
(1993) 01 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 354 of 1991

Smt. Suki and Others

APPELLANT

Vs

Hem Singh and Others

RESPONDENT

Date of Decision : 06-01-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (1994) ACJ 1024 : AIR 1994 Raj 101

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Advocate : Mahendra Trivedi, for the Appellant; Moinuddin, Kanak Mal Singhvi and R. Chouhand, for the Respondent

Judgement

B.R. Arora, J.—This appeal arises out of the Award dated 7-5-91, passed by the Judge, Motor Accident Claims Tribunal, Bali, by which the learned Judge of the Tribunal awarded a sum of Rs. 1,00,240; - along with interest @ 12% per annum from the date of the claim petition till the date of realization. The Award has been challenged by the claimants on account of insufficiency of the amount awarded by the Tribunal.

2. Deceased Jagdish Chahdra along with four-five other persons, was coming from Udaipur to Jodhpur and was travelling in a taxi-car No. RST 4638. This taxi-car was owned by one Piush Kumar and was driven by its driver Hem Singh. It was comprehensively insured with the United Insurance Company. The taxi-car was driven rashly and negligently by the driver Hem Singh and, therefore, it met with an accident about two kilometres from village Dhola and struck against a tree on the left side of the road. On account of this accident, Jagdish Chandra and Krishna Lal died on the spot while other passengers travelling in the taxi car, received injuries. The dependants of deceased filed claim petition in the Court of the Judge, Motor Accident Claims Tribunal, Bali, for the award of compensation amounting to Rupees 18,48,000/-. Rs. 55,000/- were claimed as the special damages while an amount of Rs. 17,93,000/- were claimed as the general

damages. In the special damages, Rupees 40,000/- were claimed as the amount spent by the claimants in the funeral as well as other post-death and funeral rites like "Mosar". Rs. 5000/- were claimed as the taxi charges for taking the deadbody from the place of the accident to village Madalada. In the general damages, Rs. 3,00,000/- were claimed as the loss of consortium to the wife, i.e., claimant No. 2 Smt. Keshar and loss of love and affection to the mother Smt. Sukhi and other claimants, namely, Parmeshwar, Harish Chandra, Mukesh Chandra and Mahipal --the sons of the deceased. Rs. 1,25,000/- were . claimed on account of mental shock and sufferings and Rs. 13,68,000/- were claimed as the compensation on account of the death of Jagdish Chandra. It was stated in the claim petition that the accident took place on account of rash and negligent driving of the taxi car by its driver Hem Singh and on account of the death of the deceased, the claimants' source of income has been lost. This claim petition was contested by the United Insurance Company. The averments made in the claim petition were denied. The insurance company denied its liability. It was averred in the reply that the accident took place in not following the transport rules and the defendants Nos. 1 and 2 are responsible to make the payment as the accident took place on account of the rash and negligent driving of the taxi car by its driver which dashed against the tree in the night at about 1.00 a.m. The other averments regarding the monthly income and the expectancy of the age were denied. It was, also, averred that the claimants have inflated their claim in the claim petition and the insurance company is not liable to pay any compensation. It was, also, stated that the liability of the insurance company is only to the extent of Rs. 10,000/-per passenger as per the provisions of the Act. The defendants Nos. 1 and 2, also, filed the written statements and their case, as set-up in the written statement, is that the car taxi in question was comprehensively insured with the United Insurance Company and if any claim is decreed then the insurance company may be held liable for making the payment of compensation and the claim against the defendants Nos. 1 and 2 should be dismissed. The liability of the defendant No. 1 was, also, denied on account of pendency of the criminal litigation against him. On the basis of the pleadings of the parties, the learned Judge of the Tribunal framed three issues. The claimants, in support of their claim, examined PW 1 Smt. Keshar -- the widow of the deceased -- and PW 2 Harish Chandra -- the son of the deceased -- and placed on record 12 documents. The learned Judge of the Tribunal, after trial, came to the conclusion that it was only on account of the rash and negligent driving of the taxi car by the driver Hem Singh that the accident took place near village Dhola, where the taxi car dashed against the tree and on account of which, Jagdish Chandra and Krishna Lal died on the spot and four-five other occupants of the taxi car received injuries. The learned Judge of the Tribunal further came to the conclusion that the claimants spent Rupees 5000/- in hiring the taxi for taking the deadbody of the deceased from the place of the accident to their village. The learned Judge of the Tribunal, also, allowed, Rupees 2000/- as the funeral expenses. In the general damages, Rs. 15,000/- were allowed on account of loss of consortium, Rs. 68,640/- were allowed as compensation before the age

