

(2000) 09 GUJ CK 0069
In the Gujarat High Court

Case No : First Appeal No. 126 to 135 of 1985 and Cross Objections in First Appeal No"s. 126 to 129 and 131 to 135 of 1985

G.S.R.T.C.

APPELLANT

Vs

Kamlaben Valjibhai Vora

RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B

Motor Vehicles Act, 1988 — Section 168, 168(1)

Citation : (2000) 09 GUJ CK 0069

Hon'ble Judges : K.M. Mehta, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : Mayaben Desai, for M.D. Pandya and Mehul S. Shah and Suresh M. Shah, in FA Nos.126, 127, 128, 129, 130, 131, 132, 133, 134 and 135/85 with cross objections, Mayaben Desai, for M.D. Pandya and D.U. Shah, in FA No.129 of 1985 with cross objection, for the Appellant; J.R. Nanavati and Rajni H. Mehta, in FA Nos. 126, 127, 128, 129, 130, 131, 132, 133, 134 and 135/85 with cross objections, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—PREFATORY PROFILE:

After having, extensively, examined the testimonial collection and documentary evidence and having heard the elaborate and marathon submissions, in this group of 10 appeals, before, we discuss, determine and adjudicate upon the controversies raised relating to the negligence and the amount of compensation, in the realm of law of tort, following inevitable aspects, ought to be considered and articulated.

1. What is the fortune, only misfortunes can say.
2. The great and staggering human loss on account of road mishap contributing and affecting the national growth and resources.

3. The unsafe, avoidable, travelling and hazardous way of driving, that too of a public utility concern.

Since this group of ten appeals raise painful but common, heart-stealing but identical facts emanating from the common judgment resolving eleven claims and also arising out of the common accident, they are being disposed of by this common judgment.

As the ill-luck would have been, on 9.5.81, at dusk or at the time of sun setting, around 6.00 p.m., on account of violent accident between ST bus No.GRS-8673 and a passenger matador No.GTU-1635 brought about real "sunset" in the lives of three promising and progressive careers of Agricultural Scientists, who had, unfortunately, opted for travelling in a matador van of Gujarat Krushi University, coming to Junagadh University Campus from Rajkot side and out of seven other injured persons, darkness gloom in the lives of no less than five persons, who became victim of serious injuries, on account of the collision between the aforesaid passenger bus and the passenger matador. Out of the 11 (eleven) claimants who filed claim petitions before the Tribunal, 8 were traveling in the passenger matador belonging to the Gujarat Krushi University and two passengers were travelling in the ST bus of the appellant Gujarat State Road Transport Corporation (GSRTC). Out of the 11 claims petitions, 10 appeals have been filed, by the appellant, GSRTC, wherein, except in one appeal, original claimants have also raised cross-objections. Against one of the claimants, who was awarded less than Rs.10,000/for minor personal injuries by the Tribunal, petition under Article 226 of the Constitution of India, had been filed at the instance of the GSRTC, which we are reported, to have been dismissed.

2. FACTUAL PARADIGMS - GENESIS OF VIOLENT ROAD ACCIDENT:

The accident in question occurred on 9.5.81. 11 claim petitions out of which 8 for personal injuries, by the claimants and three fatal injuries by the heirs and legal representatives of the deceased victims of the road accidents, came to be filed before the aforesaid Tribunal invoking the aids of the provisions of section 110-A of the Motor Vehicles Act, 1939, (Old Act). The injured claimants had sustained serious injuries, except three, of varying gravity. The claim petitions came to be founded upon the plea that the driver of the ST bus, one Alegbhai Bahadurbhai, was rash and negligent and responsible for the accident of violently dashing against the oncoming matador driven by one Bharatbhai, belonging to the Gujarat Krushi University, on wrong side, while taking turn near a culvert and dragged the matador at a distance of 60 ft. in the reverse direction and, virtually, the matador went off the road and fell, almost, in a nearby pit. The bus belonged to the GSRTC. The matador belonged to the Gujarat Krushi University. It was insured with New India Insurance Company. The victims of road accident, who were, travelling in the passenger matador claimed compensation against the driver and owner of the ST bus, whereas the passengers who sustained injuries and who were travelling in the ST bus claimed compensation against ST authority as well as the matador party treating all of them as joint tort-feasors.

The ST bus party, by filing written statement, denied the liability for payment of compensation on the ground that there was no negligence on the part of the driver of the ST bus. On the contrary, the bus party pleaded that the accident occurred because of rash and negligent driving on the part of the driver of Matador. The amount of compensation claimed in each petition before the Tribunal was also questioned, whereas the passenger Matador party, like that, the owner-insured and the insurer also by filing written statement refuted their liability, inter alia, contending that the accident was the outcome of the gross rashness and sheer negligence on the part of the driver of the ST bus. In that, it has been contended that the driver of the ST bus was driving the bus, at the relevant time in an excessive speed as a result of which, when he was negotiating "S" type curve, at the venue of accident, lost control over the vehicle and went on the wrong side more towards the road and intensely dashed against the oncoming passenger matador of the University, as a result of which, the matador was dragged on in the reverse direction, like that, in the same direction in which the bus was proceeding for a distance of 60 feet and stopped just on the edge of the wrong side. Thereafter, the matador which had received brutal impact on account of speeding bus on the wrong side, and was virtually gutted in fire. In short, each party tried to throw the blame on the other side.

In so far as the exact venue of accident is concerned, there is no dispute. Likewise, there is no dispute about the position of the vehicles near the venue of accident when the panchnama of Ex.42 was recorded. The exact venue of accident is near village Pithadia, on National Highway No.8-B, between Gondal and Junagadh.

The parties placed reliance on the evidence of seven witnesses and also on voluminous documentary evidence, to which reference will be made by us as and when required at an appropriate stage, hereinafter. Upon the assessment and analysis of the evidence, the Tribunal partly, allowed the claim petitions holding that the driver of the ST bus was solely negligent and responsible for the accident as he took the bus on the wrong side and dashed against the oncoming passenger matador, and exonerated the matador party and fastened the liability on the owner i.e. GSRTC.

The original claimants have, also, filed cross objections in 9 appeals out of 10, questioning the quantification of damages and supporting the finding of negligence reached by the Tribunal. That is how the group of 10 appeals u/s 110-D of the Old Act and 9 cross objections are required to be considered and adjudicated upon.

3. ANTHOLOGY OF PLEAS PROPOUNDED BY ST PARTY

On behalf of the appellant, ST party, the following contentions have been raised, while challenging the findings on the issue of rash and negligent driving and also the quantum awarded by the Tribunal.

(1) That the accident in question had occurred on account of the rash and

negligent driving on the part of the driver of the passenger matador.

(2) That in the alternative, the major contribution in the occurrence of the road accident was on the part of the driver of the passenger matador.

(3) That the manner and mode in which the accident had occurred and the fact that there was head on collision, the liability of the driver of the passenger matador ought to have been apportioned not less than 50 per cent in the happening of the accident or in other words, contributory negligence has been attributed against the driver of matador and further.

(4) That the amount of compensation awarded by the Tribunal is on a higher side.

(5) That the Tribunal has taken into consideration certain facts which it ought not to have been considered in making assessment of the damages.

(6) That the Tribunal has failed to consider certain factors which ought to have been considered.

(7) That in no case, the additional amount claimed in cross-objections could be granted as the amount awarded by the Tribunal itself is on a higher side.

4. SOLE SUBMISSION OF MATADOR PARTY:

On behalf of the passenger matador party, following sole contention is raised:

(1) That the finding of the Tribunal on the point of negligence is quite justified. It that, it has been contended that the Tribunal has, rightly, reached to the conclusion that the driver of the ST bus was driving the bus, at the relevant time, with excessive speed and while taking turn on an "S" type curve near the venue of accident, he failed to control the bus on account of the speed and dashed against the oncoming matador. In short, the Tribunal's findings are supported.

5. VOICE OF VICTIMS:

On behalf of the original-claimants, respondents herein, following contentions are raised:

(1) That the Tribunal has, correctly, assessed the evidence in holding the driver of the ST bus solely responsible for the accident.

(2) That the quantification of damages analyzed and assessed by the Tribunal and awarded in each claim petition against the amount of claims made in each petition is on a conservative side and the some of the aspects affecting issue of quantification of damages have not been, correctly, appreciated and examined.

(3) That the additional claims by way of cross-objections in 9 appeals are quite justified as they are, just and reasonable amounts in the light of the evidence on record.

The learned advocates appearing for the parties have taken us through the entire testimonial collections and the documentary evidence, in course of their

marathon submissions, before us and have, also, placed reliance on the proposition of law. The case law relied on by them will be examined and considered by us, hereinafter, at an appropriate stage as and when required.

The rival contentions advanced before us by the learned advocates appearing for the parties, are, broadly, related and connected to two major aspects, like that:

(i) issue of rash and negligent driving, and

(ii) quantification of damages for the resultant injuries and harm suffered by the injured claimants and the heirs and legal representatives of three victims of fatal injuries, arising out of the accident in question.

Undoubtedly, both these issues are pertaining to the real questions of law of tort. No doubt, the provisions of the Fatal Accidents Act, 1855 are also required to be considered in so far as the 3 appeals arising out of 3 original claim petitions are concerned. First Appeal No.126/85 ((MACP) No.206/81), First Appeal No.127/85 ((MACP) No.233/81) and First Appeal No.128/85 ((MACP) No.332/81) are against the amount of compensation awarded by the Tribunal in the sum of Rs.4,02,000/-, Rs.97,800/- and Rs.3,65,3000/- in original claim petitions for the untimely and premature demise of the bread-winners of the family. Out of these three fatal cases, First Appeal No.126/85 is a case of death of Dr. Vora, who was a Research Scientist and who was awarded doctorate, whereas, First Appeal No.127/85 has arisen out of an award of amount of Rs.97,800/- to the heirs and legal representatives of deceased driver of the matador involved in the accident. Whereas, First Appeal No.128/85 is against the amount of compensation awarded to the legal heirs and representatives of Dr.Talati, who was also working as a Research Scientist and who was awarded doctorate in Agricultural Science. Remaining 7 appeals are arising out of the original claim petitions, in which the amount of compensation awarded for personal injuries sustained by the living victims of the violent road accident of varying gravity. Out of which 2 appeals are arising out of original claim petitions, wherein, the amount of compensation is less than Rs.10,000/- and for minor injuries. As stated hereinbefore, out of 11 original claims, 10 appeals came to be filed and against one of the claimants, writ petition was filed which had, already, been dismissed, with which we are not very much concerned, at this stage.

6. PATHOLOGY OF LAW OF TORT:

7. In so far as the tortious liability is concerned, obviously, the person who bases his claim on tort has to prove the tort committed and the resultant harm or injury suffered. In the present group of 10 appeals, we are concerned with tort arising out of use of motor vehicles. The case of the claimants except those who were travelling in the ST bus, has been that the entire responsibility for the happening of the road accident in question was on the part of the driver of the ST bus. In 3 claim petitions, in which personal injuries were caused to the passengers of the ST bus, the claimants have pleaded rashness and negligence on the part of the drivers of both the vehicles. The Tribunal has accepted, upon

appraisal and assessment of the evidence, that the driver of the ST bus was fully and solely accountable for the happening of the road accident as his vehicle (ST bus) went on the wrong side and dashed against the oncoming passenger matador. This finding is, seriously, assailed by the learned advocate appearing for the ST Corporation in this group of 10 appeals. The findings recorded by the Tribunal is defended by the learned advocates appearing for the original claimants and the respondents in appeals.

8. JURISPRUDENTIAL DIMENSION OF TORTIOUS WRONG:

9. Therefore, the first question which is required to be, seriously, examined is with regard to the cause of accident, accountability and the issue of rashness and negligence pleaded by the claimants and challenged by the appellant. Undoubtedly, the issue of negligence is an important and integral part of branch of Law of Tort. The burden of proving the negligence is on the party, like that, the claimant or the plaintiff who asserts it. Such a party, therefore, ought to prove the causation. It is not for the wrong-doer to excuse himself by proving that accident was inevitable and due to no negligence of his part. It is, therefore, the person who suffers the harm or injury to prove affirmatively that it was due to the negligence of the tort-feasor or the other side or the defendant, as the case may be. Such a person has to produce reasonable evidence that the accident was the outcome of the negligence of the other side or in a case of road accident, the driver of the vehicle. If primary facts are, successfully, constituted by the evidence of the person wronged or by the person who has become the victim of tort, it is for the alleged tort-feasor or the other side to explain the circumstances, under which the questioned accident occurred. It is not necessary for the plaintiff or the claimant to show that the defendant or the tort-feasor should be, fully, guilty of negligence. The negligence could be established even on the touchstone and yardstick of preponderance of probability. In a case of civil liability, the onus of proof of prima facie showing an element of negligence on the part of the tort-feasor or the other side will shift the onus on the other side to explain the circumstances which led to the tortious act or the road accident. At times, direct evidence is seldom obtainable to substantiate the proposition of the plea of negligence for variety of reasons. It is in this context, to mitigate the hardship of doctrine of "res ipsa loquitur" has been evolved in the law of tort, which, in other words would mean, things speak themselves. It is, in this context, in common law of tort, this doctrine has been recognised and very well followed:

10. JURISTIC DYNAMICS OF NEGLIGENCE:

11. It is, in reality, very difficulty to, precisely, define or quantify the concept of negligence or meaning of expression of negligence. However, in current forensic speech, negligence has three meanings. They are : (i) a state of mind, (ii) careless conduct and (iii) the breach of care or duty of a required standard. No doubt, all three meanings are applicable in different given fact situation and circumstances but any one of them does not necessarily exclude the other

meanings.

12. Negligence as a state of mind is, undoubtedly, the opposite of intention. An act is intentional when it is purposeful and done with either the desire or the object of producing a particular result. Whereas, any act is negligent when it is done thoughtlessly. It is either because of error of judgment or on account of mistake or wrong judgment. There is no intention in the element of negligence.

13. Negligence is often used in the sense of careless conduct without reference to any duty to take care. The use of the term in this sense has introduced some confusion into the subject, and has tended to obscure the true meaning of negligence as a part of law of tort. When there is a duty to take care, the standard of care is, frequently, that of the reasonable man, although this is not always so, and, consequently, failure to take reasonable care and negligence are sometimes used as synonymous terms regardless of whether or not there is any duty cast. Similarly, there is a thin line and distinction between expression "tort" and "wrong". They are, also, at times, colloquially treated as synonyms.

14. It would be appropriate to articulate the well known definition of Alderson in so far as expression "negligence" is concerned, which is very well expounded and propounded in *Blyth v. Birmingham Waterworks Co.* (1856) 11 Ex. 781.

"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."

