

(1991) 07 KL CK 0047
In the High Court Of Kerala
Case No : M.F.A. No. 490 of 1986

Nazeema and Others

APPELLANT

Vs

George Kuriakose and Others

RESPONDENT

Date of Decision : 26-07-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1992) 1 ACC 268 : (1992) ACJ 816 : AIR 1992 Ker 67 : (1992) 2 ILR (Ker) 30

Hon'ble Judges : Varghese Kalliath, J;G.H. Guttal, J

Bench : Division Bench

Advocate : T.R. Raman Pillai, for the Appellant; P.G.P. Panicker and N. Rajagopalan Nair, for the Respondent

Judgement

Guttal, J.—In this appeal the claimants in M.A.C. No. 262 of 1983 impugn the legality of the award made by the Motor Accidents Claims Tribunal (M.A.C.T. for short), Kottayam, whereby the latter disallowed the claim for compensation of Rs.4 lakhs arising out of the death of Mohammed Basheer.

2. The question which arises for consideration in this appeal is, whether the value of the share held by the deceased in a partnership business which was received by the claimants upon the death of the deceased, is liable to be deducted in assessing the amount of compensation u/s 110-B of the Motor Vehicles Act, 1939?

The question arises out of the facts set out in paragraphs 3 and 4 below.

3. The appellant No. 1 is the widow, and appellants Nos. 2 and 3 are the minor children of the deceased. The respondents Nos. 1 and 2 are respectively the owner and driver of the bus KLO 5871 which caused the death by rash and negligent driving. The respondent No. 3 is the insurer.

4. On 4-5-1979 the deceased Mohammed Basheer was travelling in an ambassador car. When his car was near Thalayolaparamb bridge the bus driven

by the respondent No. 2, in a rash and negligent manner, rammed into the car of the deceased. The deceased died on the same day as a result of the accident.

The claim in M.A.C. No. 262 of 1983 was for compensation of Rs. 4 lakhs. But it was not split up under different heads such as loss of consortium, claim for loss of dependency and so on. The Tribunal awarded Rupees 15,000/- on account of the shortened expectancy of the life of the deceased, Rupees 15,000/- towards the loss of consortium to the widow and Rs. 10,000/- each to the appellants Nos. 2 and 3 on account of loss of love and affection of their father, thus making a total of Rs. 50,000/-.

The deceased 32 years of age was, along with his brother, a partner in the firm known as Kallumkal Trading Syndicate which dealt in rubber products. On the basis of Income Tax assessment orders of the firm, Exts. A1, A2 and A5 for the years 1979-80, 1977-78 and 1980-81 respectively the Tribunal found that the income of the deceased, as such partner, was Rs. 3,000/- per month. On 19-7-1979 within two months of the death, by a reconstitution of the firm, the appellants were made partners in the place of the deceased. This reconstitution of the firm took effect retrospectively from the date of the death of the deceased. The appellants are since earning Rs. 3,000/- per month as their share of the profit from the firm. Rs. 3,000/- per month was also the profit made by the deceased as the partner of the firm. Therefore, according to the Tribunal, the appellants suffered no monetary loss despite the death of the deceased. The Tribunal found that the income derived by the appellants as their share of profit from the firm was a benefit which they received "by reason of the death of Mohammed Basheer. However, the Tribunal rejected the appellants' contention that upon the death of the deceased they received a sum of Rs. 2 lakhs in lieu of the share of the deceased. The Tribunal endeavoured to balance the loss to the appellants caused by the death of the deceased, against the pecuniary advantage by way of income from the partnership derived by them upon the death of the deceased. On balancing the loss resulting from the death of Mohammed Basheer against the gains of profits from the firm, the Tribunal concluded that no compensation was payable on account of the shortened life expectancy of the deceased.

The fact that the death was caused by rash and negligent driving of the respondent No. 2 and that the insurer is liable to pay compensation awarded by the Tribunal are not disputed.

5. The argument of the appellants is that the compensation u/s 110-B of the Motor Vehicles Act, 1939 shall be calculated without reference to the income of the appellants as partners of the firm which they acquired upon the death of the deceased. They urge that their succession to the share of Mohammed Basheer is not related to his accidental death. They would have got his share even if he were to die a natural death in the normal course of events. Their claim in this appeal is confined to the compensation on account of loss due to the shortened life of the deceased.

