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**(1993) 09 MAD CK 0089**  
**In the Madras High Court**

Humera Bhanu, represented by her mother and next friend  
Sirajunnissa and Others

APPELLANT

Vs

Cholan Roadways Corporation

RESPONDENT

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**Date of Decision :** 02-09-1993

**Acts Referred:**

**Citation :** (1994) 1 MLJ 180

**Hon'ble Judges :** Thanikkachalam, J

**Bench :** Division Bench

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**Judgement**

Thanikkachalam, J.—C.M.A. No. 546 of 1985 is directed against the Award passed in M.C.O.P. No. 170 of 1984, whereas C.M.A. No. 547 of 1985 is directed against the Award passed in M.C.O.P. No. 173 of 1984, on the file of the Motor Accident Claims Tribunal, Tiruchirappalli. The appellants in C.M.A.Nos.546 and 547 of 1984 are minor daughter and wife and minor children of the deceased respectively.

2. The brief facts which are necessary for the disposal of these appeals are as under:

On 14.2.1984 at about 6.00 p.m. one Syed Ghouse was riding on his motorcycle, bearing Registration No. TNJ.2592 with his daughter Humera Bhanu (appellant in C.M.A. No. 546 of 1985) as pillion rider. They were proceeding towards East on the left side of the road. At that time, the bus bearing registration No. TMN. 4749, belonging to the respondent - Corporation, was coming behind the motorcycle. The bus was driven by the driver in a rash and negligent manner. The motorcycle was going in a normal speed on the left side of the road with a margin of 2 feet. While so, the bus which was driven in a rash and negligent manner came behind the motor cycle grazed it and on account of that the body of the bus came into contact with the motorcycle and hit the right side handle bar of the motorcycle. The deceased, who was riding the motorcycle, lost his control and fell down on his right side and the bus ran over him. The daughter of the deceased, who was riding on the pillion, fortunately fell on her left side and she

sustained simple injuries.

3. At the time of the accident, the deceased was employed as a Co-operative Sub-Registrar and was drawing a monthly salary of Rs. 1,412 in the scale of Rs. 525-25-675-30-855-35-925. The deceased was aged 47 years at the time of accident. He had the promotional prospects of becoming Deputy Registrar as well as Joint Registrar before attaining his superannuation. The wife and minor children of the deceased, who are appellants in C.M.A. No. 547 of 1985 filed Order P. No. 173 of 1984 claiming compensation at Rs. 6,00,000. The injured minor daughter of the deceased filed Order P. No. 170 of 1984 claiming compensation at Rs. 50,000 for the injuries suffered by her. The claims were resisted by the respondent - Corporation. In the counter filed by the respondent - Corporation it is stated that the deceased was also liable for contributory negligence. According to the respondent, the bus was driven in a normal speed and since the motorcycle was driven in a rash and negligent manner, it came into contact with the bus and on account of that the accident took place. The respondent - Corporation also contended that inasmuch as the accident took place because of the contributory negligence on the part of the deceased, they are not responsible for the accident and consequently they are not liable to pay any compensation to the petitioners.

4. The wife of the deceased and her minor child examined themselves as witnesses. No oral evidence was adduced on behalf of the respondent-Corporation. The petitioners filed 33 documents and the respondent did not file any document. On considering the facts arising in this case the Motor Accidents Claims Tribunal came to the conclusion that the accident took place on account of the contributory negligence on the part of the deceased and therefore the negligence was apportioned between the deceased and the bus driver in the ratio of 40 : 60 and accordingly compensation was awarded.

5. In so far as the quantum of compensation is concerned, the Tribunal took note of the fact that the deceased was earning at that time a sum of Rs. 1,412 as monthly salary and he was aged 47 years. The Tribunal held that the deceased would have contributed to his family a sum of Rs. 1,400 per month out of his monthly salary and by applying the multiplier of 10, the Tribunal arrived at the figure of Rs. 1,60,440 out of Rs. 1,60,440, 40% was deducted towards contributory negligence on the part of the deceased i.e. Rs. 67,776 and the balance amount of Rs. 1,01,664 was directed to be paid to the petitioners in Order P. No. 173 of 1984 as compensation. In so far as the compensation claimed by the injured minor daughter is concerned, the Tribunal awarded compensation of Rs. 2,500 as against the claim of Rs. 50,000. The Tribunal also awarded 9% interest on these compensation amounts from 4.4.1985 till date of realisation. The Tribunal also awarded Rs. 381.50 towards costs.

