

(1991) 01 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : L.P.A. No"s. 4 to 15, 16 and 17 to 20 of 1990

Himachal Road Transport Corporation

APPELLANT

Vs

Arvind Singh Mann and Others

RESPONDENT

Date of Decision : 14-01-1991

Acts Referred:

Himachal Pradesh Passengers and Goods Taxation Act, 1955 — Section 3A
Motor Vehicles Act, 1988 — Section 110A

Citation : (1991) ACJ 825

Hon'ble Judges : P.C. Balakrishna Menon, C.J.;Devinder Gupta, J

Bench : Division Bench

Advocate : Deepak Gupta, for the Appellant; Bandana Kuthiala, Kedarishwar, M.L. Sharma, B.K. Malhotra and M.C. Mandhotra, for the Respondent

Judgement

Devinder Gupta, J.—A common question of law, which arises for determination in these Letters Patent Appeals, is as to whether the payment made by the State Government under the Scheme known as "Himachal Pradesh Scheme for the payment of ex gratia grant to a passenger" (hereinafter referred to as "the Scheme"), previously known as "Himachal Pradesh Passenger Insurance Scheme" framed by the State of Himachal Pradesh u/s 3-A of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 (Act No. 15 of 1955) (hereinafter referred to as "the Passengers and Goods Taxation Act") and the amount paid by the appellant, namely, the Himachal Road Transport Corporation, by way of interim relief immediately after an accident is liable to be deducted from out of the amount of compensation awarded by the Tribunal to the claimants under the provisions of the Motor Vehicles Act, 1939 (as replaced by Motor Vehicles Act, 1988) (hereinafter to be called as "the Act").

2. The State legislature enacted Passengers and Goods Taxation Act, 1955, with a view to provide for levying of tax on passengers and goods carried by road in certain motor vehicles. Section 3-A was added to the principal Act by the Himachal Pradesh Passengers and Goods Taxation (Amendment) Act, 1977 (Act

No. 1 of 1978) which came into force on and with effect from February 3, 1978 and provides for levying of surcharge on the tax payable by every passenger carried by a stage/ contract carriage for the purpose of insurance of passengers under the Scheme which was required to be prepared and notified by the State Government. Section 3-A of the Act reads as under:

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

3. The State Government in pursuance to the aforementioned provisions contained in Section 3-A of the Passengers and Goods Taxation Act, framed the Scheme and notified it in the official Gazette on November 18, 1977. Initially, the Scheme was known as Himachal Pradesh Passengers Insurance Scheme but subsequently by another notification dated November 19, 1977, its nomenclature was changed and now it is known as "Scheme for the payment of ex gratia grant to a passenger". The Scheme makes a provision that the amount received u/s 3-A of the Passengers and Goods Taxation Act shall be credited to a fund which is to be operated upon by the Commissioner Transport of State of Himachal Pradesh or by such other officer of the State Government as may be authorised by the State Government in this behalf. The Scheme has authorised the State Government to make rules for the administration of fund. Para 2 of the Scheme provides for the risk covered and para 4 thereof provides for the Schedule of payment to be made under the Scheme, which are reproduced as under:

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

All bona fide passengers travelling in the stage carriage or contract carriage as hereinabove mentioned and whose destination or starting point falls within the State of Himachal Pradesh shall be entitled to the ex gratia payment for death or disablement caused in an accident within the territory of Himachal Pradesh and as laid down in the Schedule.

XXX XXX XXX 4. Schedule for the amounts of ex gratia payment.-(a) In case of death, the amount of ex gratia payment shall be Rs. 10,000/- in respect of one passenger above the age of 12 years.

The Schedule for the payment of insurance amount has been amended from time to time. Initially, in case of death the amount was Rs. 10,000/- in respect of one passenger above the age of 12 years and presently it is Rs. 35,000/-.

4. Besides the aforementioned Scheme, which was framed by the State Government, the Board of Management of the appellant Corporation separately took a decision for grant of interim reliefs to the victims of accident immediately after any accident. In case of death, the amount of interim relief payable to the heirs was initially Rs. 1,000/- and now it is Rs. 3,000/-, whereas in case of injury such amount payable to an injured was Rs. 200/- which is now Rs. 500/-. According to the appellant, these payments of interim relief and of the amount under the provisions of the Scheme should be taken into consideration and deducted from out of the amount of compensation payable to a claimant under the provisions of the Act.