6. There are two lines of judicial thought on the sole question arising in this appeal.

The first line of thinking which is against the deductibility of the value of the property of the deceased received by the dependants is represented by the decisions of:

(a) Punjab and Haryana High Court in Damyanti Devi v. Sita Devi 1972 ACJ 334; Sood & Company v. Surjit Kaur 1973 ACJ 414; and National Insurance Co. Ltd. v. Mrs. Sharala R. Gupta 1982 ACJ 40;

(b) Gujarat High Court in Life Insurance Corporation of India v. Legal representatives of deceased Life Insurance Corporation of India and Another Vs. Kasturben Naranbhai Vadhia and Others, and Amthiben Maganlal v. Superintending Geophysicist O.N.G.C. 1976 ACJ 72 and Prataprai Arjandas Dhameja and Another Vs. Bhupatsing Gagji (by Lrs.) and Others, ;

(c) The Delhi High Court in Bhagwanti Devi v. Ish Kumar 1975 ACJ 56 and Amarjit Insurance Co. Ltd. and Others Vs. Vanguard insurance Co. Ltd. and Others, ;

(d) The Calcutta High Court in Sambhupada v. Sobhrani Sen Sharma 1980 ACJ 180;

(e) The Himachal Pradesh High Court in H.P. Road Transport Corporation Vs. Pt. Jai Ram and etc. etc.,

(f) The Andhra Pradesh High Court in Sushila Bajpai v. Andhra Pradesh State Road Transport Corpn. 1989 ACJ 747 and

(g) The Madras High Court in T.R. Rangaswami and Another Vs. Thiruvalluvar Transport Corporation (Express Wing), Madras,

The opposite view supporting the deduction of the value of the property of the deceased received by the dependants is held by the High Courts of (i) Madhya Pradesh in Smt. Sushila Devi and Others Vs. Ibrahim and Another, (ii) Bombay High Court in Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others, and (iii) the Karnataka High Court in Karnataka State Road Transport Corporation v. A.R. Satishchandra 1981 ACJ 138.

7. We will first consider the case which holds that the amounts like pension, insurance money and gratuity received upon the death of the deceased are deductible in determining the quantum of compensation. The cases are Smt. Sushila Devi and Others Vs. Ibrahim and Another, ; Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others, and Karnataka State Road Transport Corporation v. A.R. Satishchandra 1981 ACJ 138 (Kant).

8. In Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others, the Supreme Court's observations in Gobald Motor Services Ltd. v. R.M.K. Veluswami AIR 1962 SC I, were relied upon. We will deal with the

principles emerging from Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , a little later. But it must be mentioned that Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others, was overruled by a Full Bench of the Bombay High Court in Hirjee Veerje v. Saroja Narayan Shetty 1983 ACJ 177 : (AIR 1982 Bom 467). Therefore the view of the Division Bench in Jaikumar Chhaganlal Patni that the amount of insurance money, pension, gratuity, provident fund etc. should be deducted, is no longer the law laid down by the Bombay High Court. Smt. Sushila Devi and Others Vs. Ibrahim and Another, which held that the amounts were deductible for the purpose of computing the just compensation was overruled by a Full Bench of the Madhya Pradesh High Court in Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another, and a contrary view was taken. In Karnataka State Road Transport Corporation v. A.R. Satishchandra 1981 ACJ 138 (Kant) the question whether the amount of insurance policy receivable by reason of death was deductible was not considered. Paragraph 51 of the judgment of the Karnataka High Court shows that Rs. 15,000/- were deducted from the total amount of compensation "towards accelerated payment of insurance", which is different from deduction of the total amount received by the claimants. Besides, the principle on which the deduction was made is not discernible from the report.

9. Since the various High Courts have relied upon certain observations of the Supreme Court in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, we will first analyse and consider what principle was laid down and whether it is applicable to the circumstances of this case.

10. Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , arose under the Fatal Accidents Act, 1855 which lays down the general law providing for compensation to the representatives of the deceased person or to his estate for the loss occasioned by his death as a result of the accident.