15. The decision rendered in *Blyth v. Birmingham* (supra) is followed and accepted by the Hon"ble Apex Court in *Poonam Verma Vs. Ashwin Patel and others*, . The observations made in para 13 to 18 in this decision are very pertinent and, therefore, it would be appropriate, at this stage to refer to it:

"13. Negligence as a tort is the breach of a duty caused by omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do (See: *Blyth v. Birmingham Waterworks Co.* (1856) 11 Exch 781 : *Bridges v. Directors, etc. of N.L. Ry.* (1873-74) HL 213: *Governor-General in Council v. Mt. Saliman* (1949) ILR 27 Pat 207 : (AIR 1949 Patna 388); *Winfield and Jolowicz on Tort*).

14. The definition involves the following constituents:-

- (1) a legal duty to exercise due care;
- (2) breach of the duty; and
- (3) consequential damages.

15. The breach of duty may be occasioned either by not doing something which a reasonable man, under a given set of circumstances would do, or, by doing some act which a reasonable prudent man would not do.

16. So far as persons engaged in Medical Profession are concerned, it may be stated that every person who enters into the profession, undertakes to bring to the exercise of it, a reasonable degree of care and skill. It is true that a Doctor or a Surgeon does not undertake that he will positively cure a patient nor does he undertake to use the highest possible degree of skill, as there may be persons more learned and skilled than himself, but he definitely undertakes to use a fair, reasonable and competent degree of skill. This implied undertaking constitutes the real test, which will also be clear from a study and analysis of the judgment in *Bolam v. Friern Hospital Management Committee* (1957) 2 All ER 118, in which, McNair, J., while addressing the jury summed up the law as under:

"The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess, the highest expert skill: it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. There may be one or more perfectly proper standards, and if he conforms with one of these proper standards, then he is not negligent."

18. This decision has since been approved by the House of Lords in *Whitehouse v. Jordan* (1981 1 All ER 267 (HL)); *Maynard v. West Midlands Regional Health Authority* (1985) 1 All ER 635 (HL); *Sidaway v. Gethlem Royal Hospital* (1985) 1 All ER 643 (HL); *Chin Keow v. Govt. of Malaysia* (1967) 1 WLR 813 (PC).

19. The test pointed out by McNair, J. covers the liability of a Doctor in respect of his diagnosis, his liability to warn the patients of the risk inherent in the treatment and his liability in respect of the treatment."

20. It may also be stated, at this stage, that in one sense, negligence is subjective and often means the same as inadvertence, but, this is not so, always. In *Hudson v. Viney* (1921) 1 Ch. 98 Eve J., succinctly, described such state of mind as "an attitude of mental indifference to obvious risks". The use of "negligence" to describe a state of mind is to be found even in the judgment of Lord Denman C.J. in *Filliter v. Phipphard* (1847) 11 QB 347, dealing with the way in which a fire may be started, he said, "in strictness the word "accidental" may be employed in contradistinction to "wilful" and so the same fire might begin both accidentally and be the result of negligence". No doubt, the degree of negligence may vary when used in the sense of meaning, careless conduct, it is true to say that there are variety of degrees and extent, as used in the expression gross negligence, ordinary negligence, slight negligence, what we are concerned with is the normal negligence. It is, obviously, sometimes used as a breach of the required care or duty, whether it is slight negligence or an act of carelessness or an act of indifference or gross negligence, negligence is the centre point.

21. Negligence may be of different types or category. It is difficult to articulate

and highlight all the types of negligence. However, following category of negligence are often used in assessing and measuring the damages, particularly, in case of personal injuries and death in case of tortious act arising out of the use of motor vehicles.

- (1) Sole negligence;
- (2) Contributory negligence; and
- (3) Composite negligence;

22. In so far as the discharge of onus of proof in a case of claim based on tortious liability when several opponents or defendants are involved, it is necessary to show as to what was the cause of accident and who was the author of the cause of accident. If the harm or injury is the outcome of joint tort or by more than one defendant or opponent, all are joint tort-feasors. If the defendant or the opponent is responsible to an extent in the happening of the tort, then in that case, it has to be ascertained, as to what is the contribution of such a tort-feasor. No doubt, apportionment of tortious liability or the quantum of tort may not be necessary in all cases, as the victim of tort is eligible and qualified to claim compensation from one or more tort-feasors when it is a case of joint tort-feasors. When one of the persons affected or harmed or wronged or injured is partly responsible in the cause of tort, it becomes necessary to ascertain the extent or the contribution of such a person in the happening of a tort or an accident in question as the damages awardable to such a person is required to be sliced down corresponding to the extent or in proportion to the degree or contribution made by such person. It becomes so necessary to assess this aspect when more than one vehicle is involved or more than one tort-feasor is involved in a case of damages based on tort.

23. No doubt, ordinarily, in a case of tort arising out of use of vehicles, when more than one vehicle is involved and, ordinarily, in a case of head-on collision between two vehicles and, that too, on highway, cause of negligence may be, equally, apportioned and, more so, when it happens in a broad day light in absence of any other contrary evidence. When it becomes difficult to distinguish or separate the extent or degree of negligence, when there is a collision between two vehicles, in absence of any other precise and clear and consistent evidence, the driver of each vehicle, ordinarily will be held, equally, accountable or in other words, the contribution of each tort-feasor would be 50 per cent. Nonetheless, when there is contrary evidence on record indicating larger extent of negligence on the part of a driver of a particular vehicle in a given fact situation, apportionment of negligence, accordingly, can be made. It may happen in a given case that liability of particular driver even in a case of head-on collision in broad day light also is probable because the sole negligence of the driver of one of the vehicles. The cause of tort or the accident based on tort may be on account of sole and sheer negligence on the part of such a driver.

24. In the present case, there was a collision between two vehicles, and that too,

on a highway in day light. It has been, alternatively, submitted that negligence is required to be apportioned in equal proportion against both the drivers, like that, driver of the ST bus and driver of the passenger matador. It is, in this context, it becomes very essential for us to minutely and meticulously examine and analyse the evidence to ascertain whether the cause of tort in question or the reason for happening of the unfortunate road mishap is the outcome of sole negligence or contributory negligence or composite negligence. In order to appreciate this first part of the major issue involved in this group of ten appeals, we could not resist the temptation of highlighting the celebrated principles and doctrines attributable and relatable to the law of tort.

25. Let us, now, have a close look at the fact situation emerging from the record of the present case and the evidence relied on by the tort-feasor and tort-defenders. Unfortunately, the driver of passenger matador involved in the head on collision succumbed to the injuries and his life was cut short at the cruel hands of Providence on account of the accident in question which occurred at about 6.00 p.m. on 9.5.81, near village Pithadia on National Highway No.8-B between ST bus No.GRS-8673 and passenger matador No.GTU-1635. On the date of accident, the passenger matador belonging to the Gujarat Krushi university was proceeding from Surat to Junagadh and the ST bus was proceeding from Junagadh to Surat side. It was an "express" bus. There was head-on collision. But the sites where the head-on collision occurred was on the wrong side of the ST bus. ST bus as per the evidence on record was speeding even while taking "S" type curve and while negotiating this curve, virtually in the middle of a culvert, dashed against the passenger matador which was coming from the opposite direction. The bus was proceeding from South to North, whereas, the passenger matador was proceeding from North to South. The violent impact of bus to the passenger matador took place on the edge of the eastern side of the road, which is, obviously, on the wrong side of the ST bus. The impact was so violent and so powerful that the running passenger matador was pushed back and dragged on in a reverse direction for almost at a distance of 60 feet towards north and, virtually, it went off the road but on account of the entanglement with the frontal part of the bus, it saved from falling into the nearby pit. This was the only grace shown by the God at the relevant time which, probably, saved almost five persons, no doubt, with injuries and some of them with serious injuries and permanent disablement.

26. The finding of the Tribunal on this score is scanned and scrutinised, in view of the serious criticism made by the learned advocate for the ST party, by us and we find no merit in the criticism and we find full justification in the conclusion recorded by the Tribunal in holding the ST driver, fully, responsible for the happening of the accident. Apart from the evidence of the witness, who are examined, the claimants have placed on record the documentary evidence which, fully, supports their plea of full negligence on the part of the driver of the ST bus and, also, fully, reinforce the conclusion reached by the Tribunal holding the ST driver accountable for the accident and exonerating the driver of the passenger

matador. Injured witness claimant, Shantaben Govind, claimant in (MACP) No.427/81 is examined at Ex.44 and injured claimant H.J. Vyas, claimant in (MACP) No.428/81 is examined at Ex.264. Both were travelling in the matador at the relevant time. Witness Tulsidas Vora (claimant in (MACP) No.346/81) is examined at Ex.395, claimant Pushpaben (claimant in (MACP) No.420/81) is examined at Ex.437 and witness Kamlesh Pravinchandra (claimant in (MACP) No.421/81) is examined at Ex.448. All these three witnesses were travelling as passengers in the ST bus involved in the accident. The driver of the ST bus is examined at Ex.473.

27. As observed hereinbefore, driver of the passenger matador, Bharat, had died instantaneously. We have, dispassionately, examined the evidence of all the witnesses relied on by the parties. We have also, dispassionately examined the evidence of all the witnesses relied on by the parties. We have, carefully, considered the documentary evidence placed on record in this group of 10 appeals, particularly, the panchnama of scene of accident produced at Ex.42, which was prepared on the very next day, after happening of the accident showing the position of the vehicles after the collision and also the photographs produced at Ex.206 to 217. We have, also, seriously, examined the observations and the critical analysis of the evidence on this score made by the Tribunal in para 6 to 18 of the common judgment. We have not been able to persuade ourselves to make a departure or to take a different view than the one taken by the Tribunal in holding the driver of the ST bus fully responsible for the happening of the disastrous road mishap, which, unfortunately, culminated into the death of three persons and injuries to eight persons, out of which five persons sustained serious injuries, who are the living victims of violent road accident and the original claimants and respondents in this group of appeals.

28. DOCTRINE OF "RES IPSA LOQUITUR"

29. It would be, at this stage, interesting to refer to the observations made by W.B.H. Rogers in his book "Law of Tort" which reads as follows:

"Res ipsa loquitur means that an inference of negligence is raised against the defendant by reason of the happening of certain events. As an American Judge laconically remarked in a bizarre early product liability actin, "we can imagine no reason why, with ordinary care, human toes could not be left out of chewing tobacco, and if toes are found in chewing tobacco, it seems to us that somebody has been very careless." It is commonly said that two conditions must be met to entitle the plaintiff to rely upon the maxim. First, the thing causing the damage must be under the control of the defendant or his servants. Thus in one case it was applied where a barrel rolled lout of the storeroom above the defendant's shop and struck the plaintiff, who was passing by. But where, in an American case, the plaintiff was hit by an armchair dropped from an unidentified window of the defendant's hotel on VJ day, it was rejected, for the guest, not the hotel management, was in effective control of the contents of the room from time to time. The second requirement is that the accident must be such as in the

ordinary course of things could not happen without negligence (or worse). This condition was certainly satisfied in the hotel case, though the circumstances were such that they did not point to negligence on the part of the defendants. No hard and fast tests can be laid down, for it is clear that the inference to be drawn will vary so much from one case to another and may change as an activity becomes more common and more familiar. For example, there was probably a time when the court would have refused to apply the doctrine to aircraft flight but the fact that air travel is nowadays the safest means of transportation would justify its application. Similarly it can be applied to medicine and surgery. As it was put in one case, the plaintiff should be able to say, "I went into hospital to be cured of two stiff fingers, I have come out with four stiff fingers, and my hand is useless. That should not have happened if due care had been used. Explain it if you can."

"The real difficulties of *"res ipsa loquitur"* arise when we try to determine its procedural effect. Logically, once it has been brought into play by satisfaction of the above conditions, it may have one of three effects, bearing in mind that the civil standard of proof is the balance of probabilities, "more likely than not". First, it may justify the finder of fact coming to a decision in favour of the plaintiff but in no way compel him to do so; the maxim merely expresses the inference that may be drawn from certain sorts of circumstantial evidence and the strength of that inference is one for the fact-finder's judgment. On this view, subject to a point made below, a decision for the defendant is unappealable. Though this is in some ways the most attractive view of the maxim's effect it must be admitted that it is more suitable for a system or trial by jury, in which the judge in deciding that the maxim applies is in effect saying that there is sufficient evidence to go to the jury; there is something odd, in a non-jury trial, in the idea of the judge deciding that the maxim applies (i.e. that the accident is one which could not normally happen without negligence) and then, in the absence of countervailing evidence, finding for the defendant. The second possible effect is that the maxim creates a presumption of negligence. The effect of this would be that if the defendant came forward with no evidence of an innocent explanation the finder of fact would be required to find for the plaintiff. If, however, the defendant does adduce evidence, then the weight of that may or may not rebut the initial inference of negligence raised by the maxim. But even in this situation, the ultimate issue is whether the whole of the evidence justifies the conclusion that it is more likely than not that the defendant was negligent. It is as if the initial application of the maxim tipped the scales in the plaintiff's favour and the defendant's evidence is argued to have the effect of tipping them back into a neutral position. Thirdly, the application of the maxim may create a situation in which the ultimate onus of proof is shifted to the defendant and he is required to produce an explanation which makes it more likely that not that there was no negligence on his part. On this view, if the court is left in doubt on the totality of the evidence the plaintiff wins.

The overwhelming weight of authority in the United States (where trial by jury is very common) is that the effect of *"res ipsa loquitur"* is the first of the above,

and the law is the same in Australia. To this must be added one qualification, that there are some cases in which the circumstantial evidence of the accident's happening shouts negligence so loudly that in the absence of rebutting evidence a verdict for the defendant would be perverse. An example might be a head-on collision of two trains belonging to the same company. In such a case the practical effect of the maxim would be the same as that under the second explanation, though not because it raised a genuine presumption, simply because inferences from circumstantial evidence may sometimes be as overwhelming as the weight of direct testimony. The present stance of the English courts is rather unclear and dicta can certainly be found to the effect that the maxim has the effect of reversing the legal burden of proof but there are others denying that it raises any special rule of law. It is probably now too late to bury the maxim and to recognise that there are simply varying inferences to be drawn from circumstantial evidence from one case to another, but questions of the formal burden of proof are rarely important in trial by judge alone.

Sometimes the onus of proof is truly reversed by statute or some rule of common law. For example, legislation in Ontario requires a driver in collision with pedestrian to prove that he was not negligent, and at common law, a bailee though he is only liable, in the absence of a special contract, for negligence, must show that the loss of or damage to goods in his care was not attributable to fault on his part."