6. Aggrieved, the petitioners in Order P.Nos.170 and 173 of 1984 are in appeal before this Court, Learned Counsel for the appellants herein submitted as under:

The accident took place solely on account of the rash and negligent driving of the respondent bus driver. The deceased was riding his motorcycle in a normal speed on the left margin of the road. He was riding his vehicle about 2 feet away from the left road margin. Therefore, the motorcycle cannot go further towards left. While attempting to overtake the motorcycle, the respondent - Corporation's bus came into contact with the right handle bar of the motorcycle and on account of that, the rider of the motorcycle lost his control and fell on his right side. It is thereafter, the bus ran over him and he died. The pillion rider, daughter of the deceased, fortunately fell on her left side and sustained injuries. Therefore, it is not correct on the part of the Tribunal, to say that the accident occurred also due to the negligence on the part of the deceased. Hence, the Tribunal was not correct in apportioning the negligence in the ratio of 40 : 60 between the motorcycle rider and the bus driver as the cause for the accident and deducting 40% of the compensation amount. It is significant to note that the respondent - Corporation did not adduce any oral evidence as against the evidence tendered by P.W. 1 who is an injured witness. In fact there was absolutely no negligence on the part of the motorcycle rider. The accident took place on account of the rash and negligent driving of the respondent bus driver.

7. The learned Counsel for the appellants also contended that the Tribunal was also not correct in awarding compensation at Rs. 1,01,664 when the appellants claim was Rs. 6,00,000. The compensation was not awarded on the basis of various heads under which the claim was made. The Tribunal failed to consider the future promotional prospects of the deceased. At the time of the accident the deceased was aged 47 years and therefore in normal course, he can remain in service for another 11 years and by that time he would have been promoted as Deputy Registrar and Joint Registrar, in which case, he would receive the salary at higher pay scale. The Tribunal failed to take notice of these factors-no amount was awarded for loss of consortium to the wife. The pensionary benefit was also not taken into account. So also the gratuity benefits of the deceased was also not taken into consideration. No compensation was awarded for pain and sufferings. It was therefore pleaded that the compensation awarded by the Tribunal in Order P. No. 173 of 1984 is unreasonable and grossly inadequate.

8. Learned Counsel further submitted that the compensation awarded to the pillion rider is also very low. On account of the accident she suffered various injuries. Her vision was affected. On account of the accident, she was compelled to wear spectacles. Without taking all these aspects into consideration the Tribunal awarded compensation at Rs. 2,500 which is not only very low, but also arbitrary and unjust.

9. In order to support his contentions and claims, learned Counsel for the appellants relied upon various decisions and filed three calculation memos and pleaded that the compensation as claimed in the calculation memos may be awarded.

10. On the other hand, learned Counsel for the respondent - Corporation

submitted as under. Without filing cross-objections, it is open to the respondent to canvass before this Court for reduction of compensations awarded by the Tribunal since the compensations awarded are excessive. The motorcycle rider is also guilty of contributory negligence. Therefore, the Tribunal was correct in apportioning the compensation. The bus was going in a normal speed. It is on account of the negligence on the part of the motorcycle rider the motorcycle handle bar came into contact with the body of the bus and therefore it was Submitted that the Tribunal was correct in holding that the deceased is also liable for contributory negligence. The deceased at the time of the accident was earning only Rs. 1,412 per month. He would have taken for his personal expenditure at least 1/3rd of his monthly salary. It is not correct to state that he would have taken only Rs. 12 per month for his personal expenditure out of his monthly salary. There is no evidence on record to show that the deceased is entitled to travelling allowance and daily allowance. The Tribunal was not correct in applying the multiplier of 10. When the compensation was awarded in a lump sum a deduction of 20% should be made out of the lump sum. This was not done by the Tribunal. The compensation claimed by the appellants under various heads were not substantiated with documentary evidence. It was pleaded that the compensation awarded in O.P. No. 173 of 1984 is excessive and the Tribunal should have reduced it to a reasonable extent. P.W. 1 daughter of the deceased who was riding on the pillion did not produce any certificate to show as to what kind of injuries she had sustained. The damages claimed under various heads in the case of P.W. 1 were also not substantiated with documentary evidence. Therefore, a sum of Rs. 2,500 awarded to P.W. 1 by way of compensation is also excessive and a reasonable amount should be fixed by way of compensation to P.W. 1.

