

(1982) 11 AP CK 0003

In the Andhra Pradesh High Court

Case No : Appeal against order No. 161 of 1977

Srisailam Devastanam

APPELLANT

Vs

Bhavani Pramillamma and Others

RESPONDENT

Date of Decision : 01-11-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1939 — Section 110, 95, 96(4)

Citation : AIR 1983 AP 297 : (1983) 2 APLJ 20

Hon'ble Judges : Ramaswami, J;P.A. Choudary, J

Bench : Division Bench

Advocate : S. Parvatha Rao, for the Appellant; P.M. Gopala Rao and S.V.R. Somayajulu, for the Respondent

Judgement

Ramaswami, J.—This civil Miscellaneous Appeal arises against the common judgment in O.P. Nos 230 and 232 of 1975, on the file of the Court of the Motor vehicles Accidents claims Tribunal (Ist Additional District Judge) Guntur. The appellant herein is srisailam Devastanam, hereinafter called "Devasthanam". The first respondent in O.P. No 230 of 1975. The lower Tribunal awarded compensation to the petitioners in o.P No. 230 of 1975. The lower Tribunal awarded compensation to the petitioners in O.P. No. 230/75 in a total sum of Rs. 16,600/- Devasthanam filed the above appeal against the award limiting the liability of the Insurance company hereinafter called "company" viz., the second respondent in the said O.P. for a sum of Rs. 5,000/-

2. The petitioners in O.P. No. 230/75 laid their claim for a sum of Rs. 53,000/- on various counts. As the lower Tribunal granted only Rs. 16,600/- dissatisfied thereby they filed cross-objections for the balance amount of Rs. 36,400/-

3. In this appeal Devasthanam impleaded the company as respondent No. 5 contending that the company has to bear the entire liability of Rs. 16,600/- on the ground that the vehicle was insured with third party risk and that the company has undertaken to reimburse the unlimited liability in terms of the

insurance policy Ex. B-1. The petitioners-legal representatives of the deceased are impleaded as respondents 1 to 4. The first respondent is the widow respondents 2 and 3 are minor daughters and the 4th respondent is the father of the deceased for brevity, they are called "claimants".

4. The facts leading to the filing of the claim petition are as stated hereunder: Devasthanam is plying its bus bearing registration No APQ 4421 carrying the pilgrims on hire or reward on 24-4-1976 at about 4.0 a.M. when the bus was going to Guntur. The driver drove the vehicle in a rash and negligent manner and when it reached perecherla level crossing. It left the road and fell into a ditch. In the said accident. Sri Bhavani venkateswarlu died instantaneously and two other persons sustained injuries In this appeal sons sustained injuries In this appeal, we are not concerned with the two other injured persons since they did not come up before this Court by way of an appeal against the order in O.P. No. 232/75. The claimants as legal representatives, laid their claim the basis thereof was stated as under:-

"The deceased was aged about 35 years. He was in good health and would have lived for another 25 years in the normal course of his life. He was earning about Rs. 25/- per day easily as vegetable merchant He left behind petitioners 1 to 4 i.e. widow 2 minor daughters and father respectively As a result of his untimely death the petitioners 1 to 4 are permanently deprived of their maintenance and support by the deceased for a future period of 25 years (the future life expectation of period of the deceased) Besides they are subjected to serve mental agony. Further first petitioner (widow of deceased) also suffered loss of consortium. Being aged only 27 years.

