
(1986) 07 RAJ CK 0077
In the Rajasthan High Court
Case No : Civil Special Appeal No. 27 of 1984

Sohan Lal and Another

APPELLANT

Vs

Bal Swaroop Bal Bhatnagar and Others

RESPONDENT

Date of Decision : 25-07-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 110CC, 81, 94, 95
Rajasthan High Court Ordinance, 1949 — Section 18

Citation : (1986) 07 RAJ CK 0077

Hon'ble Judges : N.M. Kasliwal, J; Mohini Kapur, J

Bench : Division Bench

Advocate : R.B. Mittal and M.M. Ranjan, for the Appellant; G.C. Mathur and S.C. Srivastava, for the Respondent

Judgement

N.M. Kasliwal and Mohini Kapur, JJ.—This Special Appeal, u/s 18 of the Rajasthan High Court Ordinance, is against the judgment dated August 21, 1984, passed by the learned single Judge of this Court. This decision was passed in an appeal against the award of the Motor Accidents Claims Tribunal, Jaipur, in claim case No. 2 of 1978, decided on 14.12.1979.

2. The present appeal is by the owner and driver of truck No. HYB 426, which was involved in an accident and who have been made liable to pay the compensation to the heirs of the deceased alongwith Respondent No. 4, the insurance company in the sum of Rs. 1,19,806/-. The liability of the insurance company has been fixed at Rs. 50,000/-. For the balance amount, the Appellants have been held to be jointly and severally responsible.

3. The accident which gave rise to the present claim occurred on July 5. 1977, at about 9.30 p.m. on the Jaipur-Delhi National Highway near Amer. Truck No. HYB 426, driven by the Appellant No. 2 was coming from Delhi to Jaipur and so also the car No. HRH 213, driven by deceased Raghunath Swaroop Bhatnagar. Being the month of July, it was a rainy day and at 9.30 p.m. it was quite dark. At the time of accident, it was raining and there was water on both sides of the road.

The driver of the truck stopped his truck on his left side in order to check some noise coming from its engine. At that time the deceased came in his car and he collided with the rear of the standing truck, which according to the claimants was parked on the wrong side, obstructing the traffic and was not displaying red-light to indicate that a vehicle was standing there. Anyone coming from the back could not have any idea that the truck was standing on the road. In the claim petition, it was mentioned that when the deceased reached near Amer, where the accident took place, a vehicle with full headlights was coming from the opposite direction and in order to avoid this on-coming vehicle, the deceased took his car to his left and it was then that it hit the truck which was said to be parked wrongly obstructing the traffic. The deceased who was driving the car sustained injuries and died immediately. His widow, son and father preferred a claim petition claiming compensation to the extent of Rs. 3,00,000/- under different heads.

4. The claim of the Respondent Nos. 1 to 3 was contested by the Appellants as well as the insurance company. The case of the Appellants is that the driver of the truck stopped it on one side of the road in order to check a noise coming from the truck and a car came at a very fast speed from behind and hit the truck. According to the Appellants the parking lights of the truck were switched on and there was no other traffic on the road and the deceased had space to drive his car. It was denied that the accident was caused on account of the mistake or negligence on the part of the driver of the truck.

5. The learned Tribunal considered the evidence produced by the parties and held that truck No. HYB 426 was wrongly parked on the metalled road without any lights which amounted to negligence on the part of its driver. At the same time, it was held that the deceased was driving the car at a fast speed, considering the fact that the visibility was poor and it was also raining so he was also guilty of contributory negligence. The negligence of the Appellant was assessed at 80% and that of the deceased at 20%. The deceased Raghunath Swaroop, who was an Engineer in the Haryana State Electricity Board, was drawing about Ps. 2,500/- at the time of his death and his age at that time was 52 years. Considering his prospects and expectancy of life, the compensation payable was assessed at Rs. 1,50,408/-, plus Rs. 16,000/- on account of loss of love and affection. Out of this 20% was deducted on account of contributory negligence and a sum of Rs. 1,33,000/- was arrived at in order to make it a round figure. Besides this, a sum of Rs. 7,000/- was allowed for the repairs of the car. Thus the total compensation awarded was Rs. 1,40,000/-. The amount payable to the three claimants was specified and the liability of the insurance company was fixed at Rs. 50,000/-. The owner and driver were held to be jointly and severally liable for the remaining amount. The claimants were allowed interest at the rate of 6% in case the compensation was not paid within a period of three months.