5. The Claims Tribunal had no occasion to consider the plea of the appellant as the same was not raised before it during the trial but it was during the course of hearing of appeal against the award made by the Accidents Claims Tribunal that the matter was raised for the first time by the appellant Corporation. The learned single Judge has held that the amounts are not liable to be taken into consideration and deducted from out of the amounts of compensation. [See Arvind Singh Mann Vs. Himachal Road Trans. Corpn. and Others, The appellant has made a challenge in these appeals to this finding of the learned single Judge by taking up a plea that the purpose of framing the Scheme and for providing interim relief was to ensure minimum payment to the injured/to the heirs of the deceased without going into the cause of the accident and this being a novel Scheme was prevalent only in the State of Himachal Pradesh for which a small surcharge on the passenger tax is charged from passengers of stage/contract carriages under the provisions of the Passengers and Goods Taxation Act and as the Claims Tribunal is required to award just compensation under the provisions of the Act to the injured/to the heirs of the deceased, the same necessarily has to be arrived at on the general principle by balancing on one hand the loss to the claimant of the future pecuniary benefits and on the other the pecuniary advantage which from whatever source comes to him by reason of death, that is to say, by balancing loss and gains to a dependant by the death and as such the amount being benefit arising out of the death in an accident, the amount is required to be taken into consideration and deducted from out of the amount of compensation. According to the learned counsel for the appellant, the Scheme is no fault Scheme and though no fault liability was introduced for the first time in the Act in the year 1982 by addition of Section 92-A on the basis of recommendations made by the Supreme Court in Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 but within the State of Himachal Pradesh

keeping in view the peculiar circumstances, this Scheme was introduced in the year 1977 therefore, benefit of the same must be given to the appellant.

6. Section 110 of the Motor Vehicles Act, 1939, provides for the constitution of the Claims Tribunal for determination of the amount of compensation payable. Section 110-A provides for the procedure and circumstances under which the family of a victim of a motor accident can get the compensation. u/s 110-B, the Tribunal is required to fix such compensation which appears to it to be just. The power given to the Tribunal in the matter of fixation of compensation under that provision is wide enough. What should be the just compensation depends upon the circumstances of each case and the courts have spelt out and enunciated valuable principles from time to time, which guide the determination of compensation in a particular situation. Prior to the amendments which were carried out in the Act by introducing Section 110-A to Section 110-F and making provisions for the establishment of Tribunals, the right to claim damages by the legal representatives of a deceased in respect of an accident, where the latter met with his death was actionable under the provisions of Fatal Accidents Act, 1855 in civil courts. The effect of new provision was to create a new forum thus taking away the jurisdiction of the ordinary civil courts. The Supreme Court in *Gobald Motor Service Ltd. V.R.M.K. Veluswami* 1958 ACJ 179 approved the mode for estimating the damages as laid down by House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) 1 ALLER 657 and *Nance v. British Columbia Electric Railway Co. Ltd.* 1951 AC 601 and observed that in calculating the pecuniary loss to the dependants many imponderables enter into consideration and the general principle is that the pecuniary loss could be ascertained only by balancing, on the one hand, the loss to the claimants of the future pecuniary benefit and, on the other, any pecuniary advantage which from whatever source comes to them by reason of death, that is, balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately. Section 1-A of this Act was held, in substance, a reproduction of English Fatal Accidents Act, 9 and 10 Vict. Ch. 93, commonly known as the Lord Campbell's Act. This principle was later on applied in fixing compensation under the provisions of the Act by the Supreme Court in *Sheikhupura Transport Co. Ltd. v. Northern India Transporters' Ins. Co. Ltd.* 1971 ACJ 206 by observing in para 6 of the report as under:

Under Section 110-B of the Motor Vehicles Act, 1939 the Tribunal is required to fix such compensation which appears to it to be just. The power given to the Tribunal in the matter of fixing compensation under that provision is wide. Even if we assume (we do not propose to decide that question in this case) that compensation under that provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1855 (Act 13 of 1855), the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the claimants of the future

pecuniary benefit and on the other, any pecuniary advantage which from whatever sources comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained-See Gobald Motor Service Ltd. v. R.M.K. Veluswami 1958 ACJ 179.

