

(1976) 05 DEL CK 0001
In the Delhi High Court
Case No : First Appeal No. 94 of 1973

Prem Devi Pandey and Others	Vs	APPELLANT
Dayal Singh and Others		RESPONDENT

Date of Decision : 28-05-1976

Acts Referred:

Citation : (1976) ACJ 407 : (1976) 12 DLT 280

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : M.L. Bhargav and J.N. Aggarwal, for the Appellant;

Judgement

Dalip Kapur, J.

(1) This is an appeal by the legal, representatives of the late Shri Ram Partap Pandey, who died as a result of a motor vehicle accident which took place on 10th November, 1967 at 5-15 P.M. on Prithvi Raj Road, New Delhi. The appellants are the widow, five daughters and the parents of the deceased Shri Ram Partap Pandey. The respondents are Shri Dayal Singh, the driver of the bus belonging to the Delhi Transport Undertaking which was involved in the accident and the Municipal Corporation of Delhi which was then running the bus. Cross-objections have been filed on behalf of the Delhi Transport Corporation and others. Apparently, the liability which fell on the Delhi Municipal Corporation at the time of the accident has now fallen on the Delhi Transport Corporation by operation of subsequent legislation changes.

(2) The only serious question agitated before me on behalf of the petitioners and the cross-objector is in relation to the quantum of damages that has to be awarded. The facts of the case regarding the accident are not in dispute at all. Those facts are, that the deceased was going on a bicycle on Prithvi Raj Road near House No. 37. Bus No. D.L.P. No. 1115 came from behind him and ran him down. It seems the bus went out of control and after hitting the deceased, went on to the footpath and hit some coal tar drums after which it crashed into a tree.

The deceased at time of his death was earning about Rs. 490.00 monthly and was 42 years old, he was the bread earner and supporter of his family consisting of his wife and five daughters. The petitioners claimed a sum of Rs. 2,00,000.00 as compensation before the Motor Accidents Claims Tribunal.

(3) The quantum actually granted by the Tribunal was only Rs. 22,717.00 together with costs and future interest at six per cent per annum payable only if the money was not deposited within two months of the award. The only question agitated before me is the quantum of the damages. Although, in the cross objections the decision of the Tribunal was also challenged on the merits, no real attempt has been made to persuade me that the decision is incorrect regarding the factum of negligence.

(4) I first proceed to indicate the manner in which the amount awarded has been calculated by the Tribunal. It was held that the deceased was 42 years old at the time of accident, it was also held that the deceased could reasonably be expected to live up to his retirement age of 58 years and thus would have been in service for a further period of 16 years. The Tribunal has referred to various decided cases, to note that the expectancy of life had been calculated in various ways by the Courts, and in some cases the expectancy had been as much as 33 years. In this case, the Tribunal thought that the petitioner would normally have lived for a further period of 16 years.

(5) On the question of quantification, it was held that the salary of the deceased was Rs. 441.00, the deceased was taking Rs. 40.00 or Rs. 45.00 as pocket expenses and thus made available sum of Rs. 400.00 for himself and his wife and five daughters. After some further calculations, the Tribunal concluded that the deceased was making available a sum of Rs. 300.00 to the petitioners Nos. 1 to 6. Thus, if the deceased had lived for 16 years, he would have contributed Rs. 57,600.00 to the petitioners No. 1 to 6. The Tribunal then made a series of deductions from this amount for ascertaining how much the petitioners were entitled to get. Firstly, it was noted that the first petitioner was getting a pension of Rs. 120.00 per month which she was to draw for seven years. This amounted to Rs. 10,000.00. Thereafter, the pension would be reduced to Rs. 50.00 per month for a further period of nine years. As the Tribunal was making calculation only for 16 years, it thought that in the next nine years the first petitioner would get another sum of Rs. 6,480.00. Further, a deduction of Rs. 2,010.00 was made on account of gratuity and the provident fund of the deceased amounting to Rs. 5,655.00 was also deducted. Furthermore, the deceased had Rs. 2,000.00 in the Bank also, for the month of November, 1967, a sum of Rs. 150.00 was received as salary. The petitioners also got Rs. 500.00 from a society for which the deceased was working part-time. The deceased was also insured for a sum of Rs. 4,000.00. All these sums totalled Rs. 33,875.00. The Tribunal deducted this sum from Rs. 57,600.00 and thus worked the total pecuniary loss at Rs. 26,725.00. The Tribunal made a further deduction from this amount on account of lump sum payment and uncertainties of life and thus arrived at the compensation amount