6. On appeal by the present Appellants, the learned single Judge held that the accident was caused on account of negligence of the driver of the truck and the deceased was also negligent to a certain extent in driving his car at a fast speed,

in bad weather, at night time. Considering the manner in which the accident occurred and also taking into consideration the view of different High Courts in apportioning the liability in cases of contributory negligence, the learned single Judge fixed the liability for the negligence in the commission of the accident at 75% of the truck driver and 25% of the deceased. The learned single Judge worked out the compensation payable by the method of calculating the amount which the deceased would have earned during his life and then deducting the amount which he would have spent on himself thereby leaving the amount which he would have spent on his dependents and also the second mode, namely, the multiplier method. The result was not very much different. According to his calculation the compensation was assessed at Rs. 1,50,408/- and after deducting 25% from the same and adding Rs. 7,000/- on account of repair of the car, the compensation to be awarded came to Rs. 1,19,806/-. The learned single Judge did not allow Rs. 16,000/- awarded by the Tribunal on account of loss of love and consortium and reduced the award by this amount. It was specified as to what amount would be payable to the wife, son and father of the deceased. The liability of the insurance company was fixed at Rs. 50,000/-. The directions with regard to payment of interest were maintained.

7. In the present appeal the Appellants have challenged the finding of the learned single Judge about the extent of negligence of the Appellants. According to them the extent of liability of the deceased should be more than 25%. Another contention is that the liability of the insurance company should not be limited to the extent of Rs. 50,000/- but it should be made liable for the whole amount of compensation. The amount of compensation awarded is also said to be on the excessive side.

8. As against this, the learned Counsel for the claimants have contended that the learned single Judge should not have disturbed the extent of liability divided between the truck driver and the car driver by raising the liability by 5%, because there is only a hair-line difference in the two. In addition to this, it is contended that interest ought to have been awarded to the claimants on the compensation. Besides this, he has contended that damages on account of loss of love and loss of consortium, mental agony, pain and suffering should be allowed. The calculation made on basis of the salary of the deceased is also said to be on the lower side.

9. The claimant Nos. 2 and 3 have filed cross-objections in this appeal raising the above pleas for seeking enhancement of the compensation awarded.

10. Considering the facts and circumstances of this case and the contentions which have been raised before us, we have to decide the following points:

(1) Which party can be said to be negligent for causing the accident and if both are negligent then what is the extent of their liability?

(2) Is the insurance company liable for the entire amount of compensation awarded?

(3) Is the compensation awarded excessive or low? In deciding this it is to be seen whether deduction on account of lump sum payment is proper and whether pension received by the claimants could be deducted from the amount which could be said to be the contribution to the family?

(4) Whether the claimants are entitled to compensation on account of mental suffering and loss of love and affection and loss of consortium?

(5) Is the interest awarded proper? Point No. 1

11. The first point to be decided is about the manner in which the accident occurred and placing the responsibility for the same. The Appellants before us have made an effort to show that the liability of the deceased for the accident should be more than 25% and 75% liability cannot be placed upon the truck driver. At the same time the learned Counsel for the claimants has contended that the Tribunal had fixed the liability of the deceased for the accident at 20% and that of the Appellant at 80% and the learned single Judge should not have enhanced the liability of the deceased from 20 to 25%.

12. In this connection first of all it may be mentioned that it is not in dispute that the truck of the Appellant was standing on the left side of the road when the accident occurred. It was stationary as the driver of the truck wanted to check some sound coming from the engine. It is also not in dispute that the car which the deceased was driving came from behind and struck the stationary truck and the deceased died as a result of the injuries received by him. The learned single Judge has held that the parked truck did not display any parking lights or any reflector so as to give some indication that there was a truck standing on the road. It was only when the car came very close to the truck that the car driver was able to see the standing truck at that place. Because of the weather conditions and the fact that there was water on both sides of the road, the learned single Judge held that it cannot be said that the driver of the truck acted negligently in parking the truck on the metal road and in not taking it off the road. However, the negligence of the truck driver was held because it did not display any parking light on the back side so as to make it visible to anybody coming from the rear side. Considering the fact that the deceased was coming at a fast speed when the visibility was poor, he also contributed to the accident. He could see the stationary truck from a distance of about 20 to 25 only. At that time he applied brakes but the distance was too short to make them effective and the car hit the truck with force, which means that he was also negligent to a certain extent. The learned single Judge relied on some reported decisions and arrived at the conclusion that the liability of the truck driver and owner was 75% and that of the car driver 25%.