11. We have heard the rival submissions.

12. We have already set out the facts in detail. The accident took place on 14.12.1984. The deceased was riding on the motorcycle and his daughter was riding on the pillion. The motorcycle was going in a normal speed on the left margin of the metal road. In between the motor cycle and the left margin of the road there was a gap of two feet. It means the motorcycle cannot go further towards left. While so, the respondent - Corporation's bus which was coming behind the motorcycle attempted to overtake the motorcycle and in that process the body of the bus came into contact with the right hand handle bar of the motorcycle and as a result of which, the rider of the motorcycle lost his control and fell on his right side and was run over by the bus. The pillion rider fell on her left side and she sustained injuries. The fact remains that the bus attempted to overtake the motorcycle. The motorcycle was proceeding on the left margin of the road and the motorcycle cannot go further left as there was only 2 feet gap. The bus, which attempted to overtake the motorcycle, ought to have taken care and caution while doing so. The fact that the body of the bus came into contact with the right handle bar of the motorcycle would itself go to show that the driver of the bus was rash and negligent in driving the bus. The circumstances leading

to the accident would go to show that the principle of *res ipso loquitur* (things speak for itself) would apply. P.W. 1 was examined as a witness. She narrated the incident. There was no contra evidence on the side of the respondent-Corporation to show that there was no negligence on the part of their bus driver. The appellants herein also filed several documents to show the nature of the accident that took place. The circumstances leading to the accident and the evidence produced by the appellants herein would go to show that the accident took place solely on account of the rash and negligent driving of the bus by the respondent - Corporation driver. The deceased was haying his minor daughter on the pillion and hence he would not have driven the vehicle in a rash and negligent manner. There is no evidence on record to show that the motorcycle was driven by the deceased in a rash and negligent manner. The Tribunal failed to appreciate the facts arising in this case on this aspect in proper perspective. Therefore, we set aside the finding of the Tribunal that the deceased also contributed negligence on his part in the accident. Accordingly, we hold that there is no negligence on the part of the deceased in riding the motorcycle and the respondent - Corporation's bus driver alone was responsible for the accident as he drove the bus in a rash and negligent manner.

13. Learned Counsel appearing for the appellants herein contended that without filing a cross-objection, the respondent cannot canvass for reduction of the quantum of compensation awarded by the Tribunal. Learned Counsel submitted that even though the respondent can support the findings of the Tribunal, the respondent is not entitled to ask for reduction of the quantum of damages. On the other hand, learned Counsel for the respondent submitted that in view of the provisions contained in Order 41, Rule 22, C.P.C. it is open to the respondent to ask for reduction of compensation without filing a cross objection. The learned Counsel further submitted that it is open to the court of appeal to maintain the decree appealed from the ground which had been raised but not accepted by the trial court, even though the respondent did not take any cross objection. This contention raised by the learned Counsel for the respondent is tenable in view of the following decisions in the case of *The Union Co-operative Insurance Society Ltd., Madras Vs. Lazarammal Ravel and Others*, , in the case of *Haridas Mundhra Vs. Indian Cable Co. Ltd.*, and in the case of *Gaddam Chinna Venkata Rao and Others Vs. Koralla Satyanarayanamurthy and Another*, . Therefore, when we consider these appeals on merits we would take into consideration the arguments advanced by learned Counsel for the respondent with regard to reduction of quantum of compensation awarded by the Tribunal.