of Rs. 22,717.00 . It is this calculation which is under challenge. So, the first question to be considered is whether any or all these deductions had to be made from the sum of Rs. 57,600.00 (If that was the amount to be awarded) and further it is to be seen whether the sum of Rs. 57,600.00 itself has been rightly worked out. I have been taken through a large number of cases to explain the manner in which the compensation has to be worked out and I must confess that the state of law on the question of deductions is far from certain. The Tribunal has not at all indicated why it has made the deductions and, Therefore, the question has to be worked out by reference to the case law.

(6) In *Bhagwanti Devi and others v. Ish Kumar and others*, decided by H.L. Anand J. of this Court, it was held after a very extensive analysis of the various decisions of the Courts that there should be no deductions at all for the Insurance policy of the deceased, pension, gratuity, provident fund and other benefits because these were benefits for which the deceased had paid. The Court observed :-

"There would be no justification, Therefore, to give the benefit of these payments to the wrong-doer who, by his negligent act, has caused the death of a person. Such a conclusion would be justified if the principles enunciated by the Supreme Court in the case of *Gobald Motor Service Limited and another v. R.M.K. Veluswami and other* were to regulate the determination of compensation under the Act because even on the application of the aforesaid principles, it appears to me that there is a clear distinction between benefits received on account of death and those that are merely payable on the death of a person. The former arise out of death and would not have been available without it, while the latter are benefits which are available independently of death but are payable on death. The deduction made by the Tribunal on these counts must, Therefore, be ignored in computing the compensation to which the dependant would be entitled."

In that case, a deduction of Rs. 12,000.00 had been made by the Tribunal on account of gratuity, pension, provident fund and insurance. The Tribunal had also deducted Rs. 6,500/- on account of a lump sum payment being made. It was pointed out that the benefits of a lump sum payment were illusory because the dependants had not received any amount in pursuance of the award being made in January, 1971. The correctness of this judgment has been disputed by the counsel for the respondents. It has also been urged that different Judges of this Court have expressed different views on this matter and also, there is a Division Bench decision taking a somewhat contrary view. Some reference has been made to cases decided by the Supreme Court. All the authorities cited have also been considered by Anand J. in the case just referred to.

(7) A contrary view from the case taken by Anand J. was taken earlier by P.N. Khanna J. of this Court in *Mohinder Kaur and others v. Manphool Singh and others**. The reasons are set out in the judgment, but it has been taken for granted that an amount of Rs. 3,000.00 received by the widow of the deceased towards pension was to be deducted from the amount of the compensation.

Similarly, it was held that some deduction had to be made for lump-sum payment of compensation. The argument being that if the deceased had not died he would have received his income periodically and not in lump-sum. Thus there are two single Judge judgments of this Court which differ from each other. There is also a Division Bench decision of this Court which was also noticed by Anand J. That is Ishwari Devi and others v. Union of India and others. It was there held on page 160 of the Report that a deduction of 10 to 20 per cent from out of the amount of pecuniary loss has usually been made in decisions under the Fatal Accidents Act for lump sum payments. The Court then continued:-

"In our opinion, the reasons for the said deduction are based on justice and fair play between the parties, and, Therefore, a deduction on that account may be made even in claims made under the Motor Vehicles Act. In the present case, we think that a deduction of 15% on the ground of lump-sum payment would be fair and just."

