
(2000) 07 KAR CK 0052
In the Karnataka High Court
Case No : Misc First Appeal No. 146 of 1997

B. Parimala and Others

APPELLANT

Vs

Riyaz Ahmed and Others

RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Citation : (2001) ILR (Kar) 1443 : (2001) 2 KCCR 986

Hon'ble Judges : V.G. Sabhahit, J; R.V. Raveendran, J

Bench : Division Bench

Advocate : Mahesh R. Uppin, for the Appellant; M.U. Poonacha, for Respondent-3, for the Respondent

Judgement

R.V. Raveendran, J.—This is a claimants' appeal against the judgment and award dated 26-9-1996 passed by the District Judge and MACT, Chitradurga, in MVC No. 19/1994.

2. The appellants are respectively the widow, three children and mother of one Govinda Setty. The said Govinda Setty was a partner of "M/s Bellary Venkataswamy Setty" carrying on business at Davangere. On 10-10-1993, when the said Govinda Setty, along with his family members, was travelling in a car bearing No. KA, 17/M- 2911 from Bangalore to Davangere, the said car dashed against a parked lorry resulting in the death of the said Govinda Setty. Feeling aggrieved, the widow, children and mother of the said Govinda Setty filed MVC No. 19/1994 against the driver, owner and insurer of the Car, claiming a compensation of Rs. 35,00,000/ alleging that the accident occurred due to the rash and negligent driving by the driver of the car.

3. The petition was resisted by the respondents contending that there was no negligence on the part of the driver of the car; that the accident occurred when the driver of the car tried to avoid collision with a vehicle coming from the opposite side, by swerving to the left and that in that process, it dashed against the parked lorry. The respondents also contended that the compensation claimed

is excessive. On the basis of the pleadings, the Tribunal framed appropriate issues regarding negligence, entitlement and quantum of compensation.

4. Common evidence was recorded in MVC No. 19/1994 and connected claim petitions arising from the said accident. The widow of the deceased was examined as PW1 and an official from the Income Tax Department was examined as PW4. Two other occupants of the car who were eye witnesses to the accident were examined as PW2 and 3, Exs. P-1 to P-118 were marked on behalf of the petitioners in all the cases.

5. After appreciating the evidence, the Tribunal by a common judgment dated 26-9-1995, allowing MVC No. 19/1994 in part. It held that the accident occurred due to the rash and negligent driving of the said car by its driver; and that Govinda Setty died in the said motor accident and the respondents were liable to pay the compensation to the claimants who are legal heirs of the deceased Govinda Setty. The Tribunal awarded a sum of Rs. 2,16,000/- as compensation (with interest at 6% p.a. from the date of petition till the date of payment) arrived at as follows:

(a) Rs. 3,96,000.00 : Loss of dependency (b) Rs. 10,000.00 : Loss of consortium (c) Rs. 5,000.00 : Funeral Expenses (d) Rs. 5,000.00 : Loss of Estate Rs. 4,16,000.00 Total LESS Rs. 2,00,000.00 Being one third of the Life Insurance amount of Rs. 6,00,000/- received by the family of the deceased _____ Rs. 2,16,000.00 _____

6. Feeling aggrieved, the claimants have filed this appeal contending that the compensation awarded is inadequate. They contend that the deduction of Rs. Two lakhs from the compensation, on account of receipt of Life Insurance amount, is contrary to law. They also contend that the loss of dependency calculated by taking the contribution by the deceased as Rs. 3,000/- per month is erroneous. According to appellants, the annual income of the deceased should have been taken as Rs. 1,55,995-00 (made up rs. 48,000-00 being the salary and Rs. 71,639-12 being the share in of profits from M/s Bellary Venkataswamy Setty and Rs. 27,045-00 being the salary and Rs. 9,310-86 being the share in of profits from M/s Padmavathi Commercials). the claimants contend that even if one third of the said amount is deducted towards personal and living expenses of the deceased, the contribution to the family would have been rs. 1,03,996/- per annum and by applying a multiplier of 13, the total loss of dependency will be Rs. 13,51,958-00; and by adding amounts awarded under conventional heads aggregating to Rs. 20,000/-, the total compensation to which the claimants-appellants will be entitled to is rs. 13,71,948/-.