14. Before the Tribunal the appellants in C.M.A. No. 547 of 1985 claimed compensation at Rs. 6,00,000. But the Tribunal awarded only Rs. 1,01,664. So also the appellant in C.M.A. No. 546 of 1985 claimed compensation at Rs. 50,000 but the Tribunal awarded Rs. 2,500. In order to support their claims, the appellants in C.M.A. No. 547 of 1985 filed three calculation memos. In calculation memo No. 1 it is stated that the total emoluments for 128 months from February, 1984 to September, 1994 comes to Rs. 2,26,085.45 as per Ex. A-33

and the evidence of P.W. 3. The average pay per month comes to Rs. 1,766.28. If 1/3rd is deducted for the personal expenses of the deceased the balance per month works out to Rs. 1,177.52 per month. The total amount at 2/3rd for 128 months of the service of the deceased comes to Rs. 1,50,722.56. The pension per month according to the pension rules will be not less than Rs. 1000 at 50% on the average of 10 months of last drawn pay. The total for seven years on the basis of span of life for 65 years after retirement of the deceased at the age of 58 years comes to Rs. 84,000 (i.e. 12,000 per annum ? 7 years). Deducting 1/3rd the balance of 2/3rd works out to Rs. 56,000. The deceased will also be entitled to retirement gratuity at the rate of 1/4th of emoluments for each completed six months period of qualifying service. The deceased would have put in a service of 34 years and it means 68 completed half years and 1/4th of the emolument of Rs. 1,766.28 would be Rs. 441.57 and for 68 half years it would be Rs. 30,026.76. For loss of consortium Rs. 10,000 was claimed. The total amount under different heads according to calculation memo No. 1 is Rs. 2,46,749.32.

15. According to calculation memo No. 2 the total emoluments the deceased would have obtained for 128 months of service from February, 1984 to September, 1994 comes to Rs. 4,42,212.45. The average per month works out to Rs. 3,454.78. If 1/3rd is deducted for the personal expenses of the deceased balance 2/3rd payable to the family works out to Rs. 2,303.18. The total amount at 2/3rd for 128 months of service of the deceased payable to the family comes to Rs. 2,94,808.30. The pension as per rules is 50% of the average emoluments of last ten months of service. Average emoluments is Rs. 4,155 50% of Rs. 4155 comes to Rs. 2078. Pension for seven years from 58 years to 65 years i.e. Life expectation upto 65 years comes to Rs. 1,74,552 (i.e. 7 ? Rs. 2,078). Deducting 1/3rd for self expenses of the deceased balance 2/3rd payable to the family comes to Rs. 1,16,368 (i.e. 1,74,552 - 58,184). Death cum retirement gratuity at the rate of 16 1/2 times of last drawn pay comes to Rs. 61,050 (i.e. 16-1/2? 3700) and if Rs. 10,000 is added to this amount towards loss of consortium, the total comes to Rs. 4,82,226.30. From this Rs. 61,497 is deducted towards family pension and the balance comes to Rs. 4,20,729.30. Thus, according to calculation memo No. 2 the total compensation payable to the family of the deceased is Rs. 4,20,729.30.

16. The calculation memo No. 3 is prepared on the basis of the revised pay scales under G.O.Ms. No. 555, Finance (Pay Cell) Department, dated 10.6.1985 and G.O.Ms. No. 666, Finance (Pay Cell) Department, dated 27.6.1989. According to this calculation memo, the total emoluments for the service period (February, 1984 to September, 1994) i.e. from the date of accident to the date of retirement) after deducting family pension and 1/3rd of the value for self expenses of the deceased the balance 2/3rd for the family comes to Rs. 2,63,810.30. The pension according to Pension Rules is Rs. 2,078 per month. The total for seven years on the basis of life span for 65 years after retirement of the deceased at the age of 58 years comes to Rs. 1,74,552. i.e. (2,078?7) and if

Rs. 58,184 is deducted towards 1/3rd for self expenses of the deceased the balance comes to Rs. 1,16,368 being 2/3rd pension payable to the family. Death cum retirement gratuity is 16 1/2 times of the last drawn pay (3,700 ? 16 1/2). Thus it works out to Rs. 61,050.00. For loss of consortium Rs. 10,000 was claimed. Thus, according to this calculation memo, the total amount to which the family is entitled to is Rs. 4,51,228.30.

