

(2004) 04 AP CK 0083

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 460 of 2001

Smt. A. Lakshmi

APPELLANT

Vs

Arjun Associated Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14
Life Insurance Corporation Act, 1956 — Section 44F
Motor Vehicles Act, 1939 — Section 110, 110B, 147, 162, 163A
Motor Vehicles Act, 1988 — Section 168(1)

Citation : (2005) 1 ACC 289 : (2005) ACJ 704 : (2004) 4 ALD 618 : (2004) 5 ALT 13

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; A. Krishnam Raju, for the Respondent

Final Decision : Allowed

Judgement

B.S.A. Swamy, J.—The question of law that arises for consideration in this Appeal would be, while computing the compensation payable to the claimant under the provisions of Motor Vehicles Act (for short "the Act"), the contractual benefits that accrued to a person on the happening of a particular event i.e., either retirement or death or in cases of policy after the expiry of period can be deducted on the ground that it amounts to double benefit.

2. The factual matrix of the case is that the deceased A. Sudarshan, husband of the first claimant and father of the other claimants, working as a line man in A.P.S.E.B. and earning a sum of Rs.6,300/- as salary per month. On the fateful day i.e., on 25-06-1996, while he was going from his office on a scooter towards Lingampally near Aluminium Industries, a lorry bearing No.TSL1668 came in the opposite direction in a rash and negligent manner and dashed against the scooterist. As a result of this accident, he received grievous injuries and succumbed to the injuries while he was being taken to the hospital.

3. The claimants filed O.P.No.785 of 1998 on the file of Chairman, Motor Accident Claims Tribunal-cum- I Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, claiming a compensation of Rs.6,00,000/- stating all the facts. They also stated that at the time of death, the deceased was aged 45 years. The respondents resisted the claim saying that the accident has occurred due to the negligence on the part of the deceased, but not because of the rash and negligent driving of the said lorry by its driver. On the basis of the above pleadings, the trial Court framed the following issues:

i) Whether the death of the deceased was due to the rash and negligent driving of the lorry bearing No.A.P.28TC 7206 by its driver?

ii) Whether the petitioners are entitled for compensation? If so to what amounts?

iii) To what relief?

4. To prove their case, claimant No.1 was examined as P.W.1 and G. Prabhu Lingam was examined as P.W.2, who is said to be the direct witness to the accident and Ex.A-1 to Ex.A-7 were marked i.e., Ex.A-1 is the certified copy of F.I.R., Ex.A-2 is the certified copy of panchnama, Ex.A-3 is the certified copy of inquest report, Ex.A-4 is the certified copy of Post Mortem Report, Ex.A-5 is the certified copy of M.V.I. report, Ex.A-6 is the certified copy of Charge Sheet, and Ex.A-7 is the salary certificate.

5. On behalf of the respondents, no one was examined.

6. The Tribunal recorded a finding that the accident took place due to rash and negligent driving of the lorry by its driver.

7. Coming to the benefit of compensation to be awarded, Ex.P-7 is the salary certificate. It is useful to extract the contents of Ex.A7-salary certificate:

"CENTRAL POWER DISTRIBUTION COMPANY OF A.P. LTD.

SALARY CERTIFICATE OF SRI A. SUDERSHAN, LINEMAN FOR THE MONTH OF MAY, 1996.

Rs.	Rs.	PAY..	4,220.00	Deductions:	F.P.I.	..	20.00	G.P.F.	..	1,000.00	D.A...
			1,081.00	G.I.S.	..	15.00	C.C.A...	121.00	Prof.Tax	..	20.00
			45.00	L.I.C.	..	477.00	H.R.A...	844.00	-----	-----	Total
			1,512.00	-----	-----						Total
											..
											6,330.00
											..
											1,512.00

											-----"

8. From the said salary certificate, it is seen that the deceased person was receiving a gross salary of Rs.6,330/- per month and a sum of Rs.1,512/- is being deducted under various heads. This aspect will be dealt with, while dealing with the merits of the case. The learned Judge has taken the net monthly income of the deceased at Rs.5,000/- after deducting Rs.2,000/- per month for his personal expenses, and the estimated loss of dependency at Rs.3,000/- per month. Though the claimants claimed that the age of deceased is 45 years, the Tribunal fixed the age of the deceased at 50 years on the basis of the age

mentioned in the Post Mortem certificate. Basing on Bhagawan Das v. Mohd. Arif¹ case, the learned Chairman of Motor Accident Claims Tribunal applied the multiplier "8" and fixed the total contribution (loss of dependency) at Rs.2,88,000/-. The learned Chairman has given Rs.1,5000/- towards non-pecuniary damages and another sum of Rs.5,000/- to the first claimant towards loss of consortium. In all, the Chairman fixed the compensation payable to the claimants at Rs.3,08,000/-. Aggrieved by the said award, the claimant preferred this appeal both on merits as well as on legal grounds.