Compensation under the Fatal Accidents Act is determined on two distinct bases referred in Sections 1 and 2. u/s 110-B of the Motor Vehicles Act, the basis of compensation is justness of the amount. The provisions of the Motor Vehicles Act in regard to compensation are wider than those of the Fatal Accidents Act. The Motor Vehicles Act, 1939 does not even refer to the Fatal Accidents Act. No doubt, the principles applicable for determining compensation under the Fatal Accidents Act may be applied to cases under the Motor Vehicles Act for the purpose of determining just compensation.

Against the background of these distinctions consider what was laid down in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, .

In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , the father, widow and sons claimed compensation upon the death of Rajaratnam. The accident giving rise to the case had occurred on 20-9-1947. The claim was under Sections 1 and 2 of the Fatal Accidents Act. A sum of Rs.25,200/- to plaintiffs Nos. 2 to 7 and Rs. 3,600/- to plaintiff No. 1 was awarded u/s 1 of the

Fatal Accidents Act. Rs. 6,000/- was awarded to plaintiffs 2 to 7 u/s 2 of the Act. The Supreme Court following the English cases, *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) AC 601 and *Nance v. British Columbia Electric Ry. Co. Ltd.* (1951) AC 601 made the oft-quoted observations relating to the mode of assessing damages, which read :

"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 any pecuniary advantage which from whatever source comes to them by reason of death, that is, the balance of loss and gain to a dependant by the death must be ascertained."

This act of balancing the loss caused to any the advantage derived by, the dependants by reason of the death has been stated to be of crucial importance in determining the amount of compensation. In other words, if the claimants received any advantage "by reason of death" of the deceased, the value of that advantage has to be subtracted from the amount of compensation assessed by the Tribunal. However, the Supreme Court noted in paragraph 8 of the report that the deceased Rajaratnam owned a building worth Rs. 2 lakhs and land worth Rs. 1,20,000/-. Nevertheless, the Supreme Court, aware of the principle of balancing enunciated by it, confirmed the grant of Rs. 25,000/- as compensation. No deduction of the value of the building and the land was made by the Supreme Court. Secondly, paragraph 3 of the judgment which sets out the points urged before it, reveals that the question whether the value of the advantage like land, house, provident fund, gratuity, shares etc. received by the dependants upon the death of the deceased should be deducted from the amount of compensation did not fall for consideration. We are of the opinion, therefore, that the Supreme Court did not lay surance Co. Ltd. Amarjit Insurance Co. Ltd. and Others Vs. Vanguard insurance Co. Ltd. and Others, and Amthiben Maganal v. Superintending Geophysicist ONGC 1976 ACJ 72 deductibility of insurance money was considered. N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, ; Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another, and Sood and Co. v. Surjit Kaur 1973 AC J 414 disallowed deductions of the amounts of provident fund, pension and gratuity. The basis of these decisions is that by reason of their intrinsic character, the benefit of such amounts, always belonged to the deceased and his dependents. The deceased could always borrow from the insurance premia paid by him or from his provident fund, for marriage, sickness or housing of his dependents. The essential consideration was whether these amounts were received by "reason of death" of the deceased, a principle laid down in *Gobald Motor Service Limited Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, and earlier English cases. "By reason of death" means "in consequence of death." These expressions manifest the causal connection between the death and the receipt of the advantage or benefit. This cause and effect relation does not admit of cases where the dependents receive amounts which are merely "payable at the death" of the deceased. In every case the

question is : Did the dependent receive the benefit "by reason of, "in consequence of" or "by" the death? The question is not whether the dependent received any benefit "at" the death or whether the benefit was "payable at the death"? In our opinion these tests raise a further question --Could the dependents have received the benefit during the lifetime of the deceased? Or can it be said that but for the death they would not have received the share of Mohammed Basheer?

It follows that if the dependents were receiving the benefits during the lifetime of the deceased or they would, in any event, have succeeded to the property, such benefit is not received by them "by reason of the death, though it was payable or receivable "at the death" of the deceased.

16. The "by reason of or "in consequence of test may be taken to have been judicially established. We accept them as valid tests. But the further question is: Where the dependents receive money "by reason of the death of the deceased what exactly is deductible from the gross amount of compensation to arrive at the net figure of compensation? We will address ourselves to this question in paragraph No. 17 below.