30. CONTRIBUTORY AND COMPOSIT LIABILITY: WHEN ?

31. The contention that the driver of the passenger matador was contributory negligent is, also, not substantiated. We have also not found it sustainable. Contributory negligence may be applicable to some torts other than negligence but that is its main sphere of operation when it is required to be considered when the claimant is alleged to be, partly, responsible for the wrong or tort. As a matter of fact, in England, contributory negligence means that the accident is partly caused by the negligence of the defendant and partly by the failure of the plaintiff or the claimant to take such care for his own safety as is reasonable in the given fact situation. At common law the plaintiff's fault was a complete defence, perhaps because of an unwillingness to recognise that an event was capable of having more than one cause. That is the reason why, the concept is evolved and the rule is devised to mitigate such a situation. This rule is, therefore, known as "last opportunity". However, it would be very interesting to note that the legislative intervention in England has made it unnecessary to explore this obscure doctrine.

32. In English law, by virtue of the Law reform (Contributory Negligence) Act, 1945, the whole philosophy and concept of contributory negligence is widely covered. It is, fairly, typical of legislation throughout the Commonwealth. If the Act provides that "where any person suffered damage, as a result of partly of his own cause and partly of the fault of any other person or persons, a claim in respect of damage shall not be defeated by reason of the fault of the person

suffering the damage, but the damage is recoverable in respect thereof reduced to such an extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damages. It is true that fault means negligence, breach of statutory duty or other act or omission which gives rise to liability in tort or would operate from the provisions of the Act and give rise to the defence of contributory negligence. The Act does not define what amounts to contributory negligence nor the circumstances were relevant, but is concerned with the consequences of finding of contributory negligence.

33. INCONTROVERTIBLE BASIC FEATURES OF WRONG:

34. As stated above, the facts and circumstances, emerging from the record of the present case, do not even remotely admit any hypothesis of contributory negligence on the part of the driver of the passenger matador. In this connection, following aspects may be highlighted, which have emerged from the record and which have remained incontrovertible:

(1) The road where the accident occurred was south to north. The offending ST bus was proceeding from south to north. The bus was proceeding from Junagadh towards Barvala, that means, towards north in the direction of Rajkot.

(2) There was "S" type curve near the venue of accident. The ST bus was negotiating the curve before the accident and had almost crossed the culvert or the side wall on turning.

(3) The ST bus was dashed almost after crossing the turning against the passenger matador which was about to enter the turning "S" bend, as a result of which, instead of being more towards west of the road, like that, towards the left side of the bus, the bus went more on the eastern side, i.e. on the wrong side of the road and obviously the oncoming vehicle would be more on the east corner of the "S" bend.

(4) Traffic rules also, therefore, provide that while negotiating a curve or a turn like "S" bend, the vehicle is required to be slowed down so that the half portion of the left side of the driver could be used and vehicle, as such, does not enter on the second half of the road, on the right side of the driver.

(5) The bus violently dashed against the passenger matador and dragged it on northern side of the road which is in the reverse direction of the matador for a distance of 60 ft. This is very clear from panchnama Ex.42 and the photographs of the scene of accident taken after the accident showing the position of the vehicle which is not questioned.

(6) The passenger matador coming from opposite side got entangled in the front portion of the bus and because of that, it was hanging on the road as half portion of the matador was towards the ditch on the eastern side of the road, that is, right portion of the ST bus.

(7) The whole matador was smashed. The driver of the matador died

instantaneously. There was fire and virtually the matador was burnt causing serious damage of substantial nature.

35. EVIDENTIARY ANALYSIS AND EVALUATION:

36. The passengers travelling in the ST bus have also stated that the driver of the bus was driving the vehicle with high speed even while taking turn. They have also alleged negligence on the part of the driver of the ST bus. The evidence of the injured witnesses travelling in the matador is also consistent and clear that the ST bus was driving with high speed and it came on the wrong side and dashed against the matador, so violently that the matador was crushed and pushed back for a distance of 60 ft. The oral evidence, panchnama, photographs and the documentary evidence placed on record, fully, supports the conclusion recorded by the Tribunal that the entire responsibility for the happening of the road mishap which took the toll of three promising persons and caused serious injuries to five persons resulting into permanent partial disablement and minor injuries to three persons travelling in the bus. So, eight persons, who were travelling in the passenger matador became victims of the gross rashness negligence, if not criminal, on the part of the driver of the ST bus. But for the timely aid received by the injured, living victims of the violent accident, provided by a taxi driver, who was passing near the venue of accident, who courageously took out, with presence of mind, the injured persons from the burning matador, the situation would have been more grievous. After the violent impact, the matador was not only pushed back in the reverse direction for a distance of 60 ft., but it got fire and became a live inferno in which three persons died, including the driver of the passenger matador. We have seen the photographs of the injured persons who have sustained serious injuries and we have noticed that, as such, they are unfortunate victims of violent vehicular accident and they are living victims, but with great sufferings and disfigurement.

37. After taking into account the overall picture emerging from the record and considering the testimonial collection and the documents, like, panchnama, photographs etc. there is no slightest hesitation in our mind that there is no scope for the plea of contributory negligence on the part of the driver of the passenger matador and in confirming and affirming the findings of the Trial Court that the entire responsibility was on the part of the driver of the ST bus as he was driving his bus, at the relevant time, with excessive and uncontrollable speed and in a violent, reckless and negligent manner, even while negotiating the "S" bend on the road, the width of which was 31 ft. There was pakka road of 23 feet and shoulder of 4 feet on both the sides. It is, therefore, very clear that on a road having width of 31 feet, if the driver of the ST bus had remained careful and circumspect and had driven his bus at a controllable speed, even as a normal prudent driver, the unfortunate road mishap could have been, easily, averted. In our opinion, therefore, the ultimate conclusion recorded by the Tribunal in fastening the full accountability on the part of the driver of the ST bus in the happening of the road accident, which, unfortunately, took the toll of three

promising persons and caused serious permanent disablement to not less than 5 persons out of 11 persons who became victim of road accident cannot be said to be in any way unreasonable or unjust. We are therefore, very clear that the plea of contributory negligence reiterated before us is without any substance and is rightly not accepted by the Tribunal.

38. It would be appropriate to refer to the relevant evidence of some of the injured persons, in order to highlight the recklessness and negligence on the part of the driver of the ST bus. In this connection, the evidence of injured witness, Tulsidas Kanjibhai, at Ex.395 may be referred. In para 4, it is evidently testified by him that at the time of accident, the bus was running in excessive speed and though there was a turning, the speed was not reduced and the driver of the bus had lost control. Similarly, injured witness Pushpaben Popatlal, Ex.437, who was travelling in the ST bus as a passenger, has stated in her evidence that the driver of the bus was cautioned for driving the bus in a controllable speed. Another injured witness, Kamlesh Pravinchandra, who was, also, travelling in the ST bus, at the relevant time, was examined at Ex.448, who has, clearly, deposed that the ST bus was being driven at excessive speed. There were also some passengers allowed in the driver's cabin before the accident and those passengers and driver of the bus were talking while the bus was speeding. The passengers of the bus had cautioned the driver of the ST bus to drive the bus with less speed. Unfortunately, the driver of the bus did not pay any heed to the caution sounded by the passengers including the witnesses. It is very clear from his evidence that before the accident occurred, there was a turning of the road and the driver of the bus had not reduced the speed. Even after the turning, the bus driver was unable to control the vehicle as a result of which, it went on the wrong side. The injured persons, who were examined, were traveling in ST bus and were sitting in the front rows behind the driver's cabin. The evidence of the bus driver, Alegbhai Bahadurbhai, is recorded at Ex.473. It is very clear from his evidence that after the accident occurred, he fled away from the venue of accident as he was unhurt, without taking care for the seriously injured persons, who were travelling in the passenger matador. The conduct of the driver, after the occurrence of the violent road mishap, instead of rendering any assistance or help to the seriously, injured passengers of the matador, running away is obviously, condemnable.

39. Even after the occurrence of the accident, the evidence of the bus driver, reading as a whole, is quite, not only promiscuous, but it is evidently preposterous. After considering the oral evidence, rival versions about the cause of the accident, coupled with the documentary evidence, it becomes crystal clear that the entire responsibility was on the part of the driver of the ST bus and the conclusion reached by the Tribunal holding the driver of the ST bus responsible and excluding the driver of the passenger matador is quite justified. The tortious act committed by the driver of the ST bus is, succinctly, borne out and successfully spelt out from the evidence of the witnesses. Therefore, the first contention advanced in this group of appeals in relation to the cause of accident,

contribution in the happening of the accident and the accountability for the unfortunate road mishap deserves to be rejected, since there is clear and direct evidence. Even otherwise, alternatively, the doctrine of "res ipsa loquitur" can be successfully, pressed into service by the original-claimants.

40. GEMS OF COMPENSATORY JURISPRUDENCE

41. Next, it would take us to the appreciation, examination and analysis of the quantification of damages since in all the appeals, amount of damages awarded by the Tribunal in each claim petition is questioned and in nine appeals out of ten, original claimants have filed cross objections.

42. Before we advert to the individual cases of each claimant, it would be quite appropriate and expedient to overview and outline the relevant propositions, provisions and principles pertaining to quantification of damages based on tortious liability. Out of 10 appeals, three cases pertained to fatal injuries and remaining 7 are for personal injuries. The expression "damage" means, harm or loss suffered or presumed to be suffered by a person as a result of some wrongful act or actionable wrong of another. The sum of money awarded by the Court or the authority concerned to victims of such wrong or tort to compensate damage is known or called "damages". It is based on the celebrated principle known as "Restitutio in integrum", which means to compensate a person or a party who is a victim of a wrong or tort, for the loss or damage sustained or suffered. The victim has also to take care to mitigate such loss or damage. It is, essentially, a restitution of what has been suffered. It should not be treated or taken as a windfall out of calamity, but the actual damage suffered. In other words, the whole doctrine is founded upon reparation of the loss or damage.

43. The expression "measure of damages" means the scale or rule by reference under which the amount of damages to be recovered in any factual situation to be assessed. There is no any fixity of rule to measure damages in the action of tort. In fact, it has been said that the law has not laid down what was the measure of the damages in a case of or action of tort. The measure is vague and uncertain depending upon vast variety of causes, facts, events, personal and pecuniary circumstances. The common law provides that the damages due to either for breach of contract or for tort are damages. No doubt, in case of any special damage, which is attributable to the wrongful act, that special damage on being proved could be awarded. This is the principle of "restitutia in integrum", which was aptly described by Lord Wright as "the dominant rule of law" in *Lisbeach Breger v. Add. SS* (1933) AC 449. It is explicit that the common law damages are ordinarily compensatory, except where the wrong doer or the tort-feasor has caused so much harm and damage to the victim by his oppressive, arbitrary or totally illegal action.

44. When a wrong has been committed, wrong doer must suffer and damage should be awarded. It is true that, at times, it is difficult to precisely or arithmetically articulate the damages for the resultant injury or harm. In

assessment of damages arising in action of tort, at times, variety of imponderables find place. It is, therefore, rightly, said that in certain situation, even a guess work to an extent is permissible and it cannot be ruled out. We may clarify that when we say that guess work in making assessment is permissible, would not mean that unwarranted conjecture or unauthorised inferences. The main anxiety of the Court making assessment and analysis of the damages in an action of tort should be to see that the victim of the tort is awarded the amount of compensation or damages so as to see that he is placed in the same position, as far as possible, in terms of money as, he would have been had there been no accident. What we assess and evaluate is not the loss of limb or loss of anatomy, which is, otherwise, invaluable. The attempt in assessing the damages for the wrong based on tort is to evaluate, as far as possible, the loss in terms of money. At times, physiological, biological and phycological harm and wrong suffered by the victim in tort is such, which would be difficult to assess in terms of money. That appears to be the reason why the legislature in its wisdom has employed the expression "the amount of compensation which appears to be just" in section 168 of the Motor Vehicles Act, 1988 (section 110-B of the Old Act). Algebraical exactitudeness in making assessment of damages in a case of wrong committed on account of tort is hardly obtainable. Where a wrong has been committed, the wrong doer must suffer from the impossibility of accurately ascertaining the amount of damages.

45. CATEGORY AND CONTOURS OF COMEPNSATION

46. Broadly speaking, the damages should be classified in four categories. They are (i) contemptuous, (ii) nominal (iii) ordinary and (4) exemplary. We need not dwell on minute details of each category. Once the liability is established and the Court comes to the assessment of damages, it depend upon its view as to what will happen in future or what would have happened had not the accident occurred.

47. Damages can also be classified as (1) general and (2) special or it could also be considered in the category of (1) pecuniary and (2) personal damages. From the point of view of presumption of damages, rights would also be classified into (i) absolute and (ii) qualified. When an absolute right is violated, law conclusively, presume damage although the person wronged may have suffered no pecuniary loss whatsoever. The damage so presumed would be called legal damage. Violation of absolute right is, therefore, actionable, per-se, without proof of any damage, whereas, in case of qualified rights, there is no presumption of legal damage and violation of such right is actionable and only on proof of such claim or actual or special damage it could be awarded. In other words, in case of an absolute right, injury or wrong like that tortious action is complete, the moment the right is violated, irrespective of whether it is accompanied by any actual damage whereas, in case of qualified, right, injury or wrong is not complete unless the violation of right results in actual or special damages. The shift from qualified right to absolute right is apparent and evident

in some of the provisions in the new Act. The very purpose of introducing section 92-A in the Old Act corresponding to section 140 in the New Act which is benign in nature and there is a purpose and policy behind it. So is the legislative intent in introducing special mechanism and machinery based on structure formula evolved in section 163-A of the New Act. Such a shift is undoubtedly a welcome measure and a land-mark milestone. In the last three decades, rise in number of vehicles moving on the road is 118 times whereas the size of the road has, practically, not been doubled, as per the latest survey report, which could, hardly be countered.

48. CHRONICLES OF FATALITY COMPENSATION:

49 In case of a fatal injury or in a death case, the Tribunal is obliged to consider variety of circumstances. Since three out of ten appeals are of fatal injuries, it would be expedient to highlight certain principles governing the damages of death. Damages for death raise different questions from damages for living victims of accident. Unless the injured person lived long enough to recover the judgment or a reached settlement on his own account, damage will not be received by him, but by his family or his heirs or legal representatives. It is, therefore, very clear that the assessment of damages would depend upon the nature of the right of action, which law gives to those persons. Treatment of this aspect and issue varies from one system of law to another. Broadly, there are three possible solutions, all of which have been adopted at one time or another in past in English system of delivery of justice.

(1) Claims to compensation which are terminated by death. Once the injured succumbs to injuries, the right of action would not survive.

(2) To take incidental cause of action which vested in the injured person and indicate that he shall survive his death and be enforceable by his legal representatives. Such statutes are known as survival statutes.

(3) Independent cause of action to near relative or kith and kin of the deceased who have been deprived of their bread-winner or at any rate of partial means of support in life. Such statutes are described, popularly as Wrongful death statutes.

