

**(1976) 06 OHC CK 0002**  
**In the Orissa High Court**  
**Case No : Misc. Appeal No. 29 of 1973**

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|--------------------------------|----|------------|
| Orissa Road Transport Co. Ltd. | Vs | APPELLANT  |
| Sibananda Patnaik and Others   |    | RESPONDENT |

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**Date of Decision :** 25-06-1976

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 7(2)  
Motor Vehicles Act, 1939 — Section 110, 110B  
Orissa Revenue Administration (Units) Act, 1963 — Section 3

**Citation :** AIR 1976 Ori 205

**Hon'ble Judges :** S. Acharya, J

**Bench :** Single Bench

**Advocate :** Y.S.N. Murty, for the Appellant; B.H. Mohanty, S.S. Mohanty, S.K. Mohanty, P.K. Sahu, P.C. Prusty and S.C. Roy, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S. Acharya, J.—The General Manager of the Orissa Road Transport Company Ltd., which owns the bus, ORG 2743, one of the vehicles involved in the accident in question, has preferred this appeal u/s 110-D of the Motor Vehicles Act against the decision of the Motor Accident Claims Tribunal, Cuttack in Misc. Case No. 23/69. The claim petition was filed by the father-in-law of the deceased (P. W. 10) on behalf of the widow and children of the deceased who are respondents 1 to 5 in this appeal. The accident in question took place on 18-10-1969 at about 11.00 a.m. near the Kuakhi bridge on the Cuttack-Bubaneswar road.

The case put forward on behalf of the claimants is that on 18-10-1969 the deceased was returning in his car ORC 7733 from Berhampur to Cuttack. Near about the Kuakhai bridge the deceased's car was passing by the side of the bus ORG 2743 belonging to the appellant and after the car overtook the bus, the bus suddenly swerved to its right and dashed against the car. At that time a loaded truck, bearing No. APS 929 owned by respondent No. 6, was coming from the opposite direction. As the said bus dashed against the car of the deceased from

behind, the car collided against the truck coming from the opposite direction and in the process the car got sandwiched between the bus and the truck and was crushed to pieces as a result of which the deceased was killed instantaneously at the spot. According to the claimants the accident took place due to the rash and negligent driving of the above mentioned bus. The deceased at the time of "his death was Joint Director of Soil Conservation, Orissa and was 45 years 9 months of age. He was then getting a salary of Rs. 1,500/- including D. A. His life expectancy according to the claimants was 65 years. On different scores the claimants made a claim for Rs. 1,56,000/-.

2. The case of the appellant (Opposite party No. 1 in the Court below) is that the driver of the bus ORG 2743 was driving the vehicle at a reasonable low speed when the accident took place. The car ORC 7733 in which the deceased was travelling overtook the bus without blowing the horn or waiting for the signal from the bus driver to overtake the bus. There was not enough space on the right side of the bus for the car to overtake the bus and just at the time when the car was trying to overtake the bus at that place a truck was coming from the opposite direction, the car dashed against the bus and then it dashed against the oncoming truck and in the process it was sandwiched between the two heavy vehicles. When the driver of the bus found that the car was trying to overtake the bus within a very small space, he (the driver of the bus) suddenly steered the bus towards its left and applied its brakes as a result of which the bus toppled down on its left side at the place of the accident. It was also urged by the appellant that the accident took place due to the rash and negligent driving of the car, and the bus driver was in no way responsible for the said accident. The appellant further contends that the application for compensation was not maintainable in law, and that in any view of the matter the claim for compensation is highly exaggerated. By an additional written statement filed by the appellant statements regarding some properties owned by the deceased and his income from different sources was furnished. In that written statement it is further stated that the claimants received certain amounts from different sources on account of the death of the deceased by accident.

3. The owner of the truck, opposite party No. 2 in the Court below and respondent No. 6 herein, did not file any written statement. The insurer of the truck i. e. opposite party No. 3 in the Court below and respondent No. 7 in this appeal, filed his written statement stating, inter alia, that at the place of the accident the truck APS 929 was parked on its extreme left side of the road even beyond the tarred portion, and the car ORC 7733 came at a very high speed and tried to overtake the bus ORG 2743 at the place where the accident took place. As the bus and the car were both being driven at a very high speed and the car was trying to overtake the bus those two vehicles dashed against each other as a result of which the car was hurled against the front portion of the truck and the accident took place. According to this respondent the accident was due to rash and negligent driving of the car and the bus, and the truck was in no way responsible for the said accident, and so neither the owner nor the insurer of the

truck can be held liable to pay any compensation in this case.