17. On the other hand, learned Counsel appearing for the respondent filed a calculation memo, according to which the total earnings comes to Rs. 2,26,805 out of which Rs. 1,13,402.00 has to be deducted as per the Supreme Court judgment in Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, and the balance comes to Rs. 1,13,402.50 and if Rs. 10,000 is added to it towards loss of consortium, the total compensation works out to Rs. 1,23,403.00. According to the decisions reported in Principal, Tamil Nadu Theological Seminary Vs. A. Saraswathi and Others, and New India Assurance Co. Ltd. Vs. V.K. Chandra and Others, , I (1993) ACC 345 (SC) , out of monthly salary of Rs. 1,412 - Rs. 81 should be deducted. After this deduction the net monthly salary comes to Rs. 1,331. 1/3rd of personal expenses comes to Rs. 442.60. Dependency was calculated at Rs. 887, i.e. Rs. 1,331-444. Thus the total pecuniary loss is calculated at Rs. 1,06,440. To this if Rs. 10,000 is added towards loss of consortium, the total comes to Rs. 1,16,440. From this amount, 20% is deducted in view of lump sum payment and uncertainties of life, the total compensation works out of Rs. 93,152.

18. As per the Supreme Court decision in National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, net benefits on the basis of capitalisation theory is suggested. If Rs. 1,000 is taken throughout and 10 years multiplier is adopted and if Rs. 10,000 is added towards loss of consortium the compensation works out to Rs. 1,30,000. If Rs. 1,30,000 is invested 11% interest works out to roughly Rs. 1,192 per month approximately. This is what the deceased was contributing. Corpus is intact for any number of years and this benefit accrues even after the retirement period during which the pension is Rs. 445. It was therefore pleaded by the learned Counsel for the respondent that the compensation should be determined in the abovesaid manner.

19. While considering the method of determining compensation u/s 168 of the Motor Vehicles Act (59 of 1988) the Supreme Court in the case of National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, , held as under:

The appropriate method of assessment of compensation is the method of capitalisation of net income choosing a multiplier appropriate to the age of the deceased or the age of the dependants whichever multiplier is lower. It is, no doubt, true that as a rough and ready measure, the method of aggregating the total expected income for the remainder of the life-expectancy with appropriate deductions towards uncertainties of life and for lump sum payments is also resorted to. But this method is now considered unscientific and is virtually obsolete. At all events wherever it is resorted to it would require to be cross-

checked with the results of the appropriate and the more scientific method of capitalisation of the loss of dependency.

20. In *I (1993) ACC 345 (SC)*, the Supreme Court held that "while determining the multiplier future increments and promotional chances of the deceased and loss of consortium to the young widow should be taken into consideration." While determining the quantum of compensation the Supreme Court held that "since the compensation is being enhanced by this Court after about 15 years of the accident, there is no question of making any deductions on any score and when the compensation was paid in lump sum deductions with regard to uncertainties of life should not be made." In *Principal, Tamil Nadu Theological Seminary Vs. A. Saraswathi and Others*, a Division Bench of this Court while considering the provisions of Sections 95(2)(b) and 95(2)(c) of the Motor Vehicles Act, 1939 held that "while the compensation is paid in lump sum 20% should be deducted." In *New India Assurance Co. Ltd. Vs. V.K. Chandra and Others*, a Division Bench of this Court while considering Section 95(2)(b) of the Motor Vehicles Act 1939, held that "deduction of 1/6th should be made on account of lump sum payment and for uncertainties in life." In *Nirmala Thirunavukkarasu v. Tamil Nadu Electricity Board* 1984 A.C.J. 210, this Court while considering the quantum of compensation payable in a fatal accident extracted the following tests as adumbrated by Subba Rao. J. (as he then was) in the case of *Gobald Motor Service Limited v. R.K. Veluswami* 1958 A.C.J. 179, viz.

