

(1979) 06 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : F. A. Os. No"s. 30 to 34 of 1972 and 26, 32 and 33 of 1973

Himachal Road Transport Corporation

APPELLANT

Vs

Jai Ram etc.

RESPONDENT

Date of Decision : 28-06-1979

Acts Referred:

Big Landed Estates and Land Reforms Act, 1953 — Section 104
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33, 121, 96
Fatal Accidents Act, 1855 — Section 1A, 2
Motor Vehicles Act, 1939 — Section 110, 110A, 110B, 110D
Trade Marks Act, 1940 — Section 76

Citation : (1979) 8 ILR HP 267

Hon'ble Judges : T.U. Mehta, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : S.S. Mittal, for the Appellant; Chhabil Dass, P. Malhotra, Indar Singh, O.P. Sharma, Bhawani Singh and K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, C.J.—All these eight appeals arise out of the compensation award given by Motor Accidents Claims Tribunal, Kangra Division, to various claimants. All of them contain some common points of law. These claims have arisen out of the same motor accident and, therefore, some of the important facts relating to all these cases are also the same. In view of this, we propose to dispose of the common points arising in these appeals by a common judgment. After disposing of these common points, we shall take up the individual appeals and shall dispose of individual cases on merits.

2. Facts of the case are that on 9th October, 1970, a passenger bus, which at the relevant time belonged to the Government transport, and which was having No. HIM 4174, was travelling from Tisa. It was bound for Chamba. When this bus arrived at a place known as Majra Ghar at 3 P.M. on that day, it met with this unfortunate accident in which 44 persons died and 11 were injured. The claims with which we are concerned in these nine appeals are the claims preferred by

the dependents or heirs of some of the persons who have died in this accident.

3. The learned Judge of the Tribunal has awarded different amounts as compensation to the dependents and/or heirs of the deceased persons, and being aggrieved by this award the Himachal Pradesh Government Transport, Chamba, has preferred these appeals. The Government Transport has been subsequently taken over by Himachal Road Transport Corporation and, therefore, now this Corporation is substituted as the Appellant in all these cases.

4. We have found that in these and other appeals arising out of the claims settled u/s 110 of the Motor Vehicles Act read with the Fatal Accidents Act, the learned Judges of the different Tribunals functioning in the State are not taking a consistent view and are not adopting a consistent method of assessing compensation in cases where the accident is found to be the result of some negligence. We have, therefore, heard the learned Advocates of the parties on the question of a proper method which could be evolved in determining the amount of damages which could be awarded in such cases. Therefore, before taking up the individual merits of each case we first propose to state some principles and methods for determining the amount of compensation in such cases. Section 110-B of the Motor Vehicles Act prescribes that on receipt of an application for compensation made u/s 110-A the Claims Tribunal shall hold an enquiry into the claim and may make an award determining the "amount of compensation which appears to it to be just". Thus, under this Section of the Motor Vehicles Act the amount of compensation is expected to be "just". The justness of the award is obviously to be determined with reference to the peculiar facts of each case and therefore no such award can be confined to any rigid-mechanical formula. However, when the Court proceeds to make an award of compensation in cases which have resulted in a fatal accident the Court is also expected to take into account two relevant Sections of Fatal Accidents Act, 1855. These Sections are Section 1-A and Section 2. Section 1-A reads as under:

Whenever the death of a person shall be caused by the wrongful act, neglect or default and the act is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused and shall be brought by and in the name of the executor, administrator or representative of the person deceased.

Section 2 reads as under:

Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary

loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

5. The reading of these two sections suggests that each one of them contemplates a different and distinct category of compensation. u/s 1-A the damages are required to be paid to one or more of the relatives of the deceased for the loss of their dependency, while u/s 2 the damages are required to be paid to the estate on account of the loss caused to the estate. This loss to the estate could be awarded to the legal heirs of the deceased even if they were not dependent on him, but loss on account of dependency calculated u/s 1-A can be paid only to the dependants of the deceased. There would be cases wherein both the categories of claims would be claimed by the same set of persons. Nonetheless, when the Court is called upon to assess compensation resulting on account of some negligent act in a motor accident, the Court has to keep in mind that u/s 1-A it has to assess the loss caused to the legal heirs.

6. From this it follows that the loss caused to the dependants of the deceased should be assessed on the basis of the value of their dependency, while the loss caused to the estate should be assessed on the basis of the savings which the deceased could have made to augment his estate. To illustrate: suppose the deceased was making the net earning of Rs. 500/- per month and was spending the amount of Rs. 300/- for his dependants and the amount of Rs. 100/- for himself, thus saving the amount of Rs. 100/- per month. In such a case the loss of dependency would be calculated on the basic amount of Rs. 300/- per month while loss of estate would be calculated on the basic amount of Rs. 100/- per month. If his dependants are also his legal heirs, they would get compensation on the basic amount of Rs. 400/- per month. June 18, 1979.

7. Section 1-A and Section 2 of our Fatal Accidents Act are based on two English statutes, viz., (1) what is popularly known as Lord Campbell's Acts (English Fatal Accidents Acts 9 and 10), and (2) English Law Reform (Misc. Provi.) Act, 1934. Therefore, for deciding the principles which should govern the mode and method of calculating compensation u/s 1-A and Section 2 of our Fatal Accidents Act, help of the English decisions on the subject can be freely taken and adopted to suit our peculiar problems.

8. u/s 1-A, principally financial loss to the dependants of the deceased is required to be assessed. The first question which arises to be determined in this connection is what would be a proper method of calculating compensation under both the sections, namely, Section 1-A and Section 2 of the Fatal Accidents Act.

9. 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; insofar 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. It is in this context that we may now proceed to consider the two important approaches as to the methods adopted by the Courts for quantifying compensation both u/s 1-A and Section 2 of the Fatal Accidents Act.

11. The approach of the Tribunals in this State has been more or less on the method adopted by Viscount Simon in *Nance v. British Columbia Electric Railway Co. Ltd.* reported in (1951) AC 601. After pointing out that the claim for damages in such cases would fall under two separate heads, namely, (1) maintenance of wife and family, and (2) savings, Viscount Simon points out the proper approach to the determination of these damages in the following words:

Under the first head-indeed, for the purposes of both heads it is necessary first to estimate what was the deceased man's expectation of life if he had not been killed when he was; (left this be "x" years) and next what sums during these x years he would probably have applied to the support of his wife. In fixing x, regard must be had not only to his age and bodily health, but to the possibility of a premature determination of his life by a later accident. In estimating future provision for his wife, the amount she usually applied in this way before his death are obviously relevant, and often the best evidence available; though not conclusive, since if he had survived, his means might have expanded or shrunk, and his liberality might have grown or wilted.