4. In the Court below the following seven issues were framed:--

- (1) Is the case maintainable ?
- (2) Has this Court jurisdiction to entertain the claim application ?
- (3) Was the accident caused due to rash and negligent driving of the truck driver ?
- (4) Is the driver of the bus of ORT Company in any way responsible for the accident ?
- (5) Was there any contributory negligence on the part of the driver of the car in which the deceased was travelling ?
- (6) Is the petitioner entitled to get any compensation ? If so, to what extent ?
- (7) To what relief, If any, the petitioners are entitled ?

The first and the second issues were answered in the affirmative. The third issue was answered in the negative. With regard to the 4th and 5th issues the Court below held that the accident took place entirely due to rash and negligent driving of the driver of the bus ORG 2743 and that there was no contributory negligence on the part of the driver of the car. Regarding the 6th and 7th issues relating to the quantum of compensation to be awarded in this case the Court found that the claimants are entitled to Rs. 75,000/-with interest at 6 per cent per annum from the date of the award till the payment of the said amount. The appellant has preferred this appeal against the aforesaid decision of the Court below and the claimants have preferred a cross-objection against the said decision demanding higher compensation than awarded by the Court below. The appeal and the cross-objection were heard simultaneously and are hereby being disposed of by this one judgment.

5. Mr. Murty, the learned counsel for the appellant at the outset urged that the Tribunal did not have the jurisdiction to entertain and adjudicate the claims preferred by the claimants as the place where the accident took place was not within the jurisdiction of the said Tribunal at the time when the claim petition was filed before it. This question was tried as a preliminary issue in the Court below before the hearing of the case on merits and the Tribunal arrived at the finding that it had jurisdiction to entertain the application for compensation and to adjudicate the matter. Mr. Murty, the learned counsel for the appellant again reargued the same question in this appeal. According to Mr. Murty the accident took place near village Pendra which came within the Puri district on and from 1-11-1969 and so the Tribunal at Cuttack, having his jurisdiction co-extensive with the District Judge, Cuttack, did not have the jurisdiction to entertain this claim petition, filed on 17-12-1969 and/or to grant any relief on the said petition. u/s 110 of the Motor Vehicles Act (hereinafter referred to as the "Act") it is for the State Government to constitute one or more Motor Accident Claims Tribunals

for such area as may be specified in the notification for the purpose of adjudication upon claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of the motor Vehicles or damages to any property of a third party so arising or both. u/s 110-A (2) every application under Sub-section (1) of that section is to be made to the Claims Tribunal having jurisdiction over the area in which the accident occurs, and shall be in such form and shall contain such particulars as may be prescribed. Undisputedly the territorial jurisdiction of the Motor Accident Claims Tribunal, Cuttack is co-extensive with the territorial jurisdiction of the District Judge, Cuttack. The civil jurisdiction of the District Judge of Cuttack was defined and circumscribed as per notification u/s 13 of the Bengal, Agra & Assam Civil Courts Act, and so long the territorial jurisdiction so conferred on the District Judge, Cuttack is not altered by any subsequent notification u/s 13 of the said Act, his said jurisdiction cannot be affected in any manner. Nothing also is brought on record" to show that there was a notification u/s 110 of the Motor Vehicles Act any way changing the existing territorial jurisdiction of the Motor Vehicles Tribunal sitting at Cuttack. Village Pendra no doubt was included in the district of Puri as per notification No. 61399 dated 30th September, 1969 issued by the Government of Orissa in the Revenue Department in pursuance of Sub-section (2) of Section 7 of the Code of Criminal Procedure read with Clause (b) of Section 3 of the Orissa Revenue Administration (Units) Act, 1963. That notification published in the Orissa Gazette (Extraordinary) dated 30-9-1969, shows that for the purposes of the said enactment the limits of the district of Cuttack were altered with effect from the 1st November, 1969 so as to exclude certain villages including village Pendra, in which the accident took place from the district of Cut-tack. There is nothing in the said notification to show that the civil territorial jurisdiction of the District Judge. Cuttack, as notified earlier u/s 13 of the Bengal, Agra & Assam Civil Courts Act, was also altered so as to exclude village Pendra from the territorial jurisdiction of the District Judge, Cuttack. In the absence of any notification u/s 13 of the Bengal, Agra & Assam Civil Courts Act or u/s 110 of the Motor Vehicles Act, showing readjustment or reconstitution of the territorial jurisdiction of the District Judge, Cuttack, or of the Tribunal at Cuttack thereby excluding village Pendra from his jurisdiction before 17-12-1969, on which date the claim petition was filed, it cannot be said that the territorial jurisdiction of the District Judge. Cuttack or of the Tribunal sitting at Cuttack underwent any change and he had no jurisdiction to entertain the present application. Both in the Court below and in this Court the parties were given enough opportunities to file or even to state on affidavit that any such notification was issued by the proper authority, but nothing could be brought on record in that connection. That being so it cannot be said that the said Tribunal did not have the jurisdiction to entertain the claims petition on 17-12-1969 and/or to grant any relief on the same. Thus the above mentioned contention regarding want of territorial jurisdiction of the Tribunal is without any substance.

