the compensation that the Motor Accidents Claims Tribunal assesses in a case(s) before it u/s 110-B of the Motor Vehicles Act, 1939. The amount that becomes payable as a result of this decision will bear interest at the rate of 8 per cent per annum from the date of the application till payment in all similar cases including F.A.O. No. 142 of 1982 and other connected matters.

F.A.O. Nos. 101 & 121 of 1982

27. In this case, Anuradha Mann, wife of the claimant, died and a claim of Rs. 4,50,000/- has been preferred. The Tribunal awarded a sum of Rs. 20,000/- only as compensation. The claimant feels aggrieved by this award and asserts by this appeal that the compensation be enhanced in view of the evidence on record and the decision of the Tribunal deserves to be set aside since no convincing reasons

have been given by the Tribunal for awarding this small sum of compensation. There is substance in this submission of the learned counsel for the claimant. The deceased was only 23 years and 11 months old at the time of the accident. She was well qualified and had done M.Sc. (Botany) and B.Ed, degrees (Exh. P-2 and Exh. P-3). She had also served as a Biology teacher in Mussoorie Public School for a short period from 20th April, 1979 to 2nd June, 1979 where her last pay was Rs. 450/- per month (Exh. P-4). She had also taught in St. George College, Mussoorie, in April and May, 1980 where she received Rs. 810/- per month as salary with free furnished quarter, free lunch and tea on working days (Exh. P-5). She had also worked as a Science teacher from 23.10.1978 to 15.4.1979 in V.M. All India Hr. Secondary School, Dehradun (Exh. P-6). Before her death in this accident, she had received an interview card/letter for the post of a Trained Graduate Teacher (Exh. P-7). Arvind Singh Mann, PW 5, has stated that the deceased used to do tuition work also and used to earn Rs. 500/- per month. No documentary evidence to prove this assertion has been filed. These facts clearly show that the deceased was young and had a bright future. She was drawing Rs. 810/- per month before the accident. Then, she was obviously to settle as a Trained Graduate Teacher any time thereafter in case she had not died in the accident. Even if Rs. 500/- are not included in her income, in that event also, her income can be conveniently assessed at Rs. 810/- per month. Applying the well-known tests for the calculation of compensation on this income, keeping in view 4 units (2 of the deceased) and in the absence of any evidence of her contribution to the estate, the amount of compensation comes to $(Rs. 404 \times 12 \times 18 + 3000)$ Rs. 90,264/-. After deducting Rs. 20,000/- awarded by the Tribunal, the claimant be paid the balance amount of Rs. 70,264/- with interest at the rate of 6 per cent per annum from the date of the application till the date of the payment. F.A.O. No. 101 of 1982 is allowed in the above terms. In view of the aforesaid discussion and decision, there is no substance in any of the contentions of the learned counsel for the Corporation. Therefore F.A.O. No. 121 of 1982 is dismissed.

F.A.O. No. 117 of 1982 and Cross-objections No. 3 of 1983

28. Darshan Singh (40) died leaving behind his mother, widow and minor son. It is stated that the deceased was a granthi. His widow, Swaran Kaur, states that the deceased was earning Rs. 400/- per month as salary from gurudwara besides Rs. 200/- to Rs. 300/- per month from other sources and Santokh Singh, PW 12, states that out of the public offerings made at the Gurudwara Ganguwal, the deceased was paid Rs. 400/- per month but in cross-examination he states that the deceased was not an employee of the gurudwara, thus contradicting the claimant Swaran Kaur. No evidence from the record has been produced to point out that the deceased was actually getting Rs. 400/- per month which could be easily done since it is not possible that the gurudwara management was paying the deceased Rs. 400/- per month without keeping any record of these payments, even if it is assumed that the deceased was being paid out of the offerings. Keeping in view these circumstances, the Tribunal assessed his income

at Rs. 300/- per month and by applying the multiplier of 15 and adding the conventional figure of Rs. 3,000/- for loss of expectancy of life, a sum of Rs. 41,700/-has been awarded. There appears to be no infirmity in assessing this compensation. The award is correct and is upheld and the objections against the same are dismissed. Cross-objections No. 3 of 1983 are dismissed as not pressed.

F.A.O. No. 118 of 1982 and Cross-objections No. 4 of 1983

29. Makhan Singh deceased (59) left behind Jagtar Kaur and four sons. The deceased was stated to be a pensioner from Bhakra Management Board and was getting Rs. 300/- per month. An effort has been made to prove that the deceased was earning Rs. 25/-per day from other sources but there is no convincing evidence on this aspect, although Balbinder Singh, PW 13, has stated that the deceased was earning Rs. 550/- to Rs. 600/-per month but this statement is just a bare assertion and the income of the deceased has not been established to be more than Rs. 300/-per month. The Tribunal has applied the multiplier of 5 keeping in view the age of the deceased and after awarding Rs. 3,000/- for loss of expectancy of life, a sum of Rs. 18,000/-has been awarded by way of compensation. From the perusal of the evidence on record, and in view of the aforesaid discussion, it cannot be said that the award deserves to be set aside. The appeal is accordingly dismissed and also the Cross-objections No. 4 of 1983 since they were not pressed.