Then the learned Lord proceeds to observe as under:

Supposing, by this method, an estimated annual sum of \$ y is arrived at as the sum which would have been applied for the benefit of the Plaintiff for x more years, the sum to be awarded is not simply y \$ multiplied by x, because that sum is a sum spread over a period of years and must be discounted so as to arrive at its equivalent in the form of a lump sum payable at his death as damages. Then a deduction must x further be made for the benefit accruing to the widow from the acceleration of her interest in his estate on his death intestate in 1949 (she came into \$ 6,500 one-third of his estate, x years sooner than she would otherwise have done) and of her interest in sums payable on a policy of \$ 1,000 on his life; and a further allowance must be made for a possibility which might have been realised if he had not been killed but had embarked on his allotted span of x years, namely, the possibility that the wife might have died before he

did. And there is a further possibility to be allowed for-though in most cases it is incapable of evaluation-namely, the possibility that, in the events which have actually happened, the widow might remarry, in circumstances which would improve her financial position.

A figure having been arrived at under this first head, there should be added to it a figure arrived at under the second head. The question there is what additional amount he would probably have saved during the x years if he had so long endured, and what part, if any, of these additional savings his family would have been likely to inherit.

It will be noticed from these observations of Viscount Simon that he refers to different types of deductions which are required to be calculated after having arrived at the figure of total loss of dependency.

12. Another method which in principle is the same as suggested by Viscount Simon but which is more efficient and dependable in calculations is the method suggested by Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* reported in (1942) AC 601. In the words of Lord Wright himself this v. method can be explained as under:

There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependant, and other like matters of speculation and doubt.

Though Lord Wright has not elaborated his method in any further details, subsequent decisions of the English Courts as well as the Indian Courts show that this method has come to be known as "multiple method". Munkman in his book on DAMAGES FOR PERSONAL INJURIES AND DEATH (Fifth Edition) describes this method in the following words:

In general, this financial loss is assessed in much the same way as prospective loss of earnings in the case of a living Plaintiff: except, of course, that the basic figure, instead of being the net earnings of the Plaintiff, is the net contribution to the support of the Plaintiff which would have been derived from the future income of the deceased. In both cases, when the basic figure has been fixed, an estimate has to be made of the probable length of time for which the earnings, or contribution, would have continued; then a suitable multiple has to be determined-a number of years" purchase-which will reduce the total loss to its present Value, taking into account the proved risks of rise or fall in the income.

Thus, this method can be expressed in the following formula:

$(A-E) \times (Y) = \text{Total compensation for loss of dependency as well as loss to the estate.}$

Here in this formula A represents the amount of net wages which the deceased was earning, E represents the expenditure incurred by the deceased for his own self, and Y represents the number of years' purchase. In this formula (A-E) covers the amount of dependency as well as the amount of accretion to the estate. Therefore, in the cases where compensation is required to be assessed separately for the loss of dependency and loss to the estate, (A-E) should be further split up to know the separate figures of dependency and accretion to the estate, and then multiplication by Y should be applied to each.

13. The methods adopted by Viscount Simon and Lord Wright do not differ in principle. But the latter method, i.e. the method adopted by Lord Wright is simple in working because while in Viscount Simon's method various imponderables, uncertainties and vicissitudes of life such, as the future possible hazards to the deceased persons expected span of life as well as to the life of a dependent, possibilities of increase or decrease in the future income of the deceased had he survived the accident, financial inflationary tendencies making the standard of living costlier, remarriage of the widow, acceleration of the interest of the dependants due to the death of the deceased, advantage of getting the compensation immediately in lump sum, are separately discounted involving various complications in calculations, in the method suggested by Lord Wright this is worked out by selecting a suitable multiplier of a certain number of years' purchase, all these different categories of possibilities resulting in different types of deductions are not required to be separately calculated as they are taken care of by shrewd and judicious selection of a proper and suitable multiplier.

14. The multiplier method above referred to is usually followed in England and has proved successful there. Two leading English cases which are often referred in this connection are *Mallett v. Mc Memonagle* (1970) AC 166, and *Taylor v. O'Connor* (1971) AC 115. As observed by Lord Diplock in *Matters* case:

Since the essential arithmetical character of this assessment is the calculation of the present value of an annuity it has become usual both in England and in Northern Ireland to arrive at the total award by multiplying a figure assessed as the amount of the annual "dependency" by a number of "years" purchase".

15. During the course of the hearing of these matters it was contended by Shri Sud, appearing on behalf of some of the claimants, that this multiplier method should not be invariably followed as it does not take into account the possibility of future increase in emoluments as was done by the Supreme Court in *Mrs. Manjushri v. B.L. Gupta* reported in 1977 ACJ 134. We find that in the case of *Mrs. Manjushri* the multiplier method propounded by Lord Wright was neither canvassed nor considered as was done in many other cases decided by the

Supreme Court. At any rate, in Mrs. Manjushri's case the Supreme Court has not said anything which would detract from the efficacy of the multiplier method. As we have already pointed out above, no method is final and only that method is best which serves best the purpose of justness contemplated by Section 110-B of the Motor Vehicles Act. It may, however, be noted that the possibility of the deceased earning more emoluments in future can be properly taken care of by selecting a suitable multiplier.

16. The method of multiplier is recognised by Supreme Court in its various decisions including Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , Municipal Corporation of Delhi Vs. Subhagwanti and Others, , C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, , and Madhya Pradesh State Road Transport Corporation v. Sudhakar reported in 1977 ACJ 290. A Division Bench of the High Court of Gujarat has discussed this question of preference between the methods adopted by Viscount Simon and Lord Wright in details in HirjiVirji Transport and Ors. v. Basiram Bibi reported in 1971 ACJ 458 wherein it is clarified that what this multiplier must be in any individual case would of course depend on the particular circumstances of the case because one has to take into account the probable duration of the life of the deceased, duration of the life of the widow and their dependants who might prematurely die, the possibility of widow's remarriage, acceleration of interest in the estate, possibilities of increased earning on the one hand as well as disablement or unemployment on the other. It is further pointed out in that decision that all other possibilities and chances are taken into account and in practice Lord Wright's method is applied by fixing a basic sum of annual dependency and multiplying it by an appropriate multiplier. This method is recognised even by the High Court of Madhya Pradesh in Smt. Kamla Devi and Others Vs. Kishanchand and Another, , and recently by a Full Bench of the High Court of Punjab and Haryana in Lachman Singh v. Gurmit Kaur reported in 1979 ACJ 170 wherein following pertinent observations are made:

The principal of working out the suitable multiplier with which annual dependency be multiplied and capital amount arrived at appears to be the only just and reasonable method because the same takes into consideration not only the age of the victim, but also the ages of the dependants and ail uncertainties of life, both in the realm of enhancement in the income as well as factors justifying reduction in the amount of compensation- For the purpose of determining this multiplier, no exact and mathematical calculation can be provided. The English Courts have held in some cases that 16 times multiplier was quite sound and reasonable. The Supreme Court has gone further and in one case even 20 times was considered to be a suitable multiplier.