6. Mr. Murty, learned counsel for the appellant has urged that the finding of the

Tribunal that the accident took place entirely due to rash and negligent driving of the driver of the bus ORG 2743 and that there was no contributory negligence on part of the driver of the car is incorrect, and is contradictory to and/or against the weight of the evidence on record. On making a careful reappraisal and fresh assessment of the evidence on record I find that the finding of the Court below on this aspect is perfectly correct and justified. The finding of the Court below that the truck APS 929 was no way responsible for the said accident was not seriously challenged by the appellant. Neither the claimants nor the appellant made the driver of the truck responsible for the accident. The photographs Exts. 2/a and 4/a clearly show that the truck had completely left the tarred portion of the road and had gone to its extreme left edge of the road, beyond which it could not have moved without causing serious consequences to itself. The said photographs got corroboration from the evidence of P. W. 8 and the spot map prepared by him. P. W. 6 who visited the spot very soon after the occurrence also corroborates the above fact. On the evidence on record I am satisfied that the finding of the Court below, that the truck cannot any way be made responsible for the accident, is perfectly correct and justified.

7. Now let me examine as to whether the bus driver or the car driver was or both of them were responsible for the said accident.

8. The appellant in para. 4 of his written statement has alleged that the car ORC 7733 in which the deceased was travelling overtook the bus without blowing the horn or asking for any signal for overtaking the bus. He has again stated therein that the driver of the car did not wait to see the signal of the driver of the bus before overtaking it. The case made out in paragraph 5 of the said written statement is that the car while overtaking the bus did not take notice of the truck coming from the opposite direction and so it (the car) dashed against the loaded truck coming from the opposite direction as a result of which the car was pushed back and it dashed against the bus. The fact that the car completely overtook the bus is borne out by the testimony of O. P. W. 2 for O. P. No. 1. O. P. W. 2 in his examination-in-chief itself has stated that the car overtook the bus and it crossed the bus. In his cross-examination he again categorically admitted that by the time of the accident the car had already crossed the bus. O. P. W. 6 has also stated that the car went 10 feet or so beyond the bus before striking against the truck. His evidence to that effect shows that the car had already crossed the bus before the accident. The case made out by O. P. No. 1 in his written statement and the above fact deposed to O. P. Ws. 2 and 6 clearly indicate that the car had sufficient space to overtake the bus and in fact it did overtake the bus and while it was moving in front of the bus the accident took place.

9. P. W. 8 was the M.V.I., Cuttack who visited the spot and examined the vehicle lying at that place and submitted his report attaching thereto a sketch map of the place of accident (certified copy of the report and the sketch map marked as Ext. 8). In his deposition he has stated that the bus was lying on its left side on the middle of the road at the place of the accident. From the photographs of the

vehicles lying at the place of accident, exhibited as Exhibits 2/a and 4/a, it is quite evident that the bus was moving very much on the right side of the road leaving sufficient space on the road on its left side. O. P. Ws. 3 and 4 for O. P. No. 1 have stated that the tarred portion of the road at the spot was about 20 feet. It is clearly evident from the exhibited photographs that at the place of the accident besides the tarred portion of the road there were katcha portions on both the sides of the road. O. P. W. 2 has also admitted in his cross-examination that there was sufficient space at the spot for a jeep to pass on the left side of the bus where it had fallen on the road. P. W. 6 has stated that there was sufficient space on the road at the spot on the left side of the bus for a cart to pass by that way. O. P. W. 4, the driver of the said bus has stated in his cross-examination that the entire bus had fallen on the tarred portion of the road and no portion of it went beyond the edge of the tarred portion. From the above evidence on record it is quite evident that at the place of the accident the bus was moving very much on the right side of the road leaving sufficient space on the road on its left side. On the evidence discussed earlier it has been found that at the place of the accident the car, before the accident had already overtaken the bus and was moving in front of the bus. That being so it was expected of the driver of the bus, who was driving the bus very much on the right side of the road, to move his vehicle to its left, obviating all possibilities of the bus coming in contact with the car in front of the bus. But on the evidence on record it is seen that the driver of the bus, instead of moving his vehicle to its left, swerved it to its right after the car overtook the bus. This fact has not only been testified to by some of the witnesses examined by the claimants but has been admitted in categorical terms by O. P. W. 2 for O. P. No. 1.