9. The learned counsel for the appellant strenuously contended that the Tribunal gravely erred in taking the net salary drawn by the deceased at the time of his death though some of the deductions in the salary relate to deferred payments or premium payable towards Life Insurance Policy.

10. Before considering this contention, we have to look into the provisions of the beneficial Legislations and the case law on the subject, to find out whether the Tribunal is justified in deducting all these amounts. The deductions are as follows:

A sum of Rs.1,000/- is being deducted towards Provident Fund, Rs.15/- towards Group Insurance Scheme, Rs.20/- towards Professional Tax, Rs.477/- towards premium payable for the insurance policy he has taken. As far as professional tax is concerned, it shall be payable if the deceased person is in service otherwise there is no obligation to pay the same. As this component is also included in the gross salary, I feel that there is justification in deducting this amount from the gross salary.

11. Coming to the other deductions, as far as L.I.C. premium is concerned, it is no more *res integra*, in view of the judgment of the Supreme Court in *Helen C. Rebello v. Maharashtra State Road Transport Corporation*². The issue that came up for consideration before the learned judges of the Supreme Court is whether the Life Insurance Money of the deceased is to be deducted from the claimants' compensation receivable under the Motor Vehicles Act 1939? Their Lordships of the Supreme Court referred to various enactments relating to social scheme benefit under the Insurance Act and held that the insurance amount payable on the death of the deceased cannot be deducted. Though the payment might have been accelerated under the policy due to the sudden demise of the deceased, the insurance amount payable to the legal heirs of the deceased person has no nexus, whatsoever, with the statutory compensation payable under the Motor Vehicles Act, since the policy under the Insurance Act is a contractual one, the compensation payable under the Motor Vehicles Act is a statutory one. Of course, their Lordships held that in the event of mere insurance of the life of the employee against any unforeseen contingencies then such an amount is deductible from the compensation payable to the legal heirs of the deceased person. Their Lordships have taken aid from the classic work-out by Lord Fleming, which was followed in *Sushila Devi v. Ibrahim*³ that:

"the pecuniary loss of each dependant can only be ascertained by balancing, on

the one hand, the loss to him of future pecuniary benefit, and, on the other any pecuniary advantage which, from whatever sources, comes to him by reason of the death. There is a vital distinction between the receipt of moneys under accident insurance and life assurance policies. In the case of accident policies, the full value is deductible on the ground that there was no certainty, or even a reasonable probability, that the insured would ever suffer an accident. But, since man is certain to die, it would not be justifiable to set off the whole proceeds from a life assurance policy, since it is legitimate to assume that the widow would have received some benefit, if her husband had pre-deceased her during the currency of the policy or if the policy had matured during their joint lives. The exact extent of permissible reduction, however, is still a matter of uncertainty."

12. Their Lordships observed that:

"in our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other form of death. The constitution of the Motor Accidents Claims Tribunal itself u/s 110 is as the section states:

"... for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to ..."

Thus, it would not include that which claimant receives on account of other forms of death, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received (sic) out of such insurance on the happening of such incidence may be an amount liable for deduction. However, our legislature has taken note of such contingency, through the proviso of section 95. Under it, the liability of the insurer is excluded in respect of injury or death arising out of, (Sic. and) in the course of employment of an employee.

This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same accident. It is significant to record here in both the sources viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives

the amount without his contribution. How thus an amount earned "out of one's labour or contribution towards one's wealth, savings, etc., either for himself or for his family, which such person knows, under the law has to go to his heirs after his death either by succession or under a will could be said to be the "pecuniary gain" only on account of one's accidental death. This of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no correlation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual, Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or, any provisions of law."