And then the Court has observed asunder:

Thus, out of all the alternatives, methods which have been adopted so far for determining the just amount of compensation, multiplier method appears to be realistic, and reasonable and ensures better justice between the parties.

Speaking about this point Lord Reid has observed as under in *Taylor v. O'Connor* (supra):

Damages to make good the loss of dependency over a period of years must be awarded as a lump sum and that sum is generally calculated by applying a multiplier to the amount of one year's dependency. That is a perfectly good method in the ordinary case but it conceals the fact that there are two quite separate matters involved—the present value of the series of future payments, and the discounting of that present value to allow for the fact that for one reason or another the person receiving the damages might never have enjoyed the whole of the benefit of the dependency. It is quite unnecessary in the ordinary case to deal with these matters separately. Judges and Counsel have a wealth of experience which is an adequate guide to the selection of the multiplier and any expert evidence is rightly discouraged. But in a case where the facts are special I think that these matters must have separate consideration if even rough justice is to be done, and expert evidence may be valuable or even almost essential. The special factor in the present case is the incidence of Income Tax and, it may be, surtax.

17. In our opinion, therefore, it would be safe to proceed to assess compensation in such cases by adopting the method of multiplier making a judicious use of an appropriate number of years' purchase.

18. We shall now proceed to consider how the two important factors of this method, namely, (1) the figure of annual dependency which is the basic or datum figure representing the multiplicand and (2) the number of years' purchase representing the multiplier, should be arrived at.

19. So far as the first factor of annual dependency is concerned, there is not much difficulty in fixing the same. The best evidence to fix the figure of this factor is supplied by the net income derived by the deceased at the time of his death. If the amount expended by the deceased for his personal expenditure is deducted from this amount of his net income, the remainder would represent the amount spent by him for his dependents plus the amount saved for future. If there is satisfactory evidence regarding the amount spent by him for his dependants, the figure of the amount so spent should be taken as the basic figure for calculating loss of dependency. But if no such satisfactory evidence is available it would be reasonable to fix the units of family expenditure and deduct the units consumed by the deceased for his personal expenditure. Normally, an adult member of the family would consume double the units consumed by minors, except those minors who are taking education in college for whom in an appropriate case, two units of expenditure may legitimately be taken into account. Hence, if a minor is consuming one unit an adult member of that family should be taken to consume two units. For instance, a family consisting of two adults and three minors would, on this basis, consume seven units of expenditure as under:

Two adults - 4 units (two each)

Three minors - 3 units (one each)

If, therefore, the total expenditure of such a family is Rs. 700/- per month, the personal expenditure of the deceased who is found to be the earning adult, should be taken as at Rs. 200/- per month (two units). The total value of dependency would, therefore, be Rs. 500/- per month. This would be the datum figure which should be further worked out by applying a suitable multiplier. This was the method adopted by the High Court of Gujarat in *Bai Nanda v. Shivabhai Shankerbhai Patel* reported in 1966 ACJ 290 (vide paragraph 40). We find this to be a safe method to find out the basic value of dependency where clear and reliable evidence is lacking.

20. The difficulty which the Courts are generally facing is, however, with regard to the choice of a suitable multiplier on the basis of years' purchase. As already noted above, this multiplier is to be chosen having regard to the peculiar facts of each case. For instance, if it is found that the deceased prematurely died at a very young age and if it is further revealed that the longevity in his family was more, then it would be safe to take a higher multiplier with a view to arrive at the figure of total compensation. Having regard to the individual facts of each case, the Courts have applied different multipliers in each case. For instance, in the English case of *Taylor v. O'Connor* (supra) 12 years' purchase was considered as proper multiplier. In another English case *Heatley v. Steel Co. of Wales Ltd.* reported in 1953 (1) All Eng. LR 489, 15 years' purchase was considered to be a proper multiplier. In *Howitt (Widow and administratrix of Richard Arthur Howitt) v. Heads* reported in (1972) All Eng. LR 491, 18 years' purchase was considered to be a proper multiplier. It is found from the reported English decisions that the Courts in England are taking the multiplier ranging from 12 to 18 years' purchase.

21. In our country, the Supreme Court has applied different multipliers, but in a recent decision given in *Madhya Pradesh State Road Transport Corporation v. Sudhakar* (supra), 20 years' multiplier is taken keeping in view the fact that the deceased had before her yet thirty years of service to be performed.

22. One consideration which has agitated the mind of the Courts is about the selection of a proper multiplier having regard to the Current or probable rate of interest. It is obvious that if the rate of interest is high, the multiplier would be low, and vice versa. It is also obvious that financial inflationary tendencies have taken roots in most of the developing countries, including our own, and in order to curb these tendencies the Governments resort to increase in the rate of interest. Therefore, the question is what rate of interest should be justly taken into account with a view to choose a proper multiplier. A Full Bench of the Punjab and Haryana High Court has observed in the above referred case of *Lachman Singh v. Gurmit Kaur* (supra) that while selecting a multiplier interest theory should not be taken into consideration because in context of Indian conditions it

is too unrealistic to be adopted for determining damages. The Full Bench has given its reasoning for taking this view in paragraph 21 of the reported judgment. As rightly pointed out therein, the adoption of interest theory presumes that the claimants would invest the amount of claim in the bank which would ensure the amount of monthly dependency. This presumption is not always well founded in the set of Indian conditions wherein banking habit and safe stock investment have not taken roots even in the middle class residing in towns. It is much less so in the rural area. However, we would not go to the extent of saying that rate of interest should never be taken into consideration at the time of choosing a proper multiple because if this amount is sufficiently big enough, it would be invested in some good security, and in case of minor-claimants it is open to the Court to give suitable directions for the investment till the minors attain majority. There would, therefore, be cases wherein rate of interest may be taken into consideration. But whenever such a consideration is found necessary, the rate which should be taken into account should be that rate which is offered in the prevailing market for a secure investment, and which is more or less stabilised and does not attract heavy market fluctuations. In *Taylor v. O'Connor* (supra) taking a low rate of interest was considered a safe basis, the reason being that where a low interest rate is chosen, the fund is assumed to be invested in low interest stocks which would retain their real value. In our opinion, therefore, if rate of interest is to be taken into consideration for the purpose of choosing a proper multiplier, only that rate can be taken into account which ensures the safety of the invested amount and which is not likely to suffer fluctuations in the market.