7. As this is a claimants appeal, the finding regarding negligence does not require reconsideration. The only question that therefore arises for consideration is whether the compensation awarded is inadequate and whether it requires to be increased?

8. In the claim statement, the claimants averred that the deceased was aged 46

years; that he was a partner in the family firm of Bellary Venkataswamy Setty (for short "BVS firm"); that he was also the Managing Partner of the firm of "Padmavathi Commercials"; and that his net income was Rs. Three Lakhs per annum from the aforesaid businesses.

9. In her evidence, P.W.1 (the widow) stated that her husband (Govinda Setty) and his brother B. Varadaraj Setty were carrying on grocery business under the name and style of "M/s bellary Venkataswamy Setty"; that he was also a partner of "Padmavathi Commercials" along with his brother Varadaraj and his mother Padmavathi; and that the deceased was earning an annual income of Rs. 1,50,000/- to Rs. 2,00,000/- from the said businesses. She further stated that the firm of "M/s Bellary Venkataswamy Setty" is one of the biggest grocery / Kirana shops in Davangere city and after the death of her husband her son B.G. Raghavendra (second claimant) has been admitted as a partner in place of her husband in the said firm; and that on the death of her husband she had been taken as a partner in the firm of Padmavathi Commercials; and that she was received Rs. 6,00,000/- from LIC in regard to Life Insurance Policies taken by the deceased.

10. The claimants relied upon the following documents to prove the income of the deceased:

- (i) Ex. P9: The copy of the partnership deed dated 1-4-1992 of BVS firm.
- (ii) Ex. P11, P12 and P117: Profit and loss accounts of BVS firm, for assessment years 1990-91, 1993-94 and 1994-95.
- (iii) Ex. P16: trading account of the BVS firm for the assessment year 1993-94.
- (iv) Ex. P13, P14, and P15: Income Tax Assessment orders of the deceased for assessment years 1991-92, 1990-91, 1989-90.
- (v) Ex.P10 and P114: Profit and loss account in respect of Padmavathi Commercials for the Assessment years 1993- 94 and 1990-91.
- (vi) Ex.P115: the balance sheet in respect of M/s Padmavathi Commercial, Davangere for the period 1-4-1989 to 31-03-1990.
- (viii) Ex.P116: trading account of M/s Padmavathi Commercials, for the period 1-4-1990 to 31-3-1991.

11. An Income Tax Inspector from the Income Tax Department has been examined as PW4 and he has stated that as per the returns filed by the firm of "M/s. Bellary Venkataswamy Setty", the said firm is continuing even after the death of Govinda Setty with reconstitution of partners and that b.G. Raghavendra, the son of the deceased has become the partner in place of deceased; and that claimant No. 1 (widow of Govinda Setty) became a partner of M/s Padmavathi Commercials in place of Govinda Setty and that firm is also continued.

12. the Tribunal referred to the said documents and found that the deceased was getting a remuneration of Rs. 48,000/- per annum from the BVS firm, in addition to a share in the profits. Having regard to the personal and living expenses, the Tribunal arrived at the contribution to the family by the deceased as Rs. 3,000/- p.m. and determined the annual loss of dependency at Rs. 36,000/- It applied the multiplier of 11 (as the deceased was aged 46 years) and determined the total loss of dependency as Rs. 3,96,000/-. To this it added Rs. 20,000/- a compensation under conventional heads. As the claimants had received a sum of Rs. Six lakhs as Life Insurance amount from LIC, the Tribunal deducted on third of the said amount (i.e., rs. 2,00,000/-) from the determined compensation of Rs. 4,16,000/- and awarded Rs. 2,16,000/- to the claimants. The Tribunal also apportioned the compensation among the claimants, that is Rs. 1,00,000/- to the widow Rs. 30,000/- each to the three children and Rs. 26,000/- to the mother.

13. The learned Counsel for the insurer submitted that the determination of monthly contribution to the family at Rs. 3,000/- per month and the total loss of dependency assessed at Rs. 3,96,000/- by the Tribunal is correct and does not calls for interference. he also submitted that the award of amounts under conventional heads aggregating to Rs. 20,000/- is correct. he fairly conceded that having regard to the decision in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, the deduction of Rs. 2,00,000/- on account of receipt of amount of LIC Policies from the compensation is erroneous.