17. The argument advanced by the respondents, -- the insurer, and the owner -- that the benefit received by the claimants upon the death of the deceased has to be deducted from the amount of compensation stems from a misreading of the judicial decisions. The judicial decisions have in unmis- table terms laid down that deduction be made for the benefit accruing to the dependent "from the acceleration of his interest" in the estate. C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, paragraph 12. The same test was laid down in other judicial decisions *Hirjee Veerjee & Co. v. Saroja Narayan Shetty* 1983 ACJ 177 : AIR 1982 Bom 467). The reason is clear. What was received "by reason of the death" is not the whole of the property but only that which came earlier than it was expected. The value of the accelerated benefit has to be computed and deducted from the amount of compensation. The deduction of the amount representing the value of the whole of the property, was never held deductible. Therefore a deduction of the entire amount received by the deceased cannot be deducted.

18. The judicial authorities have now laid down almost unanimously that the value of the acceleration of the benefit of insurance money, provident fund, gratuity and so on, is not deductible for the purpose of determining the compensation payable u/s 110-B of the Motor Vehicles Act. Two reasons are discernible from the judgments of different High Courts. First reason is as stated in paragraphs 14 and 15 is that the money represents saving of the deceased payable to him under a contract. The second reason is found in the tortfeasor approach of some High Courts. The legal validity of the deduction of benefit received "by reason of the death of the deceased has been rejected by some High Courts on the ground that the benefit of the savings by the deceased should not go to the tortfeasor or wrong-doer who is not entitled to receive any

advantage by reason of the wrongful act for which he is responsible.

In *Amthiben Maganlal v. Superintending Geophysicist ONGC* 1976 All LJ 72 (Guj) the principle of deduction of accelerated benefit was accepted but was not applied (a) as the claim was too low making any deduction unjust and (b) justice required that the tortfeasor did not receive any benefit of the savings of the deceased. In *Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another*, para 22 the Full Bench of the Madhya Pradesh High Court, following the case of *Parry v. Cleaver* 1969 ACJ 363 concluded that it is unjust, inequitable and unreasonable that the money which the deceased prudently invested insurance premia, provident fund or pension, should not enure to the benefit of the tortfeasor. More importantly, the Full Bench of the Madhya Pradesh High Court enunciated that equity and reasonableness which are the postulates of the Motor Vehicles Act do not permit these deductions. The Full Bench of the Bombay High Court *Hirjee Veerjee & Co. v. Saroja Narayan Shetty* 1983 Acc CJ 177 : (AIR 1982 Bom 467 did not accept the "tortfeasor approach" of the Madhya Pradesh *Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another*, and the Gujarat *Amthiben Maganlal v. Superintending Geophysicist ONGC* 1976 ACC CJ 72 High Courts. The English decisions also have adopted the tortfeasor approach.

19. The tortfeasor approach is a manifestation of judicial revulsion against the attempt by wrong-doers to seek advantage of the receipt of rightful benefits by the dependents. But the real reason against deduction of the benefits of insurance, pension and gratuity lies elsewhere. The real reason is evident in abundance in the recognition that these amounts are the result of savings, thrift and economic discipline of the deceased. Therefore, the dependents, to whom they legitimately belong, must receive them.

We will now consider whether the rule of deduction of accelerated benefit is sound.

20. In England the common law rule of deduction of such benefits has become obsolete by reason of the statutory inroads into it. For a brief essay on the Development of this branch of law in England See *Mc Gregor on Damages* -- Fourteenth Edn., Page 900. Wholesale application of every doctrine of English common law may not only be inappropriate but may distort a true interpretation of Section 110-B of the Motor Vehicles Act, 1939 which enjoins the Tribunal to award "just" compensation. We consider it unnecessary to express any opinion about the tortfeasor approach. In our opinion certain judicial decisions in England and the element of justness inherent in the Indian jurisprudence manifest in Section 110-B of the Motor Vehicles Act, demand a fresh look at the rule of deduction of the value of accelerated benefit.

21. The cases referred to above generally accept that the acceleration of the receipt of benefit by the dependents needs to be deducted from the gross amount of compensation. But this principle borrowed from English Common Law

is not universally applied even in England. The uncertainty on the propriety of deductions is demonstrated in a number of English cases.