of superannuation and Rs. 9600/- were allowed for the post-retirement period and as such a total sum of Rs. 1,00,240 / - was allowed as the compensation. While determining the compensation, the learned Judge of the Tribunal was of the view that the deceased, at the time of the accident, was working as the Gram Sewak and was 45 years of age. His pay, at the relevant time, was Rs. 2458/- per month. The learned Judge of the Tribunal was of the opinion that out of this amount, he was spending 1/3 on himself and was paying the remaining 2/3, i.e., Rs. 1640/- per month to his family and he, therefore, determined the dependency @ Rs. 1640/- per month. The learned Judge thereafter held that as the claimants are getting the pension of Rs. 1200/- per month which amount should be deducted from the amount of the compensation/dependency. After deduction, he determined the dependency @ Rs. 800/- per month and applied the multiplier of 15 looking to the age expectancy in the family. He applied the multiplier of 11 till the age of superannuation. The learned Judge of the Tribunal, however, dismissed the claim of the claimants for a sum of Rupees 1,25,000/- on account of solatium to the claimants on account of mental shock and agony. The learned Judge of the Tribunal, also, refused to take into consideration the agricultural income of the deceased while considering the dependency as according to the learned Judge of the Tribunal, there was no loss to the agricultural income due to the death of Jagdish Chandra. The learned Judge of the Tribunal, while determining the just compensation, refused to make any deduction in the amount of gratuity received by the claimants on which they are earning interest. The learned Judge of the Tribunal was justified in not making the deduction on this point as the gratuity is neither a gift nor a bounty but it is a service benefit related to the length of satisfactory service rendered by the employee. It is a deferred additional payment for the service rendered by him. If the deceased would have lived till the age of superannuation, he would have been entitled to the payment of gratuity and would have received the same irrespective of his death. The dependants could have enjoyed the proceeds of this sum during the lifetime of the deceased and, also, had the right to inherit the same. The benefit of grant of the gratuity is, thus, not a fortuitous circumstance of the deceased dying in an accident and not a benefit arising out of the death. The amount of gratuity received by the claimants, thus, cannot be deducted from the amount of compensation determined u/s 168 of the Motor Vehicles Act. The learned Judge of the Tribunal was, therefore, justified in not deducting the amount of gratuity or interest accrued thereon while determining the amount of compensation. The learned Judge of the Tribunal was, also of the view that as the vehicle in question was comprehensively insured with the United Insurance Company and, therefore, the insurance company is collectively and severally liable to make payment of the claim amount and is bound to indemnify the owner and the driver of the taxi car for any claim passed against them. The claimants have challenged the Award dated 7-5-91, passed by the learned Judge of the Tribunal on the ground of insufficiency as well as on the ground of refusal of their claims on other ground. No appeal or cross-objection has been filed by the owner or the driver or by the insurance company.

3. The first grievance raised by the learned counsel for the appellants was with respect to the dismissal of the claim for a sum of Rs. 40,000/- on account of special damages -- the amount which was spent by the claimants on the funeral rites of the deceased. The learned Judge of the Tribunal, while considering the case of the claimants on this ground, awarded Rs. 2000/- as the funeral expenses. The other amount of Rs. 38,000/- was disallowed on the ground that as per the claimants' case, this amount was spent on the MOSAR of the deceased Jagdish Chandra, which was not a legal expense incurred by the claimants because such type of ceremonies are prohibited by the law. The learned Judge of the Tribunal was right in rejecting this claim. Such type of ceremonies after the death are prohibited under the law and even otherwise, also, the claimants have failed to prove these expenses incurred by them. No sufficient evidence has been placed on record, from which it could be gathered that such a huge amount was spent by the claimants in the funeral ceremony or other post-funeral rites. The learned Judge of the Tribunal was, therefore, right in awarding Rs. 2000/- on this count. The judgment passed by the learned judge of the Tribunal on this count does not require any interference.

4. The next contention, raised by the learned counsel for the appellants is that the learned Judge of the Tribunal committed an error in allowing Rs. 15,000/- only as the consortium and loss of love and affection and dismissed the remaining claim of Rupees 2,85,000/- claimed by the claimants. Looking to the age of the wife Smt. Keshar and the age of the other family members, the award of Rs. 15,000/- for the loss of consortium and love and affection cannot be said to be, in any way, on the lower side. It is a just compensation which has been determined by the learned Judge of the Tribunal for the loss of consortium and the award passed by the learned Judge of the Tribunal on this count does not require any interference.