14. In Helen Rebello the Supreme Court held that only the pecuniary advantages which accrue to the legal representatives, by reason of the accidental death in the motor accident and not the pecuniary advantages which would arise on account of any other form of death can be taken into account; and that, consequently no deduction can be made on account of receipt of Life Insurance amount received by the heirs of the deceased on account of contract of insurance between the deceased and insurer. In view of it, the deduction of Rs. 2,00,000/- on account of receipt of Life Insurance amount from the amount arrived at compensation, it unsustainable.

15. The next question that arise for our consideration is whether determination of the income of the deceased and determination of loss of dependency is correct.

16. The learned Counsel for the appellants contended that where the deceased was a partner in a partnership firm, the entire income derived from such partnership business i.e., the entire share of income from the partnership business plus the entire salary / remuneration drawn by the deceased should be taken as the income for the purpose of determining the loss of dependency. On the other hand, the learned Counsel appearing for the respondents contended that where the deceased was a partner in a firm, only that part of the income attributable to the exertion and efforts put in by the partner can be treated as income and any return on the capital invested should not be taken into account, and that in this case, after the death of Govinda Setty, as his sone was taken as

partner of BVS firm and there is no reduction in the income from the partnership firm, the entire income of the deceased from the partnership business cannot be treated as loss of income on his death.

17. We may not refer to the two decisions relied on by the claimants-

17.1) In *Helen C. Rebello* (supra), the Supreme Court held thus:

"So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss of gain of the claimant occasioned by the death. But, this has to change its colour to that extent a statute intends to do.... If the "pecuniary advantage" resulting from death means pecuniary advantage coming under all forms of death, then it will include all the assets movable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including assets including what is willed by the deceased etc., this would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. Thus, under the present Act whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other form of death. Thus, it would not include that which claimant receives on account of other form of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the pecuniary advantage liable for deduction.

.....Similarly, any cash, bank balance, shares fixed deposits, etc., though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles act to be termed as pecuniary advantage liable for deduction."

17.2) In *RUKMANI DEVI v. OM PRAKASH* 1991 ACJ 3 the Tribunal awarded Rs. 1,26,000/- as compensation. The High Court reduced the compensation to Rs. 48,600.00 on the ground that after the death of the deceased his son was taken as partner in his place and the partnership was continued, and thus the family derived a pecuniary benefit. The Supreme Court held that there was no justification for the High Court to reduce the compensation and restored the award of the Tribunal.

17.3) These two decisions are not of any assistance to the Appellants. The ratio

of these decisions when applied to a partnership will be that if the deceased was a partner having a share in a firm and after his death his legal heirs step into his shoes and become partner/s, the value of such share in the partnership firm cannot be considered as "pecuniary advantage" received on the death. In other words, the value of the share in the firm or the amount of capital invested by the deceased in the firm, which is inherited by all or any of the legal heirs cannot be set off as a pecuniary gain or advantage against the pecuniary losses suffered by the legal heirs, to arrive at the loss of dependency.

18. But, in this case, the Tribunal has not deducted the value of the share of the deceased in the firm from out of the compensation amount determined by it. Nor has the Tribunal treated the share held by the deceased, in the partnership firm, which was transferred to the son, as a pecuniary advantage arising on the death of Govinda Setty. Nor is it the contention of the respondents that any deduction should be made on account of the inheritance of the share in the firm, or the accelerated receipt of the share in the partnership firm. On the other hand, the question for consideration is what should be taken as the "income" of the deceased for the purpose of calculating the loss of dependency. Whether the entire receipts of the deceased from the partnership business should be taken as income of the deceased? Or whether only a part of it should be taken as "income" for ascertaining the "loss of income" and if so how much?

19. In NATIONAL INSURANCE CO. LTD. v. SARALA R. GUPTA 1982 ACJ 40 the question related to the income from a Hindu undivided family concern in which the deceased, his wife and minor children were interested. After the death, the said HUF business was closed and the claimants [dependents of the deceased] contended they were deprived of the income from the concern on account of the death. The respondents contended that at best the loss the family will be the share of the deceased and not the entire income. The Punjab High Court held as follows:

"The Hindu undivided family which owned the concern considered of the deceased, his wife and the minor children of very tender age. It is therefore, apparent that it was the deceased who was solely responsible for the running of this concern and on his death it had to be closed down. In these circumstances, the whole of the income of this concern would be a loss of this family and has to be taken into consideration while assessing the annual loss to the dependents.