We are not oblivious to the fact that many other English judicial decisions have applied the rule of deduction of accelerated benefit. Firstly we will invite, hereinbelow, attention to four English cases, to highlight the uncertainty and the far-from-universal application of the rule even in England. The analysis is intended to draw attention to the declining validity of the rule even in English common law. Secondly, we will call attention to the total rejection of the rule by the English statutory law. Thirdly we will point out that the current legal thought in England is in favour of discarding the rule. Finally we will lay down an empirical approach consistent with Indian jurisprudence.

22. In *Roughhead v. Railway Executive* (1949) 65 TLR 435 Humphrey, J. observed :

"In my humble opinion it is a grisly way of looking at things to say that a widow benefits by her husband's premature death because she receives what he proposed to leave her and in the present case it is everything he had earlier than she otherwise would have done. Nor am I in the least satisfied that it is a universal rule which could possibly be applied to all cases."

Another English Judge said :

"I find great difficulty in knowing how one has to deal with a benefit to a wife or to a child through a portion of the deceased man's estate having received by the wife or child, sooner than it otherwise would have been. There is acceleration and that may be a benefit but it is not always so."

Gulbanu Rajabali Kassam v. Kampala Aerated Water Co. Ltd. (1965) IWLR 668 a judgment of the Privy Council, speaking of the deduction in respect of acceleration observed:

".....and having regard to the anticipated savings which might reasonably have been expected to have been made by the deceased if he had lived, no deduction ought to be made on the score of accelerated benefit, as the two figures very largely cancel out."

In *Whittome v. Coates* (1965) 1 WLR 1285 disallowing deduction of ?386 in cash held by the deceased the Court of Appeal observed :

"Therefore it would be wrong to accede to the argumentthat this sum should be deducted..... pound for pound, but it is a matter which should be taken into account."

23. The English cases referred to above demonstrate varying facets of the uncertainty about the application of the rule of deduction of the accelerated benefit. *Roughhead v. Railway Executive* (1949) 65 TLR 435 described it as "grisly" and asserted that it was not a universal rule. *Muirhead*, accepting the 8-9. *Muirhead v. Railway Executive* ((1951) CA 178 quoted by Mc Gregor at Page

911). rule with reluctance, said that the benefit of acceleration was not always a "benefit". *Gulbanu Rajabali Kassam v. Kampala Aerated Water Co. Ltd.* (1965) 1 WLR 668 laid bare the one-sided approach of deduction of the value of acceleration. It held that while acceleration gives benefit to the dependents, the untimely death of the deceased deprives the dependents of future savings or increased income resulting in cancellation of the loss and the benefit. In *Whittome v. Coates* (1965) 1 WLR 1285 the deduction of 386 pounds from the amount of compensation was disallowed. This judgment reduced the rule of deduction to a mere "a matter which should be taken into account."

24. The four English cases illustrate how uncertain is the rule of deduction of the value of acceleration. Thus, under the English Common Law, as expounded in the four cases referred to by us, the rule is neither certain in its content nor uniform in its application. Under the statutory law of England, as of today, the acceleration of the benefit to the dependents will not be taken into account in assessing compensation payable to the dependents. By reason of the statutory provisions in England "there are next to no benefits to be taken into account" for the purpose of deduction from the amount of compensation. The modern trend of legal thinking in England is to disregard, in assessing compensation, all benefits received from the estate of the deceased."

25. We are of the opinion that the rule of deduction of the value of acceleration which has lost its credibility in England, in earlier days by judicial interpretation and today, by statutory inroads, is not sound. The deduction of the value of the accelerated benefits may appear just because it balances the benefits against the loss of dependency. But this apparent balancing takes into account only one side of the matter. A complete balancing of benefit and loss must take in its ambit every benefit -- the benefit gained by acceleration and benefit lost to the dependents. For instance, untimely premature death denies to the dependants not merely the income at the time of the death but also the benefit of future gains, which the deceased would have made and accumulated for the estate. The rule ignores that by reason of the premature death, the dependents may receive substantially less capital sum than they might have received if the deceased were die later. In the case of an employee, progress and promotion bring increased income and savings --and thereby acquisition of other assets. The growing inflation, a factor which is not currently taken into account, diminishes the real value of the compensation awarded. In the case of a businessman greater profits in the future, capital formation and savings constitute future gains. The future gains or profits lost to the dependants may well cancel the value of the accelerated benefit. In our opinion a rational approach, consistent with justice, is to balance the receipt of accelerated benefit against the loss of future benefits which the accidental death denies to the dependants.