50. We are concerned, at this stage, with the quantification of damages sustained by heirs and legal representatives of the deceased victims of the tort. In case of assessment of damages of death, which is a part of survival statute on account of the wrongful death, known in the English system, wherein, the Tribunal or the authority or the Court concerned is obliged to take into account variety of aspects including certain imponderables of life for making an estimation or justification for assessment of damages in terms of money so as to place the claimants, who are the heirs of the deceased, victim of tort in the same financial position as they would have been had there been no accident, as far as possible. In American law much the same problems have arisen as in English law. Many American states have adopted "wrongful death" statutes on the model of Lord Campbell's Act. In some jurisdictions, "survival" statutes have been

passed, and in some, as in England, statutes of both types are in force. Some of the "wrongful death" statutes limit the amount of damages which can be recovered. The Fatal Accident Act, 1846 is known as Lord Campbell's Act, which, initially, started giving a new and independent right of action to certain near relatives of the deceased. Lord Campbell presumably modelled his Act upon the Scottish common law, which had always given a right of action to certain near relatives for (i) loss of support, and (ii) solatium for their personal loss.

51. Of course, in so far as India is concerned, we have a survival statute almost a model of British system of law known as Fatal Accidents Act, 1855 (Act 13 of 1855). This Act is designed to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong. This Act has hardly 4 sections and section 1A which is amended in 1951 by the Amendment Act of 3 of 1951, provides suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong, which is the basis in case of fatal injury even in the Motor Vehicles Act. It is, therefore, important to refer to the said section which reads as under:

"1A. 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."

52. The procedure for claiming compensation and power to award damages or compensation to the claimants, Tribunals are provided in Chapter XII, from section 165 to 176 in the New Act. Claims Tribunals are created u/s 165, whereas, application for compensation arising out of an accident of the natures specified in sub-section (1) of section 165 can be made u/s 166(1) by person who has sustained injury (2) by the owner of the property, or (3) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (4) by any agent duly authorised by the person, injured or all or any of the legal representatives of the deceased, as the case may be. Option regarding claims for compensation in certain cases is provided in section 167, whereas, section 168 gives power and procedure for awarding compensation by the Claims Tribunal. The procedure and powers of Claims Tribunals are also provided in section 169. The Tribunal is also empowered to implead the insurer in certain cases. The Claims Tribunal is also empowered to award interest where any claim is allowed u/s 171 and also cost even in the nature of compensatory as provided u/s 172 and section 173 provides for appeals. In this group of 10 appeals, the appellants have resorted to the provisions of section 110-D of the Old Act, corresponding to section 173.

53. It may be stated that English Fatal Accidents Act, 1846 was consolidated and amended and new Act came into force as a Wrongful death statute and known as Fatal Accident Act, 1976. Likewise, Fatal Accident Act in India, undoubtedly, required and desired consolidation and other reforms so as to keep pace with the tune of time.

54. In some of the appeals, personal injury cases involved permanent partial disablement. The concept of disability is required to be considered not only from the physiological aspect, but from variety of circumstances. The term "disability" denotes physical difficulty or impairment and the resulting social and economic status of the affected individual or person wronged by the tortious act. Fundamentally, disability is a negative term, in that, it refers to an inability or incapacity to meet certain standards of physical efficiency and/or social, occupational, or economic responsibility. Obviously, it differs from disease or illness, in that it does not refer to the fundamental biological needs of life. The positive disability would include the loss of capacity or efficiency like physical illness. The basic feature of the disablement are required to be kept in mental radar while making assessment of damages in a case of permanent disablement arising out of the use of the motor vehicle. The disablement may be medical as well as the non-medical. It may be social, it may be ethical, it may be also peculiar and personal to the individual.

55. What are the important functions of compensations system are very well highlighted in Atiyah's Accidents, Compensation and the Law, Fifth Edition by Peter Cane.

56. ANALYTICAL EVALUATION: CASE WISE.

57. It would be, now, appropriate to refer to the individual cases in the light of the facts and circumstances, emerging from the record of each case in view of the aforesaid legal settings and the principles governing the amount of compensation in fatal and personal injury cases, arising out of tortious liability.

58. First Appeal No.126/85 arising out of (MACP) No.206/81:

59. Respondents, in this appeal are the legal heirs and representatives of deceased Dr.Vora, who claimed an amount of Rs.8 lacs by way of compensation on the premise of rashness and negligence on the part of the driver of the ST bus. The claimants placed reliance on the evidence of the original claimant, widow of the deceased, Kamlaben and also on documentary evidence. Relying on the income and the service of the deceased in the Gujarat Krushi University, the Tribunal awarded an amount of Rs.4,02,000/- by way of damages to the claimants against the claim of Rs.8 lacs, breakup of which is as follows:

Rs.3,96,000 Loss of financial utility of the deceased to the family. Rs.5,000 Loss of estate Rs.1,000 Funeral expenses. Rs.4,02,000/- 60. The amount of compensation awarded by the Tribunal is, seriously, criticised on behalf of the appellants. It is submitted that this amount is on the higher side in view of the

evidence on record, whereas, the original claimants by filing cross objections have sought additional amount of Rs.1,50,000/-. On their behalf, it has been contended that the Tribunal has taken very conservative, if not, unreasonable view in awarding only an amount of Rs.4,02,000/- against the original claim of Rs.8 lacs. However, cross objections are restricted to the extent of additional amount of Rs.1,50,000/- in this appeal. It is, therefore, at this stage, necessary to examine the challenge against the impugned award and claim for enhancement in cross objection, in the light of the evidence on record.

61. Following aspects have remained unquestionable, in the present case, which may be highlighted, at this juncture:

- (1) Deceased Dr. Vora was working as a Research Scientist, and he was earning an amount of Rs.2420/-, at the time of unfortunate road mishap. Salary certificate was produced at Ex.39.
- (2) Deceased Dr.Vora was awarded degree of Ph.D. in the faculty of Agriculture.
- (3) Deceased Dr.Vora was 49 years old, at the relevant time.
- (4) Retirement age of the deceased was 60 years.
- (5) He was the main bread-winner of the family.

62. It is very clear from the record of the Gujarat Agricultural University that deceased Dr.Vora was working as Associate Research Scientist in the pay scale of Rs.1200-1900 at the time of his demise, which occurred on 9.5.81. He was earning consolidated salary of Rs.2420/as per the certificate produced at Ex.39 of the University. The birth date of Dr.Vora was July 17, 1932. As per the University Rules, the superannuation age is 60 years. It means that the deceased would have retired on July 17, 1992. He would have served the University for another period of 11 years had his life not cut short at the cruel hands of Providence.

63. It is also evident from the record of the University that he was well qualified and he had acquired Doctorate in Agricultural Entomology in the year 1977 from the International Institute, like Indian Agricultural Research Institute, New Delhi; that he had a distinguished career not only in acquiring the degree and knowledge, in his field, but even as a Teacher and a guide. He had published numerous scientific research papers in important and reputed journals. He was also working as Post-Graduate teacher. He was also recognised by the University as a guide for M.Sc. in Agriculture as well as for Ph.D. in the discipline of Entomology. He was have become, in usual course, a Professor in the scale of Rs.1500-250 within a year or two had he not died in an unfortunate road accident. He had all the chances of reaching the maximum scale at the time of his retirement. On an average, as per the University record, deceased would have got consolidated amount of Rs.4,000/per month at the time of his retirement. Therefore, his annual income would have been, roughly, Rs.48,000 at time of superannuation as per the University record. In this connection, the

approach of the Tribunal in considering the prospective earning while determining the amount of compensation, in our opinion, is faulty and erroneous.

64. The Tribunal has taken the income of the deceased at the time of accident at Rs.2420/-. However, while considering the multiplicand or the utility of the deceased to the common family fund, considered the prospective earnings of the deceased at Rs.4000 only. The Tribunal has awarded an amount of Rs.3,96,000/- by way of loss to the dependents. It is calculated on the basis of considering $\text{Rs.2420} + 4000 = 6420$ divided by 2 = Rs.3210 and an amount of Rs.320 is assessed and out of which, one-third amount is deducted towards expenses of the deceased. The Tribunal, therefore, adopted the datum figure of $\text{Rs.2200} \times 12 \times 15 = \text{Rs.3,96,000}$ under this head. In our opinion, this approach is incorrect in making the assessment of compensation on various grounds. Firstly, ordinarily, one-third of the amount is required to be deducted towards the expenditure of the deceased. However, the unit system which is necessary to be applied is not examined when the dependents on the income of the deceased are many. In the present case, deceased Dr.Vora died leaving his wife, Kamlaben, one daughter and two minor sons. It is a case of family of five persons which were dependent on the earning of deceased Dr.Vora. Therefore, instead of one-third, one-fourth or one-fifth could have been considered by the Tribunal which is not done. Secondly, while considering the annual utility of the deceased to the common family fund at Rs.2200/-, the Tribunal lost sight of the fact that the deceased was entitled to pension. The maximum pension now payable is 50 per cent of the last drawn salary subject to the fulfillment of other criteria. Thirdly, a man like the deceased who has, status, experience, competence and calibre would not, ordinarily, remained satisfied with the pensionable amount. He would, obviously remain occupied. Apart from further research, or writing articles, he would work as a paper setter, examiner, or guide. Fourthly, even as per the revised pay scale, as stated before us, the deceased would have been in the pay scale of Rs.8,000-13,500 at the time of superannuation, at the age of 60.

65. Fifthly, as per the record of the University and the certificate produced at Ex.39, the deceased would have got approximately an amount of Rs.2000/- by way of pension every month after completing the age of 60. He would have, therefore, even, under the revised pay scale earned an amount of Rs.24,000/- per year by way of pension. This aspect was required to be, seriously, examined, which has not been done by the Tribunal. It is also found from the record that the deceased was enjoying good health. He would have survived for long period than the age of retirement and even if he would have survived for a period of 10 years after retirement, he would have got pension during the period of ten years amount to Rs.2,40,000. Again, the deceased would have earned, being an expert Scientist, on research work or as a Consultant. Not only that the university record has disclosed that had Dr. Vora not died premature death on account of vehicular accident, he would have been paid an amount of Rs.10,08,000/- which is worked out as follows:

Rs.5,28,000 under the head of pay till retirement. Rs.2,40,000 pension for 10 years. Rs.2,40,000 extra income for 10 years. Rs.10,08,000/-

The aforesaid figure is worked out by the University only for a spell of 10 years on the premise that the deceased would have survived only for a spell of 10 years.

66. Since the proposition of law considering the future income is extensively explored and very well propounded in number of decisions by the Hon''ble Apex Court, it would, hardly, detain us any longer on this count. However, following decisions of the Hon''ble Apex Court need narration, in which this principle is very well expounded:

67. EXPOSITION AND ELUCIDATION : CASE LAW

1. General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . In this case, it is, lucidly, propounded as to why future income is required to be considered. The pertinent observations are made in para 13 of the judgment which reads as follows:

"13. In the present case the deceased was 39 years of age. His income was Rs.1032/- per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be appropriate to take a reasonable liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs.1032/- per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs.2,000/as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was Spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalise with the appropriate multiplier. In the present case we can take about Rs.1400/- per month or Rs.17,000/- per year as the loss of dependency and if capitalised on a multiplier of 12, which is appropriate to the age of the deceased, the compensation would work out to (Rs.17,000/- x 12 = 2,04,000/- rupees) to which is added the usual award for loss of consortium and loss of the estate each in the conventional sum of Rs.15,000/-"

2. Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . In this case for determining the just amount of compensation, multiplier method was adopted and looking to the age of the deceased, 15 multipliers were applied for assessment of loss of dependency value. Conventional figure of Rs.15000/- was also added by way of loss of estate. The emphasis was on determining the just amount of compensation. Para 6 of the said judgment reads as under:-

"On the question of computation of proper compensation to be awarded to the appellants certain well established facts on the record of this case are required to be noted. The deceased was the only breadwinner in the family of the appellants. He was cut short in the prime period of life at the age of 27 by the accident caused by the truck driver respondent new He had put in seven years military service by that time. He was earlier a Lieutenant in the Army. Then he was promoted to the rank of a Captain and was fully qualified for promotion to the rank of a Major at the time of his death. The certificate issued by dogmata. and octopus. Rumble Singe showed that the deceased had obtained the following medals during active service in various operation areas

[a] Senna Sea Service Medal [be] Snaring Medal [CA] Privy Star [do] 25th Indept. Anniverswary Medal Hiffs gross salary at the time of his death was Rs.1543/- p.m.He had passed his M.A. examination at the time of his death. He was in the time scale of Rs.1000-50-1550. He had large number of years of military service ahead of him which would have certainly taken him to higher echelons in the military career. The evidence showed that he was a teetotaller. He did not smoke or drink. This is established by the testimony of appellant no.1 The claims Tribunal on the basis of the aforesaid evidence on record came to the conclusion that on account of the untimely death of Rama Kant the appellants suffered approximately a total monetary loss of Rs.1,70,238/-. But as the Tribunal found that the deceased was 75% responsible for the accident, the appellants were awarded only 255 OF RS.1,70,238/-, which came to Rs.42,569/-. The High Court in appeal took the view that out of the gross salary of Rs.1543/p.m. deceased Rama Kant would have spent on himself Rs.900/and from this an amount of Rs.375/- would have been spent on the clothing of the deceased leaving Rs.375/for the upkeep of the claimants per month. Considering the earning of the deceased from his salary and allowances from 1976 to 1996 the deceased would have spent a sum of Rs.1,28,131/being 25% of the gross emoluments of appellants Nos. 1 and 2. The average figure for 20 years came to Rs.6406/0 per annum. This was taken as the annual dependency multicand adopting the multiplier of 15 figure of Rs.96060/was arrived at. It as noticed that family pension of Rs.200/- p.m. was available to appellant no.1- widow of the deceased. ON that basis a figure of Rs.36,000/- was worked out by adopting multiplier of 15 [that is to say] RS.200/- multiplied by 12 which lead to a figure of Rs.2400/multiplied by 15. These Rs.36,000/- were deducted from [Rs.96090/- and accordingly a figure of Rs.60,000/- was reached. 10% deduction was thereafter affected from the said figure and accordingly an amount of compensation of Rs.54,000/was worked

out.....Deceased in the present case as seen above, was earning gross salary of Rs.1543/-p.m. Rounding it up to figure of Rs.1500/- and keeping in view all the future prospects which the deceased had in stable military service in the light of his brilliant academic record and performance in the military service spread over 7 years, and also keeping in view the other imponderables like accidental death while discharging military duties and the hazards of military service, it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death i.e. up to Rs.3000/- p.m. had he survived in life and had successfully completed his future military career till the time of superannuation. The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely Rs.1500/- p.m. to the maximum which he would have otherwise got had he not died a premature death. i.e. Rs.3000/- p.m. and dividing that figure by two. Thus, the average gross monthly income spread over his future career, had it been available, would work out to Rs.4500/- divided by 2 i.e. Rs.2200/-, Rs.2200/- p.m. would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner. From that gross monthly income at least one-third will have to be deducted by way of his personal expenses and other liabilities like payment of income tax etc. That would roughly work out Rs.730/-p.mn. but even taking a higher figure of Rs.750/-p.m. and deducting the same by way of average personal expenses of the deceased from the average gross earning of Rs.2200/- p.m. balance of Rs.1450/- which can be rounded up to Rs.1500/- would have been the average amount available to the family of the deceased i.e. his dependents, namely appellants herein. It is this figure which would be the datum figure p.m. which on annual basis would work out to Rs.18,000/- Rs.18000/- therefore, would be the proper multiplicand which would be available, for capitalization for computing the future economic loss suffered by the appellants on account of untimely death of the bread winner. As the age of the deceased was 27 years and a few months, at the time of his death the proper multiplier in the light of the aforesaid decision of this Court in General Manager, Kerala State Road Transport Corporation, Trivendrum [1994 AIR SCW 1356] [supra] would be 15. Rs.18000/- multiplied by 15 will work out to Rs.2,70,000/- To this figure will have to be added the conventional figure of Rs.15,000/- by way of loss of estate and consortium etc. That will lead to a total figure of Rs.2,85,000/- This is the amount which the appellants would be entitled to get by way of compensation from respondents nos. 1 and 2 subject to our decision on point new."