7. Section 1-A of the Fatal Accidents Act, which provides for award of damages, is as under:

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 to recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

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

8. Section 110-A of the Act speaks of an application being moved for grant of compensation arising out of an accident. Section 110-B of the Act requires the Tribunal to fix such compensation which appears to it to be just. Neither the provisions of Fatal Accidents Act, 1855, have been applied to the proceedings before the Tribunal, nor the provisions of the Act speak of damages. The legislature when enacted and brought on the statute the provisions of Section 110-A to Section 110-F by Motor Vehicles Amendment Act (100 of 1956) will be presumed to be aware of the existence of the provisions of the Fatal Accidents Act, 1855 and difference between the two terms, namely, damages and just compensation. Damages are given for an injury suffered. Compensation is by way of atonement for the injury caused with intent to put either the injured party or those who may suffer on account of the injury in a position as if the injury was not caused by making pecuniary atonement. The legislature, therefore, will be presumed to have intended that in case of fatal accidents arising out of the use of motor vehicles to determine just compensation to recompense the legal representatives/ dependants in equivalent money value for the injury caused.

9. A Division Bench of this court in H.P. Road Transport Corporation v. Pandit Jai Ram 1980 ACJ 1 has observed that u/s 110-B of the Act, it is the just compensation which is required to be awarded. It is observed in para 8 of the

report as under:

While considering the question of choosing a suitable method for assessing compensation under both the Sections, one important fact which the court should bear in mind is that u/s 110-B of the Motor Vehicles Act it is the "just" compensation which is required to be awarded. Therefore, no method of calculation of compensation would be justified if it does not result in awarding the amount which is not "just" looking to the peculiar facts of each case. In other words, every method of calculation must be treated as subordinate to the necessity of giving a "just" compensation. Therefore, though while adopting various methods of determining compensation for loss of dependency and loss to the estate the court may take into consideration the principles propounded by judicial pronouncements with regard to the implementation of the provisions contained in Section 1-A and Section 2 of the Fatal Accidents Act; in so far as the ultimate figure of compensation is concerned, the court is not bound by any rigid mathematical formula if it finds that the justness of the case requires either increase or decrease in that figure.

10. No method of calculation of compensation would be justified if it results in awarding the amount which is not "just" looking to the peculiar circumstances of each case. The word "just" is of very wide amplitude. The interpretation must be meaningful since the commitment exists in the policy of the Act and provisions to a shared sense of value of life and morals. The provisions in the Act are not designed to compensate the dependants for the actual loss but are intended to put the dependants in a position they would have been had the deceased been alive. The Supreme Court in *Manjushri Raha v. B.L. Gupta* 1977 ACJ 134 said as under:

With the emergence of an ultra-modern age which had led to stride of progress in all spheres of life, we have switched from fast to faster vehicular traffic which has come as a boon to many, though sometimes in the case of some it has also proved to be a misfortune. Such are the cases of victims of motor accidents resulting from rash and negligent driving which take away quite a number of precious lives of the people of our country. At a time when we are on the way to progress and prosperity, our country can ill-afford to lose so many precious lives every year, for though the percentage of deaths caused by motor accidents in other countries is high, in our own country the same is not by any means negligible, but is a factor to be reckoned with. Our lawmakers being fully conscious of the expanding needs of our nation have passed laws and statutes to minimise motor accidents and to provide for adequate compensation to the families who face serious socio-economic problems if the main bread-earner loses his life in the motor accident... While Section 110 of the Motor Vehicles Act provides for the constitution of Claims Tribunals for determining the compensation payable, Section 110-A provides for the procedure and circumstances under which the family of a victim of a motor accident can get compensation and lays down the various norms, though not as exhaustively as it

should have. The courts, however, have spelt out and enunciated valuable principles from time to time which guide the determination of compensation in a particular situation....

Justice Krishna Iyer, speaking for the Bench in *Concord of India Insurance Co. Ltd. v. Nirmala Devi* 1980 ACJ 55 ...The jurisprudence of compensation for motor accidents must develop in the direction of no fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales....

11. The amount of compensation to be determined by the Tribunal, as observed above, should be just and unless the tortfeasor satisfies the Tribunal that the deductions claimed by it are proper and permissible, it is not competent for the Tribunal to allow any deductions. What deductions should be allowed from the amount of just compensation has been a matter of various judicial pronouncements. Judicial opinion on this question is sharply divided and is not uniform. On one side is a liberal view which held that insurance amount, provident fund, pension or gratuity are not deductible from the amount of compensation, on the other side is the narrower and stricter opinion that the dependant's actual financial loss should be determined in the award of compensation and any financial gains that have accrued or may accrue by virtue of death from any source whatsoever should be taken into consideration. Before dealing with various judicial pronouncements, it would suffice to say that the cases decided under the Fatal Accidents Act cannot be taken as precedent or a guide inasmuch as u/s 110-B of the Act, the Tribunal is to determine the compensation which appears to be just, whereas the provisions of Fatal Accidents Act lay down that it is net loss of balance which constitutes the measure of damages and obviously require number of deductions to be made.