13. Their Lordships also pointed out that the compensation received under the Motor Vehicles Act, without any contribution is a statutory one, while the amount receivable under the life insurance policy is contractual.

14. Their Lordships further held that:

"as we have observed the whole scheme of the Act, in relation to the payment of compensation to the claimant, is beneficial legislation, the intention of the legislature is made more clear by the change of language from what was in Fatal accidents Act, 1855, and what is brought u/s 110-B of the 1939 Act (old Act). This is also visible through the provision of section 168(1) under the Motor Vehicles Act, 1988 and section 92-A of 1939 Act, which fixes the liability on the owner of the vehicle even on no fault. It provides where the death or permanent disablement of any person has resulted from an accident in spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation u/s 92-A is in addition to any other right to claim compensation in respect whereof under any other provision of this Act or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit to the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have been given of this statute, evidenced by two distinct sets of decisions of the various High Courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no deductions of the life insurance amount, should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these considerations, we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intents of the legislature under various provisions of the

Motor Vehicles Act, 1939."

15. From this, it is evident that the claim for compensation under the provisions of the Motor Vehicles Act is in addition to any other right to claim compensation in respect whereof under any other provision of this Act or of any other law for the time being in force.

16. Their Lordships further held that:

"when there are two possible interpretations are there with regard to a beneficial legislation, the interpretation which subserves the object of legislation viz., benefit to the subject should be accepted."

17. The next deduction noticed from the salary is General Provident Fund. The Provident Fund Act, 1925 is a Central Enactment and it extends to the whole of India. The object underlying the Provident Fund Act is that the employee, either public sector or private sector, in case of retirement should have some means to live or in case of death his dependents should have some means to live. Since saving is made compulsory, every employee has to subscribe for this Provident Fund, whether he likes it or not and he has no option. Under the provisions of the Act, the employer and the employee to contribute in equal amounts to the Provident Fund and the amount accrued to his account carries interest. Further, he can also avail loan facility from the amount accrued at any time, depending upon his necessity.

18. From this it is seen that under the provisions of the Act, every employee, whether he is in Government service or private service, is expected to contribute towards Provident Fund on the premise that his employer will also be contributing for his future needs. If an employee dies during the course of the employment, the account will be settled till that date only. The general provident fund contributions are not being paid and will not be carried further either by employer or the dependents of the employee. Likewise, on retirement from the service the amount shall be paid to the employee.

19. From this it is seen that the amounts saved by the employee will be repaid with interest either on his retirement or on his death or relinquishing his employment due to various reasons. In fact, in the judgment referred (2 supra) their Lordships touched this aspect also in para 37 of the judgment, which reads as follows:

"37. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly any cash, bank balance, shares, fixed deposits, etc., though are all a pecuniary advantage receivable by the heirs on

account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter se between them and not to which, there is no semblance of any correlation. "

20. From this, it is evident that this amount is a secured amount and a deferred payment and it is certain to be received, whereas an amount, under Motor Vehicles Act, will be uncertain and is receivable only when in an accident, where the victim dies of the injuries or receives permanent disabilities.

21. From the above discussion, it is seen that the provident fund contributions form part of the salary payable to the employee. It is a case of compulsion that every employee has to contribute to this fund, to save something for his peaceful retired life or to leave something to his dependents if any untoward incident takes place. If it is not made compulsory it is not known whether the employee will contribute to that fund or not. Hence, I feel that the provident fund contribution, forms part of the salary payable by the employer to his or its employee and while fixing compensation under the Motor Vehicles Act the same cannot be deducted.

22. On the same analogy, the amounts saved under Group Insurance Scheme also cannot be deducted.

23. Andhra Pradesh Government Life Insurance Fund Rules were issued by the State Government u/s 44 (F) of the Life Insurance Act, 1956, whereunder compulsory insurance scheme for the State Government employees was made compulsory. The object of the scheme is to ensure protection for the families of the deceased-Government employees and to augment their resources at the time of retirement. The membership under this scheme is compulsory for all Government servants appointed on or after 1st November, 1956. Under this scheme, 4% of the basic pay for the employees in superior service and Rs.4/- for class IV employees" is compulsory deductible from their salary. The employees are given option to contribute upto 12% of his pay or at the minimum scale attached to the substantial post held by him. The salient features of the scheme are that the monthly premiums will be deducted at the source from the pay of subscriber, so that the policies do not lapse for non-payment of premium as long as the policy holder remains in service and the arrears, if any, will be recovered with interest. The policies are with profits. The policies are exempted from the attachment by a Court of Law. No Government dues are deducted from the policy amount except the amounts that may be due to this Department on account of arrears of premium or loan etc. Policies of Department cannot be assigned. Policies issued by this Department are exempted from medical examination. Policy holders are entitled to avail loan facility upto 90% of the surrender value of the policy. Due to misfortune, if a policy- holder is permanently disabled,

payment of future premium is waived from the date of disablement upto a maximum of Rs.30/- per month.