23. Another principle which is to be borne in mind is that in case of the deceased who was hale and hearty and who was in the middle age of round about thirty-five years, it would be safe to take the multiplier ranging from 15 to 18 years provided there are no other compelling circumstances which would induce the Courts to adopt a multiplier which is lower or higher than these limits.

24. As already stated above, the choice of multiplier is to be made by the Court using its own experience and having due regard to the peculiar facts of each case, because the ultimate goal is not to adhere to any rigid formula, but to award a compensation which is just. In this approach the Courts have to remain sympathetic and realistic in their considerations because every assessment of compensation of this type rests more or less on conjectures of a fallible human being who is not able to know the ways of Providence. Under the circumstances, what is required to be assessed is only a reasonable probability as it appeals to a reasonable person.

25. The next question is whether any additions or deductions are required to be made after having arrived at the total figure of compensation which could be paid for loss of dependency. It is found from the various judgments of the Tribunals with which we have come across that if the Tribunal finds that the deceased used to spend a particular amount in support of his dependants, the tribunal gives

compensation only of the amount of dependency without taking into account the loss caused to the estate. This is found to have been done even in cases wherein the dependants, who are entitled to compensation for loss of dependency, are also found to be the legal heirs who are entitled to inherit the estate of the deceased. For instance, if a deceased person is found to be having the net earning of Rs. 500/- per month, and if the tribunal further finds that he used to spend Rs. 300/- for his dependants, the tribunal awards compensation only on the basic figure of Rs. 300/- per month without caring to know whether out of the remaining amount of Rs. 200/- the deceased used to save anything or not. In such cases, therefore, it is of utmost importance for the tribunal to find out what amount the deceased was spending for himself. If it is found that he was not spending any amount more than Rs. 100/- per month, then in the instance which we have taken, the savings added to his estate would be at the rate of Rs. 100/- per month. Therefore, the dependents, who are also the legal representatives of the deceased, would be entitled not only to the loss of dependency at the rate of Rs. 300/- per month, but also to the loss in estate at the rate of Rs. 100/- per month. This particular aspect must be borne in mind by the Tribunals in our State while fixing the total compensation payable to the claimants.

26. The claimants would also be entitled to some conventional amount in form of loss of expectancy of the life of the deceased. We have noticed that no Tribunal in our State is awarding any such conventional amount. Lord Roche, in *Rose v. Ford* (1937) AC 859, has expressed this principle of awarding damages for loss of life expectancy in the following words:

I regard impaired health and vitality, not merely as a cause of pain and suffering, but as a loss of a good thing in itself. Loss of expectation of life is a form in which impaired health and vitality may express themselves as a result. In such a loss, there is a loss of a temporal good, capable of evaluation in money, though the evaluation is difficult...Damages frequently have to be estimated in a case such as the following: A person suffers physical injuries of a nature to prevent him or her from living as full and complete a life as before, not in the matter of earning power, but in the matter of performing the functions and reaping the enjoyments of a normal life. An analogous problem is now presented. In the case I have outlined, partial loss of the good of life over the normal period of life has to be measured. Here a total loss of the good of life over part of the normal period of life has to be measured- I do not doubt that the measurement can be made.

In *Benham v. Gambling* (1941 AC 157) the House of Lords had to consider what was the proper measure of damages for loss of expectation of life for a boy of two and a half years of age who was killed accidentally in a road accident. It held that damages under this head do not depend on the length of years which are lost, nor on financial or social prospects; that they represent compensation for loss of the prospects of a predominantly happy life; and that in general the damages should be moderate especially in case of a child whose prospects in life are extremely uncertain. Accordingly the damages were assessed at 200 only.

The leading speech in this case is of Viscount Simon, L.C., the key-note of which is found in the following passage:

...stripped of technicalities, the compensation is not being given to the person who was injured at all, for the person who was injured is dead...Damages which would be proper for a disabling injury may well be much greater than for deprivation of life. These considerations lead me to the conclusion that in assessing damages under this head, whether in the case of a child or an adult, very moderate figures should be chosen...

In this case though initially the figure of ₹ 200 was chosen, according to the latest trend, the conventional figure of ₹ 500 for the loss of expectation of life is now chosen, though, very recently the Court of Appeal has allowed ₹750 in *McCann v. Sheppard and Anr.* (1973) 2 All. ER 881. So far as our country is concerned, the High Court of Gujarat has taken this conventional figure at Rs. 3,000/- in *Bai Nanda* (supra) wherein it is observed that damages given for shortening of life should not be calculated solely or even mainly on the basis of the length of life that is lost; they should be fixed at a reasonable figure for the loss of a measure of prospective happiness. It was now a rule of law that if a man was cut off in the prime of life, then no matter how mighty his prospects, only a conventional sum should be awarded in respect of his lost years. The conventional figure of damages under this head is rather low. Keeping in mind our Indian conditions a moderate conventional figure should not be less than Rs. 3,000/-. We find ourselves in agreement with these observations and hold that conventional figure of damages for loss of expectation of life should be Rs. 3,000/-, as observed by the Gujarat High Court, and this should be added to the total amount of compensation awardable by applying the multiplier method. In *T.V. Gnanavelu and Another Vs. D.P. Kannayya and Others*, the High Court of Madras has held that looking to the facts of that case the compensation of Rs. 4,000/- for loss of expectation of life was proper. However, that figure of Rs. 4,000/- is found to have been selected by the High Court having regard to the peculiar facts of that case. In our opinion, the conventional figure of Rs. 3,000/- would be a proper addition in normal cases.

27. In one of the appeals before us the question which has arisen is whether family pension which the widow got from the department should be deducted from the amount of compensation or not. The appeal in which this question has arisen is F.A.O. 33 of 1972 (*Bimla Devi v. H.R.T.C.*). The learned Advocate of the Road Transport Corporation contended that though according to the settled law the amounts of insurance and gratuity may not be deducted from the amount of compensation, there is no reason not to deduct the amount of family pension which the dependants would be actually getting as a result of the death of the deceased. For this proposition reliance has been placed on one decision of the High Court of Punjab and Haryana given in *Sushila Rani Sharma v. Som Nath* reported in 1974 ACJ 505. It is true that in this case deductions on account of pension, G.P. Fund, C.T.D. Account and Bank Account have been allowed. It is