26. It is important to remember that although the dependents may get the moneys or other property earlier in time, the value of these moneys and property may be substantially less than they would have been, had the deceased

tied in the normal course of events, by reason of the savings that he would have made out of his future earnings. In short, the gain by the accelerated benefit is cancelled out by the loss of probable future savings. We are of the opinion that the cancellation of the gain of accelerated benefit by the loss of probable future savings, by the deceased, is a factor of fundamental importance in assessing compensation in cases involving receipt of accelerated benefit.

27. Every case in which the dependents receive a benefit like insurance money, provident fund or other property, involves the accelerated benefit from the estate of the deceased. We have rejected for the reason in paras 25 and 26, the rule of deduction of such benefit for the reason that the rule fails to take into account the loss of probable future savings of the deceased. In other words, the rule of deduction of the accelerated benefit serves to deny to the dependents what rightfully belongs to them. There is thus a strong element of injustice in the rule of deduction.

28. Section 110-B of the Motor Vehicles Act enjoins the Tribunal to award "just" compensation. An amount determined by denying to the claimants what belongs to them, without balancing the loss against future gains, cannot be "just" compensation. In our opinion "just" lays down a wider basis for assessment of compensation than the Fatal Accidents Act does. The basis for determining compensation adopted under the Fatal Accidents Act in India or in England under the English Fatal Accidents Act, is not as wide as the basis formulated by the legislature by employing the words "just compensation" in Section 110-B of the Motor Vehicles Act. The fundamental consideration u/ Section 110-B is justness of the compensation. No compensation which fails to balance loss and gains can be said to be just. The balancing of the loss of dependency against the gains by acceleration is an incomplete, partial, balancing of interests. A complete and just balancing must take into account, the lost gains of future savings and capital. In our opinion this total balancing of loss and gain is the essence of "just" compensation. In our opinion, the rejection of the rule of deduction of the accelerated benefit advances the ends of justice and is therefore in accord with Section 110 B of the Act. To accept the rule of deductibility and disregard the future gains lost to the dependents, offends the element of justness in Section 110-B. Acceptance of the one-sided partial rule of deductibility produces unreasonable result and is opposed to the legislative purpose of securing just compensation.

29. In England where the injustice of the rule of deduction of accelerated benefit has been recognised, a two stage method of calculation of compensation is followed. First a deduction for the acceleration is made and then the future savings to the dependents are added. This two-stage calculation was adopted by the Privy Council, *Nance v. British Columbia Electric Railway Co. Ltd.* (1951) AC 601 and was later endorsed by the House of Lords, *Taylor v. O'Connor* (1971) AC 115.

The method adopted in England need not be followed in India. Firstly the ends of

justice -- the very purpose of Section 110-B of the Motor Vehicles Act, 1939 -- can be achieved by rejecting the unjust rule. Secondly, in India the evidence of future gains of the deceased may not be available, making the balancing of the lost future gains against the accelerated benefit difficult. Thirdly most of the benefits falling for consideration come to the dependents by succession and cannot be taken into account in the process of balancing.

30. While judicial decisions abound in relation to the accelerated benefits of insurance money, provident fund and the like, there are fewer cases which consider how the acquisition of other assets of the deceased --such as immovable property, share in a partnership etc. -- should be dealt with. In the present case, the appellants stepped into the firm as partners and received the share which the deceased owned. This presumably happened by succession.

The cases in which the dependents receive property like car or house which they used even during the lifetime of the deceased obviously do not justify deduction of the acceleration. However, we do not find a significant difference between such cases and the cases in which the dependents come into possession of the deceased's property after his death. If the dependents enjoyed the benefit of the house, land, a car or income from the business during the lifetime of the deceased, after his death they continue to have the benefit from such property in a different capacity. No doubt, the deceased is not alive to share the use of these assets, thereby marginally increasing the benefit to them. In the present case, the appellants always enjoyed the benefit of the income from the business of Kallumkal Rubber Syndicate as the dependents of Mohammed Basheer. After his death they enjoy the benefit as partners of the firm. The reality of the situation is that for all practical purposes the appellants were enjoying the benefit of the estate of the deceased, almost as much before his death as they do now. The fact that the appellants now enjoy absolutely the benefit of the share of the deceased is a change of mere form and not of substance. Therefore the appellants did not receive the benefit of the partnership business "by reason of the death" of Mohammed Basheer they always possessed it.