The details of the amount claimed are given below:-

"1. (a) Pecuniary loss suffered by petitioner No. 1 (widow of deceased) as legal representative-cum-dependant of the deceased for a future period of about 20 years (period of loss of future earning) of the deceased 17,000 (b) Do for 2nd petitioner (daughter aged about 10 years of deceased) for a period of about 8 years i.e. till attainment of majority and marriage (maintenance education and marriage etc) expenses. 8,000 (c) Do for 3rd petitioner (daughter aged about 4 years of the deceased) for a period of about 14 years i.e. till attainment of majority and celebration of marriage (maintenance education and marriage expenses, etc. 8,000 (d) Do for 3rd petitioner (daughter aged about 4 years of the deceased) for a period of about 14 years i.e. till attainment of majority and celebration of marriage (maintenance education and marriage expenses, etc.) 12,000 (e) Do for 4th petitioner (father aged about 65 years of the deceased) maintenance by the deceased for a period of about 7 years 4,000 II. Loss of consortium to the 1st petitioner (widow of deceased aged about 27 years only) 8,000 III. Pecuniary loss to the estate of the deceased i.e.. loss of expectation of the life of the deceased (about 25 years) and mental pain and suffering to the petitioners 1 to 4 on account of premature and tragic death of the deceased. 4,000 _____ Total 53,000-00 _____

(Rupees Fifty Three thousand only)"

5. The lower Tribunal framed appropriate issues and after adduction of evidence by the parties the lower Tribunal did not accept the evidence of the driver (R. W. 1) explaining the cause of the accident and found that the accident had occurred due to the rash and negligent driving by the driver (R. W. 1) It further held that the claimants are entitled to compensation without proof of rash or negligent driving by R. W. 1 as the deceased cannot be held liable for accident. Devasthanam is liable for payment of the compensation to the claimants. With regard to the quantum it held that the deceased was earning not more than Rs. 5/- to Rs. 6/- a day and the daily profits be fixed at Rs. 6/- The profits are worked out at Rs. 2,190/- out of that deducted 1/3rd towards maintenance of the deceased and the balance amount of Rs. 1460/- was treated as being spent for the widow and the two minor children and it would be treated as annual dependence value to the claimants 1 to 3 the wife and the minor children. If the amount of Rs. 14,600/- is kept in fixed deposit in a bank. Then it would get an annual interest of Rs. 1460/- The age of the deceased was fixed at 40 years and the expected span of life is fixed at 55 years so. If the multiplication with 15 years so if the multiplication with 15 years of expected life is taken and 1/3rd is deducted towards lump sum payment the same amount of Rs. 14,600/- was to be fixed towards loss of dependence value Rs 2,000/- has been fixed for mental pain and agony. Thus on all Rs. 16,600 were awarded. The amount of Rs. 14,600/- was ordered to be divided equally between the widow and the minor children the amount of Rs. 2,000/- fixed towards mental pain and suffering was ordered to be divided equally among the four claimants viz., wife two minor children and the father . Interest at 6% per annum was awarded from the date of the petition. As stated earlier, the liability of the company was limited to the extent of Rs. 5,000 and the remaining amount was ordered to be paid by the Devasthanam and also the costs.

6. In this appeal the fact that the deceased died instantaneously in the accident due to rash and negligent driving of R. W. 1 the driver of the vehicle is not disputed. therefore the finding of the lower Tribunal that the accident had occurred due to rash and negligent driving of the driver R. W. 1 is confirmed.

7. Sri PM. Gopala Rao the learned counsel for Devasthanam raised two contentions: Firstly he contended that the cross-objections filed by the claimants is not maintainable. Section 110-D of the Motor vehicles Act (hereinafter referred to as "the Act") does not provide for any cross-objections. It provides only right of appeal against the award. The appeal being a creature of the statute. The claimants cannot file the cross-objections. He relied upon a decision of this Court reported in Madras Motor and General Insurance Co. Vs. Katanreddi Subbareddy and Others, . The second contention raised is with regard to limiting the liability of the company to Rs. 5,000/- According to him the company has undertaken an unlimited liability in the policy Ex. B. 1 and that though the statute provides the upper limit of Rs. 5,000/- it is always open to the company to undertake

unlimited liability since the company has undertaken unlimited liability under the contract in Ex. B1 they are liable to reimburse the entire compensation awarded by the lower Tribunal