19.1) In Nazeema and Others Vs. George Kuriakose and Others, a division bench of the Kerala High Court, observed as follows:

".....In the present case, the appellants always enjoyed the benefit of the income from the business of Kallumkal Rubber syndicate as the dependents of Mohammed Basheer. After his death they enjoy the benefit as partners of the firm. The reality of the situation is that for all practical purposes the appellants were enjoying the benefit of the estate of the deceased, almost as much before his death as they do now. The fact that the appellants now enjoy absolutely the

benefit of the share of the deceased is a change of mere form and not of substance. Therefore, the appellants did not receive the benefit of the partnership business "by reason of the death" of Mohammed Basheer. They always possessed it."

The Court, after, referring to relevant case law, proceeded to formulate the following two principles:

"(i) The income from a business establishment for which the deceased was solely responsible, is lost to the estate after his death. Therefore, the whole of such income which ceased to flow after his death has to be taken into account in assessing loss to the dependents; and (ii) The Immovable property and other income yielding assets inherited by the dependents under the appropriate law of succession are not benefits accruing by reason of the death of the deceased."

20. There is a difference between an income earned by a person by investing his money in fixed deposits and an income earned by a person by investing money as capital in a partnership firm, and on account of his initiative, zeal exertion and business acumen, earning a profit. The profits earned are not only the result of the investment of capital, but is the result of investment plus the time, skill and effort put in by the partner. There is also a difference between the income of a person who is a dormant partner, who does not contribute to the management, and income earned as an active member.

21. There is also a difference between the nature of income from a partnership. The first is a share in the profits. The second is interest, on the capital invested in the firm or advances made to the firm other by way of loan or deposit. The third is the salary or remuneration received by a partner from the firm.

22. The income from a partnership firm will have to be categorised with reference to the status of the partner, for the purpose of calculating the loss of dependency. A person can be a "working partner" without contributing any capital, receiving a share in the profits/losses with or without remuneration. A person may be a sleeping/dormant partner in a firm contributing to the capital of the firm without participating in the management or without contributing any effort or exertion towards the management of the firm, but receiving a share in the profits/losses. A person may be an active partner who contributes to the capital and who also participates in the business of the firm and receives a share in the profits/losses with or without a monthly remuneration. Lastly the person may be a minor admitted to the benefits of the partnership without participation in the management of the firm, who is given only a share in the profits. The position in regard to these four categories is as follows:

(i) Where the deceased was a working partner, who had not contributed any capital to the firm, whatever income he derived either by way of remuneration or by way of share in profits is on account of effort and business acumen; and therefore the income from partnership in entirety will have to be treated as the "income" of the deceased for the purpose of determining the loss of dependency.

(ii) Where the deceased was a Stepping / Dormant partner who did not participate in the management of the business, but received the profits from the business only on account of capital contribution, no part of such income is derived by the exertion of the deceased. Such income is a dividend or a return on the investment. On the death of such sleeping partner his legal heir will either receive back the capital or would step in to the shoes of the deceased and continue to receive the income from the such capital investment. There same will be the position in regard to a minor admitted to the benefits of partnership. Therefore in the case of a sleeping partner (dormant partner) or a minor admitted to the benefits of partnership, the income from the partnership firm, can not be treated as income of the deceased, for purposes of calculating the loss of dependency. Such income may have to be excluded and in the absence of any other income, the income of the deceased will have to be determined at a nominal amount [say the notional income of Rs. 15,000/- per annum provided in the second schedule to the Motor Vehicles Act]