At first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by accidents; Secondly the amount required for the future provisions for his wife shall be estimated having regard to the amounts he used to spend on her during his life time and other circumstances; Thirdly the estimated annual sum is multiplied by the number of years of the man's estimated span of life, and the said amounts must be discounted so as to arrive at the equivalent in the form of a lump sum payable on his death; Fourthly, further deduction must be made for the benefit accorded to the widow from the acceleration of her interest in this estate and Fifthly, further amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life, and it should also be taken into account that there is the possibility of the widow remarrying much to the improvement of her financial position. It would be seen from the said mode of estimation that many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the respondents may depend upon data which cannot be ascertained accurately but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit, and on the other hand any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss, and gain to a dependant, by the death must be ascertained.

In *Nand Kaur v. Sukh Rai* AIR 1981 Del. 319 : 1981 A.C.J. 320, it was held that the average life expectancy should be taken at 70 Or 75 years. In *Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others*, , it was held that "when the compensation is calculated on the basis of what the claimants would have received in all during the course of 23 years, interest receivable on the investment of such lump sum for all these years, reflects an un contemplated and in a way unmerited addition. Discount thus is an indispensable process and part of fair and just determination. Percentage of discount however must depend on fact and facts of each case." In the abovesaid decision it was also held that further amount of Rs. 5,000 towards loss to the estate by way of expectancy cannot be revised on the ground of duplication in awarding damages by following the decision in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, . In *Sankaran National Insurance Co. Limited, Timnelveli Town v. Valliammal* 1987 T.L.N.J. 1984, this Court while considering the tests for determining the multiplier held as under:

We have set out the principles regarding multiplier, as held by various High Courts. Therefore, bearing these principles in mind, this Court holds that the system of multiplier in arriving at a quantum of compensation in motor accidents claims, entirely depends upon the discretion of the Tribunal and the Appellate Court and the said discretion vested with the Tribunal of the Appellate court is to be exercised judicially and not arbitrarily. In each case, the multiplier has to be chosen as one quite in accordance with law, justice, equity and good conscience and applied in the case, neither to the advantage of the claimants nor to the detriment of the persons liable, whether the owner of the vehicle involved or the insurance company, but the determination should be just and legal.

21. The fact remains that the deceased was working as a Sub Registrar in the Co-operative Department. His last drawn salary was Rs. 1412 and he was 47 years old at the time of the accident. The Tribunal was of the view that the deceased would have contributed Rs. 1400 to his family and rest he would have taken for his personal expenses. According to the respondent - Corporation as per decisions reported in *Principal, Tamil Nadu Theological Seminary Vs. A. Saraswathi and Others*, in the case of *New India Assurance Co. Ltd. Vs. V.K. Chandra and Others*, and in the case of I (1993) ACC 345 (SC) , after deduction of Rs. 51 the net claim would come to Rs. 1,331 and out of this 1/3rd should be deducted for personal expenses. On such deduction, the net amount contributed by the deceased to his family would come to Rs. 887 (Rs. 1,331 - Rs. 444). Thus the total pecuniary loss and loss of consortium was worked out at Rs. 1,16,440 (Rs. 1,00,654 + 10,000). Out of this amount 20% should be deducted for lump sum payment and uncertainties in life. Thus the Respondent corporation worked out the total compensation payable to the family of the deceased at Rs. 93,152.

22. It was also pointed out by the respondent-Corporation that if the compensation is calculated on the basis of income capitalisation method as per the decision of the Supreme Court in *National Insurance Co. Ltd. Vs. M/s.*

Swaranlata Das and others, along with loss of consortium, the compensation would come to Rs. 130,000 (Rs. 1,000  $\times$  12  $\times$  10 = Rs. 10,000) and interest at the rate of 11% per annum on Rs. 1,30,000 would come to Rs. 1,192 per month approximately. This is the contribution the deceased would have made to his family per month, according to the respondent - Corporation. This amount is apart from the pension the deceased would get after his retirement at Rs. 445 per month.