5. The next contention raised by the learned counsel for the appellants is that the learned Judge of the Tribunal committed an error in not awarding compensation on account of mental shock and agony suffered by the claimants. The Courts, while determining the compensation, can award the compensation which resulted in the loss of pecuniary benefits to which the claimants are exposed as a result of the death, deducting therefrom any pecuniary advantage which accrued to the claimants as a consequence of the death of the victim of the accident. Solatium to the relative for the mental loss and suffering is alien to the concept of the compensation. No such compensation can be granted to relieve mental suffering and shock. The tort-feasor could not have foreseen such an eventuality. No amount of compensation can, therefore, be awarded to the claimants for the mental shock and suffering. The learned Judge of the Tribunal was, therefore, justified in dismissing the claim of the claimants on this count.

6. The next grievance raised by the learned counsel for the appellants is that the learned Judge of the Tribunal was not justified in not taking into consideration the agricultural income of the deceased while determining the compensation. The

claimants, in support of their case, have examined PW 1 Smt. Keshar the widow of the deceased ??? and PW2 Harish Chandra the son of the deceased. They have stated in their statements that the deceased was earning Rs. 25,000/- per year from the agriculture. He was having 35 Bighas of agricultural land agricultural proceeds of which he was paying to his family to meet out the day to day expenditure of the family. In the cross-examination, these witnesses have admitted that no change has taken place in the agricultural income after the death of deceased Jagdish Chandra and the agricultural land is still giving the same income. The deceased himself was not looking-after the agricultural land and it was being looked after by the other members of the family or by the labourers. When no change in the agricultural income has taken place and the land is giving the same income then the learned Judge of the Tribunal was justified in not taking into consideration this agricultural income while determining the just compensation as this income was not contributed by the deceased, but it is the independent income from the agricultural land. This income, therefore, cannot be treated as the income of the deceased and was rightly excluded from consideration while determining the just compensation.

7. The next contention raised by the learned counsel for the appellants is that the multiplier of 15 has wrongly been applied by the learned Judge of the Tribunal and it is, also, contended that while applying the multiplier, the learned Judge of the Tribunal committed an error in applying the multiplier of 13 in determining the compensation for the pre-retirement period and has, also, committed an error in assessing the income of the agriculture after his retirement only @ Rs. 400/- per month. The deceased was entitled to continue in service only till he attained the age of superannuation and would have got the pay and other benefits from his employer only till that date and, therefore, the learned Judge of the Tribunal was justified in applying the multiplier of 13 till the age of superannuation. So far as the dependency considered by the learned lower Court on the basis of the pay and other benefits which he was getting from his employer, is concerned, no mistake has been committed by the learned Judge of the Tribunal on this count. The learned Judge of the Tribunal was, also, justified in calculating the dependency of the deceased from the agriculture after his retirement @ Rs. 400/- per month and rightly determined the compensation payable on this count. Looking to the age of the deceased and the age expectancy of the other members of the family, the learned Judge of the Tribunal was, also, justified in applying the multiplier of 15. No illegality has been committed by the learned Judge of the Tribunal in the application of the multiplier of 15. The award passed by the learned Judge of the Tribunal on this count also, does not require any interference.

8. The next contention raised by the learned counsel for the appellants is that the learned Judge of the Tribunal was not justified in determining the dependency of the claimants only up to Rs. 1640/- per month while it has specifically come in the evidence that the deceased was getting the salary of Rs. 2458/- per month and was spending only Rs. 158/- on himself. PW 1 Smt.

Keshar, in her, statement, has stated that the deceased was spending Rs. 158/- on himself and at the time of the death, the age of the deceased was 45 years and after keeping with him this amount of Rs. 158/-, the deceased used to pay Rs. 2300/- per month to the family. The learned Judge of the Tribunal, after considering the relevant evidence, produced by the parties, came to the conclusion that the deceased was spending 1/3 of his income on himself and was paying to the family the remaining 2/3 of his income. The learned Judge of the Tribunal determined the dependency of the claimants on the deceased to the tune of Rs. 1640/- per month. The learned judge of the Tribunal has properly considered the materials available on record and rightly determined the dependency to the tune of Rs. 1640/- per month. The judgment passed by the learned Judge of the Tribunal on this point, therefore, does not require any interference.