68. The learned counsel for the claimants has further relied on the decision of the Hon'ble Supreme Court in the case of Urmilla Pandey and others Vs. Khalil Ahmad and others, wherein the deceased died at the age of 29 years. The Hon'ble Supreme court has fixed life expectancy at 65 years and the Hon'ble Supreme Court held that direction of 30% lumpsum payment is not proper when the same is not permissible.

69. The learned counsel has also relied on the judgement of this court in the case of SMT. RAFIA SULTAN WIDOW OF MIRZA SULTAN ALI BAIG AND ORS. VS. OIL & NATURAL GAS COMMISSION reported in 1985(2) GLR 1315. In this very case the deceased died at the age of 27 years and at that time his salary was Rs. 1543/-. This Court after taking into consideration the future income, fixed Rs.3000/as monthly income of deceased. The relevant paragraph 28 on page 1334 reads thus:-

"It is not in dispute that the deceased was aged 27 years when he died. The aforesaid pleading in the light of the evidence of plaintiff No. 4 clearly indicates that the deceased who was in the time scale of Rs. 650-1200 at the time of his death as Assistant Engineer in the service of the Commission was drawing Rs. 1225/- by way of gross emolument inclusive of allowances, Leaving aside the highest post of General Manager, the available ultimate post to the deceased would be the post of Project Manager or Chief Engineer which is the highest post on the project engineering side carrying the time scale of Rs. 2000-2200. Leaving aside the question of upward revision of pay scales in future, it is very easy to visualise that if the deceased had lived through his full span of earning career, he would have easily got atleast Rs. 3000/- per month by way of gross emoluments. He was getting Rs. 1,200/- by way of gross emoluments at the age of 27 years. He was qualified engineer having his B.Sc. Engineering (Mechanical) degree in first division in 1974 from Aligarh University. He had joined the Commission as Technical Assistant, Grade I, on 8.8.1975. Within two and half years, his life was cut short, and he died in harness. Under these circumstances, it is easy to visualise that had he lived the full span of life, he could have atleast got Rs. 3000/- per month as gross emoluments at the fag end of his full career. Taking a mean of Rs. 1200/- per month which was his gross emolument at the time of his death and Rs. 3000/- per month as gross emolument at the end of his career, if it had remained unimpaired, the average would work upto Rs. 2,100/- being one half of Rs. 4200/-. So far as the dependent-claimants are concerned, only four claimants now remain in the field viz. plaintiffs Nos. 1, 4, 5 and 7. They are widowed mother, younger brothers and unmarried young sister of the deceased. It is easy to visualise that the deceased had he survived, would have married in due course and would have brought up a family of his own. Thus, the dependency benefit which he would have given to the present claimants would have lessened by passage of time. It is now well settled by a catena of decisions of this court that where the dependents are parents or brothers and sisters and when the deceased had died at a young age without having married, the datum figure has to be sliced down by 2/3rd and only 1/3rd has to be computed as available to the other dependents (see: Somabhai Vajabhai Vs. Babubhai 23(1) GLR 765. Under these circumstances, the datum figure of Rs. 2,100/per month on an average which would have been the average income of the deceased over years had he survived, will have to be sliced down by 2/3rd and only 1/3rd will have to be computed as being available for the dependents. That works out to Rs. 700/- per month. This would represent the

datum figure of dependency benefit which the deceased would have made available over years to his dependents viz. the present concerned plaintiffs. Annual figure on that basis works out to Rs. 8,400/-."

70. In our view this court has to award just compensation. Just compensation means, appropriate, equitable or proper. It signifies that the compensation amount should be so assessed as to make provision for the legal representatives to receive or earn such pecuniary benefits as they could have obtained from the deceased if he had lived his normal life. Therefore, the compensation to be assessed which can be termed 'just' as contemplated by Section 110B (old Act) now Section 168(1) (new Act) of the Act, should be such that if the same is prudently invested in some scheduled bank, it would earn interest which would be equal to the pecuniary benefit which had been available to the legal representatives from the deceased had he not died due to accident which resulted from the negligent use of the motor vehicle. The earning capacity of the deceased, normal expectancy of his life, status of his family and the estimate of the financial assistance which he could be expected to give to his legal representatives, had he lived normal age, are some of the relevant factors which can render assistance in the determination of a fair or just compensation.

71. In view of the judgement of the Apex Court in the case of G.M., K.S.R.T.C. Corpn. Vs. SUSAMMA THOMAS (supra), SARLA DIXIT VS. BALWANT YADAV (supra), and Division Bench of this court in the case of SMT. RAFIA SULTAN WIDOW OF MIRZA SULTAN ALI BAIG AND ORS. VS. ONGC (supra), in our view while fixing the compensation the court must see not only the income of the deceased at the time of his death but the court may arrive at notional potential income of deceased in future, after considering earning capacity of the deceased, normal expectancy of life, his education, nature of service, status of his family and estimate of the financial assistance which would have been expected to give his legal representatives, had he lived normal age. After considering all these aspects, the Tribunal must come to a future notional prospective income. After arriving that the Tribunal must take mean of the income of the deceased at the time of his death and future income and that should be considered for awarding compensation, after considering necessary multiplier in this behalf.

72. Considering the aforesaid facts and proposition of law in the light of the expertise, qualification, experience, avocation and the facts highlighted hereinbefore, we are of the clear opinion that instead of annual dependency of the deceased to the common family assessed by the Tribunal at Rs.2200 x 12 = Rs.26,400/- is on a very lower side. It could not be, in any case, less than Rs.4000 x 12 = Rs.48,000/- as the deceased was able to earn full pensionary benefits and ear out of doing work as a Paper setter, paper examiner, as a guide to the Post Graduate and Doctorate students, which can be done so long as the teacher is physically fit as per the evidence on record. The income of the deceased, at the time of accident was around Rs.2400/- and he was in a position to earn more. Therefore, the assessment made by the Tribunal is on a lower side

and is required to be upwardly revised. It could be more than the amount of Rs.1,50,000/- which is claimed by the claimants by filing cross objections. Since it is restricted to Rs.1,50,000/-, full amount as claimed in the cross objection is required to be granted in view of the aforesaid considerations and calculations. In our opinion, therefore, First Appeal No.126/85 is required to be dismissed and cross objections are required to be allowed. The resultant effect would be that the claimants shall be entitled to an additional amount of Rs.1,50,000/- by way of compensation. The claimants, therefore, shall be entitled to Rs.4,02,000 plus Rs.1,50,000/- aggregating to Rs.5,52,000/- by way of compensation under both the heads with interest. In so far as rate of interest is concerned, it will be a common point in issue in all the claims, which we shall deal with hereafter.

73. First Appeal No.127/85 arising out of (MACP) No.233/81:

74. The appellant has challenged the amount of compensation of Rs.97,800/- awarded by the Tribunal to the claimants against the original claim of Rs.2 lacs. Whereas, the original claimants-respondents herein, have, by filing cross objections claimed additional amount of Rs.50,000/-. Deceased Bharat was driving the passenger matador, who died, immediately after the accident. He was serving as a driver in the Gujarat Krushi University at the relevant time and he was earning Rs.526/- per month as a driver. He died leaving his wife and two minors and a widowed mother. The income of the deceased is not in dispute. Out of the monthly income of Rs.526 per month plus allowances of the deceased, the Tribunal has taken an amount of Rs.425/- by way of dependency value and has adopted the multipliers of 18. An amount of Rs.91,800/- has, thus, been granted under the head of loss to the dependents and an amount of Rs.5,000/- for the loss of expectation of life and Rs.1000 for funeral expenses. In all the claimants came to be awarded an amount of Rs.97,800/-. The salary certificate issued by the University is at Ex.337. The service book of the deceased is produced at Ex.366. Unfortunately, the Tribunal failed to appreciate the prospective earnings of the deceased. In view of the aforesaid settled proposition of law, the amount of Rs.50,000/- claimed by the claimants by filing cross objections, as an additional amount, could not be said to be in any way excessive or higher amount.

75. As per the income certificate of the deceased at the relevant time, he was earning Rs.570/- and he would have, at least reached to the level of Rs.2000/- during the span of his service career looking to his young age. Considering the young age of the deceased, and the monthly income of Rs.570 and the prospective earnings of Rs.2,000/-, both would come to Rs.2570 divided by 2 (two) and it would come to Rs.1285 and even if one-third is deducted, it would come to Rs.860. Rounding off the figure at Rs.850, the amount would come to Rs.10200 per year under the head of loss of annual dependency value to the claimants. Since the deceased was 32 years, 15 multipliers would be just and reasonable. Therefore, the claimants would be entitled to $\text{Rs.10,200} \times 15 = 1,53,000$ rupees under the head of loss to the dependents, whereas, additional amount claimed is restricted to Rs.50,000 only and even if it is added to the

amount awarded, it would come to Rs.1,47,800/- which is less than the amount assessed under the head of loss to the dependents. Therefore, the claimants are entitled to the additional amount of Rs.50,000/- with interest.

76. In the result, First Appeal No.127/85 is dismissed and the cross objections are allowed, as stated above.

3. First Appeal No.128/85 arising out of (MACP) No.332/81.

77. The respondents, in this appeal, are the original claimants, heirs and legal representatives of the deceased, Dr.Talati, who died on account of road accident in question. The deceased was travelling in the matador. Dr.Talati had sustained serious injuries and he succumbed to the same after two days. The original claimants, claimed an amount of Rs.6 lacs by way of compensation, whereas the Tribunal has awarded an amount of Rs.3,65,300/- which is challenged in the appeal. The claimants have claimed additional amount of Rs.1 lac by filing cross objections.

78. Original claimant No.1, Shantaben, is the widow of the deceased and original claimant No.2 is the son of deceased Dr. Talati. Dr. Talati was working as Research Scientist. He was aged about 52 at the time of accident and his monthly earnings, at the time of accident was Rs.2550/-. The widow of the deceased, Shantaben, is examined, at Ex.44. Salary certificate issued by the University is produced, at Ex.45. Details of salary and the prospects of the deceased are highlighted by the University in its certificate, at Ex.46. Service book of the deceased is produced at Ex.365 and the research work done by the deceased is highlighted in Ex.350 and 352. Dr. J.P.Bhatt of the Gujarat Agricultural University is examined at Ex.340. It is very clear from the record produced by the University and the evidence of Dr. Bhatt that the deceased was a brilliant teacher and he had also a very good academic record, during the course of his service as Assistant Research Scientist in the University. He had made many research papers in his subject. Deceased Dr. Talati was awarded doctorate in the faculty of Agriculture on the subject of entomology. He had done 28 research papers during the period of his service. He was one of the known agricultural scientist of India as deposed by Dr. Bhatt in his evidence. He was also working as a Guide for the Post Graduate students as well as Ph.D. students. He was also working as a paper setter, examiner and a guide. It is found from the evidence of Dr. Bhatt, that teachers like Dr. Vora and Dr. Talati, even after the retirement of age of 60 years, ordinarily, they would have got reemployment in view of the paucity of such expertise in the realm of agricultural science and the deceased persons, who were working as Assistant Research Scientists, would have in all probabilities got reemployment, apart from the amount of pension, upon superannuation.

79. The Tribunal has awarded an amount of Rs.3,65,300/-, the breakup of which is as follows:

Rs.3,52,300 for the loss of dependency benefits. Rs. 7,000 for pain, shock and

sufferings. Rs. 5,000 for loss of estate Rs. 1,000 for funeral expenses.
Rs.3,65,300 : Total

80. The amount of Rs.3,52,300/- is assessed under the head of loss of dependency benefits to the claimants taking into consideration the monthly dependency of the deceased to the common family fund at Rs.2275 and multipliers of 13 are applied. In other words, $\text{Rs.}2275 \times 12 \times 13 = \text{Rs.}3,52,300/-$, under the head of loss to the dependents. The amount awarded by the Tribunal under this head is not only conservative, but it could not be said to be just, taking into account the facts and circumstances and the prospective earnings of the deceased. Since the deceased was a brilliant and bright teacher, the assessment of annual utility of the deceased to the common family at Rs.2275 is quite on a lower side. In our opinion, the additional amount of Rs.1 lac claimed by the claimants by filing cross-objections cannot be said to be in any way unjust or unreasonable.

81. We are, therefore, of the clear opinion that the amount assessed by the Tribunal by way of compensation is on a lower side and, therefore, it is required to be, upwardly, revised taking into consideration all the facts and circumstances emerging from the record of the case. In any case, the dependency benefits would not be less than Rs.5000/-. The amount, therefore, claimed by way of cross objections, which is restricted to Rs.1 lac is just and reasonable and therefore, the claimants are entitled to an additional amount of Rs.1 lac over and above the amount of Rs.3,65,300/- awarded by the Tribunal. Consequently, First Appeal No.128/85 is dismissed and the cross objections are allowed, as stated above.

4. First Appeal No.129/85 arising out of (MACP) No.346/81:

82. The Tribunal has awarded an amount of Rs.5,700/- by way of compensation under both the heads against the original claim of Rs.9999/-. It is also challenged by the appellant, whereas, the original claimant who is the injured person, who was travelling in the offending ST bus at the relevant time, has claimed an amount of Rs.4299 by way of additional amount of compensation by filing cross objections. The breakup of the amount awarded by the Tribunal is as follows:

Rs.4,000/- for pain shock and sufferings. Rs.1,500/- for medical expenses. Rs. 200/- for loss of salary. Rs.5700/-.

Medical certificate in respect of the injuries sustained by the claimant is produced, at Ex.397. After the taking into account the nature and number of injuries, the manner in which the violent dashing occurred and the loss of teeth, the amount of Rs.9999/- is quite just and reasonable. The injured claimant is, therefore, entitled to additional compensation as claimed. Accordingly, First Appeal No.129/85 is dismissed and the cross objections are allowed.