Earlier in the same judgment, the Division Bench had observed that the principles applicable to the Fatal Accidents Act were also applicable to deductions under the Motor Vehicles Act, 1939. The conclusion of the Court was:

"IT is clear from the principle enunciated by the Supreme Court which, in our opinion, should be applied in the present case in determining the just compensation payable to the appellants (applicants), that the pecuniary loss to the claimants has to be ascertained by balancing loss to them of the future pecuniary benefit and the pecuniary advantage which came to them by reason of the death."

I think, that the decision of the Division Bench is binding on me. However, the matter does not end there because earlier in the same judgment the Division Bench observed :-

Therefore, Claims Tribunal dealing with a claim under the Motor Vehicles Act has only to consider what appears to it be just compensation on the facts and circumstances of the case before it, and it need not strictly follow and apply the basis of the assessment of compensation indicated in the various decisions under the Fatal Accidents Act or under the English Law.

One of the points involved in the case was whether the amount of insurance claim payable to the legal representatives of the deceased amounting to Rs. 30,000.00 or Rs. 40,000.00 should be deducted from the compensation to be otherwise awarded. But the Court does not seem to have expressed itself as to whether this amount should be deducted or not. At another place in the judgment on page 158 it is observed as under in relation to decisions under the Fatal Accidents Act :-

"The Claims Tribunal may, in deciding the just compensation in a case, bear in mind and apply any general principle or principles laid down in the aforesaid Indian or English decisions as far as they may be applicable, and in so far as they

may promote the interests of justice on the facts and circumstances of each case.

Thus, the Division Bench has made observations at various places as to the manner in which the compensation has to be awarded and these observations in my view, amount to giving a certain amount of freedom to the Claims Tribunals to follow the decisions under the Fatal Accidents Act, 1955, and to apply the same if they promote justice, equity and fairplay. Generally, the principle to be followed is that the loss of any pecuniary benefits resulting to the legal representative from the accident have to be set off and balanced again the pecuniary advantages resulting from the death of the deceased. What this means in practical terms is that if the deceased for instance, leaves a large estate which the legal representatives inherit, that is a pecuniary advantage which the legal representatives would not have had but for the death of the deceased, and that gain is to be counter-balanced against the loss of the pecuniary benefits the legal representatives were enjoying from the deceased, such as food, shelter, education, allowances and other benefits.

(8) I need not refer to the various decisions of other High Courts, where a more or less a similar view has been taken. I have not been referred to any reported judgment other than the one delivered by Anand J. holding that pecuniary advantages in the form of insurance policy, pension, gratuity, provident fund and other benefits have not to be taken into consideration when ascertaining the quantum of compensation to be granted to the legal representatives.

(9) Before actually applying the law to the facts of the present case, I would like to give a short summary of the historical background which has led to the fixation of damages for Fatal Accidents being different from the one applicable in ordinary cases of damages. It was held by the English Courts under common law that a loss resulting to third parties by the death of a person did not give rise to a claim for tort. This is known as the rule in *Baker v. Bolton*. The application of this rule led to many anomalies and eventually the Fatal Accidents Act, 1846 also referred to as Lord Campbell's Act was passed. The corresponding legislation in India was the Fatal Accidents Act, 1855. These two Acts enable third parties to sue for damages in respect of the death of a person in certain circumstances. The Supreme Court in *Gobald Motor Service Ltd. and another v. R.M.K. Veluswami and others*, interpreted the provisions of the Fatal Accidents Act, 1855, and accepted the view expressed by the House of Lords in *Davies v. Powell Duffrin Associated Colliers Ltd*, as being applicable to India also. It also noted that the same principles had been restated by Vicount Simon in *Nance v. British Columbia Electric Railway Co. Ltd.*". The passage quoted from Lord Wright's judgment in the former case may be quoted here with advantages :-

"The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered.....The actual pecuniary loss of each individual entitled to sue can only be ascertain- ed by balancing, on the one hand, the loss to him of

the future pecuniary benefit and..... pecuniary advantages which from whatever source comes to him by reason of the death."