13. The learned Counsel for the Appellants has contended that the truck was not standing at the place of the accident for a long time but had been stopped there just a few minutes before the accident occurred. The reason for stopping was also urgent as the engine of the truck was giving some unusual sound and at

that time the driver of the truck had no alternative but to stop the truck at a place where he could look into the engine. In these circumstances, it is contended that the negligence of the truck driver could not be compared to that of those truck drivers who leave their vehicles parked on the road for a long time without taking precautions to make arrangement for displaying signs that there is a stationary vehicle on the road. According to him when the truck driver was forced to stop the vehicle and the accident occurred immediately after, even before the truck driver could take precautions for putting some sign about the stationary truck, then his negligence should not be assessed at 75%. It is also contended that the reflecting lights were smeared with mud due to the rain and as such it was not the fault of the truck driver, if the truck was not visible to the car driver.

14. On the other hand the learned Counsel for the claimants has contended that when the learned Tribunal had assessed the proportion of the negligence of the deceased at 20% then this should not have been raised to 25% by the learned single Judge. According to him this extra 5% has been wrongly deducted from the compensation. It is argued that between 20% and 25% there is only a hair-line difference and as such the decision of the learned Tribunal should not have been changed.

15. The decisions which have been cited in this connection and relied upon by the learned single Judge may be first looked into.

16. The *Chop Seng Heng v. Thevannasan* 1976 ACJ 275 (Privy Council, England), was a case where a lorry was parked with its lights on as it was dark, just near a blind corner but the second lorry came from behind at a speed of 35 miles per hour and crashed into the rear portion of the stationary lorry. For the injuries sustained by a passenger in the second lorry, the liability was apportioned between the drivers of the stationary lorry and second lorry in the ratio of 75:25 respectively. The negligence of the first lorry driver was in parking his lorry close to the corner and the negligence of the driver of the second lorry was in driving at a fast speed around a blind corner. It was found that there was no error in apportioning the claim on both the sides.

17. In *Shakurmiya Imammiya Shaikh v. Surendra Singh Rup Singh* 1978 ACJ 130 (Gujarat), the facts of the case were that a truck was coming from the opposite direction with full dazzling lights with the result that the motor-cyclist could not go to his right side and he collided with another stationary truck parked on the tar road. There was no back light or any other signal to indicate the presence of this truck. In such circumstances the liability of the parked truck was assessed at 75% and that of the motor-cyclist at 25%.

18. In *Pushpa Rani Chopra v. Anokha Singh* 1975 ACJ 396 (Delhi), the principles of contributory negligence were discussed and it has been quoted from Halsbury's Laws of England, 3rd Edition, Vol. 28, paragraph 92, as under:

In an action for injuries arising from negligence, it was a defence at common law

if the Defendant proved that the Plaintiff, by some negligence on his part, directly contributed to the injury in the sense that his negligence formed a material part of the effective cause thereof. When this is proved the Plaintiff's negligence is said to be _ contributory. It is now enacted by the Law Reform (Contributory Negligence) Act, 1945, that where any person suffers damage as a result partly of his own fault and partly of the fault of any other person or person, a claim in respect of that damage is not to be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof are to be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

19. It was held that in order to establish a plea of contributory negligence, it is to be proved that the injured party did not in his own interest take reasonable care of himself and contributed by his want of care to his own injury. The principle involved is that where a man is partly author of his own wrong, he cannot call on the other party to compensate him in full. A person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonably prudent man, he might hurt himself.

20. The Oriental Fire and General Insurance Company Ltd. v. Deep Kaur 1980 ACJ 100 (P and H), is another case where a truck was parked on the metal road on left side of the road, without taking precautions to indicate that there was obstruction on the road. A car came and struck against the rear portion of the truck and the car driver died on the spot. The liability of the truck driver and the car driver was apportioned in the ratio of 3/4th and 1/4th respectively.

21. While coming to this conclusion, reference was also made to Section 81 of the Motor Vehicles Act, by the learned single Judge, which imposes a duty that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction, or undue inconvenience to other users of the road. It was held that if the car driver with all his vigilance had noticed the parked truck from a sufficiently long distance, the accident could have been averted by stopping the car before crashing into the truck but the car driver did not exercise his vigilance. The truck driver was not negligent merely because of parking the truck on the tar road, but for leaving it without any parking lights.

22. In the present case the truck had been parked on the metal road and there was no signal or indication of any kind to show that a truck was standing on the road. It may be accepted that the truck was parked in such a position out of necessity as there was water on both sides and the truck driver could not take it further left in the kacha, but then he did not leave the parking lights on so as to make the stationary truck visible to any other traffic Using the road, in such a situation, he may not have violated the provisions of Section 81 of the Motor Vehicles Act but the parking of the truck without any parking lights or a clean reflector for the advantage of other traffic makes him negligent.