5. First Appeal No.1300/85 arising out of (MACP) No.420/81.

83. This is a case of personal injuries sustained by the claimant who was travelling in the ST bus at the relevant time. She sustained minor injuries and the Tribunal awarded an amount of Rs.5500/- against the original claim of Rs.9999/-. She is examined at Ex.437. Looking to the number of injuries the amount awarded is quite just and reasonable. Therefore, the challenge against the award is required to be rejected. Accordingly, the appeal is required to be dismissed.

6. First Appeal No.131/85 arising out of (MACP) No.428/81:

84. In this appeal, the respondent H.J. Vyas is a living victim of vehicular accident who was travelling in the passenger matador at the relevant time. He claimed an amount of Rs.2,50,000/- for personal injuries and permanent partial disablement sustained by him, whereas, the Tribunal has awarded in aggregate an amount of Rs.67,000/-. It is also questioned in the appeal on the premise that the amount awarded is exorbitant, whereas, the original applicant has, by filing cross objections, claimed an additional amount of Rs.75,000/-. The Tribunal has made relevant observations in para 33 and 34 of the impugned common judgment.

85. The claimant is examined, at Ex.264, whereas, the injury certificate is produced, at Ex.267. Dr.C.J. Nanavati, Orthopaedic Surgeon is examined, at Ex.426. According to his evidence and the medical certificate of Dr. Nanavati, the injured claimant has sustained permanent partial disability to the extent of 20 per cent of the whole body. Thus, there is impairment on the functions of the anatomy and loss of physical function of the whole body is assessed to the extent of 20 per cent by the doctor. The injured had sustained fracture and compression on Vertebra D-9 which has resulted into permanent partial disablement. Leave certificate issued by the University is produced, at Ex.265 and the medical certificate issued by Dr. Baxi, Medical Officer of the Government Hospital is produced, at Ex.268. In view of the evidence on record, the deceased has taken leave of more than 3 months.

86. The injured claimant was working as Assistant Professor and was getting total salary of Rs.1700/- at the relevant time. It is very clear from his evidence that he had sustained serious injuries and, therefore, he had become unconscious after the accident and he was shifted to Government Hospital at Junagadh. He was admitted as an indoor patient for 12 days in the Government hospital. During that period, he was undergoing serious and severe pain. He was operated upon and he had also undergone blood transfusion. After his discharge from the hospital as per the medical advise, he had undergone outdoor treatment, for a period of more than two months. He was on leave for more than 3 months. During the period of outdoor treatment, he was unable to pursue the normal pursuit and avocation of life. It is also very clear from his evidence that because of the accident, he had to repeat a course of 4th semester as he was unable to give examination of 4th semester due to the injuries. He, therefore, stated in his evidence that he lost six months of his study. Ex.270 is the xerox

copy of the valuation report of 4th semester issued by the University. The medical bills and receipts are produced at Exs.271 to 303. It is clearly testified by him that he spent more than Rs.20,000/- towards medicine, transportation, doctors charges, special diet, etc. during the course of his treatment. His wife and children were attending him during the period of treatment in hospital and even at home.

87. It is also noticed from his evidence that he has been advised to put a special type of belt due to back injury and compressed vertebra and he is unable to walk at a stretch for a long distance. He is also unable to lift weight. He has also stated that earlier he used to go on cycle to the University from his residence and after the accident, he is unable to use the bike and therefore, he had to incur expenses for transport. According to his evidence, he is required to spend Rs.400 per month to each to the venue of his employment.

88. It is also deposed by him that he was prevented from attending his promotion and he lost chance of promotion and the opportunity has been postponed for future and he is suffered loss of Rs.500/- in his salary. He has also stated that he is not in a position to attend field work due to the serious injuries and permanent partial disablement to the extent of 20 per cent.

89. On account of the accidental injuries, the injured claimant wasted six months in pursuing his study of 4th semester. He had, therefore, to repeat the fourth semester. The valuation report of the 4th semester is manifested by the certificate at Ex.270. He has also incurred huge amount towards medical expenditure and according to his evidence, he expended an amount of Rs.20,000/- towards, medicine, transportation, fees of doctors, special diet. As stated above, during the course of his treatment, he was attended by his wife, parents or children. He was, some times, required to be attended by his elder brother, who is living separately.

90. No doubt, the services rendered by the relatives for the injured person, in the present case, are gratuitous. Nonetheless, it is a settled proposition of law that the services rendered gratuitously by the relatives in course of the treatment is required to be measured in terms of money as the tort-feasor cannot be allowed to take benefit of such gratuitous services rendered by the family, friend or members of the common fraternity. This aspect is also not examined and appreciated by the Tribunal while making assessment of damages for personal injuries. The Tribunal has observed in para 32, 33 and 34 of the impugned common judgment, wherein, this aspect has remained in oblivion.

91. The injured claimant was hospitalised as an indoor patient as he had sustained serious injuries. In fact, by grace of God he could survive such a major mishap as the matador in which he was travelling as a passenger, on account of violent impact, later on converted into an inferno, but for the timely assistance by a taxi driver, he would have been also a victim of the great mishap. It is an admitted fact that the fire which occurred after the impact has, virtually, affected

the entire matador. All the four tyres were burnt. In these circumstances, it was, really, the grace of God that he was dragged out from the burning matador by the taxi driver after the violent impact. Since the injured had sustained serious injuries with fracture of vertebra, he remained in hospital. The injury certificate is produced at Ex.267. Discharge card is produced at Ex.269. That the injured had to remain as an indoor patient in Civil Hospital, Junagadh for 12 days. Even after his discharge, he was undergoing complete bed-rest for a spell of two months. He had to take rest on hard bed under the medical advice on account of the fracture of vertebra. It is, in this context, the injured was required to be attended by one or other assistant and in his case, the assistance was provided by the members of the family, though services provided by the members of the family were gratuitous, tort-feasor could not claim benefit thereof. Had the family member not attended the injured during the period of treatment and convalescence, he would have engaged a paid medical attendant and the expenditure incurred in this behalf by the victim of the tort is to be fastened on the tort-feasor. This aspect, which is also one of the important salient and basic aspects law of tort, is required to be considered for arriving at a consolidated amount of compensation for the assessment of the damages arising out of vehicular accident.

92. The injured was granted sick leave from 11.5.81 to 21.8.81, suffixing 22nd and 23rd August, 1981. At this stage, it may be mentioned that a contention was raised that there was no monetary loss proved on record as the injured claimant was granted sick leave. It is true that as per the record produced from the University, the claimant has not suffered any monetary loss while being on sick leave. That is one of the aspects, but that is not all. The loss of leave which otherwise, he could have enjoyed in his later period of his service is also required to be capitalised and again, it may be noted that such a loss of leave suffered by the victim of the tort cannot be treated as no monetary loss. In fact, tort-feasors are liable for the payment of loss of leave, which is required to be followed in terms of money. This aspect is very well established and while computing the damages, it must be born in mind.

93. The Tribunal, has rightly, observed that the injured claimant was required to repeat one semester during the course of his research and reading for doctorate. The loss suffered on this count is also required to be capitalised for the purpose of overall award. The claimant was also treated by a private Orthopaedic surgeon, Dr.Nanavati, who has certified that the claimant has sustained permanent partial disablement to the extent of 20 per cent. He was undergoing treatment of Orthopaedic Surgeon, Dr.Nanavati for a long spell of more than a year. Frequently, he was required to consult him and he had to undergo treatment continuously. The documentary evidence in relation to the treatment given by Dr.Nanavati are also placed on record. The amount awarded by the Tribunal of Rs.67,0000/- for personal injuries against the original claim of Rs.2,50,000/- a and the additional claim of an amount of Rs.75,000/- by way of filing cross objections, is in our opinion, fully justified from the ocular version as

well as the documentary evidence produced at Ex.265 to 303. The revised pay scale of Teachers and the supervisors of the Gujarat Krushi University are also required to be considered so as to make an attempt to assess the damages, as far as possible to reach near the justness of the claim and that too, in terms of money. It would, be therefore, necessary to look into the then prevalent pay scale and, thereafter, upwardly revised:

94. Assistant Professor:

Rs.700-1600 Rs.2200-40000 Rs.8000-13500

95. Keeping in view the provisions and in fulfillment of the constitutional responsibility for maintenance of standard in the field of agricultural education and research the Government of Gujarat in its different resolutions have revised the pay scales of teachers of the Agriculture University upon the recommendations of the Indian Council of Agricultural Research (ICAR), New Delhi, from time to time. Accordingly, as lastly, recommended by the ICAR, on the basis of Malhotra Pay Commission Report, the pays scales of Teachers of the Universities were revised by the Government resolution dated 20.3.89 and the same were made applicable to the teachers of the Universities which, again, came to be revised by a resolution dated 1st October, 1999. Lastly, revised pay fixation was made applicable with effect from 1st January 1996. It is also very clear from the resolutions issued by the State Government the upward revisions made by the State Government in the pay scales of the Teachers, a copy whereof was produced for our perusal and judicial notice of which can, safely be taken, in order to make assessment of damages as near as just.

96. While summarising the claim of the injured in this appeal, following aspects, unequivocally lead us to not only confirm the amount of compensation awarded by the Tribunal, but also to award additional amount of Rs.75,000/- as claimed in the cross objections by the original claimants.

(1) That the injured claimant is a living victim of the violent road mishap, but for the grace of God and timely help of a taxi driver, he would have become a victim of major mishap.

(2) He sustained serious injuries and fracture of D-9 vertebra which has in reality crippled him for the whole life to the extent of 20 per cent, permanent partial disablement.

(3) The bodily integrity of the claimant, who was just 35, at the relevant time is materially shattered.

(4) He is unable to ride a bike as a result of which he has to spend additional amount for transportation even for commuting to and fro to the University for discharge of his work.

(5) He remained under the medical treatment for a period of more than one year, including the treatment as an indoor patient and complete bed rest for a period

of more than 3 months. He, suffered loss on a account of the injuries as he could not attend the regular semester work in course of research leading to doctorate degree.

97. After having taken into account the aforesaid factual situation, oral and voluminous documentary evidence and the facts and aspects which we have highlighted, the claimant is entitled to additional amount, which is restricted to Rs.75,000/- in the cross objections. In aggregate, therefore, the claimant shall be entitled to an amount of Rs.1,42,000/- by way of compensation under both the heads, like, pecuniary and personal loss sustained by the claimant on account of the vehicular injuries resulting into permanent partial disablement. Therefore, the appeal is required to be dismissed and cross objections are required to be allowed. Accordingly, the appeal is dismissed and the cross objections are allowed.

98. First Appeal No.132/85 arising out of (MACP) No.427/81: This appeal is against the amount of compensation of Rs.1,29,000/- awarded to the claimant against the original claim of Rs.2 lacs, breakup of which is as follows:

Rs.50,000 Pain, shock and suffering. Rs.54,000 For future economic loss.
Rs.25,000 For medical expenses, etc. Rs.1,29,000 Total

99. The respondent, original claimant, Shantaben, widow of deceased Dr. Talati has also claimed an amount of Rs.70,000/- by filing cross objections. The Tribunal has dealt with the quantification of damages awarded to the claimant in para 35 to 39 of the impugned common judgment.

100. The claimant, Shantaben, was travelling in the passenger matador along her husband Dr. Talati. She was examined at Ex.44. Unfortunately, she lost her husband Dr. Talati who was also travelling in the matador on account of the accident. She also sustained serious injuries. She has stated in her evidence at Ex.44 that she sustained serious injuries, as a result of which she had become unconscious. She was shifted to Civil Hospital, Ahmedabad. He had sustained injuries on her face, head and back and other parts of the body. She was admitted as an indoor patient in the Civil Hospital, Ahmedabad for six days. Initially, she was shifted to a hospital at Junagadh from where she is transferred to the Civil Hospital, Ahmedabad and after discharge from Civil Hospital, Ahmedabad, she was undergoing treatment in a private hospital of Dr.George. She was also treated for fracture by Dr. Dinubhai, an Orthopaedic Surgeon in Ahmedabad. She had to stay for a spell of three to four months for treatment in different hospitals. It is also very clear from her evidence that on account of the severe psychological shock, and mental distress, she was not even informed for a period of three months about the unfortunate demise of her husband Dr. Talati.

101. After having, carefully, examined the record, we have found that she is a living victim of violent accident. She had sustained serious injuries and one of the injuries was of fracture of mandible. The photographs produced at Ex.47 and 48 of past and when compared with the photographs after the injuries, produced

at Ex.50 and 51, it becomes quite evident that not only she has sustained disfigurement of face, but the whole integrity of the face is violently shattered. This would, undoubtedly, cause a great amount of pain, shock and sufferings for the remainder of her life. She was 44 years at the time of accident. She has suffered so far, and she will have to suffer for many more years to come apart from the great loss of husband, because of the disintegrity of her body in general and the face in particular.

102. Considering the the above facts emerging from the record of the case, the additional amount claimed in the cross objections would appear to be fully justified. At this stage, the injuries noted and highlighted by Dr. Dinubhai A. Patel, Orthopaedic Surgeon, of Ahmedabad and produced at Ex.53, may be highlighted here as under:

103. IMPAIRMENT OF BODILY INTEGRITY:

"1. Walks with limp.

2. Operated scar over postero lateral aspect thigh left. Lower limb.

3. Difficulty in suqatting.

4. Recession right eye ball.

5. Difficulty in opening mouth.

6. Chronic Osteomyelitis maxillae with simsitis.

7. Disfigurement of face - because of multiple fractures facial bones.

8. X ray left - thigh shows nail in position and fracture united.

9. X ray for left lower limb and face. Pelvis shows fracture left public rami.

X ray for facial bone shows fracture nose bone. Maxillary antrum, floor of the orbit and maxillary floor.

10. X ray right knee shows fracture lower pole patella.

11. Flattening of the bridge of the nose."

104. Dr. Patel has also assessed the permanent partial disablement to the extent of 30 per cent on account of the injuries.

105. The medical certificate of Dr. R.A. Bhadelia is produced at Ex.154. It is very clear from the report and the certificate that the claimant had sustained various fractures. There were fractures of pelvis, left femur, mandible, and reverse water''s fracture. There were fractures of public rami on the left side. There was also fracture of middle third of femur. There was mandible fracture on the left side. There was also fracture of right orbit and one fracture of left zygomatic arch. X-ray reports are produced at Ex.155, 156, 158 and 160. Voluminous medical bills and receipts and X ray plates are also placed on records at Ex.239

to 249.