10. The story advanced by the bus driver and O. P. Ws. 3 and 4 that the car at first rubbed against the bus as a result of which it swerved to its right and struck against the truck coming from the opposite direction is not supported by the case put forward by the appellant himself in his written statement nor is it supported by O. P. W. 2. O. P. W. 2 was the Quality Inspector of the Food Corporation of India and he reported the matter at the Bhubaneswar Capital Police Station. Nothing even is alleged against O. P. W. 2 to disbelieve his statement. His narration of the incident, so far as its broad features, is in conformity with the case made out by the appellant, and his evidence inspires confidence and sounds more probable than the evidence of the other witnesses examined on behalf of the appellant, as they tried to make out absolutely a new case not in conformity with the case put forward by the appellant in his written statement. The story put forward by O. P. Ws. 1, 3 and 6 that the car while trying to overtake the bus, rubbed against the right side of the bus and swerved to its right and dashed against the truck coming from the opposite direction as a result of which the face of the car turned around and in that process it got sandwiched between the two Vehicles, is also not the case put forward by the appellant in his written statement. The case deposed to by O. P. Ws. 1, 3 and 4, that after the car dashed against the truck the truck dashed against the bus as a result of which

the bus toppled down on the road, is not only not stated by the appellant himself in his written statement but is also controverted directly by O. P. W. 6, who in categorical terms in his examination-in-chief itself states that the bus and the truck did not collide against each other. A reading of the evidence of O. P. Ws. 1, 3, 4 and 6 does not inspire confidence. It appears that they made an effort to absolve the driver of his responsibility of driving the bus in a negligent manner. I, therefore, do not give any credit to their evidence.

11. I do not attach any importance to the non-examination of the driver of the car, as I am basing my finding on this aspect of the matter mostly on the materials and evidence brought on record by the opposite party and other oral and documentary evidence of authentic and convincing nature.

12. Admittedly the car was sandwiched between the bus and the truck. On the evidence on record it is established that the car completely overtook the bus and was moving in front of it. So it was for the bus driver to have steered the bus to its left in order to take it away from the car so that the bus would not have come in contact with the car and the car, on getting a wide space, could have moved forward on its way. Moreover if the driver of the bus would have acted that way, the bus would not have hit the car from behind even if the car, as suggested by the opposite party, dashed against the truck coming from the opposite direction. In that case the bus would not have been involved in the said accident. From the evidence on record I am inclined to arrive at the finding that after the car crossed the bus the driver of the bus instead of slowing down its speed proceeded ahead with the same or higher speed, swerved it to the right and dashed against the car from behind as a result of which the car, which had already crossed the bus and was moving in front of it, swerved to its right side and dashed against the truck which was on the extreme left side of the road. In that process the car got sandwiched between the bus and the truck and in consequence the deceased died at the spot. From all that has been discussed above it is quite evident that the bus driver did not act with reasonable care and caution, instead he acted in a rash and negligent manner in driving his vehicle and so such a nasty accident took place. In the facts of the case the car driver cannot be held responsible for any contributory negligence. That being so the owner of the vehicle, i. e. the company of which the appellant was the Managing Director, is liable to pay proper compensation for the said accident.

13. On the above finding one has to assess the compensation to be paid in this case.

14. The Tribunal, in ascertaining the compensation to be awarded in a case of this nature, is required to make an award determining the amount of compensation which appears to it to be just. The pecuniary loss to the aggrieved party in such cases would depend upon various factors and data which cannot be accurately ascertained and the Tribunal has to make a fair and reasonable assessment of the same even on conjectural basis. The determination of the question of compensation depends on several imponderables and so one cannot

insist or expect meticulous accuracy in such assessments. The general principle of assessment of compensation, as has been observed by the Supreme Court in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., "*, is that "the" pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained.