found that in *Jaikumar Chhaganlal Patni v. Mary Jerome D'Souza* reported in 1978 ACJ 28 deduction on account of the amount of life insurance policy has also been given by the High Court of Bombay. A single Judge of the High Court of Delhi has in the case of *Prem Devi Pandey v. Dayal Singh* reported in 1976 ACJ 407 allowed deduction on account of gratuity and provident fund, pension and life insurance. After considering these cases we find ourselves unable to agree with the propositions that deductions can be allowed from the amount of compensation either on account of insurance or on account of pensionary benefits or gratuity. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others and it cannot be said that they have been earned by the dependants or the legal heirs of the deceased as a result of the death of the deceased. The compensation which is awardable u/s 110-B of the Motor Vehicles Act and Sections 1-A and 2 of the Fatal Accidents Act, is the compensation for loss of dependency and loss of estate, and the factors which balance this compensation are only those factors which have accrued to the advantage of the dependants or the legal heirs as a result of the death of the deceased. Therefore, the advantage which accrues either to the estate or to the dependants as a result of some contract or act which the deceased performed in his life time cannot be said to be the result of the death of the deceased though they come into existence on the death of the deceased. So far as the insurance amount is concerned, whatever the estate or the dependants get, is purely the result of the contract between the deceased and the insurance company. As for the amounts of pension and gratuity, they are the result of the service rendered by the deceased during his life time. The modern concept of pension and gratuity is that they are deferred wages which have been earned by an employee during the course of his service. The point of time at which these amounts are paid is, therefore, wholly immaterial and therefore, the mere fact that these amounts are paid at the time when deceased met with his death is not of much relevance unless it is found that the payment in question was purely the result of the death of the deceased as is the case in which the interest of the dependants is accelerated on account of the death of the deceased.

28. The view which we are taking is already taken by this High Court in two cases, namely, *Kailash Wati v. State of Haryana* reported in AIR 1975 HP 35 , and *Mrs. Rita Arora and Others Vs. Salig Ram and Others*, We further find that the view taken by the Delhi High Court in the above referred case is not consistent with the view taken by the same High Court in *Bhagwanti Devi v. Ish Kumar* reported in 1975 ACJ 56 wherein Anand J. has elaborately dealt with this question in paragraph 41 to paragraph 43 of the reported judgment. Even a Division Bench of the High Court of Punjab and Haryana has held in *Damyanti Devi v. Sita Devi* reported in 1972 ACJ 334 that the benefit, if any, derived by the legal representatives of the deceased from the policy of insurance of the deceased is not derived because of the tortious act of the wrong doer which resulted in his death, but on the footing of a contract which the deceased had

entered with the insurer under which he paid the premium. The High Court of Gujarat has also held in *Shakurmiya Imammiya Shaikh v. Minor Surendera Singh Rup Singh* reported in 1978 ACJ 130 that deduction on account of pension cannot be allowed. Even the Orissa High Court has taken the same view in *Jagannath Sinha v. Khirodini and Ors.* reported in 1977 ACJ 196.

29. The leading English decision on this point is one given by the House of Lords in *Perry v. Cleaver* reported in 1969 ACJ 363 wherein it is held that just as an insurance amount was the fruit of premiums paid in the past, pension was the fruit of services already rendered; the wrongdoer should not be given benefit of the same by deducting it from the damages.

30. We, therefore, conclude that the amount of insurance money and different amounts of pensionary benefits as well as provident fund cannot be deducted from the amount of compensation determined u/s 110-B of the Motor Vehicles Act read with Sections 1-A and 2 of the Fatal Accidents Act.

June 27, 1979

31. Next question which arises to be considered is whether in the appeals preferred u/s 110-D of Motor Vehicles Act to the High Court from the award of a Claims Tribunal it is open to the High Court to permit the Respondent to file any cross objection. The contention of the learned Advocate of the Himachal Road Transport Corporation is that on this question a learned single Judge of this Court has already taken the view that cross objections in such appeals could not be entertained as they have not been specifically provided either in the Motor Vehicles Act or in the rules framed there under, and there is no justification for changing this view- He has relied upon the decision given by Pathak, C.J., as then he was, in *The Himachal Pradesh Government and Ors. v. Mrs. Bholi and Ors.* reported in 1975 ACJ 339. The learned single Judge has in that case observed that a cross objection, in the sense in which that expression has been used in Order 41, Rule 22 of the Code of Civil Procedure, is in the nature of an appeal which should be statutorily provided. But since there is no statutory provision for preferring a cross objection in the claim cases arising out of Motor Vehicles Act, the Court cannot permit the Respondent to such appeal to prefer cross objections. The learned Advocate of the Appellant Corporation has, in support of this view also relied upon a recent decision given by a Division Bench of the Allahabad High Court in *Virendra Singh v. Phoolmati* reported in 1978 ACJ 430 which has relied upon a previous decision given by the same Court in *Mt. Daroupadi Debi and Another Vs. S.K. Dutt and Another*, .

32. As against this, Shri Sud, appearing on behalf of one of the claimants, has relied upon a series of decisions given by other High Courts in India taking a contrary view and has drawn our attention to the fact that Chief Justice Pathak has himself referred this question to a larger Bench in F.A.O. 2 of 1977.

33. We have perused the decision recorded by the learned single Judge of this Court in the above referred case as well as the decisions of other High Courts

taking a contrary view. So far as the Motor Vehicles" Act and the rules framed there under are concerned, they do not throw any light on this question. But so far as the CPC is concerned, it is clear that Part VII of the Code which makes provisions for appeals from original decree specifically provides for an appeal in Section 96 thereof. Therein, there is no such specific provision with regard to cross objections. However, provisions as regards cross objection are found in Order 41, Rule 22. Order 41 is with regard to appeals from original decrees and prescribes a procedure which a Court is expected to follow at the time of disposing of an appeal preferred u/s 96 of the Code. It is in the scheme of this procedure prescribed in Order 41, that Rule 22, which stipulates the filing of cross objection, finds its place. Schedule I of the CPC in which Order 41 is placed is enacted u/s 121 of the CPC which says that the rules in the First Schedule shall have effect as if enacted in the body of the Code until annulled in accordance with the provisions of Part X of the Code. Remaining Sections of the Part X provide for the manner in which these rules can be changed. It is obvious from this Part X of the CPC that the Schedule I which contains different Orders and Rules is essentially enacted for the purpose of providing a procedure. But even provisions prescribing a particular procedure may contain some substantive rules creating rights in favour of certain parties. Therefore, the question is whether Rule 22 of Order 41, which contemplates the filing of cross objections creates any substantive right in favour of Respondent who wants to file cross objections, or stipulates a mere procedure enacted for the purpose of disposing of an appeal preferred u/s 96.

34. This question assumes importance because if it is found that Rule 22 of Order 41 creates a substantive right in favour of a party, then that substantive right can be implemented only if it is specifically provided either under a statute or under the rules framed there under. However, if Rule 22 of Order 41 is construed as merely a part of procedure prescribed for the purpose of effectively disposing of an appeal preferred u/s 96 of the Code, then even if such a procedure is not specifically provided for in the Act or in the rule, the same can be followed once the Court takes cognizance of the appeal.