106. It is, also, clear from her evidence that she is unable to pursue normal avocation of pursuits of life on account of the permanent partial disablement to the extent of 30 per cent of the body. Obviously, therefore, she has to spend additional expenditure for engaging the services of hired person. The amount of Rs.54,000/- under the head of future economic loss awarded by the Tribunal in the peculiar facts and special circumstances highlighted hereinbefore and borne out from the evidence on record is on a very lower side. The claimant is entitled to at least an amount of Rs.1 lac. In other words, the claimant is entitled to an additional amount of Rs.46,000/- under the head of future economic loss. The Tribunal has also awarded an amount of Rs.50,000/- for pain, shock and suffering, which in our opinion, is required to be, upwardly, revised in view of the nature and number of injuries, the multiple serious injuries resulting into multiple fractures, the age and the nature of household work, the restricted movements, disfigurement of face, permanent partial disablement, which has not only handicapped her from the daily routines of life but has also caused great amount of pain, shock and suffering in past and also will continue in future, not only, cosmetically, but also psychologically, apart from physiological. In our opinion, therefore, she should be awarded additional amount of Rs.20,000/- under the head of pain shock and suffering, over and above the amount of Rs.50,000/ awarded by the Tribunal.

107. The amount of Rs.25,000/- awarded under the head of medical expenses, appears to be just and reasonable. Therefore, while dismissing the appeal against the award of Rs.1,29,000/- awarded by the Tribunal to the claimant, we are left with no option, but to award additional amount of Rs.66,000/- in the cross objections. Therefore, the claimant would be entitled to in aggregate an amount of Rs.1,95,000/- against the original claim of Rs.2 lacs. Cross objections are, therefore, required to be allowed while dismissing the appeal. Accordingly, cross objections to the extent of Rs.66,000/- are allowed. and the appeal is dismissed.

108. First Appeal No.133/85 arising out of (MACP) No.442/81.

109. In this appeal, challenge is against an amount of Rs.79,200/- awarded by the Tribunal to the respondent-original claimant, against the original claim of Rs.4,25,000/-. In this appeal also, the claimant has claimed additional amount of Rs.1,10,000/- by filing cross objections. In order to appreciate the merits of the appeal and also the cross objections, let us have, again a close look into the evidence relied on by the Tribunal and led by the claimant. The Tribunal has dealt with the quantification of damages to the original claimant in para 40 to 43 of the impugned common judgment. The claimant has been awarded an amount of Rs.79,2000 by the Tribunal, breakup of which is as follows:

Rs.25,000 For pain shock and suffering Rs.36,000 For future loss of income.
Rs.10,200 For loss of income for 4 months. Rs. 8,000 For medical expenses.

Rs.79,200 Total:

The claimant is examined, at Ex.320. He was one of the passengers travelling in the matador. He had sustained serious injuries. Since the injured had sustained serious injuries, he was, initially shifted to Government Hospital, Junagadh, where he was kept an indoor patient. Before that, he was given preliminary treatment in the Government Hospital at Jetpur, from where he was shifted to Junagadh Civil Hospital and since he was required to be shifted for better treatment in bigger hospital, he was shifted and admitted in the Civil Hospital, Ahmedabad, where he was kept as indoor patient for ten days. The medical certificate of Civil Hospital is produced at Ex.322, whereas, discharge certificate of Civil Hospital, Junagadh is produced at Ex.323. He was examined and treated by various doctors in course of prolonged treatment.

110. Needless to reiterate that the original claimant, who was travelling in the matador, which has got fire after the violent impact resulting into three deaths, survived a major mishap as he was dragged out by a taxi driver, before the fire engulfed the matador. As per the medical certificate produced at Ex.323 and issued by the Civil Surgeon, Junagadh, the claimant had sustained serious injuries and following fractures:

- (1) Fracture of right tibia upper end.
- (2) Fracture of left tibia and fibula upper end.
- (3) Fracture of right ulna lower one-third.
- (4) Fracture of scapula right side.

111. Under the medical advise, he was shifted to the Civil Hospital at Ahmedabad on 14.5.81 and, whereas, accident occurred on 9.5.81. Thus, he was treated as an indoor patient in Civil Hospital, Junagadh for five days.

112. The injured claimant Dr. Dange, has sustained permanent partial disablement. Medical certificate issued by Orthopaedic Surgeon, Dr. R.K. Thakkar dated 12.7.83 is produced at Ex.411. Dr. Thakkar has assessed the permanent partial disablement to the extent of 20 per cent in the working of right upper limb. The claimant has sustained one-fourth inch shortening of his right ulna bone and one-fourth inch wasting of muscles of right forearm. It is also very clear from the evidence and the medical certificate of Dr. Thakkar that the claimant has sustained permanent partial disablement to the extent of 25 per cent in the working of right lower limb.

113. We have gone through, dispassionately, the observations and analysis of evidence made by the Tribunal in para 40 to 43 of the impugned common judgment and we find that the amount of Rs.79,200/- awarded by the Tribunal under both the heads is grossly inadequate and is required to be revised upwardly. No doubt, original claim of the injured was Rs.4,25,000/-. He has claimed additional amount of Rs.1,10,000/- over and above the amount awarded

by the Tribunal by filing cross objections. In order to appreciate the merits of the additional amount claimed, it would be expedient to refer to the relevant material aspects pertaining to the salary, service and the loss in future income on account of permanent partial disablement placed on record. Salary certificate is produced at Ex.45 issued by the Gujarat Krushi University. The claimant was working as an Associate Research Scientist, at the relevant time in the University. The claimant is holding doctorate degree in plant pathology. He earned his doctorate degree from the Research Institute at New Delhi. He was earning an amount of Rs.2553/- at the relevant time when he became an unfortunate victim of the road accident. He was in the pay scale of Rs.1200-1900 which was against revised to Rs.3700-5700 and which is now revised to Rs.12000-18300 as per the resolution dated 1st October, 1999 and the revised pay fixation as stated earlier is made applicable with effect from 1.1.96. The Tribunal, unfortunately, was not having the benefit of looking the revised pay scale which is now brought to our notice by placing copies of the notifications.

114. It is clear from the evidence that the injured claimant on account of permanent partial disablement and shortening of limbs, finds difficulty in walking and standing for long spell. He also finds difficulty in lifting weight. Flexion of right hand and right leg is restricted on account of disablement. He was also, advised to undergo neurological treatment after consultation, but till date of his evidence, which came to be recorded on 27.9.93, he had not consulted and there is nothing on record that he had consulted and as such sustained any neurological defect.

115. According to the evidence of the claimant, he spent more than Rs.20,000/- under the head of medical expenses, transport charges, special diet and other miscellaneous charges. The Tribunal has only awarded an amount of Rs.8,000/- under these heads. After having considered the voluminous documentary evidence, medical bills and receipts including X-ray expenses and the charges of consultants, the claimant is entitled to at least an amount of Rs.15000/- under the head of medical expenses, whereas, the Tribunal has awarded only an amount of Rs.8,000/-. Therefore, the claimant is entitled to additional amount of Rs.7000/- under this head.

116. The amount of Rs.25,000 is awarded by the Tribunal for pain, shock and suffering and an amount of Rs.36000 is awarded under the head of future economic loss. In our opinion, in the light of the evidence on record, the amount awarded by the Tribunal under both the heads require upward revision in the light of the evidence on record. In view of the facts and circumstances and the personal loss sustained by the claimant, resulting into permanent partial disablement, the claimant is entitled to an additional amount of Rs.15000/- under the head of pain shock and suffering and Rs.81000 under the head of future economic loss. The Tribunal has assessed the future loss considering the income which is now upwardly revised. As indicated hereinabove, the present pays scale of the claimant is Rs.12000-18300. The claimant was in the pay scale

of Rs.1200-1900 which went on revising and increasing and at the present the pay scale is Rs.12000-18300 with effect from 1.1.96. Therefore, the datum figure taken by the Tribunal at $\text{Rs.}200 \times 12 = \text{Rs.}2400/-$ is required to be enhanced to $\text{Rs.}650 \times 12 = \text{Rs.}7800/-$. Therefore, the claimant is entitled to additional amount of $\text{Rs.}450 \times 12 = \text{Rs.}5400/-$. The claimant was 39 years old at the relevant time, whose, superannuation age is 60 as per the evidence on record. Even after superannuation, looking to the expertise and the speciality, man of his standing, as per the evidence on record, would, ordinarily, get reemployment. Even then, the multiplier of 15 which is adopted by the Tribunal would be just and proper. The claimant, therefore, would be entitled to additional amount of $\text{Rs.}5400 \times 15 = \text{Rs.}81000/-$ under the head of loss of future loss of income. The amount of Rs.10200 awarded by the Tribunal by way of loss of income of four months is justified and we do not find any reason to enhance it or revise the same.

117. After having taken into consideration the overall picture emerging from the present case, nature of injuries, the amount of pain, shock and suffering, physical impairment sustained by the claimant, his age and avocation and the extent of permanent partial disablement of his anatomy, the claimant is found entitled to additional amount of Rs.1,03,000/- over and above the amount of Rs.79200/awarded by the Tribunal. Therefore, the original claimant is entitled to aggregate sum of Rs.1,8 Rs.4,25,000/-. The modified break up would be as under:

Head	Amount	Pain, shock and suffering	Rs. 40,000	Future loss of income
	Rs.117,000	Loss of past income	Rs. 10,200	Medical Expenses, special diet transport charges, etc.
	Rs. 15,000	Total:	Rs.1,82,200/	

118. The claimant has claimed an amount of Rs.1,10,000 by filing cross objections. He is found entitled to additional amount of Rs.1,03,000/-. Therefore, the cross objections are required to be allowed to that extent while dismissing the appeal. The cross objections are accordingly allowed while the appeal is dismissed.

119. First Appeal No.134/85 arising out of (MACP) No.447/81:

120. In this appeal, the challenge is against the award of an amount of Rs.85,900/- to the original claimant, respondent herein, by way of compensation in both the heads, break up of which is as follows:

Rs.15,000 for pain, shock and sufferings;	Rs.54,000 for future economic loss
Rs.10,000 for medical expenses;	Rs. 6,900 for loss of income
Rs.85,900/-. Total	

121. By filing cross objections, original-claimant Dr. Vaishnav claimed an additional amount of Rs.1 lac. The original claim was Rs.2,75,000/-. The claimant was examined at Ex.314. The Tribunal has taken into consideration the evidence led by the claimant and the amount of damages awarded in para 48 to 52 of the impugned common judgment. The claimant was working as Professor in the

Gujarat Krushi University. The claimant, Dr.Vaishnav, is holding the degree of doctorate. The claimant was earning aggregate amount of Rs.2210/- per month at the relevant time. Salary certificate is produced at Ex.315. He was also working as Rector of the University hostel. However, he was not getting any additional remuneration as he was given residential accommodation by the University. He was staying in a bungalow of the University in lieu of his services as a Rector of the University, at the relevant time.

122. Dr.Vaishnav was also travelling on the unfateful day in the matador. As observed hereinbefore, like other few passengers, he had also survived a major mishap. He was dragged out from the burning matador by the taxi driver. He had, however, sustained serious injuries on account of the violent impact of the ST bus. He was, initially, shifted to the Government dispensary at Jetpur from where he was shifted to the Government Hospital, Junagadh, where he was kept as an indoor patient for a period of 15 days. Thereafter, he was undergoing treatment for a long period. He had sustained serious injuries, out of which one was on the head. He was examined and treated by Neurologist Dr. Prabodh Thakkar and also by Dr. Buch. According to his evidence, he spent an amount of Rs.15000/- for medicine, medical charges, special diet and incidental expenses like, transport. He was attended by his elder brother and sometimes by his brother-in-law during the course of his treatment in the hospital and during the course of treatment at home. His clothes, kit, including tape recorder, cassettes, etc. were also burnt on account of fire in the Matador. According to his evidence, he suffered loss of Rs.5500 because of loss of movables with which he was travelling in the Matador.

123. The claimant Dr.Vaishnav has also testified that on account of the permanent partial disablement, his mobility is restricted and he is, therefore, unable to attend the examination work outside the headquarters, which otherwise he used to attend outside the State in different Universities four to five times a year. He has to keep one attendant on account of the permanent partial disablement and he has, therefore, claimed an amount of Rs.2,000/- per year. He has also suffered loss on account of the disablement the free residential accommodation which he used to get as a Rector of the hostel of the University, over and above his teaching work. It is stated by him in his evidence that he was getting Rs.160/- per month, i.e. 10 per cent of the his basic for doing Rectorship. No doubt, he has also stated in his evidence that he is apprehensive of getting promotion as Director. He has also deposed that he finds it difficult to lift weight. He also finds difficulty in walking at a stretch for a long distance on account of disablement.

124. The service record of the claimant is produced at Ex.369. The salary certificates of the claimant are produced at Ex.315 and 374. The entire medical record is produced at Ex.455. The permanent partial disablement is produced at Ex.451, whereas, certified issued by Dr.Desai is produced at Ex.472. The medical certificate issued by Dr.Kachhadia, who had examined and treated the claimant

first, when he was admitted in the Civil Hospital at Junagadh, is produced at Ex.306. According to his evidence, claimant Dr.Vaishnav had sustained serious injuries on right side of his body including the back portion of the head. After preliminary treatment given to him at the hospital at Jetpur, he was shifted to Junagadh Hospital where he was initially examined and treated by the said doctor.

125. The claimant was also examined by Dr.Buch who is examined at Ex.450. Dr.B.C.Buch was working as Psychiatrist at the relevant time in Junagadh hospital. When he examined the claimant Dr.Vaishnav, he was in semiconscious position. It is very clear from his evidence that the physical condition of the claimant, Dr.Vaishnav, was very precarious. He has observed that the claimant presented a classical sequence of coma, delirium, and korsakol syndrome indicating concussion. It was followed by signs of right sided cerebellar damage. He also noticed post concussion syndrome characterised by headache, irritability, fatigability and difficulty in concentration. It is also very clear from his evidence that he found right sided cerebellar damage in the form of difficulty in speech and difficulty in precise and accurate movements of right upper and lower limbs. The claimant Dr.Vaishnav was also examined by Dr. B.N. Desai, Neurosurgeon. He had examined Dr. Vishnav on 21.8.83. Dr. Desai use to attend the Junagadh hospital sometimes in a month as he was working as Honorary Surgeon in the Vadilal Sarabhai Hospital at Ahmedabad. He has also, fully, supported the evidence of Dr.Buch. He has highlighted the difficulties experienced by claimant Dr. Vaishnav in para 3 and 4 of his evidence. Medical certificate issued by him is produced at Ex.472.

126. It becomes quite evident from the evidence of Dr. Buch as well as Dr. Desai that claimant, Dr. Vaishnav, on account of the injuries sustained permanent partial disablement and he has also sustained disablement in his neurological status. According to the evidence of experts in neurology and neurosurgery, the claimant, Dr. Vaishnav would find difficulty in pursuing the normal pursuits and avocation of life and keeping his balance for long, while standing. He is likely to fall down on account of the injury and sprain and he would be exposed to higher degree of risk while crossing road or boarding or alighting vehicle. It is, clearly testified by expert Dr. Desai that Dr. Vaishnav would not be able to manage or control while riding a bike or driving a scooter. What a great unwarranted, untimely, calamity Dr.Vaishnav has become victim of, in his 40's who is a researcher and scientist, who was working as an examiner of postgraduate students as well as students aspiring for doctorate.