15. In this case it is not disputed that the deceased was getting a salary of Rs. 1,500/- out of which, after all deductions, he was actually taking home Rupees 911/-. Besides this he was getting Rupees 300/- as house rent from the house constructed by him. Out of this let me set apart 1/6th of the same towards maintenance and payment of taxes for the house. Thus, the deceased at the time of his death had with him Rs. 911/- plus Rupees 250/- = Rs. 1,161/- per month which amount was available for his own personal expenses and for the expenses and maintenance of his family members, i. e. the claimants in this case. There is evidence to show that he was not able to save anything out of his income. There is evidence on record to show that the deceased was leading a plain and simple life and was not spending any noticeable amount on himself besides his expenses on food, clothing and other bare necessities of life. There is nothing on record to indicate anything to the contrary. Considering the cost of living and the status of the deceased I am inclined to set apart Rs. 400/- per month on account of the personal expenses of the deceased from the aforesaid amount of Rs. 1,160/-. So Rs. 760/- per month was available for the expenses and maintenance of the claimants and as the deceased was not making any saving out of the same, one can reasonably expect that the aforesaid balance amount was being spent on and after the maintenance and expenses of the claimants. The claimants continued to receive the house rent as before even after the, death of the deceased and so they did not suffer any loss on that account on the death of the deceased. So, for the purpose of assessing "the compensation" in this case the house rent amount cannot be taken into account. Thus the financial loss which the claimants suffered can be said to be Rs. 510/- per month immediately on the death of the deceased-The deceased was about 46 years only when he died, and so he would have continued in service till his 58th year had he not died due to the said accident (Age of superannuation increased from 55 years to 58 years as per Government Resolution No. PR 10/7422947/F, dated 11-6-1974, copy filed in this Court by the claimants along with their petition dated 26-4-1976). As the deceased had about 12 years more to serve one can reasonably say that the deceased would have earned higher salary in future either on the time-scale of pay or on promotion to a higher post. Considering all that I am inclined to fix on an average Rs. 600/- per month as the loss sustained by the claimants due to the death of the deceased on account of the accident. The deceased was 45 years 9 months old at the time of his death by accident, and so he was expected to continue in service for 12 years and 3 months more. Therefore one can

reasonably say that from the date of the deceased's death till his age of superannuation at the age of 58 years he was capable of rendering monetary help and assistance to his family members to the tune of Rs. 88,200/- (Rs. 600/- per month X 12 years 3 months).

16. The life expectancy of the deceased was put at 65 years by the claimants themselves. After his superannuation at the age of 58 years the deceased was entitled to get pension till his expected death at the age of 65 years. One cannot at this point of time state the exact amount of pension which the deceased would have received on his superannuation. As he was drawing a salary of Rs. 1,500/- per month at the time of his death at the age of about 46 years, one can reasonably expect that on his superannuation at the age of 58 years in 1981 with higher salary he would have got a pension of about Rs. 750/- per month. Deducting expenses for his own account after retirement at the rate of Rs. 350/- per month he was capable of contributing Rs. 400/- per month for 7 years (58th year to 65th year) towards the maintenance and expenses of the claimants. On this account, therefore, the claimants are entitled to compensation of Rs. 33,600/-.

17. It was contended on behalf of the claimants that the deceased was likely to be promoted to the post of the Director of Agriculture just after a year of the accident. To assess compensation on the basis of a chance of promotion in future would land one-self in the region of speculation. As a chance for promotion is highly speculative, assessment of compensation cannot be made on that basis.

18. In assessing compensation in such matters probable expenses for education and marriage of children, as claimed in this case cannot form the basis. Compensation in such cases has to be assessed on the loss to the claimants of future pecuniary benefits due to the death of the deceased.

19. Mr. Murty, the learned counsel for the appellant contends that in assessing the compensation to be paid to the claimants in a case of this nature the pecuniary benefits and other amounts which are readily made available to the claimants by reason of the death of the deceased have to be deducted from the total compensation. In this connection Mr. Murty submitted that the amounts which the claimants received on account of Life Insurance Policies of the deceased and other lump sum pecuniary benefits which devolved on the claimants by reason of the death of the deceased have to be discounted from the amount of compensation assessed on the basis of future loss of pecuniary benefits, as made in the previous paragraphs. Admittedly after the death of the deceased the wife of the deceased, one of the claimants in this case, received Rs. 11,613/- from the L. I. C. of India as the sole nominee of that policy. She was also paid by the L. I. C. Rs. 200/- per month till 19-9-1971 and thereafter Rs. 100/- per month for five years. Besides that she received from the Insurance Company Rs. 11,800/- for the cost of the car which was damaged in the said accident. Out of that amount a loan of Rs. 2,347/-, incurred by the deceased for the purchase of that car, was outstanding and so, that amount was repayable by

the claimants. Further the wife of the deceased received as the sole nominee of the deceased Rs. 15,181/- from the General Provident Fund.