12. Even prior to the decision of House of Lords in *Perry v. Cleaver* 1969 ACJ 363 which has been followed in *Jai Ram's case* 1980 ACJ 1 it was the settled legal position at the common law that the proceeds of insurance and sums coming by reason of benevolence are to be disregarded. These were considered to be collateral benefits which could not be deducted from the assessed damages. The benefit in case of insurance was bought by the deceased by his own money under a contract with the insurer and the other benefit was derived from the benevolence of friends, relatives or public at large. In *Perry's case* (supra), the principle was extended and applied to the case of disablement or ill health pension payable by the employer to an employee who was compulsorily retired on account of accident injury. It was held that such pension, whether discretionary or payable as of right and whether contributory or non-contributory did not have to be taken into account against the lost salary but will be deductible only from the lost retirement pension. In *Cunningham v. Harrison* 1974 ACJ 218 the Court of Appeal held the annual ex gratia payments for life made by the employer to the injured employee to be non-deductible in an action for damages under common law. These types of receipts were not disregarded in

the United Kingdom in dealing with damages under the Fatal Accidents Act, 1846 (Lord Campbell's Act) until the law was altered. Fatal Accidents (Damages) Act, 1908, brought in exclusion of contractual benefits and later by the Law Reforms (Personal Injuries) Act, 1948, benefits in respect of national insurance were given. These provisions were repealed by the Fatal Accidents Act, 1959 and subsequently were replaced by the Fatal Accidents Act, 1976, which came into force on September 1, 1976. Section 4 (1) thereof provided that in assessing damages in respect of a person's death in any action, any insurance money including premium returned, benefit whether under social security legislation or from a friendly society or trade union, any pension and any gratuity shall not to be taken into account. Now finally Section 4 of 1976 Act has been re-enacted by the Administration of Justice Act, 1982, which provides that in assessing damages in respect of a person's death, all benefits to any person from his estate or otherwise as a result of his death shall altogether be disregarded.

13. A Full Bench of the Punjab and Haryana High Court in *Bhagat Singh Sohan Singh v. Om Sharma* 1983 ACJ 203 after survey of number of English and Indian precedents was of the view that the receipt of insurance, provident fund, pension or gratuity benefits by the dependants of the victim must be altogether excluded from consideration in the award of compensation u/s 110-B of the Act. While coming to this conclusion, the Bench observed as under:

...the inevitable question that arises is with regard to the true principles underlying the grant of just compensation to the dependants... insurance benefits have always been excluded from consideration, both on ground of public policy and the fact that the deceased had bought the insurance policy and paid the premium therefor. Similarly, sums of money paid as private or public benevolence have on principle been rightly excluded because their benefactors could never intend that their munificence should go to the tort-feasor and not to the deceased victim or his dependants. Herein what has endemically rankled the judicial conscience is the fact that financial benefits, which are essentially the deferred fruits of a person's labour, thrift, foresight or contribution cannot be allowed to enure to the benefit of the wrongdoer alone and go in mitigation of the damages payable by him... one must recall the well-known principle of the assessment of damages generally and equally for the dependants of the victim of an automobile accident. The heart of the matter herein is to evenly balance, as if in a golden scale, the financial loss to the dependants on one side and financial gain or benefit directly arising from the death of the victim on the other. However, the somewhat ticklish question is as to what are the financial gains arising on account of the death which alone can be put in the balance. In this balancing operation the court has to be on its guard that on one hand the dependants should not be put to any financial loss whatsoever and on the other that the death of the victim and the resultant grant of damages should not serve as a windfall to them... Particularly, in India where as yet the family bonds are strong the death of the bread-winner is a catastrophe which is both irreparable and irremediable. It is true that solatium is alien to the concept of compensation

and perhaps one of the reasons therefore is that damages in this field would be wholly speculative in nature. However, can it on the other extreme be possibly said that the exclusion of the financial benefits, like insurance, provident fund, family pension or gratuity for computing compensation would amount to a windfall for the dependants... these financial benefits are in essence the deferred earnings of the victim of the accident or the result of his savings, his thrift or foresight. The dependants, even otherwise, would have had the benefit of these sums in due course. To take these away from the rightful claimants and to enure them only for the benefit of the tortfeasor is something which rightly shocks the judicial conscience... in the light of the true principles underlying the grant of just compensation benefits like provident fund, family pension or gratuity cannot go in mitigation of damages payable by the tortfeasor and are, therefore, not deductible.