I may observe that some of the consequences of this decision have been altered by subsequent legislation in England, but I do not find any corresponding legislation in India. Thus, as we are concerned, the principle for quantifying damages applicable to a case like the present involves the balancing of loss of pecuniary benefits with the gain of any pecuniary advantages that might flow from the death of the deceased.

(10) I do not see any reason why the quantum of damages should be different under the Motor Vehicles Act. The Motor Vehicles Act does not create any new liability because it merely states in Section 110-B that on receipt of an application for compensation, the Claims Tribunal shall after giving the parties an opportunity of being heard "hold an enquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid, etc." There is not a word in the Act as to the manner in which the compensation is to be computed except that it should be just. In my view, the decisions under the Fatal Accidents Act operate in exactly the same way. A just compensation involves balancing the loss with the gain. I do not think that this is an unjust method of determining compensation. For instance, if the legal representatives inherit a considerable property, but at the same time lose some monetary advantage that they used to receive from the deceased, they may not be worse off than before. In some cases, they might be much better off. On the other hand, if the sole bread-winner of the family dies, as in this case, and leaves some money in the Bank or some pension is payable on his death, then though the money in the Bank and the pension, etc., may in a sense be a pecuniary benefit to the family, it cannot seriously be considered as a benefit which compensates them for the immensity of other loss. Nevertheless, these benefits small though they may be, have to be counter-balanced against the loss of pecuniary benefits.

(11) It is now necessary to apply the test just formulated to the facts and circumstances of this case, after considering the findings of the Tribunal.

(12) I first proceed to determine what is the pecuniary loss to the family. The deceased has left his widow and five daughters. At the time of his death, the deceased was a Selection Grade Clerk drawing a salary of Rs. 441.00 per month. He was also working as an auditor in the Co-operative Department as a part-time auditor and was getting a salary of Rs. 35.00 per month. He was also getting a house-rent benefit. The Tribunal was of the view that the sum of Rs. 35.00 should not be counted at all as it was not a regular income, it did not consider the house-rent at all. I fail to understand why these amounts should not be taken into account. If the deceased could take up part-time employment, I do not see why he could not have continued as a part-time employee either as an auditor in the Co-operative Department or elsewhere. I, Therefore, conclude that

his salary income must be assumed to be Rs. 490.00 per month at the time of his death as claimed. The widow of the deceased Shrimati Prem Devi, Public Witness . 13 deposed that the deceased used to take Rs. 40.00 or Rs. 45.00 per month as pocket expenses. This would leave a balance of Rs. 445.00 per month as contributable to the family fund. The Tribunal came to the conclusion that the deceased was contributing Rs. 44.00 per month to each child and Rs. 88.00 per month to himself and his wife. I cannot find any reason for this conclusion. In my view, the five daughters had to be educated and eventually, their marriages had also to be performed. I cannot at all see why the contribution should not be divided among the seven members of the family equally. In my view, the whole contribution must be divided among the members of the family which would mean that each person was receiving about Rs. 63.00 per month.

(13) Turning again to the decision of the Division Bench of this Court in *Ishwari Devi and v. Union of India and others*. *Supra*, I find that the method used for computing the loss of pecuniary benefit was to capitalise the whole sum for the full period for which the deceased might have lived. It was there held that the deceased would have lived for 20 years, but in the present case it has been held that the deceased would have lived for only 16 years. The deceased in the case before the Bench was Sham Lal who was 40 years of age at the time of his death. The deceased in the present case was 42 years old. I fail to understand why the deceased in this case would have lived only 16 years, while the deceased mentioned in *Ishwari Devi* case should have lived for 20 years. The life expectancy is naturally a matter of I guess-work, but it should not vary from case to case. Statistically, if a person has achieved a certain age he has a greater chance of longer life than say a child of two years. If one is considering the case of a child of two years the average life might be only 45 or even less. But taking the case of a person who is already 42 years, the expectancy of longer life is naturally enhanced. I think, that in all justice, I should accept the same test as was adopted in the Division Bench and come to the conclusion that the expectancy was at least 20 years. Of course, this expectancy is based on pure averages. The deceased in actual fact might have lived even up to 100 years, or he might have died in quite normal circumstances within a few months. However, if in one case a person aged 40 years is accepted to live till the age of 60, I do not see why a person who is 42 years, should not be expected to live up to 62 years. I am, Therefore, of the view that the loss of pecuniary benefit to which the appellants are entitled must be considered on the basis that the deceased would have lived another twenty years.