8. Sri parvatharao. The learned counsel appearing for the claimants contended that the statute provides a right of appeal to the High Court it does not provide any specific procedure to be followed in regard to the method and manner in which the appeal has to be entertained and to be disposed of In its absence the provisions of O. 41. C.P.C. Which provides procedure is applicable to appeals filed under S. 110-D of the Act and O. 41 R. 22 provides for right of filing cross-objections. Therefore the cross-objections. Therefore, the cross-objections filed by the claimants are valid and sustainable. He further contended that th lower Tribunal erred in not awarded consortium as claimed by the widow of the deceased venkateswarulu. She is aged about 27 years as on the date of his death. She lost the conjugal company of the deceased at prime age. As a consequence she is entitled to the consortium for a sum of Rs. 8000/- as claimed by her. The lower Tribunal is also unjustified in awarding only Rs. 2000/- towards mental pain and suffering. It is undisputed that the age of the deceased was 35 years and the lower Tribunal is wrong in putting the age of the deceased as 40 years the span of life is now considerably increased and as a result. There is expection of life up to 70 years. Therefore the span of life of the deceased should have been taken as 70 years. That apart there is sufficient evidence on record establishing that the deceased was earning Rs. 25/- per day and that the lower Tribunal has grossly erred in fixing the earning capacity of the deceasedat a miserably has grossly erred in fixing the earning capacity of the deceased at a miserably meagre sum of Rs. 6/- per day. Even assuming without conceding that the earning capacity is Rs. 6/- per day, taking the expectancy of the life span of the deceased at 70 years, the Tribunal ought to have awarded the pecuniary loss on that basis the lower Tribunal is also not justified in limiting the liability of the Insurance company at Rs. 5,000/-

9. Sri Somayajulu the learned counsel for the compnay contended that the statute has put the limitation to the maximum of Rs. 5,000/- and that there is a specific recital in the policy limiting the liability only to Rs. 5,000/- Ex B. 1 is only a true copy of the policy and there is a mistake in not incorporating Rs. 5,000/- under column "Limits of Liability" u/s II-I (I) therefore the lower Tribunal is justified in limiting the liability only to Rs. 5.000/- Even if this Court comes to the conclusion on the construction of Ex. B-1 that the company has undertaken unlimited liability it should be left open to the company to recover the balance amount in the event of the claimants to recover the sum from the company to seek restitution of the same from Devasthanam.

10. Upon the above contentions raised by the respective parties the questions that arise for consideration in this appeal are:

(1) Whether the cross-objections filed by the claimants are maintainable?

(2) If it is held that the cross-objections are maintainable whether the lower Tribunal is justified in awarding compensation in total at Rs. 16,600? And whether there are grounds to increase the compensation on the basis of the evidence on record?

(3) If the finding on point No. 2 is positive i.e. the claimants are entitled to more compensation than was awarded by the lower Tribunal then the further question is whether the entire amount awarded shall be recoverable from the company or whether the liability of the company or whether the liability of the company is limited only to Rs. 5,000/- and the balance is to be recovered from Devasthanam?

11. Before considering these questions in seritim, it must be held in the first instance that as stated earlier than either Devasthanam or the company are not disputing that the accident has occurred on 24-4-1976 on account of the rash and negligent driving of its driver R. W. 1 and as a result the deceased died instantaneously in the accident It is also undisputed in the accident It is also undisputed that Devasthanam is vicariously liable for the tortious acts of its employee the driver on these undisputed premise, the question for consideration premise, the question for consideration is what is compensation the claimants the legal representatives of the deceased are entitled to

12. At this stage it may be relevant to mention that the finding of the lower Tribunal that the 4th claimant the father of the deceased was not being maintained by the deceased is not being maintained by the deceased. Is not challenged. Therefore that finding has become final. We have to proceed only on the basis. The lower Tribunal has awarded a share to the father in the quantum of compensation with regard to mental pain and suffering i.e. he was awarded Rs. 500/- out of the amount of Rs. 2,000/- on that count and it was ordered to be shared equally by the claimants. Therefore except on this count there is no award made in favour of the father of the deceased, the 4th claimant.