23. On the other hand the car driver is also negligent because the evidence in this case shows that another truck was coming from the opposite direction and due to the glare of the lights of that truck the car driver could not see the parked truck and therefore, collided with it. It is common experience that while driving at night time the glare of vehicles coming from the opposite direction leaves the other driver blinded for a moment, the result of which is that the traffic going ahead of him is not visible, unless there are some lights or other indication to show the existence of such traffic. It was for the car driver to have immediately slowed down when the glare of the truck coming from the opposite side affected him. But it appears that he did not reduce his speed until the stationary truck became visible to him, but at that time he was only about 20 or 25 away from it and it was too late to avert the accident. Thus his contributory negligence is also established by the fact that his speed was fast when the weather conditions were bad and there was the blinding effect of the glare of the other truck lights.

24. The question which arises is in what proportion the liability should be apportioned. Just as the learned Counsel for the claimants contended that there is a hair-line difference between 20% and 25% so also it may be stated that apportioning the liability in a precise, mathematical and scientific method is very difficult in such situation. What the court ought to arrive at is whether both the parties were equally negligent for the act or one of the parties was more negligent than the other. When the conclusion is that the negligence of one is greater than the other, then it is proper to apportion the liability in the ratio of 3/4th and 1/4th as it is difficult to arrive at figures in between the two. The courts should take a consistent view in the matter of apportioning the liability when the inference to be arrived at is more or less discretionary. When the courts have consistently taken the view that if the negligence of one party is more than that of another, then its liability should be fixed at 75% then this appears to be reasonable and proper to do so rather than divide in small fractions in determining the extent of liability. In this case the negligence of the truck driver is established and the negligence of the car driver is only to this extent that he was not able to avert the accident, as such negligence of the car driver is less than that of the truck driver and the apportionment made by the learned single Judge is appropriate and does not call for any interference.

Point No. 2

25. The contention of the learned Counsel for the Appellants is that in case of an accident when the vehicle involved is insured then the liability of the insurance company should not be limited to Rs. 50,000/- or any other amount but it should be taken to be unlimited liability.

26. It has been emphatically contended that the liability of the insurance company cannot be made limited as has been done by the learned Tribunal and the learned single Judge and in support of this contention, reliance has been placed on Smt. Chand Kanwar Vs. Mannaram and Others, (Rajasthan) and Srisailam Devastanam v. Bhavani Pramillamma 1983 ACJ 580 (AP). In the Andhra

Pradesh decision a passenger travelling in a bus died when the bus met with an accident. This bus was covered by an insurance policy but the statutory liability of Rs. 5,000/- was not mentioned in the original policy. It was in these circumstances held that the insurance company was liable to pay more than the statutory liability. The entire amount of compensation awarded was held to be payable by the insurance company as the contract of insurance did not place any limit on the liability. The Rajasthan case shall be referred to later.

27. As against this the learned Counsel for the insurance company has first of all drawn our attention to the insurance policy by which the truck in this case was covered and this contains a specific clause that "the limit on the amount of liability in respect of any one claim or series of claims arising out of one event is Rs. 50,000/-". Section 95 of the Motor Vehicles Act is relevant in this connection which places limit upon the liability of the insurance company for different categories of vehicles. It is contended that merely because an insurance policy is known by the name of comprehensive policy, it cannot be said that the insurance company has agreed to indemnify the owner to an unlimited extent because this term is used only in distinction with third party risk. A further option is open to the insured to seek a condition in the policy that the extent of liability of the insurance company shall be unlimited. It is open to the insured to pay additional premium and obtain this facility. The learned Counsel for the insurance company has placed reliance on a number of decisions in order to show that the limits of liability as prescribed by Section 95 of the Motor Vehicles Act are to be adhered to.

28. In *Kota Sand Company v. Santosh Talwar* 1985 ACJ 98 (Rajasthan), a plea was raised that the liability of the insurance company was unlimited and it should be made liable for the whole amount of compensation payable to the claimants. It was held that the insurance policy was with the insured and if it was his contention that the whole liability was that of the insurance company then it should have produced the original insurance cover to get rid of the liability, which could be fastened on the insurance company. Thus the plea of statutory unlimited liability of the insurance company was not accepted. A learned single Judge of this Court in *Sampat Lal v. Geeta Devi* 1985 RLR 1052, has laid down the principles governing the liability of the insurance company after taking into consideration the various decisions in this respect and it was held that the liability of the insurance company is limited to the extent as provided u/s 95(2) (b) of the Motor Vehicles Act and it was also held that the non-production of the insurance policy will not make much difference and would not lead, to enhance statutory liability of the insurance company.

29. The Gauhati and Assam High Court in *Kanan Bordoloi Balwant Rai Mukkar* 1984 ACJ 469 (Gauhati) has upheld the liability as provided by Section 95(a) of the Motor Vehicles Act and it has been held that the liability of the insurance company is to the extent of Rs. 50,000/- in the case of an accident involving a goods vehicle.