24. From this, it is seen that the amounts accrued under the policy are even not only kept away from court attachments but also from any other amounts payable by the employee to the department. Thus whole scheme of the this Beneficiary scheme is intended to see that no employee shall be subjected to starvation after his retirement or on the happening of an event which disables him from attending his duties and in case of death of the employee to see that the members of the deceased family are not thrown out into the streets. But, at the same time, the employee is compelled to save from out of his earnings when he is hale and healthy. Hence, on the same analogy, I feel that these amounts cannot be deducted while awarding compensation. If a victim involved in the road accident is disabled or his legal heirs in case of his death receives any other amounts under the schemes, wholly saved out of his own earnings cannot be treated as a payable benefit on account of accidental death. As a matter of fact, the payment of amounts under this scheme will be only accelerated because of the incapacity of the employee to work, but they have no nexus to the compensation payable under the provisions of Motor Vehicles Act which is a statutory benefit conferred on the victims of the accident on the pretext that that the loss suffered by him or family member have to be reasonably compensated. If it were the intention of the policy maker i.e. either the legislature or the authorities operating these schemes would have definitely made or incorporated a condition in the policy before issue u/s 147 of the Act to the effect that any amounts that are receivable on account of death or permanent disability of the employee, under any of the schemes or Acts, have to be deducted while arriving at the compensation payable under the Act. But no such provision was made under the Act.

25. In *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas*⁴ while considering just compensation payable u/s 110-B of the Motor Vehicles Act, 1939 (old Act), the Supreme Court observed that:

"We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs.2,000/- as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was Spartan or Bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependants."

26. From this, it is seen their Lordships fixed the compensation on the basis of gross income of the deceased.

27. In *Sarla Dixit v. Balwant Yadav*⁵ their Lordships of the Supreme Court while

taking the gross salary of the deceased person into consideration for fixing the compensation, observed as follows:

"Applying these principles to the facts of the case before this Court in the aforesaid case it was observed that the deceased in that case was of 39 years of age. His income was Rs.1,032/- per month. He was more or less on a stable job and considering the prospects of advancement in future career the proper higher estimate of monthly income of Rs.2,000/- as gross income to be taken as average gross future income of the deceased and deducting at least 1/3rd therefrom by way of personal living expenses had he survived, the loss of dependency could be capitalized by adopting the multiplicand of Rs.1,400/- per month or Rs.17,000/- per year and that figure could be capitalized by adopting multiplier of 12 which was appropriate to the age of deceased being 39 and to that amount was added the conventional figure of Rs.15,000/- by way of loss of consortium and loss of estate. Adopting the same scientific yardstick as laid down in the aforesaid judgment, the computation of compensation in the present case can almost be subjected to a well settled mathematical formula. Deceased in the present case, as seen above, was earning gross salary of Rs.1,543/- per month. Rounding it upto figure of Rs.1,500/- and keeping in view all the future prospects which the deceased had in stable military service in the light of his brilliant academic record and performance in the military service spread over 7 years, and also keeping in view the other imponderables like accidental death while discharging military duties and the hazards of military service, it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death, i.e., up to Rs.3,000/- per month had he survived in life and had successfully completed his future military career till the time of superannuation. The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely, Rs.1,500/- per month to the maximum which he would have otherwise got had he not died a premature death, i.e., Rs.3,000/- per month and dividing that figure by two. Thus, the average gross monthly income spread over his entire future career, had it been available, would work out to rs.4,500/- divided by 2, i.e., Rs.2,200/- Rs.2,200/- per month would have been the gross monthly average income available to the family of the deceased had he survived as a bread-winner. From that gross monthly income at least 1/3rd will have to be deducted by way of his personal expenses and other liabilities like the payment of income tax, etc. That would roughly work out to Rs.730/- p.m. but even taking a higher figure of Rs.750/- p.m. and deducting the same by way of average personal expenses of the deceased from the average gross earning of Rs.2,200/-"

28. In this case, their Lordships have not only taken the present gross salary drawn by the deceased person, but also fixed the gross monthly income of the deceased by taking the hike in salary to which he would have reached had he been alive. (i.e.) the gross income was fixed for awarding compensation towards loss of dependency by taking average of the present and future salary that he is

likely to draw had he been alive.