13. In order to consider the grievance of the claimants for the rest of the claim disallowed by the lower Tribunal. We must first decide the question whether the cross-objections filed by them are maintainable since it has been disputed by the learned counsel for Devasthanam. Therefore the question for consideration is whether the cross-objections filed by the claimants are maintainable Before considering this question, it would be profitable to consider the cases decided on the point whether the appeal is maintainable against an order or award or a decision rendered by a regularly constituted Court. Entrusted by a competent legislature to adjudicate upon the rights and claims arising under a special enactment as early as in 1888 this question arose before a Full Bench of the madras High Court in Kamaraju v. Secretary of state of India ILR(1888) Mad 309. The question that arose therein was, whether a second appeal to the High Court would lie against the decision of the District Court constituted as a forest Court under forest Act. An appeal is provided to the District Court against the decision of a Forest settlement officer and there is no provision for a regular second

appeal provided to the High Court. The aggrieved party filed a second appeal in the High Court against the decision of a Forest Court (District Court). The question therefore that arose for decision before the Full Bench was whether the second appeal is maintainable against the decision of the Forest Court (District Court). The learned Judges, after considering the provisions of the Forest Act held that:

"It is hardly probable that the legislature would have provided for the ultimate determination by the High Court of a class of accessory rights over land while intending at the same time to bar the jurisdiction of the High Court in the determination of the title to the land itself".

Ultimately the learned Judges held that the second appeal does lie to the High Court from a decision of the District Court under S. 10 of the Forest Act.

14. The next decision which has become a locus classicus laying down the law in this regard is laid down by House of Lords in National Telephone company Limited v. Postmaster General (1913) AC 546 (547) at 562 Lord Parker of Waddington has stated that:

"Where by statute matters are referred to the determination of a Court of record with no further provision the necessary implication is I think that the Court will determine the matters. As a Court its jurisdiction is enlarged, but all the incidents of such jurisdiction including the right of appeal from its decision remain the same".

15. Viscount Haldane Lord Chancellor had laid down the law as follows:-

"When a question Court without more, it in my opinion imports that the ordinary incidents of the procedure of that Court are to attach. And also that any general right of appeal from its decisions likewise attaches".

16. The same question was considered by the Privy Council in Secretary of State v. Ramarao AIR 1916 PC 21. The question that arose in that case is the same as in the Full Bench case of the Madras High Court referred to supra namely whether a second appeal would lie against the judgment of the District Court under the Madras Forest Act. And whether an appeal would lie to Privy Council against the High Court decision. It was contended that the appeal was incompetent. While rejecting the said contention, their Lordships have laid down that:

"Their view is that when proceedings of this character reach the District Court that Court is appealed to as one of the ordinary courts of the country, with regard to whose procedure orders and decrees the ordinary rules of the CPC apply. This is in full Bench Kamaraju v. Secretary of State (ILR 1888 Mad 309) a decision which was given in 1888 and has been acted on in Madras ever since".

The same view has been reiterated in AIR 1934 81 (Privy Council) : AIR 1936 93 (Privy Council) : AIR 1948 12 (Privy Council) .

17. The same question came up for consideration before their Lordships of the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, . The question that arose for consideration was that when an appeal has been filed under S. 76 of the trade Marks Act to the High Court, whether a Letters patent appeal would lie to the Division Bench against the Judgment of the learned single judge, Under clause 15 of the letters patent while considering that question their Lordships have laid down the law thus (para 7).

"Ordinarily after an appeal reaches the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. Thus section 76 Trade Marks Act. Confers a right of appeal to the High Court and says nothing more about it. That being so the High Court being seized as such of the appellate jurisdiction conferred by section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under Cl. (5 of the letters patent there being nothing to the contrary in the trade Marks Act".

This principle has been reiterated in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, and *Collector of Varanasi Vs. Gauri Shankar Misra and Others*, .