(iii) Where a person is an active partner, who has not only contributed to the capital of the firm but also participates in the management of the business, the calculation of income for purposes of loss of dependency is a somewhat difficult process. This is because what can be taken as income for determining the pecuniary loss, is the income attributable to the efforts, exertion, management skills of the deceased and not the "income" attributable to the investment made, that is return or interest on the capital. In such cases where the partner is entitled to only a share in the profits/losses, and is not entitled to any remuneration, there should be judicious division of the amount received as share in profits, into income referable or attributable to the capital contribution and the income referable to the effort or exertion put in by him as a partner to manage the affairs of the firm. The actual percentage of division will depend on the facts of each case. If the partnership deed provides for a share in the profits and also a remuneration, normally, but not always, the remuneration is attributable to the efforts and exertion put in by the partner and the share in profits is for the investment made by way of capital. Here again the matter depends on the facts of each case, that is the terms of partnership the evidence relating to investment, quantum of profits and quantum of remuneration and the time spent by the deceased (full time or part time) in managing the affairs of the firm. A judicious division will have to be made of the income to determine the "income" attributable to the exertion/effort of the deceased and the income attributable to the investment made.

23. There the deceased was carrying on any business [either as proprietor or as managing partner] which was run solely on account of his efforts and skill and such business is closed or is drastically reduced in scale, on account of his death, there can be little doubt that the earning of the deceased from such business will have to be taken as "income" for calculating the loss of dependency. But, what is the position if the deceased was not carrying on the business by his individual skill and effort, but the deceased was a partner with several others or is a

member of a family firm, and on his death his widow or son/daughter steps into his place in the partnership and family continues to have the income from the partnership which the deceased was getting earlier? In that event, can it be said that there is loss of entire income, which the deceased was getting from the partnership firm, for calculating loss of dependency? Obviously not in that event, the loss of income will be the monetary equivalent of the supervision, skill and effort of the deceased. But how is it to be calculated? A few illustrations will be useful to highlight and differentiate between several categories of income and determination of income for purposes of arriving at the loss dependency.

Illustration-A: The deceased had invested a sum of Rs. 5,00,000.00 in fixed deposits with Banks and was getting an income of Rs. 5,000.00 per month, by way of interest. On his death, the said Rs. 5,00,000-00 is inherited by the dependents [wife and children] and they also continue to get Rs. 5,000.00 per month as interest. In such a case, the sum of Rs. 5,000-00 received the deceased as income is not really a "loss" of income on his death and cannot, therefore be taken into account for determining the loss of dependency. The said income will have to be ignored and in the absence of any other income, only a notional income [say Rs. 15,000.00 per annum, as provided in Schedule-II to Motor Vehicles Act] should be considered as income for calculating the loss of dependency.

Illustration-B: The deceased was owning 10 acres of land and by cultivating the same, through labourers under his supervision, was earning Rs. 1.00 lakhs per annum. On his death, the dependent family [wife and children] inherit the land. But, for lack of experience, they engage a manager to supervise the cultivation by paying a salary of Rs. 3,000.00 per month and continue to get an annual income of Rs. 1.00 lakh from the land in such a case, the annual income of Rs. 1.00 lakh earned by the deceased from the land cannot be the loss of income of the family. Only the value of the supervision and personal effort put in by the deceased, which had to be made good by engaging a manager, can be treated as loss of income. Thus, the loss of income will have to be taken as Rs. 36,000-00 per annum. Even where a manager is not engaged, and the family members of the deceased supervise the land, the loss will be the value of supervision by the deceased. The notional value of such effort and supervision determined with reference to the facts and circumstances, will be the loss on account of the death.

Illustration-C: The deceased, during his life time, was a partner in a family business of which he and his brother are the partners, each having invested Rs. 1,00,000-00 to the capital and both participating in the management of the partnership. Each partner was taking a monthly remuneration of Rs. 5,000.00, and interest at Rs. 12% on the capital of Rs. 1,00,000.00 invested of each of them and 50% share in the profits/losses (the share in profits being Rs. 10,000.00 per annum during the relevant year. One of the partners died in a motor accident and his son is taken as partner in the place of the deceased on the same terms; and thus the family continues to get the same income

(consisting of remuneration, interest on capital investment and share in profits/losses). In such a situation, the entire income which the deceased used to get from the firm (remuneration plus interest on capital plus share in profits) will not be the loss to the family for purposes of calculating the loss of dependency. Only the value of the effort put in by the deceased as partner will be a loss to the family. Thus, the remuneration of Rs. 5,000.00 per month or Rs. 60,000.00 per annum will be the loss of income.