23. In the decision in the case of National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, , the Supreme court pointed out that the income capitalisation method is now considered as unscientific and it has become virtually obsolete. According to the Supreme Court, it would require to be cross-checked with the result of the appropriate and more scientific method of capitalisation of the loss of dependency. Therefore, the method suggested by the respondent-Corporation under the head "C" in their memo of calculation cannot be accepted. Further, it is not known as to on what basis the monthly income was taken at Rs. 1,000 per month in the memo of calculation filed by the respondent.

24. In the decision in I (1993) ACC 345 (SC) , the Supreme Court held that while determining the multiplier, the future increment and promotional chance of the deceased and the loss of consortium to the widow should be taken into consideration. In the method of calculation suggested by the respondent - Corporation in its memo of calculation filed by it under the heads "A" and "B" future increments and promotional chance of the deceased were not taken into consideration and therefore these methods suggested by the respondent - Corporation are not acceptable since these methods are against the decision of the Supreme Court cited supra.

25. In the memos of calculation filed by the appellants future increments and promotional chances were taken into consideration in a more scientific method. One of the memos of calculation filed by the appellants is on the basis of revised scales of pay under G.O.Ms. No. 555, Finance (Pay Cell) Department, dated 10.6.85 and G.O.Ms. No. 666, Finance (Pay Cell) Department dated 27.6.1989. The accident took place in the month of February, 1984. The deceased would have retired in the month of September, 1994. He would have drawn the salary for a period of 128 months. In his evidence P.W. 3 stated that the deceased could have been promoted as Deputy Registrar with effect from 1.11.1986 and as Joint Registrar from September, 1993 before attaining superannuation. As per G.O.Ms. No. 666, Finance (Pay Cell) Department, dated 26.9.1989 his pay scale as Deputy Registrar would be Rs. 2,200-75-2,800-100-4,000 and as Joint Registrar his pay scale would be Rs. 3,700-125-4,700-150-5,000. It was submitted that as per the revised pay scale under the abovesaid Government orders, the average salary per month would come to Rs. 3,454.78 and out of it if 1/3rd is deducted for his personal expenses 2/3rd payable to his family would come to Rs. 2,303.18. On this basis the deceased would have contributed to his family a sum of Rs. 2,94,808.30 till his superannuation. The deceased would also be entitled to

pension as per the revised pay scale. The pension as per rules is 50% of the average emoluments of last 10 months service. The average life span is determined at 65 years. It means after retirement the deceased would have received his pension for a period of 7 years. Deducting 1/3rd towards his personal expenses, 2/3rd of the amount payable to the family is worked out at Rs. 1,16,368 ( $7 \div 12 \times \text{Rs. } 2,078$ ) = Rs. 1,74,552 - Rs. 58,184 = Rs. 1,16,368. The deceased would also be entitled to death cum retirement gratuity. This would be 161/2 times of last drawn pay. This works out to Rs. 61,050 ( $\text{Rs. } 3,700 \times 16.5$ ). Under the head loss of consortium a claim was made for Rs. 10,000. Considering the age of the deceased and the age of his widow this claim appears to be reasonable and accordingly we allow the same. If the abovesaid amounts are taken into consideration, the total amount of compensation claimed by the appellants comes to Rs. 4,51,228.30. This, according to the appellants, would be the contribution by the deceased to his family.

26. in *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, , the Supreme Court held that "where the social need of the hour requires that precious human lives lost in motor accidents leaving a trail of economic disaster in the shape of their unprovided for families call for special attention of the law makers to meet this social need by providing for heavy and adequate compensation particularly through Insurance Companies. Our country can ill-afford the loss of a precious life when we are building a progressive society and if any person engaged in industry, office, business or any other occupation, dies, a void is created which is bound to result in a serious set-back to the industry or occupation concerned. Apart from that the death of a worker creates a serious economic problem for the family which he leaves behind. In these circumstances it is only just and fair that the Legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula. At the same time, the Supreme court also cautioned the authorities concerned in the matter of awarding compensation in the following manner in *M.P.S.R.T. Corporation v. Sudhakar*, 1977 ACJ 290 (SC) .