30. The Andhra Pradesh High Court in *Srisailam Devastanam v. Bhavani Pramamma* 1983 ACJ 580 (AP), has taken a different view in order to hold that the insurance company is liable to pay more than the statutory liability but this view was taken because the insurance policy did not contain the maximum statutory liability clause. In view of this it was held that the company had undertaken an unlimited liability.

31. The Rajasthan decision in *Smt. Chand Kanwar Vs. Mannaram and Others*, (Rajasthan), has construed the words "such amount as is necessary to meet the requirements of the Motor Vehicles Act" in the policy and it has been held that two interpretations are possible viz. as provided in the Act or as fixed by the award, but taking a beneficial interpretation, the liberal view in favour of the insured was taken.

32. Before referring to the terms of the policy in the present case, we may go through the provisions of the Motor Vehicles Act, which are relevant for purposes of determining the liability of the insurer. Section 94 of the Act provides for an owner, for getting the motor vehicle insured if it is to be used in a public place. Thus the insurance of a vehicle is compulsory except in the cases which have been excluded from the operation of these provisions, such as vehicles owned by Government etc.

33. Section 95 of the Act provides for the requirements of policies and limits of liability. The effect of this provision is that a person getting his vehicle insured cannot get it insured below the limits prescribed by these provisions. It will not be open to the insurance company to issue a policy which does not fulfil the minimum requirements of the law. According to Section 95(2)(a), as it then existed, it was imperative that a policy of insurance should cover any liability incurred in respect of any one accident in the case of a goods vehicle to a limit of Rs. 50,000/-.

34. Section 96 of the Act provides for the duty of insurers to satisfy judgments against persons insured in respect of third party risks. After a certificate of insurance has been issued under Sub-section (4) of Section 95 and a judgment is obtained against the person by whom a certificate of insurance has been obtained, the insurer is liable to pay to the person, entitled to the benefit of the decree any sum not exceeding the sum assured payable under the policy. This provision limits the liability of the insurance company to the sum assured payable under the policy. The provisions of Motor Vehicles Act do not place any restriction on the upper limit for which a policy is to be issued. They can arrive at an agreement by which the liability can be more than the statutory liability if the insurer pays additional premium and obtains a receipt covering risk cover over and above the statutory limit. The liability of the insurance company will be unlimited only when a clause to that effect has been inserted in the policy. The terms and conditions incorporated under the policy are to be read as a whole and not by referring to only a portion of it. The insurance policy in this case which is Exh. P-14, contains the following limits of liability:

Limits of liability.--Limit of the amount of the Company's liability u/s II-1(i) in respect of any accident:

Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.

Limit of the amount of the Company's liability u/s II-1(ii) in respect of any one claim or series of claims arising out of one event Rs. 50,000/-.

35. This limit, when it fixes the liability for such amount as is necessary to meet the requirements of the Motor Vehicles Act, means that the limit is the statutory limit prescribed by Section 95(2)(b) of the Act. Even if it can be said that it means the whole of the amount which is awarded to a claimant, then Section 110-B of the Act provides that the Claims Tribunal shall specify the amount which shall be paid by the insurer. If the liabilities of the insurance company were to be unlimited, the question of specifying the amount payable by it would not arise. In the present case the Claims Tribunal as well as the learned single Judge has fixed the amount payable by the insurance company at Rs. 50,000/- and when there is no clause under the insurance policy for the unlimited liability of the insurer, then it would not be in accordance with the law to make an order placing the whole burden upon the insurance company. It may be mentioned here that this ground was not even raised by the Appellant in the memo of appeal or before the single Judge and it is only because of the decision in Smt. Chand Kanwar Vs. Mannaram and Others, (Rajasthan), that this argument has been put forth before us for the first time by the learned Counsel for the Appellant.

36. The learned Counsel for the Appellant has contended that the policy issued in the present case is a comprehensive policy and this should be taken to mean that it will cover all the liability of the insured. The ordinary dictionary meaning of "comprehensive" has been referred to and it is contended that when the policy is comprehensive, then it must be taken to include the whole of the liability.

37. In our opinion the meaning of comprehensive policy is to be appreciated in contrast to a policy which covers only third party risk. The liability of the insurance company in a third party policy covers risk of injury and death of a third party and does not cover risk for damage to property or vehicle. The term "comprehensive" cannot be taken to mean unlimited liability because it refers to different types of liability and not the extent of liability in financial terms.

38. This Court in a Full Bench decision in Vimla Srivastava Vs. Rajnidevi Sharma and Others, while considering the liability in respect of a passenger travelling in a bus has upheld the limit of liability prescribed by Section 95(2)(b)(4) of the Act. It was observed as under:

In view of the above express language used by the Legislature, in our view, the liability of the insurer continues to be limited to the extent of Rs. 10,000/- in the case of individual passenger in a motor cab and Rs. 5,000/- in any other case.