29. In *United India Insurance Company Limited v. Patricia Jean Mahajan*⁶ while dealing with the principles of assessment of damages approved the case of *Helen C. Rebello*'s case (second *supra*) by observing that:

"we are in full agreement with the observations made in the case of *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, , that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general rule, but what is more important is tht such receipts by the claimants must have some co-relation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some co-relation between the amount received and the accidental death or it may be in the same sphere, in absence the amount received shall not be deducted from the amount of compensation. Thus the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured."

30. From this, it is seen that their Lordships held that receipts from whatever source that may come into hands of the claimants are deducted without any correlation to the death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains may be on account of savings or other investments, etc., made by the deceased would not go to the benefit of wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.

31. A learned single Judge of this Court in *S. Narayanamma v. Secretary to Government of India, Ministry of Telecommunications*⁷ while considering the points for determining "just and reasonable" compensation though used the words in normal nature of calculating the compensation to assess the net income of the deceased available for support of himself and dependants, relying of *Helen C. Rebello*'s judgment (second *supra*) in para 12 held that the Tribunal went wrong in deducting vehicle loan and other deductions while fixing monthly income of deceased. While allowances like travelling allowance, allowance for newspapers/ periodicals, telephone, servant, club-fee, car maintenance, etc. by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased.

32. But in *Asha v. United India Insurance Company Limited*⁸ the Division Bench

of the Supreme Court approved the action of the High Court in deducting L.I.C., society charges, H.B.A. etc. It is useful to extract para 8 of the judgment, which reads as follows:

"Lastly, it was submitted that the salary certificate shows that the salary of the deceased was Rs.8,632. It was submitted that the High Court was wrong in taking the salary to be Rs.6,642. It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards L.I.C., society charges and H.B.A. etc. We are unable to accept this submission also. The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependants would only be receiving the net amount less 1/3rd for his personal expenses. The High Court was therefore right in so holding."

33. But in this case their Lordships did not consider the judgment in Helen C. Rebello's case (second supra). At any rate, there is no discussion whatsoever and what is passing in mind of the learned judges is not spelled out in approving the judgment of the High Court, wherein the amounts paid towards L.I.C., society charges, Housing Building Advance etc. were directed to be deducted from the compensation payable under the Motor Vehicles Act.

34. On the other hand, as pointed out by the Supreme Court in Helen C. Rebello's case (second supra), Section 168 of the Act simply says that the Tribunal has to make award subject to provisions of Section 162 determining an amount of compensation, which appears to it to be just and specifying the persons to whom the compensation shall be paid etc. Hence, these amounts are known as deferred payments or contractual payments. Deferred payments receivable by the employees either under the Provident Fund Act as well as under the Insurance Scheme being contractual, they are not liable to be deducted from the compensation payable under the provisions of the Act.

35. The issue can be looked at from other angle also. Under the provisions of the Motor Vehicles Act every victim or his legal heirs either on account of permanent disability or death have to be compensated in the same manner by applying same principles in terms of money to the extent of the loss suffered by them (i.e.) whether he is a Government employee or a citizen of this country i.e., any human being who is involved in an accident is entitled to compensation under the provisions of the Motor Vehicles Act. Whereas these deferred payments are under the provisions of Provident Fund Act or Andhra Pradesh Government Life Insurance Fund Rules, which are made compulsory in case of employed persons whether under the state or otherwise and the amount payable under the said policy being contractual and if these amounts are deducted from the employees governed by these schemes amounts to hostile discrimination in awarding compensation under the provisions of the M.V. Act as against others who are not governed by these beneficial schemes.