In assessing damages certain other factors have to be taken note of, such as, the uncertainties of life and the fact of accelerated payment that the husband would be getting a lump sum payment which but for his wife's death would have been available to him in dribblets over a number of years. Allowance must be made for the uncertainties and the total figure scaled down accordingly. The deceased might not have been able to earn till the age of retirement for some reason or other, like illness or for having to spend more time to look after the family which was expected to grow. Thus the amount assessed has to be reduced taking into account these imponderable factors.

27. In view of the principles laid down by the Supreme court and our High court in the decisions cited supra, out of the abovesaid sum of Rs. 4,51,228.30, We have to make certain deductions to arrive at the legitimate compensation

payable to the family of the deceased. Deductions have got to be made for lump sum payment and uncertainties of life. The payment is made according to the family of the deceased. If the deceased was alive the family would, get income in dribblets over number of years. The capacity of the earning would also deteriorate due to illness, etc. In such circumstances it is doubtful whether the deceased would be able to contribute 2/3rd of his income. The family of the deceased is also now receiving the family pension which will be increased according to the new pay scale as per the report of the 4th Pay Commission. Considering all these aspects in the light of the judicial pronouncements cited supra, we are of the opinion that if 50% is deducted out of the total amount of Rs. 4,51,28830 that would meet the ends of justice. No doubt the family of the deceased is entitled to another Rs. 10,000 under the head loss of consortium. Thus the family of the deceased would get Rs. 2,25,614 which has been rounded off to Rs. 2,26,000 plus Rs. 10000 in all Rs. 2,36,000. Thus considering the claim made by the appellants\*in the light of the judicial pronouncements cited supra, we determine the quantum of compensation payable to the family of the deceased at Rs. 2,36,000 instead of Rs. 1,01,164 awarded by the Tribunal. The appellants would also be entitled to interest at the rate of 12% per annum on the amount of compensation determined by us from the date of filing the petition till the date of realisation. The respondent - Corporation is directed to deposit the abovesaid amount deducting the amount, if any, already deposited by them in court in Order P.No.173 of 1984 within four weeks from the date of this judgment. Accordingly, C.M.A. No. 547 of 1985 stands allowed with costs.

28. In C.M.A. No. 546 of 1985, the appellant who is the daughter of the deceased claimed compensation for her personal injuries at Rs. 50,000 and the Tribunal awarded Rs. 2,500. It is against that order, the present appeal has been preferred by the daughter of the deceased. The appellant also was riding on the motorcycle as the pillion rider; She fell down due to rash and negligent driving of the bus by the driver of the respondent - Corporation. We have already held in C.M.A. No. 547 of 1985 that there is no negligence on the part of the motorcycle rider in riding the motorcycle and the negligence was on the part of the bus driver of the respondent Corporation. Therefore, the appellant herein is also entitled to get compensation for her personal injuries. According to the learned Counsel for the appellant, on account of the accident, she has been made to wear spectacles. According to Ex. A-1 medical certificate she received only simple injuries. She produced some bills to show that she has incurred expenditure in purchasing medicine. Ex. A-2 is the O.P. ticket. By seeing the accident, in which her beloved father, was killed, she would have received mental shock. Considering all these aspects, we determine the Compensation payable to the appellant in C.M.A. No.546 of 1985 at Rs. 5,000 instead of Rs. 2,500 determined by the Tribunal. The appellant is also entitled to interest at the rate of 12% per annum of Rs. 5,000 from the date of filing the petition till the date of realisation. The respondent - Corporation is directed to deposit the compensation amount after deducting the amount, if any, already deposited by them in court in

O.P. No. 170 of 1984, within four weeks from the date of this judgment. C.M.A. No. 546 of 1985 is also allowed with costs.

29. In the result, both the C.M.A. Nos. 547 and 546 of 1985 are allowed with costs to the abovesaid extent.