31. We will now refer to three judgments -- two of Punjab & Haryana High Court and one of Andhra Pradesh High Court, and endeavour to understand the principles emerging from them.

Sarla Gupta's case 1982 ACJ 40 (Punj & Har) has an important lesson relevant to this case. Ramkumar Gupta the deceased derived in addition to his salary income from the profit of Messrs Bombay Forge a Hindu undivided family firm. After his death the firm closed down. Since the firm whose income stopped after the death of Ramkumar, was run solely by him it was held that "whole of the income of this concern would be a loss of the family and has to be taken into consideration while assessing the annual loss to the dependents." Secondly although after the death of Ramkumar his widow was employed as the Director of K.T. Steels, in the place of Ramkumar, her salary of Rs. 1,000/- p.m. was not deducted from the compensation. Thirdly the value of the landed property of

Ramkumar inherited by the dependents was held not deductible from the compensation. All these assets would in any case have been inherited by the dependents.

In *Damyanti Devi v. Sita Devi* 1972 ACJ 334 (Punj & Har) the value of the residential house and factory left by the deceased were not deducted from the compensation as the dependents did not receive them "by reason of the death."

In *Susheela Bajpai v. Andhra Pradesh State Road Transport Corpn.* 1989 ACJ 747 (Andh Pra), the claimants received Rs. 25,000 from the Insurance Company towards the loss of the Tempo vehicle in which the deceased was travelling at the time of the accident. It was held that the claimants received the amount by succession and not "by reason of death" of the deceased.

32. Two principles emerge from the three decisions referred to in the last paragraph:--

(i) The income from a business establishment for which the deceased was solely responsible, is lost to the estate after his death. Therefore the whole of such income which ceases to flow after his death has to be taken into account in assessing loss to the dependents.

(ii) The immovable property and other income yielding assets inherited by the dependents under the appropriate law of succession are not benefits accruing "by reason of" the death of the deceased.

33. *Sarla Gupta* 1982 ACJ 40 (Punj & Har); *Damyanti Devi* 1972 ACJ 334 (Punj & Har) and *Sushila Bajpai* 1989 ACJ 747 (Andh Pra) lay down principles which advance the legislative purpose of determining just compensation.

These decisions support our view that the rule of deduction of the value of accelerated benefit is not just. The Motor Vehicles Act, 1939 has used with reference to the compensation to be awarded, the words "which appears to be just". The Fatal Accidents Act, the interpretation of which generated the test of deduction of the value of acceleration does not contain even a reference to "just" compensation. The Fatal Accidents Act provides for damages "proportioned to the loss resulting from such death" and "pecuniary loss to the estate" -- phrases which convey a narrow concept of compensation. The Fatal Accidents Act provides for compensation in respect of "actionable wrong" -- words which are general and extend to wrongs unconnected with Motor Vehicles. The Motor Vehicles Act 1939 -- a consolidating Act -- specially provides for compensation for acts "arising out of the use of motor vehicles". This special law relating to compensation for accidents arising out of the use of motor vehicles deliberately introduced the concept of justness of compensation applicable to the Special class, of actions. The idea of justness is wider than the bases of compensation laid down in the Fatal Accidents Act. It takes in its sweep every consideration which balances the loss and gain to the dependents. The dominant legislative intent is to ensure that what is awarded to the dependents is just. In our opinion

the rejection of the rule of deduction of accelerated benefit, for reasons stated by us in paras 21-25, and for the reasons on which the decisions in the three cases referred to in paras 31-32, rest, advance the legislative object of providing just compensation.

34. We have carefully borne in mind the fact that in *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, the Supreme Court has, upheld the test of deduction of accelerated benefit. The case arose out of the Fatal Accidents Act 1855, which lays down different bases and narrower tests for determination of compensation. The Supreme Court was not called upon to decide the question of "just" compensation arising out of the very special facts out of which the case before us arises.