35. Before discussing whether Rule 22 of Order 41 of the CPC creates a substantive right or merely enacts a procedure, it would be proper to refer to the decision given by the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, . The relevant facts of that case were that Registrar of Trade Marks had allowed the objection of the Respondent James Chadwick and Bros. Ltd. to the application made by the Appellants under Trade Marks Act, 1940, and had rejected the said application. Against this order of the Registrar, National Sewing Thread Co. Ltd. preferred an appeal to the High Court of Bombay as permitted by Section 76 of the Trade Marks Act. That appeal was allowed and the order of the Registrar was set aside by a single Judge of the Bombay High Court. However, from that judgment of the learned single Judge, an appeal was preferred by James Chadwick and Bros. Ltd. under Clause 15 of the Letters Patent of Bombay High Court. That appeal was

allowed and the order of the Registrar was restored.

36. On these facts the question which arose before the Supreme Court was whether an appeal under Clause 15 of the Letters Patent of Bombay High Court was premissible against the judgment of the learned single Judge. The contention was that since u/s 76 of the Trade Marks Act only one appeal was contemplated, no second appeal under Clause 15 of the Letters Patent was permissible. The Supreme Court rejected this contention holding that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practices and procedures of that Court. For this proposition Supreme Court approved of the following observations of Discount Haldane in *National Telephone Co. Ltd. v. His Majesty's Postmaster-General* 1913 AC 546

When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches.

The Supreme Court further approved of the following observations made by the Privy Council in AIR 1948 12 (Privy Council) :

Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute, the Courts are governed by the ordinary rules of procedures applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in. terms confer a right of appeal.

This very view has been reiterated by the Supreme Court in *Collector of Varanasi Vs. Gauri Shankar Misra and Others*, .

37. In view of the above decisions of the Supreme Court it is obvious that if it is found that cross objections contemplated by Order 41 Rule 22 from merely a part of the procedure for disposing of an appeal, then the same procedure which the Court would follow in an appeal preferred u/s 96 of the Code of Civil Procedure, would apply and the Respondent would be allowed to file cross objection as contemplated by Rule 22 of Order 41.

38. The contention of the learned Advocate of the Corporation, however, was that cross objections which are filed under Order 41, Rule 22 are not filed as part of procedure but are filed on account of the fact that a substantive right to file the same has been created by Rule 22 of Order 41. Such a view is of course taken by a Division Bench of Allahabad High Court in above referred case of *Virendra Singh v. Phoolmati* (supra). It should, however, be borne in mind that some procedural rights to possess a substantive character inasmuch as they are legally enforceable. Nonetheless, they are a part of the procedure and cannot be claimed independently of that procedure. On consideration of the scheme of Order 41 Code of Civil Procedure, we are of the opinion that though right of a

Respondent to file cross-objections under Rule 22 of Order 41 maybe treated as such an enforceable right, the said right arises out of the procedure contemplated for the disposal of an appeal filed u/s 96 of the CPC and is not independent of such an appeal. In other words, this right is intrinsically of a procedural character though substantive in its nature inasmuch as it can be claimed and asserted according to law during the proceedings of an appeal. It should be noted that substantive right to file an appeal independently of the appeal filed by the other party is already created by Section 96 of the Code of Civil Procedure. Therefore, the right to challenge a part of a decree irrespective of the right to file an appeal u/s 96, as contemplated by Rule 22 of Order 41, must be treated as a procedural right for the simple reason that this right to file cross objections is solely dependent upon the filing of an appeal by the opposite side. Moreover, scheme of Order 41 and especially the wide powers given to the Court under Rule 33 of Order 41 suggests that the intention of the Legislature is to see that once the Court is seized of a matter in its appellate jurisdiction, it is able to do complete justice between all the concerned parties. To us, therefore, it is very clear that the provision enabling a Respondent to file cross objections made in Rule 22 is a procedural provision under which even if a Respondent has not preferred any appeal, the Court is enabled to do complete justice to the parties by allowing the Respondent concerned to prefer cross objections within the period of limitation. Under these circumstances, with great respect to the learned Judges of the Allahabad High Court, we find ourselves unable to accept their view that provision enabling a Respondent to file cross objections is a substantive provision and not a procedural one.

39. In view of our finding that provision for filing cross objections contemplated by Order 41, Rule 22 is a procedural provision, the ratio of the above referred two decisions of the I Supreme Court would at once be attracted, and this Court being seized of an appellate jurisdiction conferred by Section 110-D of the Motor Vehicles Act, it has to exercise that jurisdiction in the same manner in which it exercises its other appellate jurisdiction allowing the Respondents in such appeals to prefer cross objections.

40. The learned Chief Justice has referred to the above decision of the Supreme Court in *National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd.* (supra), but has distinguished that case and other cases adopting the same line of reasoning in the following words:

It will be noticed that in all these cases the question was whether a further proceeding by way of appeal lay against a decision of the Court, be it a District Court or the High Court, and it was held that such proceeding was competent. In the present case, however, the question is whether a cross objection filed by the present Petitioner is maintainable. A cross objection in an appeal cannot be linked to a further appeal arising out of the initial appeal. A cross objection lies at the same level of relief as the appeal in which it is filed. The principle on which the aforesaid cases proceeded is attracted where a further right of appeal is

claimed against the decree passed on the initial appeal.

With great respect, we are unable to comprehend why, if Cross objection lies at the same level of relief as the appeal in which it is filed, the same could not be allowed to be filed, when the appeal itself is allowed to be filed as a matter of procedure which is adopted by the Court concerned. We are, therefore, of the opinion that the decision given by the Supreme Court in *National Sewing Thread Co. Ltd. v. James Chadwick and Bros*, (supra) cannot be distinguished, and the view taken by the learned Chief Justice sitting as a single Judge is, with due respect, not the one which we could follow. We find that Himachal Bench of Delhi High Court has taken the view which we are taking, in connection with an appeal arising from Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953. Section 104 of that Act provides that an appeal shall lie to the District Judge from an order of the Compensation Officer and a second appeal shall lie from the decision of the District Judge to Judicial Commissioner. No procedure has been prescribed by that Act in respect of the appeals filed in the Court of the Judicial Commissioner. The question arose before the Court as to whether cross objections were competent in the second appeal or not. The Court held that the provisions of CPC should apply to such appeals and therefore cross objections were competent. For taking this view the Court has put reliance upon the decision given by the Supreme Court in *National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd.* (supra).