14. This court has also in *Rita Arora v. Salig Ram* 1975 ACJ 420 and *Jai Ram's case* 1980 ACJ 1 held that benefits received by the heirs towards gratuity, provident fund, family pension and insurance amount were not deductible from the compensation amount payable to the dependants. The basis for such conclusion was that they had come as a result of the victim's own efforts and service put in and as a result of his savings, thrift or foresight. To the similar effect are the decisions of Full Bench of Madhya Pradesh High Court in *Kashiram Mathur v. Rajendra Singh* 1983 ACJ 152 and Division Bench of Allahabad High Court in *Krishna Sehgal v. U.P. State Road Trans. Corporation* 1983 ACJ 619 and also of Division Benches of Rajasthan High Court in *Chand Kanwar v. Mannaram* 1986 ACJ 269 (Rajasthan), Gujarat High Court in *Life Insurance Corporation of India v. Legal Representatives of deceased Naranbhai Munjabhai Vadhia* 1973 ACJ 226 (Gujarat) and Delhi High Court in *Bhagwanti Devi v. Ish Kumar* 1975 ACJ 56 (Delhi). In all these cases reliance was placed on *Perry's case* 1969 ACJ 363 (HL, England) and it was held that even in the context of a fatal automobile accident, no deduction on account of gratuity, pension, provident fund and insurance could be allowed u/s 110-B of the Act.

15. The other view which has been taken by the High Court of Bombay in *Hirjee Veerjee and Co. v. Saroja Narayan Shetty* 1983 ACJ 177 (Bombay) and High Court of Karnataka in *Deputy General Manager and Divisional Controller, Karnataka State Road Transport Corporation v. H. Sarojamma* 1982 ACJ 457 (Karnataka), that collateral benefits derived by the dependants deserved to be taken into consideration while determining the amount of compensation is based upon the proposition that the law in India, which has been following the English common law, should be continued to be applied because there has been no statutory intervention. They have followed the principles laid down by the Supreme Court in *Gobald Motor's case* 1958 ACJ 179 (SC) and are of the view that till there is statutory recognition of taking note of the change of law in England all pecuniary advantages which from whatever source come to dependants by reason of death deserve to be taken note of. Facts in *Gobald Motor's case* (supra) show that the observations made by their Lordships of the

Supreme Court laid down a general guideline for assessing damages in a case arising out of a suit under Fatal Accidents Act, 1855. There are obvious differences of language and import between Sections 1-A and 2 of the said Act and Section 110-B of the Act. The language used in Section 110-B of the Act as discussed above is liberal. u/s 1-A of the Fatal Accidents Act, 1855, the court is to give such damages as it may think proportionate to the loss resulting from such death to the parties respectively for whose benefit such action is brought, whereas there are no limitations or restraints imposed on the language of Section 110-B of the Act. Whilst Section 1-A of Fatal Accidents Act, 1855 talks of damages, Section 110-B of the Act is rested upon broader consideration for awarding compensation which appears to be just. Thus it can be said that Fatal Accidents Act is general in nature applicable in all cases where death of a person has been caused by a wrongful act, neglect or default of another. The provisions of Sections 110-A and 110-B of the Act are, however, specific and deal particularly with injuries or death resulting from motor vehicle accident. Therefore, it would follow on the well-known canon of construction that the special provisions of the Act would govern in addition to and, if necessary, exclude the general provisions of the Fatal Accidents Act. On this basis general guidelines for assessing damages as laid down in Gobald Motor's case 1958 ACJ 179 will not be applicable while determining compensation u/s 110-B of the Act. For these reasons, we are inclined to take the first view, which is liberal one, also keeping in view a very salient aspect that a tortfeasor should not be given the benefit of any moneys that may come into the hands of a claimant on account of the death of a near and dear one, the proper approach would be to deny to the tortfeasor the right to claim a set-off from the financial loss caused by his rash and negligent act. It is not to be ignored that a right which was otherwise available under the common law for damages against a tortfeasor was incorporated for expeditious disposal by special Tribunals under the Motor Vehicles Act, so far as the injuries and deaths resulting from motor vehicles were concerned. The compensation payable is in the context of and resultant from these accidents. This compensation is apart from what the injured or the deceased or his legal representative(s) would have got notwithstanding the accident. They, therefore, could not go to reduce the amount of compensation, nor operate to assume the same. Any view to the contrary may provide a licence to cause death by accident of any affluent person with impunity without inviting liability for damages/compensation.