9. The last contention raised by the learned counsel for the appellant is that the learned Judge of the Tribunal was not justified in making the deduction on account of the family pension received by the claimants while determining the dependency. There can be three possible views on the question whether the deduction of the family pension received by the claimants after the death of the victim can be made for the determination of the compensation? The first view is that the family pension is the product of employee's service and it is not just and proper that a tort-feasor should take over the benefit of this by getting a credit for it, in mitigation of the damages that he has to pay. According to this school of thought, this is a necessary incidence of service and cannot be attributed to the fortuitous circumstances of the accident and is not the result of the death. The other view is that the family pension is not one which a legal representative of the deceased could have got but for the death of the deceased and this was the amount which did not belong to the estate of the deceased and, therefore, the amount of family pension received by the claimants is to be deducted for the purpose of determination of just compensation. The third reasonable and possible view is that the grant of family pension is not the pecuniary gain as such but it is acceleration of the pecuniary gain and it is the value of the acceleration that has to be taken into account and not the value of the benefit itself and some allowance can be made for the payment received earlier.

10. In *Sheelawati and Others Vs. Delhi Transport Corporation and Another*, a Division Bench of the Allahabad High Court held that the provident fund, pension and gratuity are deferred payments for the satisfactory service, savings and contributions of the deceased employees. These amounts his family would have, in any case, been entitled to get whether the employee died a natural death or died in an accident. They ought not to be taken into consideration for determining the amount of just compensation as they cannot be termed as pecuniary benefits.

11. In *State of Punjab Vs. Mehar Devi and Others*, a Single Bench of the Punjab and Haryana High Court, placing reliance over the Full Bench judgment of the

same High Court in the case of Bhagat Singh and Sohan Singh Vs. Om Sharma and Others, held that while assessing the annual dependency, pension, provident fund and gratuity cannot be taken into consideration.

12. In *Saminder Kaur v. U.O.I.* 1987 ACJ 7 the Full Bench of the Gauhati High Court (consisting of five Judges) held that when a Government servant retires, he becomes entitled to provident fund, pension and gratuity benefits. Provident fund or pension or gratuity are the deferred payments for the satisfactory service and contributions of the deceased employee. These amounts his family members are entitled to receive whether the employee dies a natural death or dies in an accident. Therefore, they ought not to be taken into consideration in determining the amount of just compensation as they cannot be termed as pecuniary benefits. As regards family pension, the widow of a deceased Government servant would be entitled to this under the service conditions. The Full Bench further observed that this is not a benefit received by the widow and the wrong-doer cannot be allowed to take advantage of the family pension etc.

13. In *Smt. Prem Kanwar and Others Vs. Rajasthan State Roadways Corporation and Another*, a Single Bench of this Court held that the intrinsic nature of benefits like the pension is that they are the deferred fruits of satisfactory service, industry, thrift, contributions and foresight of the employee. Equally these may be the necessary incidents of statutory service rules, employment contracts or beneficial legislation. To attribute these payments entirely to the fortuitous circumstances of the accident and the resultant death is untenable. Therefore, it cannot be said that the pension is being received by his claimants as a result of his death by accident. Therefore, the real and intrinsic nature of the benefit insurance etc. is the labour, industry and satisfactory service rendered by the employee (deceased) and a fortuitous circumstance of his dying in an accident by a motor vehicle. A tort-feasor should not take over the benefit by getting credit of them in mitigation of the damages that he must pay.

14. In *N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another*, the Hon'ble Supreme Court of India observed that the amount of family pension cannot be reduced that the amount of family pension cannot be reduced from the amount of compensation. In this case the Tribunal, while determining the just compensation, computed the compensation as Rs. 40,500/- and made an award directing the respondents to pay the balance of Rupees 30,500/- after taking the credit for Rupees 10,000/- which the dependants of the deceased had received under the family benefit scheme. In the appeal filed by the Pandian Roadways Corporation, the Court affirmed the deduction of Rs. 10,000/- made on account of family benefit scheme and affirmed the finding of the Tribunal on this count, also. The High Court, however, partly allowed the appeal and made further deduction of Rs. 5000/- granted by the Tribunal on account of mental agony suffered by the claimants as a result of the death of the deceased. The claimants preferred an appeal before the Hon'ble Supreme Court and while setting-aside the reduction made by the Tribunal, as

well as by the High Court of Rs 10,000/- on account of family pension, observed as under (at 107 of AIR): --

"The High Court next proceeded to evaluate the pensionary benefits which the widow appellant No. 1 would enjoy. Appellant No. 1 as the widow of the deceased is entitled to pension @ Rs. 120/- per month for a period of seven years thereafter the amount will taper down. The High Court evaluated the monetary benefit of pension and reduced the amount of Rs. 10,000/-. We are unable to appreciate this reduction. We find no justification for it."