Thus we hold that unless there is a contract, otherwise the limits of the liability

of the insurance company shall be governed by Section 95(2) of the Act and in the present case the contract of insurance policy lays down this limit and it cannot be said to be unlimited.

39. We are unable to subscribe to the plea raised by the learned Counsel for the Appellants to hold that the liability of the insurance company is not limited to Rs. 50,000/-.

Point No. 3

40. The last contention is with regard to the quantum of compensation awarded to the claimants. The amount awarded by the Tribunal was reduced by the learned single Judge to the tune of about Rs. 19,000/- by disallowing the amount awarded for love, affection and consortium and by raising the extent of contributory negligence of the driver of the car (deceased) from 20% to 25% but the claimants did not prefer any appeal against it. It is the Appellants who have come up in this special appeal to contend that the amount awarded is excessive. However, the claimants have submitted cross-objections in order to get the amount of compensation enhanced. Now they are praying for the re-opening of the calculation by contending that the learned Tribunal has not correctly appreciated the amount which the deceased was earning and his contribution to the family. This calculation was not challenged by submitting cross-objections before the learned single Judge. The learned Tribunal has first taken the monthly income, of the deceased and after taking into consideration the Amount which the deceased was spending on himself, the dependency of the claimants was worked out. He first worked out the dependency for the period prior to the date the deceased would have retired from service and then worked out the dependency for the period after his retirement. In doing so all the relevant factors, which are to be taken into consideration, have been looked into and have been approved by the learned single Judge. The learned Counsel for the Appellants have not been able to satisfy as to in what manner this calculation is not proper. We may again refer to the circumstances in this respect. The age of the deceased at the time of his death was 52 years and he was holding the post of Superintending Engineer in Haryana State Electricity Board. He would have retired at the age of 58 years. Considering the fact that his father was alive the expectancy of his age was taken to be 70 years. According to the certificate of the pay of deceased, he was drawing Rs. 2,509/- p.m. at the time of his death. He was bringing home a sum of about Rs. 1,900/- p.m. and after excluding the amount which he can be said to be spending on himself, the contribution to the family was taken to be Rs. 1,300/-. From this amount a sum of Rs. 432/- was deducted as his family was getting this amount as pension on the death of the deceased. The family would have got this amount till the retirement of deceased. This deduction is proper because the family of the deceased would not have been entitled to this pension if the deceased had not died prematurely. For six years, i.e. upto the time the deceased could have retired, the loss was computed at Rs. 62,496/-. For the period after his retirement, it was worked out that he would

have got a pension of Rs. 1,250/- and after deducting his personal expenses about Rs. 220/- and the pension Rs. 216/- payable to his widow, the contribution to the family was assessed at Rs. 814/-. At this rate, the amount of loss was computed for a period of 12 years i.e. till the deceased would have reached the age of 70 years. This amount worked out to Rs. 87,912/-. Out of this amount, 25% was deducted on account of lump sum payment. The Tribunal had deducted 20% on account of contributory negligence of the deceased and this was raised to 25% by the learned single Judge.

41. Learned Counsel for the claimants has first of all contended that the amount of pension payable to the family of the deceased should not be deducted while assessing the loss to the family. Reliance has been placed on *Surender Kaur v. Dharam Singh* 1985 ACJ 53 (Delhi), in which it has been held that the Provident Fund, Gratuity, Pension and other savings of deceased cannot go to reduce or eliminate the amount of compensation. In this case the Claims Tribunal had not allowed any compensation to the representatives of the deceased who died in an accident because of the other benefits he was to get from his service. It was held that the benefits which came to the legal representatives, as a result of service career of the deceased cannot be taken into consideration to reduce the amount of compensation or to eliminate the same. A distinction was drawn between what belonged to the deceased or his legal representatives as a matter of course and what was the result of wrongfully causing the death of a person. This decision itself makes it clear that the claimants will not be deprived of compensation because of certain benefits they would get in the normal course. In the present case the claimants would not have got a sum of Rs. 432/- by way of pension from the time when the deceased was 52 years of age till he attained the age of 58 years, if he had not passed away in an accident. This amount, therefore, became payable to the claimants on account of the early death of the deceased which they would not have got otherwise, therefore, taking into consideration of the same while assessing the compensation to be awarded cannot be said to be improper.