(14) On this conclusion, the loss of pecuniary benefits has to be capitalised for twenty years. Thus, the widow and five daughters of the deceased have lost pecuniary benefits amounting to Rs.15,000.00 each. I may notice that the Tribunal has treated all the legal representatives as one single person while computing the amount payable, and also divided the total benefits equally. I do not think that this is at all justified and is contrary to the manner in which compensation should be calculated. It is not the whole unit that one has to

consider, but each individual person. Thus, the pecuniary loss to each person has to be determined and the pecuniary benefit set off as far as can be done in accordance with justice and fairness. This calculation has to be made in each individual case. The process by which the Tribunal has set off the benefits received by the widow from even the amount to be received by the daughters is erroneous. I think that it is not at all justifiable in law.

(15) I take up the case of the widow, for computing the benefits that have flowed to her which have to be set off against the amount of Rs.15000.00 just determined. She is to get a pension of Rs. 120.00 per month, for seven years. This comes to Rs. 10,080.00 . She is to get a further pension for nine years amounting to Rs. 60.00 per month which would come to Rs. 6,480.00 . Thus the pecuniary benefit from the pension would be greater than the amount of Rs. 15,000.00 . The gratuity and provident fund have also to be received by the widow. Some additional sum

(16) I have up to the moment made the computation on the assumption that the pecuniary benefits which would have been obtained from the deceased would have been Rs. 63.00 per month throughout the period of 20 years. This would only be so if his income remained constant throughout the period. But, am I right in making the assumption that in case the deceased had lived, there would be no increase in his salary and remuneration in the next 20 years? Turning now to the evidence, I find that Shri S.N. Malik, Pay and Accounts Officer, Akbar Road had testified that the deceased was drawing Rs. 290.00 per month apart from allowances. The total being Rs. 441.00 per month. He was also entitled to house rent at the rate of 15% of his basic pay. He was also considered for promotion to the grade of Rs. 270-5-575. He was actually working in the grade of Rs. 210-380. I have no doubt that if the deceased had worked for 20 years, he would have gradually increased his salary and normally, would have at least reached the salary of 575.00 in the upper grade. In all probability, this would be added a number of other allowances which are almost impossible for me to compute because of the variations in Dearness Allowance, etc., which have taken place at various times. I have not the least doubt that if he had been alive to-day, his salary plus allowances would have been far in excess of Rs.441.00 . Even if he had not gone up in the time-scale, his salary plus allowances would now be about Rs. 505.00 per month. If his salary had gone up, naturally his contribution to the other members of the family, i.e., his widow and five daughters would have increased. If the Court is to give a just calculation of pecuniary loss to the widow and children, it must also take into account the fact that their pecuniary benefits would have increased in the normal course. I have made some enquiries concerning the possible salary that the deceased might be drawing now and have found that the entire salary grade has been revised because of the Pay Commission Report. If the deceased were alive, he would have got the benefit of this pay revision. Therefore, the calculation that has been made earlier by me as not a fair one at all. I have also to consider whether subsequent events can be taken into consideration in this manner. The revision

of salaries and other allowances has taken place after the death of the deceased. They are facts which are known to-day, though they might not have been taken into consideration by the Tribunal. Still, I do not think this Court would be justified in shutting its eyes to the facts, it cannot ignore the alteration in the salaries and allowances which would have benefited the deceased had he been alive, and correspondingly, there must have been an increase in the pecuniary benefits to the legal representatives of the deceased.