20. Law is well settled that all pecuniary advantages which come from all different sources of the claimants by reason of the death of the deceased must be discounted from the lump sum compensation. In the case reported in *Oriental Fire and General Insurance Co. Ltd. Vs. Mrs. Kamal Kamini Das and Others*, it has been held that deductions must be made for the benefits accruing to the widow for the acceleration of her interest in his estate and funds. Lord Viscount Simon in *Nance v. British Columbia Electric Railway Co. Ltd.* 1951 AC 601, while stating the several factors which are to be taken into consideration for assessing compensation in such cases, has stated that deduction must be made for the benefits accruing to the widow from the acceleration of her interest in his estate. The amounts on the life policies of the deceased and his G. P. Fund would have devolved on the deceased, may be in an inflated form, had the deceased not died a premature death. As in most cases, the deceased on receipt of the said amounts would not have utilised the entire money for himself but would have spent most of it on the claimants. By the death of the deceased due to the accident the said amounts devolved on the claimants on an earlier date, and due to the benefit of the accelerated devolution some deduction has to be made from the lump sum compensation assessed in this case. In most cases it is difficult to assess the actual benefits accruing from such accelerated devolution of the deceased's interest in his funds on the claimants, and so a particular fraction out of such amounts to be fixed on the facts and circumstances of each case, is generally deducted on this account. This Court in *Sabitri Pati's case* 1973 Acc CJ 319 (Orissa) made a deduction of one-eighth due to the payability of amounts of insurance policies and other service benefits which accrued to the claimants by reason of the death of the deceased in an accident. In the facts of this case and on the policy of uniformity I also prefer to deduct one-eighth of the money received by the claimants from the Insurance Company on the life policies of the deceased and the G. P. Fund from the lump sum compensation already estimated above, due to the accelerated devolution of such amounts on the claimants.

21. The amount which the claimants received from the Insurance Company on account of damage to the car cannot be discounted from the compensation amount. The claimants had the benefit of using the car during the lifetime of the deceased and have certainly suffered loss due to the total destruction of the car in the said accident. That loss is made good by the payment of the above amount and so by this amount no special benefit has accrued to the claimants by reason of the death of the deceased.

22. The Court below has straightway deducted Rs. 30,000/- from the lump sum compensation by saying that the house belonging to Shyamananda devolved on the claimants immediately upon the death of the deceased and so the valuation of that property must be deducted in account of accelerated succession. The Court below was not justified on deducting the said amount on this count. The

house of the deceased and/or benefits accruing therefrom would have devolved on the claimants directly or indirectly after the death of the deceased in the ordinary course. The claimants in fact were deriving benefit from the income from the house by way of rent during the lifetime of the deceased. The claimants continued to enjoy that benefit after the death of the deceased. The income of the deceased on that account has not been taken into account in assessing compensation in this case, as can be seen above. No special benefit on this account has devolved on the claimants by reason of the death of the deceased. Accordingly the value of the house or any portion thereof need not be discounted from the compensation assessed in this case.

23. One-sixth out of the compensation amount assessed to be paid on the above considerations is generally deducted due to uncertainties of life and lump sum payment of the compensation amount, and I see no reason why such a deduction on this count shall not be made in this case.

24. A case for deduction on any other ground could not be made out.

25. Thus for reasons stated above one-eighth out of Rs. 22,213/- and Rupees 15,181/-, which the wife of the deceased received respectively from the L. I. C. and G. P. Fund, has to be deducted from the compensation amount assessed on the loss of pecuniary benefits. Accordingly Rupees 4,674/- is to be deducted from the said compensation amount of Rs. 1,21,800/-. So the balance comes to Rs. 1,17,126/-. One-sixth out of this amount i. e. Rupees 19,521/- has to be deducted due to lump sum payment of the compensation amount. So the claimants are entitled to a net amount of Rs. 97,605/-. The claimants, therefore, are entitled to the said net amount of Rs. 97,605/- with interest at the rate of 6 per cent per annum from the date of the filing of the claim petition till the payment of the said amount by the appellant, Usha Debi, respondent No. 5 in this appeal will receive the said amount for herself and on behalf of respondents 1 to 4.

In the result, therefore, the appeal is dismissed and the cross-objection is allowed to the extent stated above. Parties however will bear their own costs of the appeal and the cross-objection.