F.A.O. No. 119 of 1982 and Cross-objections No. 6 of 1983

30. Joginder Singh (52) is a granthi. He states that he was earning Rs. 500/- per month and claims Rs. 1,00,000/- by way of compensation for the personal injuries resulting in permanent disability to his legs. It is also stated by Joginder Singh, PW 8, that the claimant cannot walk and work properly. The Tribunal found that he was wearing crutches, meaning thereby that the independent functioning of his lower limbs had stopped. The Tribunal found that the evidence about his income as a granthi was not convincing, although the evidence as to the injuries was there in the statement of Dr. H.K. Sharma, who examined Joginder Singh on 28.8.1980 and found the following injuries on his person:

- (1) Fracture of neck femur right side.
- (2) Multiple bruises over whole of the body.

He was examined again on 21.4.1981 and a medical certificate (Exh. P-14) was issued. According to the doctor, Joginder Singh was having partial loss of functioning of right leg due to the injury, that is fracture of neck of the femur. He was again examined on 6.2.1982 and certificate (Exh. PW 15/1) was issued. The percentage of disablement has been stated to be 80 per cent. Looking to the nature of the evidence on the record, the Tribunal awarded a sum of Rs. 36,000/- by adopting the multiplier of 10 on an income of Rs. 300/- per month. In the facts and circumstances of this case, the award appears to be just and

reasonable and the submissions of the learned counsel for the Corporation against the same are without substance. The award is upheld and the Cross-objections are dismissed, as not pressed.

F.A.O. No. 120 of 1982 and Cross-objections No. 2 of 1983

31. In this case, the claimants allege that the deceased Lal Singh was running a dairy at Anandpur Sahib and was earning more than Rs. 1,500/- to Rs. 2,000/- per month. Harbhajan Kaur, PW 3, states that her husband used to rear 8 buffaloes and 3/4 cows from which he used to get 40-45 kg. of milk per day. Thus, he used to earn about Rs. 1,500/- per month. Harbhajan Singh, PW 1, also states that the deceased used to keep 10/12 buffaloes. This witness does not make any mention of cows stated by Harbhajan Kaur, PW 3. The Tribunal has noticed that the fact that the deceased was running a dairy could have been easily proved by the production of a licence, the deceased may have procured for doing so, as stated by Harbhajan Kaur, PW 3. In the absence of this kind of evidence, the genuineness of the statement as to the income of the deceased becomes doubtful although Nav Tesh Singh, PW 11, has also stated that the deceased was having 10 buffaloes and he was working as a servant with him on a monthly payment of Rs. 200/-. He also makes no mention of cows in his statement like Harbhajan Singh, PW 1. Further, it is also in evidence that after the death of the deceased, the buffaloes were sold but no satisfactory evidence on this aspect has been produced. After going through the evidence on the record, the examination of the matter by the Tribunal, the award is just and reasonable and the challenge against the same cannot be accepted. The award is upheld and the appeal is dismissed. The Cross-objections are also dismissed as not pressed.

F.A.O. No. 122 of 1982 and Cross-objections No. 7 of 1983

32. Pritam Kaur claims compensation for the death of her husband Pratap Singh (60), who was an agriculturist. He died after 2 ? months from the date of the accident due to pneumonia. The claimant, PW 7, states that they had 3/35 bighas of land. After the accident, her husband used to become unconscious since he had sustained a fracture of backbone in the accident. From Mandi, he was removed to Military Hospital, Jullundur, where he was treated for a month. He was discharged by the military authorities vide discharge slip (Exh. P-10), whereas from Civil Hospital, Mandi, he was discharged through discharge slip (Exh. P-11). He remained under the treatment of a doctor at Una as certificate (Exh. P-13) shows. The medical evidence shows that Pratap Singh had a fracture and contusion in the back. According to certificate (Exh. P-13), he was suffering from paraplegia. The Tribunal has rightly held that the death of the deceased was not due to the injury but due to pneumonia that occurred to him. In this way, in view of the evidence on record, the Tribunal awarded a sum of Rs. 18,000/- after using the multiplier of 5, which appears to be just compensation, keeping in view the nature of evidence, age and other circumstances of this case. The challenge to the award by the Corporation has no substance and the appeal is dismissed

and the Cross-objections are also dismissed as not pressed.

33. All the aforesaid appeals and Cross-objections are disposed of in the aforesaid terms leaving the parties to bear their own costs.