36. To put it aptly, in awarding compensation under the M.V. Act if the employees are treated in a different manner from others who are victims of the accident, such a discrimination is not permissible either under the provisions of the M.V. Act or under Article 14 of the Constitution of India which prohibits hostile discrimination and it mandates that the persons similarly placed should be treated similarly.

37. Hence, the victims of the motor accidents have to be treated equally whether he is a Government employee or not and there cannot be any discrimination between these two classes unless such discrimination is contemplated under the provisions of the statute.

38. In the light of the above discussion, it is seen that the gains that may be received by the victim or his dependents, may be they are out of the accident and death, on account of savings or other investments made by the deceased would not go to the benefit of wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.

39. Such amounts cannot be deducted from the compensation payable u/s 168 of the M.V. Act, whereunder the victim has to receive just and reasonable compensation to compensate the loss in monetary terms. Hence, I hold that the only judgment of the Supreme Court in Asha's case (8 supra) whereunder their Lordships approved the action of the High Court in deducting the amounts paid towards LIC., society charges, H.B.A. etc., is not a correct proposition. More so, in the absence of any discussion and without reference to the case law on the subject, the other two decisions relied by Sri Krishnam Raju, the learned counsel for the 2nd respondent-Oriental Insurance Company Limited, made general observation, and those judgments cannot be treated as an authority for the proposition that the gains or benefit received by the claimant or his dependents may be on account of savings or other investments etc., made by the deceased have to be deducted from the compensation payable under M.V. Act.

40. Accordingly, I answer the issue in favour of the appellant and hold that the Tribunal went wrong in taking only net salary of the defendant after deducting G.P.F., G.I.S. and L.I.C. contributions made by him during his lifetime. On the other hand, the Tribunal is justified in deducting professional tax in arriving at gross salary of the deceased person.

41. Coming to fixation of compensation, Sri Kota Subba Rao, appointed as Duty Counsel appearing for the appellant and Sri A. Krishnam Raju, learned counsel appearing for the 2nd respondent-Oriental Insurance Company Limited cited the following decisions:

In Bhagawan Das's case (1 supra) His Lordship Jagannadha Rao having considered the evolution of compensation payable, held that it is safe to fix the compensation on the basis of the actuary's multiplier system, while holding that the injured person in a motor accident is entitled to full compensation for the

financial loss suffered. Having traced the history of payment of compensation under the M.V. Act held that it is safe to rely on the actuary's multiple system while fixing the compensation.

42. In para 18 of the judgment referred (1 supra) his Lordship observed that:

"what is the basis for the actuary's multiplier, what are the factors it takes into account, is the next question. In the judgment of A.P.S.R.T.C. v. Shafiya Khatoon⁹ the mathematical and actuarial background was, perhaps for the first time, explained, at considerable length. The next future losses from date of trial for the remaining expected period of life (in accident cases) and the net future losses from date of death of the person (in fatal cases) have to be estimated."

43. In State of Haryana v. Jasbir Kaur¹⁰ their Lordships of the Supreme Court considered the words "just" and "reasonable" occurring in 168 and 167 of the M.V. Act in determination of the compensation and held that just and reasonable compensation does not mean a bonanza or a source of profit to the victim of the accident.

44. In para 7 of this judgment their Lordships held that:

"It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in gold scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

45. Coming to the compensation payable to the claimant in this case, monthly gross salary received by the deceased was fixed at Rs.6,310/- and after deducting 1/3rd which comes to Rs.2,105/- towards his personal expenses, the loss of dependency comes to Rs.4,205/-. If the yearly loss of dependency is

multiplied with "13", it comes to Rs.6,55,980/-.

46. Again, Mr. Krishnam Raju, learned counsel for the 2nd respondent-Oriental Insurance Company Limited contends that the table given in the second schedule is applicable to the persons whose income is less than Rs.40,000/-, but whose salary is more than 40,000/-, the compensation has to be worked out as Bhagawan Das's case (1 supra).

47. It is true that the table was given upto the yearly income of Rs.40,000/-. I have seen Section 163A of the Act very carefully. The section did not place any cap or ceiling for fixing of compensation as per the schedule upto Rs.40,000/- only. The table given is not exhaustive but it is only a guidance to the Tribunal as well as courts in fixing just and reasonable compensation.