127. The permanent partial disablement certificate issued by Dr. Buch is produced at Ex.451 and certificate issued by Dr. Desai is produced at Ex.472. There is no any manner of doubt from the medical record of the experts of Neurology that claimant Dr. Vaishnav, upon neurological evaluation and examination is fund to be sustained mild dysphasia, mild ataxia on the right side and rhombergi positive on account of the right side cerebellar damage due to the injuries sustained by him in the vehicular accident.

128. In the light of the aforesaid facts and circumstances and the peculiar disablement, neurological and physiological, sustained by the claimant, Dr. Vaishnav, we have no hesitation in finding that the amount of Rs.85,900/- awarded under the both the heads by the Tribunal is grossly inadequate. The claimant has, however, restricted the additional amount of claim to the extent of Rs.1 lac, by filing cross objections. The amount of Rs.15,000/- awarded under the head of pain, shock and suffering by the Tribunal is also quite inadequate. In addition to the amount of pain, shock and suffering so far the claimant underwent and also in future, particularly in the December years of life, he would become not only a victim of ageing process but the permanent partial disablement, both physical as well as psychological, and it would enhance the woes, stress and strains at the old age. We are, therefore, of the clear opinion that the claimant is entitled to an amount of not less than Rs.40,000/- under the head of pain, shock and suffering in view of the type, nature and status of both physiological and psychological injuries sustained by him causing restricted movements and permanent partial disablement. As stated above, the Tribunal has awarded only an amount of Rs.15,000/- on this count. Therefore, the claimant is entitled to an additional amount of Rs.25,000/- under this head. In all, he would, therefore, be entitled to an amount of Rs.40,000/- for pain, shock and suffering.

129. The award of Rs.54,000/- under the head of future economic loss pursuant to the impugned judgment of the Tribunal is also on the lower side considering the real disability, permanent impairment, both physiological and psychological on account of which the claimant Dr. Vaishnav is unable to even use any two wheeler vehicles since he is unable to maintain balance. He has lost the benefits derived by him out of Rectorship. He was enjoying free housing accommodation and additional 10 per cent of his basic pay which has been lost due to the permanent partial disablement. The revision of pay scale which we have, hereinabove, noted, obviously, would not have been contemplated by the Tribunal as the impugned judgment is of 1985. We have been enlightened and appraised of the two subsequent revision in pay scales pursuant to the recommendations made by the Indian Council of Agricultural Research and on the basis of Malhotra Pay Commission Report. The pay scale of the claimant which was Rs.1200-1900, at the time of unfortunate, road mishap has been periodically revised and is now fixed in the pay scale of Rs.12000-18300, which was brought into effect from 1.1.96. The minimum time-scale under the notification dated 1st October, 1999 of the Government of Gujarat on the date of effective day or the cut-off date would come to Rs.14940/-, whereas, the claimant when he was examined, was earning consolidated salary of Rs.2260/-. Even while taking a conservative view in the matter, the claimant would, undoubtedly, put to an annual economic loss of $\text{Rs.}700 \times 12 = \text{Rs.}8400/-$. Looking to the age of 44 of the claimant, multiplier adopted by the Tribunal requires no change. Therefore, the claimant would be entitled to an amount of $\text{Rs.}8400 \times 15 = \text{Rs.}1,26,000/-$, whereas, he was awarded a meagre amount of

Rs.54,000/-. Therefore, he would be entitled to an additional amount of Rs.72,000/under the head of future economic loss.

130. The claimant is, therefore, found entitled to an additional amount of Rs.72,000/- under the head of future economic loss and an amount of Rs.25,000/- under the head of pain, shock and suffering. Therefore, the claimant would be entitled to an amount of Rs.97,000/- by way of additional amount of compensation. An amount of Rs.10,000/- is awarded by the Tribunal for medical expenses. In view of the evidence on record, we find that this amount is also required to be enhanced to an extent of Rs.10,000/-. The amount of Rs.6900/- awarded under the head of past loss of income is left undisturbed. Though the claimant is found entitled to more since he has lost his valuables on account of burning in the fire in the matador in which he was travelling and also loss of past income and loss of leave, the amount which is found entitled to is exceeding the amount claimed by filing cross objections, we do not discuss these heads in detail. In our opinion, therefore, the claimant is found entitled to in aggregate an amount of Rs.89,900/- awarded by the Tribunal and at least additional amount of Rs.1 lac which would come to Rs.1,85,900/- against the original claim of Rs.2,75,000/-, the break up of which is as follows:

Rs. 40,000 for pain, shock and suffering Rs. 1,26,000 for future economic loss (Rs.700x12x15) Rs. 20,000 for medical expenses, special diet and transportation charges, etc. Rs. 6,900 for loss of past income, etc. Rs.1,92,900/- Total

131. Since the claim is restricted to an amount of Rs.1,85,900/-, the claimant is entitled to full amount as claimed in the cross objections. Cross objections are, accordingly, allowed while dismissing the appeal, with interest.

132. First Appeal No.135/85 arising out of (MACP) No.443/81: In this case, the Tribunal has awarded consolidated sum of Rs.78,100/- under both the recognised heads to the respondent original claimant, Babulal, against his original claim of Rs.3,25,000/-. The appellant GSRTC has also questioned this amount of compensation, whereas, original claimant has sought additional amount of compensation of Rs.50,000/- by filing cross objections. With a view to examine and appreciate the merits and the challenge against the amount awarded by the Tribunal, let us, now, turn to the relevant and material factual situation, in the present appeal.

133. The Tribunal while awarding an amount of Rs.78,100/- by way of damages has dealt with the case of the claimant, Babulal, in para 44 to 47 in the impugned common judgment. We have, dispassionately, examined the observations and the views recorded by the Tribunal. The claimant was examined at Ex.304. Salary certificate issued by the University is produced at Ex.306. The claimant was earning consolidated amount of Rs.1424/-, in the pay scale of Rs.700-1600 as an Assistant Professor at the relevant time. The said pay-scale, as observed hereinbefore, has been periodically revised. Initially, it was revised

in the pay scale of Rs.2200-4000, which has again been revised in the scale of Rs.8000-13500/-. Unfortunately, the road accident in question has taken a great toll not only in terms of human loss as three passengers travelling in the matador succumbed to injuries sustained by them, but also on account of the serious permanent partial disablement sustained by other co-passengers. This would, obviously, put a great drain not only to social but, intellectual resources. It has been observed, hereinbefore, that in cases of living victims of violent accident that the permanent partial disablement sustained by highly intellectual experts in the field of entomology and other disciplines of agricultural science have not only paralysed and disturbed the normal pursuits and avocation of affected persons, but also in wider sense in larger complexion and perception to the societal interest and the intellectual resources and the case of the present claimant is, again, a heart-stealing story of living victim which we have, painfully, read from his evidence and from the evidence of the experts.

134. The claimant was working, at the relevant time, as an Assistant Professor and Researcher in Gujarat Agricultural University. He was holding post graduation in M.Sc. He was, unfortunately, travelling in the matador, at the relevant time when the offending ST bus voluntarily dashed against the matador resulting into serious injuries and permanent partial disablement. According to his evidence, he was, initially shifted to Government Hospital, Jetpur and after preliminary treatment, he was shifted to Junagadh Civil Hospital, where he was admitted as an indoor patient for 10 days and thereafter, he was shifted to his hometown, from where he used to visit the OPD at Junagadh hospital. He, during the spell of 33 days had visited 5 to 6 times the Civil Hospital, Junagadh. He had sustained fracture of right leg and also serious injuries on his right knee. He has stated, in his evidence that on account of injuries and violent dashing his audibility is impaired to an extent. He was, therefore, undergoing treatment for a long time at his home town along with treatment for fracture. It is also testified by him that he was treated by Dr. Mansatta, at Palanpur, who used to visit from Ahmedabad hospital and under his management he underwent treatment for some time and thereafter he was also treated by Dr. Jayant H. Patel, ENT Surgeon and Specialist in Microsurgery, who advised him for treatment and operation of ear, since his hearing capacity was affected. However, there was risk involved in the operation, he did not opt for it in Ahmedabad and he pulled on with disablement. Medical certificates are produced on record. Medical certificate of Dr. Jayant Patel is produced at Ex.421. Medical bills and certificates are produced at 307 to 313. Despite rigorous treatment taken from Dr. Jayant Patel, ENT Surgeon, there was not much improvement in the hearing impairment. It is also testified by the claimant that the said disablement and difficulty persisted even on the date of his evidence. The claimant was in the pay scale of Rs.700-1600. As we have noticed, the said scale has gone up to Rs.8000-13500. According to his evidence, as a result of permanent partial disablement, his earning capacity is affected.

135. The claimant has placed reliance on the evidence of Orthopaedic Surgeon

Dr. C.J. Nanavati, who is examined at Ex.426, and who was working as an Orthopaedic Surgeon and Professor of Orthopaedic in Jamnagar Medical College, at the relevant time. He examined the claimant on 27.6.83 and found fractures in the knee joint. He also examined him to assess the permanent partial disablement and has also issued medical certificate in that behalf at Ex.427. As per the medical evidence and medical certificate issued by Dr. C.J. Nanavati, the claimant has sustained permanent partial disablement to the extent of 35 per cent in the right lower extremity. He has diagnosed intracicular fracture of lateral condyle of right tibia with compression of lateral popliteal nerve right side. The conclusion of permanent partial disablement recorded by Dr. Nanavati is based on his examinations and observations made in medical certificate at Ex.427, which reads as under:

136. DISINTEGRATION OF ANATOMICAL FRAME:

- "1. Paraspinal spasms extending from the back of neck to lower lumbar region.
2. Flexion of spine upto knee bending in standing position, patient flexes hip only, the back bones does not bend. L.S.stiffness of spines.
3. Extension] Rotation Bilateral [severely restricted Side bending Bilateral]
4. Minimal tenderness at D 8-9 diffuse.
5. Tenderness of L4 level, 2 CM. Lateral to mid line on (L).
6. S.L.R. 60/60 R/L.
7. Sensory deficit L4-S-S 1-2-3.
8. C.N.S. Rest N.A.D.
9. Patient walks only with Taylors type corset.
10. Pulse 80 - BP 110/70
11. No any other type of injury detected."

The Tribunal has awarded an amount of Rs.78,100/- under both the heads, breakup of which is as follows:

Rs.25000 for pain, shock and suffering. Rs.45000 for future economic loss. Rs. 6000 for medical expenses. Rs. 2100 for loss of income. Rs.78100/- Total

137. The claimant was aged about 39 years at the relevant time. He had sustained permanent partial disablement to the extent of 35 per cent in the right leg. So the functional utility of the right leg is very much impaired. It would, definitely cause great amount of pain, shock and suffering for the remaining years of life also. The hearing impairment will also tell upon the effective and efficient working of an individual and may at times prepare a launching pad for a greater or bigger accident. The permanent partial disablement assessed by ENT Surgeon Dr. Jayant Patel is in terms of the hearing impairment. It is also very

clear from the evidence of Dr. Patel that on account of the accident, the hearing is affected and upon audiometry examination the loss in the right ear is about 25 dB. This is within the normal limit, whereas the loss sustained in the left ear is about 50 dB and therefore Dr. Patel has made his assessment upon functional loss of the ear and also on the expert analysis and opinion of Arnold Mann, as per his certificate at Ex.421 dated 5.2.83.

138. The amount of Rs.25,000/- awarded by the Tribunal in the light of the facts and circumstances and the extent of disablement sustained by the claimant in hearing as well as in the functional loss of right leg, is on conservative side and an additional amount of Rs.5,000/would be justified. Whereas, under the head of future economic loss, the Tribunal has awarded monthly loss at Rs.250 and has adopted the multiplier of 15. Therefore, the Tribunal awarded an amount of $\text{Rs.250} \times 12 \times 15 = \text{Rs.45000/-}$ under the head of future economic loss. Considering the evidence of and particularly the extent of disablement and the revision of pay scale, benefit of which was not their with the Tribunal, we are of the opinion that the amount of Rs.45,000/- is inadequate and is required to be upwardly revised. In our opinion, in the facts and circumstances, the claimant is likely to suffer additional economic loss of Rs.200/- per month. Therefore, the claimant would be entitled to $\text{Rs.200} \times 12 \times 15 = \text{Rs.36000/-}$ by way of additional compensation under the head of future economic loss. In so far as Rs.6000 awarded under the head of medical expenditure and an amount of Rs.2100/- under the head of loss of past income are concerned, we find the same in order and, therefore, we confirm the said amount under both the heads.

139. In the facts and circumstances, the claimant is found entitled to additional amount of Rs.41,000/- against the additional claim made in cross objection of Rs.50,000/-. The claimant, therefore, would be entitled to an aggregate Rs.1,19,100 ($\text{Rs.78100} \times \text{Rs.41,000}$) under both the heads with interest. Consequently, the appeal is dismissed while allowing the cross objections to the aforesaid extent.

140. Insofar as the award of interest is concerned, the Tribunal has awarded only interest at the rate of 6 per cent on the amount awarded. The learned advocate appearing for the parties have disputed the rate of interest. The learned advocates appearing for the tort-feasor have contended that the rate of interest in the light of the facts and circumstances and the date of accident is quite just and reasonable, whereas, learned advocate appearing for the victims of the tort have contended that the rate of interest awarded is quite low and is required to be enhanced. The amount of interest can be awarded by the Tribunal and, ordinarily, the award of interest in absence of any upper statutory limit like Workmen Compensation Act, obviously, would fall in the wide discretary regimen. The Tribunal, therefore, has taken into account variety of circumstances and many ponderables and imponderables. No doubt, consistently, the rate of interest which earlier used to be at 4 per cent went on increasing by passage of time, by catena of judicial pronouncements. The Tribunal is empowered to award

interest, apart from the Interest Act of 1978, under the provisions of section 110-CC of the Old Act, whereas, under the New Act, corresponding provision is incorporated in section 171 of the Act. It is, therefore, left to the discretion of the Tribunal to award appropriate reasonable rate of interest on the amount of damages awarded to the victims of tort against the tort-feasor.

150. Considering all the relevant facts and circumstances of the case, the rate of interest is enhanced from 6 per cent to 12 per cent per annum on enhanced amount only. The enhancement would be 15 per cent from the date of appeal on enhanced amounts, till the payment. However, a concession of three per cent can be enjoyed by the tort-feasors, if the enhanced amount is paid within three months from the ready date of delivery of certified copies, obviously, then the rate of interest shall be calculated at 12 per cent per annum instead of 15 per cent per annum.

151. In the result, all appeals are dismissed while cross objections are allowed, as stated above.