Illustration-D: On the same facts (as in illustration-C), the partnership merely provided for sharing of profits/loss at 50% each, without any remuneration or interest on capital contributed by the two partners. In the absence of evidence to the contrary, the "income" for purposes of dependency can be arrived at by deducting the interest (say 10% per annum) on the capital contributed, from the profit from the firm. If the capital is Rs. 1,00,000-00 and the share in profits is Rs. 30,000.00 per annum, then the loss of "income" will be Rs. 30,000-00 minus Rs. 10,000-00 (that 10% interest on capital of Rs. 1,00,000.00) that is Rs. 20,000-00. If the income arrived by such method is less than the new recognized notional income of Rs. 15,000-00 per annum, the income can be taken as Rs. 15,000.00 per annum.

23.1) It is however reiterated that the income should be determined with reference to facts of each case. For example there may be cases where a family firm is well established and reputed and having a large income, with a small capital and death of a one of the family members (a partner) may not make any difference in the income. In such case the entire income (minus interest on capital) may not be the income, and appropriate further deductions will have to be made to ascertain the real contribution of the deceased and value thereof. Be that as it may.

24. In this case, late Govinda Setty was receiving by way of income, from the BVS Firm, not only a share in the profits, but also a remuneration. After his death, his son Raghavendra (claimant No. 2) was taken as a partner in the said firm with the same capital and the same share and thus the family of Govinda Setty is having the benefit of the income from the said firm, as it was getting when Govinda Setty was a partner. Thus, it is just and appropriate to take as the income of the deceased Govinda Setty, for the purpose of determination of loss of dependency, only the remuneration he was getting from the firm and not the share in the profits.

25. He will now determine the total loss of dependency. The claimants alleged that the deceased was a partner in two firms, namely BVS FIRM and "Padmavathi Commercials". They claimed that that the income from BVS FIRM was Rs. 48,000.00 per annum as remuneration and Rs. 71,639.00 per annum as the share in profits, for the period 1-4-1993 to 31-3-1994. In regard to Padmavathi Commercials it is contended that the income by way of remuneration was Rs. 27,045.00 per annum and Rs. 9,310.86 was the share in profits.

26. Ex.P114 is the profit and loss account of Padmavathi Commercials for the period 1-4-1989 to 31-3-1990 and Ex.P. 116 is the Balance sheet of Padmavathi Commercials for the period 1-4-1990 to 31-3-1991. They show that Govinda Setty and his wife (claimant No. 1) were partners in the said firm, along with Govinda Setty's brother and mother, Ex.P.10 is the profit and loss account of Padmavathi Commercials for the period 1-4-1992 to 31-3-1993. This shows that from 1-4-1992, the deceased Govinda Setty ceased to be a partner of the said partnership and his son B.G. Raghavendra (claimant No. 2) had been taken as a partner in place of Govinda Setty. There is nothing to show that Govinda Setty subsequently again became a partner of Padmavathi Commercials. Thus, the deceased was not a partner at all in the firm of Padmavathi Commercials at the time of his death, his son Raghavendra having been taken as a Partner in his place during the accounting year 1992-93 (Assessment Year 1993-94) itself. Hence, the contention that the deceased was deriving any income from the firm of Padmavathi Commercials and that such income should be taken as the income of the deceased for the determination of total loss of dependency, is rejected.