35. We summarise our conclusions :

(i) Gobald Motor Services Ltd. which is the foundation of the view that the value of every benefit accruing to the dependents by reason of the death of the deceased, should be deducted for the purpose of determining compensation u/ Section 110-B of the Motor Vehicles Act, does not support such a view. Paragraphs 7 -- 12.

(2) Under the rule of deduction of the value of the benefits received by the dependents, what is deductible is the value of the acceleration and not the value of the whole amount received. Paragraphs 16 -- 19.

(3) The rule of deduction of the value of accelerated benefit received by the dependents has lost its validity even in England. Paragraphs 20 -- 24.

(4) Judicial opinion in England has rendered the rule of deduction of the accelerated benefit uncertain in its content and application. The statutory law of England has discarded the rule. Paragraphs 21 -- 25.

(5) The modern legal thought in England is to disregard, in assessing compensation, all benefits received by the dependents, from the estate of the deceased. Paragraph -- 24.

(6) The rule of deduction of the accelerated benefit, now abandoned in England, ignores that loss of possible future benefits such as increased savings, and acquisition of other property by the deceased, cancels out the value of accelerated benefit. Therefore the rule has an element of injustice. Paragraphs 25 -- 27.

(7) The basis of compensation under the Motor Vehicles Act, 1939 being justness, the generalised tests applicable under the Fatal Accidents Act do not govern cases under the Motor Vehicles Act. Paragraph -- 33.

(8) Rejection of the one-sided rule of deduction of accelerated benefit, advances the ends of justice and is in consonance with the legislative intent of securing just compensation u/Section 110-B of the Motor Vehicles Act, 1939, Paragraphs 28, 29 & 33.

(9) The receipt of the property of the deceased by the dependents through succession is not "by reason of death" of the deceased. Therefore the value of such property should be kept out of consideration in arriving at the figure of just compensation. Paragraphs 30 -- 32.

36. We therefore hold that the amount of Rs. 3,000/- p.m. which the appellants received as partners of Kallumkal Rubber Syndicate, cannot be deducted for determining compensation payable to them. The appellants have claimed compensation only in respect of the loss of dependency due to the shortened life of the deceased. Mohammed Basheer was 32 years old on the date of his death. Having regard to the increased average life expectancy in India and having regard to the fact that the deceased was engaged in independent business, it is reasonable to hold that he would have continued to earn at least Rs. 3,000/- p.m. and support the appellants for 30 years more. Out of Rs. 3,000/- p.m. he would have contributed Rs. 2,000/- to the family which depended on him. A multiplier of 25 would be appropriate. The total loss on account of his death would therefore be $2000 \times 12 \times 25$ = Rs. 6,00,000.00. The unexpected, uncertain and imponderable events call for a deduction of 1/5th of this amount. Thus the total compensation comes to Rs. 6,00,000.00 minus (Rs. $6,00,000 \div 5$ = Rs. 1,20,000.00) Rs. 1,20,000.00 = Rs. 4,80,000.00.

37. In the circumstances of the case a sum of Rs. 4,80,000.00 is just compensation. However, the appellants have claimed only an amount of Rs. 4,00,000.00. We therefore make an award of Rs. 4,00,000.00 as compensation to the appellants. This amount shall include the sum of Rs. 50,000.00 awarded by the Tribunal thus making an enhancement of Rs. 3,50,000.00 over what the Tribunal has awarded. The amount shall carry interest at the rate of 12% per annum.

The above amount of compensation shall be apportioned in the following manner.

- (i) Nazeema, wife of K. M. Mohammed Basheer Rs. 1,60,000.00
- (ii) Fatima, daughter of K. M. Mohammed Basheer Rs. 1,20,000.00
- (iii) Tariq, son of K. M. Mohammed Basheer Rs. 1,20,000.00

The amount of compensation awarded to Fatima and Tariq, who are minors, shall be deposited in a nationalised bank until they attain majority. Since the minor appellants are in receipt of income as partners and do not need any part of the compensation awarded by us for their maintenance the interest accruing on the amount in the name of the two minor appellants shall not be withdrawn and shall be allowed to accumulate until they attain majority.

There will be no order as to costs.