42. Learned Counsel for the claimants has contended that future prospects of the deceased have not been taken into consideration and it is contended that after his retirement the deceased would have got some other job in which he would have earned some money and some consideration for this should also have been taken. This matter was not canvassed by the claimants before the learned single Judge. Even if he may be allowed to raise the same before us, it would be proper to say that in order to get some benefit on account of a job which the deceased could have taken in future, it was necessary, atleast, to make some suggestions about it in the evidence. The claimants could have shown that other retired Engineers of Haryana State Electricity Board had been given some other jobs after their retirement. In the absence of any material, benefits to the claimants cannot be granted merely on the basis of conjectures.

43. The learned Counsel for the claimants has contended that the learned

Tribunal and the learned single Judge have wrongly deducted 25% on account of lump sum payment and this deduction should not have been allowed. The argument on which this plea is based is that the accident occurred in the year 1977 and the money became payable to the claimants as soon as the claim petition was filed and had the claimants received the compensation at that time even after the deduction of 25% on account of lump sum payment, they would have been in a better position. Now, in the year 1986, the value of rupee has fallen down very significantly and the deduction of 25% made on account of lump sum payment cannot be said to be justified. In support of his contention he has placed reliance on *New India Assurance Co. Ltd. v. Lakhibai* 1985 ACJ 138 (MP), wherein it was held that no deduction on account of lump sum payment is proper and desirable in view of the fact that the value of money has gone down.

44. In *Inder Lal v. Narendra Kumar* 1985 ACJ 303 (Rajasthan), this Court considered the recent trend in compensation cases and held that there has been a steep fall in the value of rupee/currency of India and the purchasing power of the rupee has gone too much low. Coupled with it, the courts have noticed that, there has been enough monstrous inflation and rise of prices and the interest rate is very low, so it would not be proper to make a deduction on account of lump-sum payment.

45. Similarly this Court in *Prem Chand v. Jasoda* 1985 ACJ 315 (Rajasthan), held that the latest approach in this distinct field of social welfare legislation should be not to minimise the compensation by making deduction on account of lump sum payment.

46. In *Satyawati Pathak v. Hari Ram* 1983 ACJ 424 (Delhi), a similar view was taken by the Delhi High Court, which refused to make a deduction on account of lump sum payment, considering the rising prices.

47. Andhra Pradesh High Court in the case of *Srisailam Devastanam v. Bhavani Pramamma* 1983 ACJ 580 (AP), did not allow any deduction on account of lump sum payment due to the steep fall in the value of money.

48. On the other hand the learned Counsel for the Appellants have referred to a number of decisions in this connection but we would like to cite the decision of Supreme Court reported in *Madhya Pradesh State Road Transport Corporation Bairagarh Bhopal v. Sudhakar* 1977 ACJ 290 (SC). The Supreme Court has approved the deduction of some amount from the compensation payable on account of uncertainties of life and on account of lump sum payment. It was observed as under:

But in assessing damages certain other factors have to be taken note of which the High Court overlooked, such as the uncertainties of life and the fact of accelerated payment that the husband would be getting a lump sum payment which but for his wife's death would have been available to him in dribblets over a number of years. Allowance must be made for the uncertainties and the total figure scaled down accordingly. The deceased might not have been able to earn

till the age of retirement for some reason or other, like illness or for having to spend more time to look after the family which was expected to grow. Thus the amount assessed has to be reduced taking into account these imponderable factors. Some element of conjecture is inevitable in assessing damages.

Thus it can be said that at one time the deduction of some amount from the compensation on account of uncertainties of life and lump sum payment was considered proper but fall in the value of rupee and the rising inflation has led the courts to take a view that deductions should not be made from compensation payable to the claimants. It may be stated that the effect of rising prices and inflation is felt when the compensation payable is paid after a long time. In several cases the period between the date of the submission of the claim and the date on which the compensation is actually paid to the claimants is more than a decade, during which the economic situation in the country undergoes a vast change. If the compensation awarded is paid to the claimants soon after the decision of the Claims Tribunal, then the effect of the fall in the purchasing power of the money will not be as deep rooted as it would be if the money is paid after ten years when the appeal is decided. Hence, some significance is to be attached to the time when the compensation is actually paid to the claimants after the submission of the claim.

49. In this case the learned Claims Tribunal deducted 25% on account of lump sum payment but this was not challenged by the claimants in an appeal. When an appeal was preferred by the owner and driver of the truck, then the claimants did not submit any cross-objections for claiming the compensation which had been deducted on account of lump sum payment. Even after the decision of the learned single Judge the claimants did not come to this Court, which shows that they had no grievance. It was only when the Appellants preferred the special appeal they for the first time submitted cross-objections. This aspect of the matter also becomes relevant in deciding as to whether a lump sum payment should be allowed or not. At this stage it may also be clarified that the learned Tribunal calculated the compensation payable in two parts. The first part was for the pre-retirement period of the deceased which was of six years. The loss of dependency for this period was worked out at Rs. 62,496/-. No lump sum payment was deducted from this. The second part was for 12 years, the post-retirement period. The amount of dependency for this period was calculated at Rs. 1,17,216/- and only out of this Rs. 29,304/- was deducted on account of lump sum payment and it was reduced to Rs. 87,912/-.