16. The question which arises is as to whether the amount payable or the amount paid under the provisions of the Scheme or by way of ex gratia payment by the appellant can be said to be pecuniary advantage as a result of death in the accident, benefit of which can be given to the tortfeasor. The levy of surcharge under the provisions of Passengers and Goods Taxation Act is a statutory levy and the moment a passenger pays the amount of statutory levy, a statutory contract comes into existence between the passenger and the State. The amount of levy so collected from passenger is kept apart for being dealt with

in accordance with the provisions of the Scheme. It is a contribution made by the passenger himself during his lifetime. Purchase of a ticket on the part of a passenger entitles his dependants to receive the benefit of insurance amount under a contract which comes into existence on payment of the price of ticket, which includes the additional levy. This financial benefit is in essence a deferred benefit to a passenger as a result of the contract. On the same principle, on the basis of which receipt of insurance amount, provident fund, pension or gratuity benefits by the dependants of victim are excluded, the amount paid by the State under the Scheme is to be excluded by holding that it is an act of foresight by statutory compulsion by which the passenger entered into a statutory contract with the State, due to which his dependants or heirs acquired the benefit. To take this benefit away from the rightful claimants) and to enure it for the benefit of the tortfeasor is something which rightly shocks the judicial conscience. While the matter was dealt with by the learned single Judge, the State Government explained the policy behind the framing of the Scheme. It was stated that it had been framed with a view to ameliorate the lot of passengers and to minimise their loss and grief on account of the accident in addition to create confidence in them to travel in the vehicles covered by the Scheme. It will be against the public policy to allow the tortfeasor to claim deduction of the amount paid by the State Government from out of a fund under the provisions of the Scheme. Had it been the intention of the legislature, it would have definitely made such a provision by expressly incorporating the same in Section 3-A of the Passengers and Goods Taxation Act.

17. The provision for levying surcharge has been made by the State Government and the fund is also ultimately collected by it. It is not a fund which is administered by the appellant Corporation for the passengers travelling in the vehicles covered by the provisions of the Act who ultimately are to derive the benefit. The appellant being a tortfeasor cannot claim deduction for the payment received by the heirs of a passenger who had by purchasing ticket paid the amount of surcharge on the basis of a public policy. The Supreme Court in *N. Sivammal v. Managing Director, Pandian Roadways Corporation* 1985 ACJ 75 approved an award made by the Tribunal declining to deduct the amount of family pension received by the heirs of deceased under the family benefit scheme. When pecuniary advantage under the family benefit scheme, which the heirs got as a result of death in an accident, has been held not to be a pecuniary advantage liable for deduction, therefore, on the same analogy the amount received by the claimants under the provisions of the Scheme cannot be held to be deductible from the amount of compensation.

18. The amount of ex gratia payment by way of interim relief given by appellant immediately after the accident can be said to be a payment made by a tortfeasor towards the amount of compensation though it is a voluntary payment. It cannot be said to be an amount by way of benevolence. But for the accident, the appellant would not have paid this amount. The appellant is justified in claiming benefit of such a payment, which is made in pursuance to a policy decision taken

by its Board of Management.

19. In view of the above, we hold that the appellant is not entitled to have the amount paid under the provisions of the Scheme set off against the amount of compensation payable to the claimant(s). We further hold that the amount of interim relief paid voluntarily by the appellant to the claimant(s) immediately after the accident is required to be adjusted and deducted from the amount of compensation ultimately awarded under the provisions of the Act. Having dealt with this common question, we now proceed to dispose of the appeals in which there is a challenge made by the appellant to the quantum of compensation determined by the learned single Judge.