48. Of course a Division Bench of the Supreme Court in Oriental Insurance Company Limited Vs. Hansrajbhai v. Kodala¹¹ held that:

"this no fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that the expanding notions of social security and social justice envisage that liability to pay compensation must be "no fault liability" and as observed by this Court in Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai¹², "in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents". However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs.40,000/- which is the highest slab in the second schedule which indicates that the Legislature wanted to give benefit of no fault liability to a certain limit. This would clearly indicate that the scheme is in alternative to the determination of compensation on fault basis under the Act."

49. In fact, in Deepal Girishbhai Soni v. United India Insurance Company Limited¹³ a Division Bench of the Supreme Court, doubting the correctness of 2-Judge Bench decision of the above judgment (Kodala case) has referred the matter to a 3-Judge Bench, wherein it was held that:

"We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A the annual income of Rs.40,000/- per annum shall be treated as a cap. In our opinion, the proceeding u/s 163-A being a social security provision, providing for a distinct scheme, only those who annual income is upto Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act."

50. From this, it is seen that those victims who want settlement to their claims orally shall file an application u/s 163-A of the Act where compensation payable without insisting, that the accident has taken place due to rash and negligent driving of the driver of the vehicle which caused the accident. In other words, to lay claim u/s 163-A the claimant need not prove the rash and negligent driving of

the vehicle by its driver. It is sufficient if he proves that the accident was caused due to the use of the motor vehicle in a public place. On the other hand, under the regular procedure contemplated under the Motor Vehicles Act for fixing of the just compensation u/s 168 is not scuttled and the person who files an application u/s 166 of the Act, proves that the accident was caused due to rash and negligent driving of the vehicle, a duty is cast upon the Tribunal to fix just compensation payable taking into consideration the social justice and other attending circumstances commensurate with the living standards of the family.

51. In *Kaushnuma begum v. New India Assurance Company Limited*¹⁴ their Lordships of the Supreme Court held that:

"though structured formula was formulated for the purpose of Section 163-A of the M.V. Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as the present case is concerned."

52. From this, it is seen that compared to the other methods available for fixing the compensation, it is always safe to rely on the table-structured formula given in the table while arriving at the compensation payable to the victim.

53. If I accept the contention of Mr. A. Krishnam Raju, learned counsel for the 2nd respondent-Oriental Insurance Company Limited, the compensation has to be worked out on the basis of *Bhagwan Das* case. It works out to very hardship to those victims who were able to prove that the accident has taken place due to rash and negligent driving of the driver, as they will be receiving lesser compensation as per *Bhagwan Das* case, whereas the claimants who are under no obligation to prove that the accident has taken place due to rash and negligent driving of the driver is placed in a high pedestal in getting higher compensation.

54. Hence, I feel that in cases arising u/s 168 of the M.V. Act the compensation payable to the victim can be fixed on the basis of the structured formula and in fact the wrongdoer will be benefited by doing so. Further, we must keep in mind that *Bhagawan Das* case was decided more than 15 years ago and there is significant change in the living conditions of the people and the value of the rupee has also gone down very much.

55. Hence, viewed from any angle, I feel that the structured formula can be taken as a necessary assistance and guidance in arriving at the compensation even in cases that are to be decided u/s 168 of the M.V. Act.

56. In fact, this is a case filed u/s 168 of the Act. Hence, I do not find any substance in the contention of the Mr. A. Krishnam Raju, learned counsel for the 2nd respondent, as the compensation payable towards loss of dependency itself is over and above the claim made by dependents of the victim. Since I have taken the structured formula as a guidance in fixing the compensation, I award an amount of Rs.,2000/- for funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate. In all, compensation payable

to the claimants works out to Rs.6,65,480/-.

57. Since the compensation claimed by the claimants is only for Rs.6,00,000/-, the same is limited to Rs.6,00,000/-. This compensation shall carry interest at the rate of 9% per annum from the date of filing of application till the date of realization.

58. In the result, the Civil Miscellaneous Appeal is allowed by setting aside the award of Tribunal. No order as to costs.

59. This Court appointed Sri Kota Subba Rao as Duty Counsel for assisting the court by placing relevant case law to the notice of the Court. Therefore, I fix a sum of Rs.2,000/- as his legal fee. Hence, the Legal Services Authority, High Court of Andhra Pradesh, Hyderabad, shall pay an amount of Rs.2,000/- to the Duty counsel Sri Kota Subba Rao.