41. We find that this particular reasoning has been adopted by various High Courts in India. The Karnataka High Court has initially taken a view contrary to the view which we are taking just now in three of its judgments, but finally a Full Bench of that High Court has over-ruled these previous judgments in *K. Chandrashekara Naik v. Narayana* reported in 1974 ACJ 522. The High Court of Delhi has taken the view in *Delhi Transport Undertaking v. Kumari Lalita* (supra). The High Court of Punjab has also taken the same view in *Shanti Devi v. The General Manager Haryana Roadways* 1971 ACJ 247 and in *Major Triloki Nath Bhargava v. Jaswant Kaur* 1975 ACJ 259. The High Court of Madhya Pradesh in *Manjula Devi Bhutta v. Manjusri Raha* (1968 ACJ 1), High Court of Assam in the *Phoenix Assurance Co. Ltd. v. Kalpana Rajput* (1974 ACJ 470). High Court of Orissa in *Madhusudan Rai v. Smt. Basanti Kumari Devi* (1973 ACJ 308), High Court of Rajasthan in *Mjs Automobile Transport (Rajasthan) Private Ltd. v. Dewalal and Ors.* (1977 ACJ 150), High Court of Andhra Pradesh in *Government of Andhra Pradesh Transport Department, Hyderabad v. Mrs.K. Padma Rani* (1975 A.C.J. 462) and High Court of Madras in *The The Union Co-operative Insurance Society Ltd., Madras Vs. Lazarammal Ravel and Others*, and *Govind Singh v. A.S. Kailasam* (1975 ACJ 215).

42. It was contended that tribunal is not the Court and the award given by the tribunal is not a decree and therefore Rule 22 of Order 41 would not have any application- The High Court of Punjab has rejected this contention in *Shanti Devi v. The General Manager, Haryana Roadways* (1971 ACJ 247) and we find

ourselves in agreement with the view taken therein to the effect that the procedure contemplated for the tribunal in trying such claim cases is the procedure very much akin to Court's procedure, and that the award given by the tribunal in such claim cases finally determines the rights of the parties. But apart from that we find that the application of Order 41, Rule 22 is not to be considered as in terms because when the procedure contemplated by that rule is to be applied to such appeals the word "Court" is to be read as tribunal and a decree is to be read as an award.

43. In view of this position we are of the opinion that a Respondent in an appeal preferred u/s 110-D of the Motor Vehicles Act is competent to prefer cross objections within the period of limitation stated in Order 41, Rule 22 of the Code of Civil Procedure.

44. This disposes of all the common points of law and according to the decision recorded by us on these common points, we now proceed to take up the individual cases.

F.A.O 30 of 1972

45. With regard to all these cases, it is required to be noted that the fact that the accident was as a result of negligence cannot be disputed because the bus was heavily overloaded and was driven by an unauthorised person. This has been specifically admitted in the reply filed by the State on behalf of the Transport Department.

46. Facts of this case show that one Ram Darshan who was aged 23? years at the time of the accident, died in the accident. He was studying as well as earning and the evidence reveals that his earning was Rs. 400/- per month. The learned Judge of the Tribunal has taken the dependency of the claimant father of the deceased at the figure of Rs. 200/- per month. This figure is on the conservative side. The father of the deceased, who is the claimant, was aged 71 years at the time when he filed his claim. Taking this age of the father as well as the age of the deceased into consideration, the Court could have easily taken the multiple of 15 years purchase. If this multiple of 15 years is taken, the amount of compensation awardable to the claimant would be much more than the amount of Rs. 20,000/- which is awarded. Under the circumstances we see no force in this appeal which is dismissed with costs.

F.A.O 31 of 1972

47. In this case the deceased is Tek Singh, who was 26 years of age and was serving as a Clerk in the Public Works Department and who died as a result of the accident. At the time of his death, he was earning Rs. 311.65 per month. As a result of his death, he left behind him a widow aged 21 years, a son and a widowed mother aged 60 years. The learned Judge of the Tribunal has found that he was sending Rs. 200.00 per month for the maintenance of his family. Thus, according to the learned Judge, the rate of dependency was Rs. 200.00 per

month. Looking to the age of the deceased as well as the age of the dependants this is the case in which multiple of twenty years purchase can be applied. But even if lesser multiple is applied, it cannot be found that the deceased would have spent the amount of Rs. 112.00 for his personal expenditure. Therefore, apart from the loss of dependency, the claimants would also be entitled to loss on account of the estate because the claimants are also the legal heirs of the deceased.

48. Now, if the multiple of twenty years purchase is taken, the loss of dependency would come to Rs. 48,000.00 and the amount of Rs. 3,000.00 as conventional amount on account of loss of expectancy of life. If dependency is calculated at a lesser multiple the loss on account of the estate also should be taken into account. Therefore, taking all these circumstances into consideration, the amount of Rs. 49,278.00 as granted by the learned Judge of the Tribunal is quite proper. This appeal, therefore, fails and the same is dismissed with no order as to costs.

F.A.O 32 of 1972

49. In this case the deceased is Pirthi Singh, a student, aged 19 years, studying in B.A. Final in Government College, Chamba. The claimant is his widowed mother aged 60 years. Reference to Para 11 of the judgment recorded by the learned Judge of the Tribunal shows that the deceased had a brilliant academic career and was on the threshold of the completion of his study. The learned Judge has rightly observed that he would have easily started his earning career with a salary of Rs. 400.00 per month. The dependency of the claimants is taken by the learned Judge at the rate of Rs. 150.00 per month. The learned Judge has applied the multiple of 15 years of age and has awarded total compensation of Rs. 20,250.00.

50. We find that even according to the principles adopted by us, the claimant would be entitled not only to the amount of compensation, but also the loss to the estate and therefore even if the dependency of 15 years is taken, the claimant would be getting much more than the amount actually awarded to her. In the result, therefore, there is no substance in this appeal which is dismissed with costs.

51. Deceased Hari Har Sarup, who was aged 43 years at the time of the accident, died in the accident- He was serving as Inspector of Post Offices and was drawing a salary of Rs. 517.00 per month. He left behind a widow and two minor daughters. The learned Judge of the Tribunal has accepted the words of the widow who has deposed that the deceased was sending Rs. 300/- per month to her for family expenses. Therefore, the dependency of the claimants can be calculated at the rate of Rs. 300/- per month.

52. The question, however, is that what multiple should be applied. It was contended on behalf of the Appellants that the multiple of 15 years purchase should be applied looking to the age of the deceased. In our opinion, looking to

the facts of the case, the multiple of 16 years purchase should be applied and applying this multiple the loss of dependency would be Rs. 57,600.00. To this amount should be added the conventional amount of Rs. 3,000.00 on account of the loss of life expectancy, making the total of Rs. 60,600.00.

53. There is no clear evidence as to what amount the deceased was spending for himself and therefore, applying the formula of the unit expenditure it would follow that the deceased must be spending Rs. 172/- per month for his personal expenditure. This would leave the amount of Rs- 345.00 per month for the dependants as well as for the estate. The dependency is calculated at the rate of Rs. 300/- per month and, therefore, Rs. 45/- would be saved for accretion to the estate. Thus applying 16 years" multiple, the loss to the estate would come to Rs. 8,640/-.