27. Therefore, what remains to be considered is the income of the deceased Govinda Setty from the BVS FIRM. In regard to the BVS FIRM, the orders of Income Tax Assessment for the assessment years 1980-90 (Ex.15), 1990-91 (Ex.P14) and 1991-92 (Ex.P13) show that the deceased had returned a total income of Rs. 37,330-00, Rs. 55,030.00, and Rs. 78,710.00 respectively. In regard to the assessment year 1990-91 (i.e. the accounting year 1-4-1989 to 31-3-1990) the profit and loss account (Ex.P11) shows that a sum of Rs. 71,639.12 was received as net profit by Govinda Setty. The profit and loss account for 1-4-1992 to 31-3-1993 (Ex.P12) shows the net profit of Govinda Setty was Rs. 47,045-49 apart from salary of Rs. 48,000.00. In regard to the assessment year 1994-95 (1-4-1993 to 31-3-1994) the profit and loss account has been produced at Ex.P.117 which discloses that after the death of Govinda Setty, his son of B.G. Raghavendra was inducted into the firm as a partner and that B. Govinda Setty was paid Rs. 27,045.00 as remuneration for the part of the year when he was a partner of the said firm (1-4-1993 to 10-10-1993) and his B.G. Raghavendra was paid Rs. 27,045.00 as remuneration for the remaining period (11-10-1993 to 31-3-1994) when he became a partner after the death of his father Govinda Setty. It also shows that a sum of Rs. 9,310.86 paise was credited to the account of deceased Govinda Setty and a sum of Rs. 48,000-00 was credited to the account of B.G. Raghavendra towards profit. The above documents would show that during the year immediately before the death of Govinda Setty (that is for the period 1-4-1992 to 31-3-1993) he was a partner of BVS FIRM getting a remuneration of Rs. 8,000.00 (apart from Rs. 47,046.49 as share in the profits) Having regard to the facts and circumstances, a part of share in profits (75%) can be attributed to the capital investment made by the deceased (which need not be taken as income for ascertaining the loss of dependency). The balance 25% of share of profits and the entire remuneration received can be attributed towards the efforts and exertion put in by Govinda

Setty in the management of the firm as a partner. Thus the total income of Govinda Setty from the firm should be taken as Rs. 12,000.00 (25% of Rs. 47,046.00 rounded off) plus Rs. 48,000.00 in all Rs. 60,000.00 per annum for purpose of ascertaining the pecuniary loss.

28. The family of the deceased Govinda Setty consisted of himself, his wife, three children and mother. Govinda Setty's mother and son were not however dependents, as they were partners in two firms. For purpose of ascertaining the contribution to the family, the following two amounts will have to be deducted as held by the Supreme Court in U.P. STATE ROAD TRANSPORT CORPORATION v. TRILOK CHANDRA ILR 1995 Kant 2127 (i) personal expenses of the deceased and (ii) living expenses of the deceased. Having regard to his status and position in Society a sum of Rs. 500/- per month or Rs. 6,000/- per annum will have to be deducted towards personal expenses. Out of the balance of Rs. 54,000.00, one third will have to be deducted towards the living expenses of the deceased (by allotting two units to deceased and his wife and one unit to each of his two minor children) Thus, the contribution to the family from the deceased would have been Rs. 36,000/- per annum. As the death of Govinda Setty was on 10-10-1993 i.e. before the amendment of to the Motor Vehicle Act introducing Schedule-II, the applicable multiplier will have to be selected by taking the operative multiplier as 16 - vide the principles laid down by the Supreme court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and the decision of this Court in GULAM KHADER v. UNITED INDIA INSURANCE CO. LTD. MFA No. 195/1997 decided on 11.7.2000. As the deceased was aged 46 years, the appropriate multiplier is 11 and therefore the total loss of dependency is Rs. 36,000 x 11 = 3,96,000.

29. The award of Rs. 5,000/- towards loss of estate, Rs. 5,000/- towards the funeral expenses and Rs. 10,000/- towards the loss of consortium is upheld. Hence, the claimants will be entitled to Rs. 4,16,000/- without any further deductions.

30. The respondents have without any justifiable cause resisted the challenge to the deduction of Rs. 2,00,000/- towards Life Insurance Receipt. Therefore, the increased compensation amount (Rs. 2,00,000/-) shall carry interest at 9% per annum.

31. In view of the above, we allow this appeal in part as follows:-

(i) The compensation is increased from Rs. 2,16,000/- to Rs. 4,16,000/-.

(ii) The interest awarded at 6% per annum on Rs. 6,16,000/- from the date of petition till the date of realization is not disturbed. But, the increased amount shall carry interest at the rate of 9% per annum from the date of petition till date realization.

(iii) The amount is apportioned as follows: 40% to the widow (appellant No. 1), 25% each to two daughters (appellants 3 and 4) and 5% each to the son and

mother (appellants 2 and 5)

(iv) The amount awarded to appellant No. 1, 3 and 4 shall be kept in fixed deposit for a term of five years with liberty to appellant No. 1 to draw interest thereon.

(v) Parties to bear respective costs in this appeal.