(17) This analysis would show that it would be wrong to take the loss of pecuniary benefit as far the dependants of the deceased are concerned to be equivalent to the amount they were getting on the date of the accident. The correct procedure, in my view, is to also take into account the possibility that these benefits would have increased in the process of time, on account of the increase in the salary of the deceased ; the increase in emoluments on account of allowances ; and the distinct possibility of promotion into the higher grade. These possibilities raise imponderable questions which I am not competent to solve in a mathematical manner. There is no certainty as to how much the deceased would have got and how much the increase in benefits to the applicants-dependants, i.e., the widow and five daughters might have been. I would like to say that the question I have just been dealing with is not a novel one. It has been considered in many decided cases especially by the English Court. I mention some of those cases for reference only.

(18) In *Eifert v. Holt's Transport Co. Ltd.*, Singleton L.J. said :-

"But it must be forgotten that the judge had to consider not only the immediate family loss but the fact that upon the evidence the family dependency would have been greater had this man lived longer. In other words, the judge had to bear in mind the prospect of increased earnings year by year if this man had lived."

Extract from other judgments which do not appear to be cited elsewhere are mentioned in "Volume 2 of the Quantum of Damages by Kemp & Kemp". In *Higg v. Drinkwater*, the following extract from the judgment of Denning L.J. is illustrative of the point. After stating the amount of allowances lost by the death of the deceased. It was said :-

"We must add a reasonable amount for his loss of prospects of promotion, and remember also that in addition he was in pensionable employment. There was a contributory pension scheme which, after his retirement at the age of sixty-two would inure, in the ordinary course of events, not only for his benefit but for hers. We must take a fair, reasonable figure having regard not only to future prospects of his promotion."

Thus, there is authority that the future prospects of promotion have to be taken into consideration. In the same book to which I have referred, a number of other judgments are referred in which a similar computation was made in Table No. 1II appearing at page 42 of the book. Thus, I am of the view that some amount has

to be taken into account as being due to the dependants on account of the loss of increased pecuniary benefits for the future if the deceased had been alive.

(19) Having thus concluded that an increase over and above the sum of Rs. 15,000.00 computed above to be awarded to the appellants, I have also to take into account now whether all the sums mentioned earlier have to be deducted pecuniary gains. I am now referring to the question of pension, gratuity, provident fund, account in the Bank, Life Insurance Policy, etc. As far the pension is concerned, there is no doubt that the widow would not have got this pension, but for the death of the deceased. It is, Therefore, a distinct pecuniary gain in itself. Taking the question of gratuity and provident fund, it is to be observed that the provident fund and gratuity were even otherwise payable to the deceased. Suppose the deceased had lived his full life and retired at the age of 58, then, he would have drawn his gratuity and provident fund and, on his death this provident fund and gratuity would have been inherited by his legal representatives. This amount would, Therefore, have come to the widow and five daughters in any case. This is not a pecuniary gain as such but an acceleration of a pecuniary gain. It is the value of the acceleration that has to be taken into account and not the value of the benefits itself. It has been held in a number of cases decided by the English courts and also by the Privy Council, in *Royal Trust Company v. Canadian Pacific Railway*, that it would be wrong to take the whole amount of such payment into account, but some allowance has to be made for payments received earlier than would normally have been received. The test adopted in these cases is that first it has to be ascertained whether such amounts would in all probability have been inherited by the legal representatives in any case, if this is so, then there is no pecuniary gain as such but only an acceleration of gain. Similarly, the money in the Bank can be considered to be an accelerated gain. As far as the Life Insurance policy is concerned, this is an amount which would have been received by the deceased only if he had paid the remaining Installments on the policy. Therefore, this can be considered to be a pecuniary gain. In short, some of the amounts received by the widow have to be considered as pecuniary gains while some have to be considered as merely an acceleration of pecuniary benefits that would otherwise have been received by her from the deceased in normal course. There is also the possibility that the widow might have pre-deceased her husband if he had remained alive. This has also to be taken into account in making a proper computation of damages. In any event, I think, the pecuniary gains as far as the widow are concerned are sufficient to offset any pecuniary loss because the total sum involved is Rs. 33,875.00 which is far in excess of any pecuniary loss that can be computed by me. Taking all the factors into consideration, the loss of pecuniary benefits should I hold, be increased by 33 per cent or 1/3rd on account of the loss of additional pecuniary benefits that would otherwise have enured to the widow and five daughters if the deceased had remained alive. I would, Therefore, increase the amount to be awarded to each of them to Rs. 20,000.00 . On the calculation just made, the amount already received by the widow is in excess of Rs. 20,000.00