20. In the present appeal (L.P.A. No. 16 of 1990), the Tribunal made an award of Rs. 20,000/- only and the learned single Judge allowed the appeal of claimant and determined the total amount of compensation payable to him as Rs. 90,264/-, thereby increasing the amount of compensation by a sum of Rs. 70,264/-. The claimant is the husband of deceased aged 23 years and 11 months. She was holding M.Sc. (Botany), B.Ed. degree. She was earlier engaged as a Biology teacher in Mussoorie Public School till the month of June 1979 on a monthly salary of Rs. 450/- but later on she was engaged as a teacher in St. George College, Mussoorie on a monthly salary of Rs. 810/- with free furnished quarter and free lunch and tea on working days. She had received an interview letter for the post of post-graduate teacher in a college. Besides this, it is the version of the claimant that she was getting a sum of Rs. 500/- by way of private tuitions. The learned single Judge took the monthly income of the deceased as Rs. 810/- only. Half of the amount was considered as contribution to the family, namely, herself and her husband and by applying the multiplier of 18 and adding a sum of Rs. 3,000/- towards conventional figure, the total sum payable was determined at Rs. 90,264/-. The learned single Judge does not seem to be right in his approach. In case the deceased was contributing half of her salary to the household, then it is reasonable to suppose that the husband might also be contributing his share to the household expenses for the boarding and lodging and she might also be spending some amount separately exclusively on her. We do not, therefore, think it correct to assume that the husband's loss was to the extent of half of salary of the deceased as has been held by the learned single Judge. If, on an average, the deceased contributed Rs. 600/- per month to the common pool after having retained some amount for her own use, then the loss of claimant would be roughly to the tune of Rs. 300/- p.m. and in these circumstances applying the multiplier of 18 we consider it reasonable that the total sum payable to the claimant in this case after adding the conventional figure of Rs. 3,000/- would be Rs. 67,800/- in all. We, therefore, set aside the award made by the learned single Judge in this case and hold that the claimant is entitled to a sum of Rs. 67,800/- along with interest at the rate of 6 per cent per annum from the date of petition till the date of payment.

21. L.P.A. No. 4 of 1990 arises out of the judgment of the learned single Judge in

F.A.O. No. 158 of 1982. Drumpti, claimant in this case, is the widow of Sant Ram, who was working as a mason in Himachal Pradesh State Electricity Board and was drawing a monthly salary of Rs. 819.14. His date of birth was December 9 1928 and that of superannuation January 1, 1986. In his case by taking the datum figure at Rs. 655.32 per month, the learned single Judge applied the multiplier of 12, which we consider is on the higher side keeping in view the age, health 1/ circumstances, including the fact that after retirement he was to get a sum of Rs. 200/-per month by way of pension, whereas the claimant got a family pension of Rs. 100/-only, we consider 8 to be the reasonable multiplier. Accordingly, we hold that the claimant as such would be entitled to a sum of Rs. 65,920/-, inclusive of conventional figure of Rs. 3,000/-, instead of Rs. 97,360/- as has been awarded by the learned single Judge. In addition, the claimant will also be entitled to interest at the rate of 6 per cent per annum on this amount from the date of petition till the date of payment.

22. The learned counsel for the appellant has in L.P.A. Nos. 5, 7, 12, 14, 17, 18, 19 and 20 of 1990 tried to challenge the determination of the amount of compensation. We have gone through the records and we find that the award of compensation by the Tribunal in the case, out of which L.P.A. No. 5 of 1990 has arisen, was not challenged before the learned single Judge and as such it is not permissible for the appellant to make such a challenge in Letters Patent Appeal. In other cases, we have examined the evidence and find that there is no lawful justification to interfere with the determination of the amount of compensation by the learned single Judge as the same is just and reasonable.

23. In the result, the appeals are partly allowed as indicated above and the parties are left to bear their own costs in the respective appeals.

24. The claimants in L.P.A. Nos. 5, 7, 17, 18, 19 and 20 of 1990 have filed cross-objection Nos. 45, 46, 36, 37, 38 and 39 of 1990, respectively. The claimants in these cases had also filed cross-objections against the award made by the Tribunal before the learned single Judge but during the course of hearing of the appeals, the same were not pressed before the learned single Judge which fact has been recorded by him in his judgment and as such it is not permissible for the claimants to re-agitate the matter in Letters Patent Appeals. The cross-objections as such are dismissed as not maintainable.

25. Mr. Deepak Gupta, learned counsel appearing for the appellant, has rendered valuable assistance to the court and we place on record our sense of appreciation for the same.