15. The Hon"ble Supreme Court, thus, set-aside the judgment of the Tribunal as well as of the High Court on this point and held that the monetary benefit of pension cannot be reduced from the amount of compensation.

16. In *Shakurmiya Imamniya Shaikh v. Minor Surendra Singh Rup Singh* 1978 Acc CJ 130 a Division Bench of the Gujarat High Court observed that the family pension amount, which was sanctioned for the widow or/and the family could not be taken into account for slicing down the award of damages.

17. In *Bhagwati Devi v. Ish Kumar* 1975 ACJ 56 a Single Bench of the Delhi High Court has held that the benefit of pension, gratuity, provident fund and other such benefits are in the nature of quid pro quo and have relation to the savings effected by the deceased, besides having their genesis either in the contract or in the past service and good conduct and these benefits could not be said to be the benefits arising out of the death of a person in the sense in which the action for damages or inheritance could be related to such an event. There would be no justification, therefore, to give the benefit of these payment to the wrong-doer who by his negligence has caused the death of a person.

18. In *Damyanti Devi v. Seeta Devi* 1972 ACJ 334, a Division Bench of Punjab and Haryana High Court held that the insurance amount received by the claimant cannot be said to be the benefit derived by them on account of the death of the insured. It was received by them by virtue of the insurance contract.

19. Now I take up the cases on which reliance has been placed by the learned counsel for the respondents, in which it has been held that in determining the just compensation, deduction on account of pension payable to the widow and the ex gratia payment received by her are admissible for deduction.

20. In *Jamela Begum v. Raipur Transport Company Limited* 1986 ACJ 837, a Division Bench of Madhya Pradesh High Court held that while determining the compensation, the amount of pension and ex gratia payments received by the claimants are liable to be deducted.

21. In *Sohan Lal v. Balwaroop Bal Bhatnagar* 1987 A CJ 113 a Division Bench of this Court held that the amount of pension became payable to the claimants on account of early death of the deceased which they would not have otherwise received and, therefore, taking into consideration the same while assessing the compensation to be awarded, cannot be said to be improper. In this case, the

learned Judge of the Tribunal while determining the just compensation made deduction of the family pension received by the claimants which was upheld by the Division Bench of this Court. In deciding the issue whether the pension can be deducted or not, the judgment of the Hon''ble Supreme Court in the case of N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, was not considered by the Hon''ble Division Bench in which it has been specifically held that the monetary benefit of pension received by the claimants cannot be reduced from the amount of pension and the deduction made by the High Court on this count was set aside. In the absence of the judgment of the Supreme Court, the Division Bench judgment of this Court is binding upon me, but when the Division Bench has taken a contrary view from the view taken by the Hon''ble Supreme Court, then the single Judge of this Court is bound by the judgment of the Supreme Court in view of the provision of Article 141 of the Constitution of India.

22. In A. Bhagayamma v. State of Karnataka 1984 ACJ 145 a Division Bench of the Karnataka High Court held that the amount of pension granted by the Government has to be deducted from the loss of dependency while the amount of gratuity, provident fund etc. should not be deducted as they are not the result of the death but the legitimate earning of the deceased.

23. In A.N. Choudhary v. Deba Huti Patnayak 1979 ACJ 455 a single Bench of the Orissa High Court slashed the pension payable on account of untimely death of Laxmi Narain and held that it should be taken into consideration in quantifying the compensation.

24. In Prem Devi Pandey v. Dayal Singh 1976 ACJ 407 a single Bench of the Delhi High Court held that so far as the pension is concerned, there is no doubt that the widow would not have got the pension but for the death of the deceased. It is, therefore, a distinct pecuniary gain in itself.

25. I have gone through all these judgments which have been relied upon by the learned counsel for the parties. In all these judgments, on which reliance has been placed by the learned counsel for the parties, the judgment of the Supreme Court, in the case of N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, wherein it has been specifically held that the monetary benefit of pension cannot be reduced from the amount of compensation and the High Court was not justified in reducing the amount of compensation by way of family pension for determining the just compensation, was not considered and that is the reason for divergence of the opinion on the issue.

26. There is one another aspect of the matter, also, and that is whether at all it is a pecuniary gain as such or it is an acceleration of the pecuniary benefit/ gain. The question, therefore, which requires consideration in the present case is whether the payment made to the claimants on account of pension can be deducted for the purpose of determining the compensation or not?