54. Adding the amount of loss of dependency and the loss of estate we get the figure of Rs. 69,240/- (Rs. 60,600+ 8,640). This would be the total amount of compensation which the claimants would be entitled to according to the principles settled by us. However, the claimants have been awarded the compensation of Rs. 71,610.30. The difference between this amount and the amount to which the claimants are found entitled is not good enough to call for our interference in appeal, because the appellate Court would not interfere with the assessment made by the Tribunal unless the assessment made by the Tribunal is extravagant. Under the circumstances, we do not find this to be a fit case for our interference in the appeal. The appeal, therefore, is dismissed without any orders as to costs.

55. So far as the cross objections filed in this case are concerned, they obviously fail because the compensation which is awarded by the learned Judge of the tribunal is found a little on the higher side as shown above. Therefore, the cross objections are dismissed with costs.

56. In this case, one deceased, Vishwa Nath, who was 46 years of age and was receiving the salary of Rs. 250/- per month besides free food and residence, died in the accident- He left behind him two sons, three daughters and a widow- The learned Judge of the Tribunal has found the value of the dependency at the rate of Rs. 125/- per month and he made the total award of Rs. 30,600/-. On the calculation as shown below, we find that this award is completely justified and there is no reason to interfere with the same.

57. Looking to the age of the deceased, the dependency and the loss of the estate should be calculated at the multiple of 15 years" purchase. So, calculating the loss of dependency, it comes to Rs- 22,500/- to which amount the loss of life expectancy should be added at the conventional figure of Rs. 3,000/- which gives us the total of Rs. 25,500/-.

58. The deceased was already provided with free food and residence for himself and, therefore, he must be spending some small amount for his pocket expenditure. Taking a liberal view of the matter, even if it be believed that he

was spending Rs. 50/- for his pocket expenditure, he would be saving Rs. 75/- per month (Rs. 125.50). So, loss to the estate should be calculated at the rate of Rs. 75/- per month. Applying the multiplier of 15 years" purchase we get the figure of Rs. 13,500/-.

59. Thus the total amount of compensation on the above calculation would come to Rs. 39,000/-. But the Tribunal has awarded Rs. 30,600/-. We, therefore, see no point in this appeal which is dismissed with costs.

F.A.O 26 of 1973

60. This appeal is preferred by the claimant Krishnu Devi who is the mother of the deceased Kumar Krishan aged 24 years. The deceased died in this accident, while he was going to take up his employment as a primary teacher. Had he survived, he would have got a total emolument of Rs. 255.80. p.m. The learned Judge of the Tribunal has given the award of Rs. 4,000/-but in this appeal the claimant has claimed the total compensation of rupees one lakh and odd.

61. The claimant mother was 60 years of age at the time of the accident. Even if it is believed that she would have expected to live for ten years more, considering the fact that she was to be given a lump sum amount of compensation and also taking into consideration other imponderables, we think that five years multiple for her would be quite proper. While taking this multiple of five years, we have also taken into consideration the fact that the deceased would have got himself married within two to three years.

62. Considering the fact that the deceased had to maintain only his mother till his marriage, the personal expenditure of the deceased would come to two units valued at Rs. 128/- per month. The remaining amount would have gone to the maintenance of the mother and for accretion to the estate.

63. Therefore, taking five years" purchase for the dependency of the mother claimant, the loss on account of dependency to the claimant would be Rs- 6,400/-. But to this conventional amount of Rs. 3,000/- on account of loss of life expectancy should be added which gives us the total of Rs. 9,400/-.

64. It was contended that some amount should be added on account of loss to the estate. Though, we believe that there would have been some loss to the estate, it is difficult to adopt any method of calculation for the same. The deceased would have no doubt earned increments in his salary, but it is evident that he would have married within two to three years which would have increased his family expenditure. Therefore, we think this to be a fit case in which some round figure should be taken as loss to the estate. We take this figure to be Rs. 2,600/-. Thus the total compensation which is awarded is Rs. 12,000/-.

65. The award passed by the learned Judge of the Tribunal is, therefore, modified and it is ordered that the claimant shall be paid the total compensation of Rs. 12,000/-. The appeal is accordingly allowed but without any order as to costs in

view of the exaggerated claim made by the claimant.

F.A.O 32 of 1973

66. In this case the deceased, who died in this accident, was Hem Singh aged 35 years at the time of his death and was serving as A.S.I, in the Police Department receiving the total emolument of Rs 623/- per month. The claimants are his widow, one minor son, mother and father. The learned Judge of the Tribunal has awarded the meagre compensation of Rs. 25,420/-

67. According to the formula adopted by us in the foregoing discussion about the general principles, the family had nine units of expenditure. Believing that the deceased was consuming two units of expenditure, this expenditure would come to Rs. 140/- per month leaving the amount of Rs. 480/- per month for dependency as well as for accretion to the estate. Taking this as the dictum figure and taking the multiple of 15 years' purchase, the total compensation for loss of dependency as well as loss of estate would come to about Rs. 86,000/-. Under the circumstances, the compensation given by the learned Judge is found to be very inadequate. However, there are no cross objections filed, by the claimants. Under the circumstances, the appeal is found without any substance. The same is dismissed with costs.

F.A.O 33 of 1973

68. In this appeal the deceased Baldev Singh, who was a primary school teacher, died in the accident at the age of 23½ years. His income was Rs. 236.10 per month. The claimants who have filed the claim petition were father, step mother, widow and minor son of the deceased- However, the learned Judge of the Tribunal held that the father and the step mother are not entitled to the compensation. Therefore, the compensation to the widow and the minor son is required to be calculated. The Tribunal assessed this compensation at Rs. 39405/- on the basis that the deceased was providing his family with the maintenance amount of Rs. 150/- per month.

69. Now taking the monthly dependency of the claimants at the rate of Rs. 150/- and looking to the age of the deceased and the claimants, taking the multiple of 20 years purchase, the claimants would be entitled to compensation on account of loss of dependency at Rs. 36000/-. If the conventional amount of Rs. 3000/- is added to this on account of loss of life expectancy the total amount of compensation to which the claimants would be entitled would be Rs. 39000/-. The Tribunal has, however, awarded Rs. 39405/- which is found to be a correct figure of compensation.

70. If the unit expenditure figure by the deceased for his own person is taken into account, then no loss on account of estate would remain to be calculated on the basis that the dependency was Rs. 150/- per month- Therefore, the claimants would not be entitled to any amount on account of loss to the estate.

71. In view of above, this appeal fails and the same is dismissed without any

order as to costs.