50. With this in view, the circumstances of the present case are to be seen. The Claims Tribunal passed its award on 14.12.1979. A sum of Rs. 50,000/- was paid by the insurance company soon after. Thereafter the Appellants paid Rs 20,000/- according to the direction dated 16.8.1982 of the learned single Judge and then again a sum of Rs. 10,000/- was directed to be paid on 15.10.1982. In this manner the claimants have received Rs. 80,000/-. At the time the payments were made the value of rupee was not what it is today, hence on account of

steep fall in the value of money and also uncertainties of life, we consider it proper to disallow the 25% deduction on account of lump sum payment on the amount which remains unpaid on this date. The total amount payable on account of dependency was Rs. 1,50,408/-. Out of this, after deducting 25% on account of the contributory negligence of the deceased the amount payable comes to Rs. 1,12,806/-. Out of this Rs. 80,000/- has been paid. On the balance amount of Rs. 32,806/- the claimants are allowed to add 25% which can be said to be improperly deducted. This works out to Rs. 8,200/- and has to be added to the amount awarded.

Point No. 4

51. This relates to grant of compensation on account of loss of love, affection and consortium. The learned Tribunal had allowed Rs. 16,000/- under this head but the same has been disallowed by the learned single Judge. This matter stands decided by a Full Bench decision in Rajasthan State Road Transport Corporation Vs. Smt. Kistoori Devi and Others, to which one of us (Kasliwal, J) was a party. After discussing the various decisions on this point, it has been held that in determining the just compensation allowable by the Tribunal u/s 110-B of the Act, the court is entitled to grant compensation under the heading loss of love and affection of spouse/children/parents. This includes allowing compensation for loss of consortium. In view of this F.B. decision, the claimants are entitled to compensation under this head and Rs. 16,000/- which has been disallowed by the learned single Judge has to be awarded to them. Thus the cross-objection of the claimants deserves to be accepted to the extent of Rs. 16,000/-.

Point No. 5

52. The claimants have contended that the interest awarded is not in accordance with the provisions of Section 110-CC of the Motor Vehicles Act. On the other hand the learned Counsel for the Appellant has contended that an arrangement should be made so that the compensation awarded when deposited in bank would yield an interest equal to the amount of dependency so that the dependents may be financially at par. According to him, the compensation should be limited to such amount. Superficially, this sounds as a very attractive suggestion but then it does not take into account the factor that the dependents not only need day-to-day food and clothing but they also have to incur major expenditures like marriage, education etc. For this purpose, if the principal amount is utilised then the claimants will no longer have any recurring income. This contention of the Appellants is not acceptable.

53. Section 110-CC of the Act provides for awarding interest on the compensation at such rate to be fixed from the date the claim was submitted. A number of decisions have been relied upon where interest was awarded at 9% or 12% per annum from the date of the claim. It is not necessary to refer to them. This provision only permits the court to do so and does not make it compulsory to award interest at a particular rate or from a particular time. The court can in

its discretion fix the interest to be awarded and in the present case, where the deceased has also partly contributed to the accident, the grant of interest at 6% per annum in case the compensation is not paid within three months from the date of the award is just and proper.

54. In the result, the appeal of the Appellant fails and is dismissed with costs.

55. The cross-objection of the claimants is accepted to the extent of Rs. 16,000/- on account of loss of love, affection and consortium and Rs. 8,200/- which has not to be deducted on account of lump sum payment. Accordingly the amount of compensation awarded is enhanced from Rs. 1,19,806/- to Rs. 1,44,006/-. The amount to be paid to Mr. Bal Swaroop Bhatnagar is Rs. 17,000/-, to Kamal Bhatnagar Rs. 58,000/- and the balance Rs. 69,006/- to Mrs. Urmila Bhatnagar. The Appellants shall be jointly and severally liable for this amount as the insurance company has already paid its share. Rs. 30,000/- paid by the Appellants shall be adjusted towards this amount. The directions given by the Tribunal as regards payment of interest are maintained.

Break-up of the compensation allowed

Pre-retirement period Post-retirement period Rs. 1,12,806/-

Add 25% on Rs. 32,806/- Rs. 8,200/-

Loss of love and consortium Rs. 16,000/-

Damage to car Rs. 7,000/-

Total Rs. 1,44,006