27. In *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, the Apex Court laid down the principle for the determination of the compensation and held that the pecuniary loss to the dependants can be ascertained only by balancing on the one hand the loss to the claimants of a future pecuniary benefit and on the other hand any pecuniary gain come to them by reason of the death, i.e., a balance of loss and gain to the dependants by the death of the deceased must be ascertained.

28. There is a distinction between the benefits received on account of the death of a person and the benefits which are payable on his death. So far as the benefits arising out of the first part are concerned, they arise out of the death and would not have been available without the occurrence of the death in an accident, but so far as the benefits which are merely payable on the death of a person are concerned, they are the benefits which are independently available but are payable only after the death. No deduction can be made so far as the latter benefits are concerned, which are though available but are payable only on the death. The payment of family pension falls within this latter category and, therefore, they cannot be deducted while determining the compensation. It has been held by the Court of the appeal in *Daish v. Wauton* (1972) 1 All ER 25 that such payment which had come as a result of legislation or a contract or provided from beneficial bequest and which came independently of any right of redress against such tort-feasor so that these solitary benefit conferred on the victim were enjoyed by the victim or the members of his family could never be deducted from the damages looking to the intrinsic nature of its benefits which on equitable consideration could never go for the benefit of the tort-feasor. The grant of family pension is a right which one inherits on the completion of qualifying service or on superannuation or on death." The benefits received by the dependants of the deceased in the form of pension etc. cannot be considered as a death benefit. As per the condition of the . service, a government servant in his own right, is entitled to get the regular pension upon superannuation. His widow is, also, entitled to get the same if the government servant dies after his retirement. The pension comes as a result of his service career and it is an incidence of service payable to the employee on superannuation and is deeply rooted in the performance of the satisfactory service rendered by the employee and cannot be attributed to the fortuitous circumstances of the accident and the result of the death. The tort-feasor cannot be allowed to take the benefit of the pension received by the claimant by getting the credit for them in mitigation of the damages that he must pay. There is a difference between the benefits received on account of the death and those which are payable on the death of a person. The grant of pension on attaining the age of superannuation is the benefit which is available independently of the death but is payable on the death or on the date of the superannuation. The pensionary benefit which one inherits on account of qualifying service or the death cannot be denied to a person entitled to such benefits on the pretext that he has received such other benefits. It is not the pecuniary gain as such but is an acceleration of pecuniary gain. It may be

the value of the acceleration that can be taken into account while determining the amount of compensation and not the value of the benefit itself and some deduction, if possible, can be made for the payments received earlier. But the other aspect of the case, also, cannot be ignored and the amount of family pension cannot be slashed from the amount of compensation because the deceased has put-in the qualifying service for the grant of pension, if he would have survived till the age of superannuation he would have put-in 13 years more qualifying service for pensionary benefits and in that circumstance he would have got more pension than what the claimants are getting now and after the superannuation age, the pension received by him would have formed a part of his estate and the dependants would have been entitled to inherit the same. In this view of the matter, also, taking the over-all view of the matter, the amount of family pension received by the claimants cannot be deducted from the amount of compensation determined u/s 168 of the Motor Vehicles Act. The learned Judge of the Tribunal, thus, committed an error in reducing the amount of pension received by the claimants while determining the compensation. The order passed by the learned Judge of the Tribunal, reducing the amount of family pension is, therefore, set aside and the dependency of the claimants on the deceased is determined @ Rs. 1640/- per month. The multiplier applied by the learned Judge of the Tribunal, however, does not require any interference. The amount of compensation awarded by the learned Judge of the Tribunal is, therefore, enhanced by Rs. 1,87,200/- and the total compensation payable to the claimants is determined at Rs. 2,87,440/-. The claimants will, also, be entitled for the interest on the whole amount from the date of filing of the claim petition. Out of this amount of Rs. 2,87,440/-, an amount of Rs. 25,000/- has already been paid to the claimants under the "no fault liability" and the remaining amount is required to be distributed among the claimants. Out of this amount of Rs. 2,62,440/-, Rs. 20,440/- be paid to the mother Smt. Sukhi Bai and Rs. 82,000/- may be paid to the widow Smt. Kesar Bai and Rs. 40,000/- each be paid to the sons of the deceased, namely, Parmeshwar, Harish Chandra, Mukesh Chandra and Mahipal. The amount payable to the minor sons, namely, Mukesh Chandra and Mahipal be deposited in the Fixed Deposit Account in a Scheduled Bank and be paid to them on their attaining the majority.