and, Therefore, she is not entitled to any amount of compensation. On the other hand, the five daughters have not received any pecuniary benefits at all, or if there are any, they are merely illusory. The compensation is being paid to the widow and not to the children. So also, the money in the Bank gratuity and provident fund are not to be enjoyed by the daughters. Even if they are, I do not think that the daughters will get more than Rs. 1,500.00 each. Thus, they would be entitled to get Rs. 18,500.00 each. On top of this, on the basis of the test given by the Division Bench, an amount of 10% to 15% is to be deducted for immediate cash payment. I would make this deduction. To bring the figure exact. I would deduct Rs. 2,000.00 from the amount to be awarded to each of the daughters and thus compute the amount that has to be awarded to each of them at Rs. 16,500.00

(20) I would also point out in connection with the amount being awarded to the daughters, that they had to be educated, they had to be settled in life, and probably, their marriage expenses have to be met. These are expenses that the deceased would have met if he had been alive. I think, that the amount of Rs. 16,500.00 to each daughter can be treated as a just compensation as far as they are concerned. As far as the widow is concerned, in view of the fact that she had got pension and has also got other sums, adequately compensates her. I would have awarded some amount to her for loss of her husband and other damages that can be awarded on account of the hardship she must have suffered. However, the law on this question is quite clear that as far as this type of damages are concerned, no amount is to be taken into consideration in the case of a fatal accident.

(21) Therefore, the result is that the quantum of damages awarded by the Tribunal has to be recomputed altogether. The parents of the deceased and the widow are to get nothing, but the five daughters have to be given an amount of Rs. 16,500.00 each together with the costs and future interest at the rate of six per cent per annum. As the date of the accident was 10th November 1967, and this judgment is being delivered in May, 1976, I think the advantage that has flowed to the daughters on account of lump-sum payment must be treated as illusory. I think that they should get six per cent interest on the amount awarded calculations from the date of the accident which would mean that they would get a substantially greater sum than Rs. 16,500.00, or the deduction of Rs. 2,000.00 made by me on account of lump-sum payment has to be restored. I think, in all fairness, I should state that the award of the Tribunal amounting to Rs. 22,717.00 has already been received by the appellants within the time fixed. It would, Therefore, be difficult to allow interest at the rate of six per cent commencing from 10th November, 1967. Instead, I think, the safer course is to restore the deduction of Rs. 2,000.00 and thus make the amount payable to each daughter to be Rs. 18,500.00. As a period of nine years has passed since the date of the accident without the daughters receiving any substantial amount, I must take into consideration the fact that they would have earned interest if this sum had been paid to them shortly after the accident. I would, Therefore,

add another sum of Rs. 500.00 to the amount awarded in the case of each daughter. The result would be that they would get Rs. 19,000.00 each with future interest at the rate of six per cent per annum on this sum only if it is not paid within two months from the date of the judgment. Thus, the five daughters of the deceased would get a total sum of Rs. 95,000.00 . As they have already received a sum of Rs. 22,717.00 , this amount will be adjusted and they will be entitled to get the additional amount of Rs. 72,283.00 in toto. The sum of Rs. 72,283 now awarded in addition to the sum previously awarded will be payable to the five daughters and not to the widow. The sum will be divided equally among them. The appellants will get their costs in this appeal in addition to the costs before the Tribunal. I make it clear that the sum of Rs. 95,000.00 has to be divided equally among only the five daughters of the deceased and the previously awarded sum of Rs. 22,717.00 is also payable only to them. The cross objections, C.M. 1286/73 are also disposed of.