18. More or less under similar circumstances a question arose before a full Bench of this Court reported in *The Public Prosecutor Vs. Legisetty Ramayya and Another*, under the provisions of the Essential commodities Act vis-a-vis the code of criminal procedure under S. 6-C of the Essential commodities Act the district and sessions Court is constituted as "Judicial authority" against the decision of D.R.O confiscating the properties the subject matter of the contravention under the provisions of the Essential commodities Act. The question that arose there was whether a criminal Revision petition would lie under Ss. 435 and 439 criminal procedure code to the High Court. The Full Bench has answered the question that a criminal revision petition would lie and one of the tests laid down in that regard was:

"Where by statute. Matters are referred to the determination of a Court with no further provision the necessary implication is that the Court will determine the matter as a Court its Jurisdiction is enlarged with all the incidents as such jurisdiction".

This view of the Full Bench was approved by the Supreme Court in *Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another*,

19. Thus, it is now well settled position of law that where a statute provides a right of appeal to an established Court without anything more as to the manner in which the appeal is to be disposed of then the incidents of right of appeal will

carry with it the applicability of the rules of practice and procedure of that Court with regard to its power to entertain an appeal filed and its disposal manner of exercise of that jurisdiction and the incidents thereof. This principle with its logical consequence will be extended to filing cross-objections.

20. It is an undisputable fact that when a right of appeal has been provided under S. 110D of the Act without providing any procedure for its disposal. The procedure of the appellate Court (sic) has been prescribed under O. 41 of the CPC O. 41 R. 22 provides for a right to the respondent to file the cross-objections after the receipt of the notice in the appeal. Admittedly, Devasthanam has filed this appeal. Devasthanam impleaded the claimants as respondents 1 to 4. Notice was issued by this Court and it was served on them. After service of notice, within the prescribed time of limitation, they filed cross-objections as provided under O. 41 R. 22 CPC therefore in the light of the law laid down above, the cross-objections filed by them are maintainable.

21. In this regard this principle is also no longer res integra. Now almost all the High Court have uniformly taken the view that cross-objections in an appeal u/s 110-B of the Act do lie under O. 41 R. 22 of civil procedure code. First we shall take up a division bench decision of this Court before referring to the decisions of the other courts. In Government of Andhra Pradesh Vs. K. Padma Rani and Others, : a preliminary objection was raised by the Government pleader that cross-objections are not maintainable, the Division Bench after considering the entire case law held that the cross-objections are maintainable. The division Bench after considering the entire case law, held that the cross-objections are maintainable Instead of burdening this judgment with details reiterating the principle by each High Court. It is enough if we mention that the same is the view taken by other High Court namely Manjula Devi Bhuta v. Manjusri raha 1968 A CJ 1 ; Delhi Transport Undertaking v. Raj Kumari 1972 ACJ 403 ; Shanti Devi and Others Vs. General Manager, Haryana Roadways, Ambala and Others, ; W. S. Bhagsingh & sons v. Om Prakash Kaith. 1971 A CJ 324; R.M.S. Shanmugham Chettiar and Others Vs. Gian Cheng Kiet, : Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others, : Kantilal and Bros. and Another Vs. Ramarani Debi and Others, and U.P. State Road Transport Corporation Vs. Smt. Janki Devi and Others, ; U.P. State Road Transport Corporation Vs. Smt. Janki Devi and Others, In the Full Bench decision of the Allahabad High Court referred to above it was specifically held that (at p. 301);

"The word "award" has been used in the Act in a sense of a decree or akin to a decree since the award given by the Tribunal in such claim cases determines the rights of the parties . Since the procedure contemplated by order 41 Rule 22 is applicable to the appeal preferred u/s 110-D of the Motor Vehicles Act the word "Court" may be read as "Tribunal".

22. The Full Bench decision of punjab and Haryana High Court reported in Shanti Devi and Others Vs. General Manager, Haryana Roadways, Ambala and Others, took the same view.

23. In view of this preponderate view of law laid down by almost all the High Court the decisions of the learned single judge in Madras Motor and General Insurance Co. Vs. Katanreddi Subbareddy and Others, with great respect to the erudition of the learned Judge, we are constrained to hold that it was not correctly decided. Thus the objection raised by Sri Gopalrao, the learned counsel for Devastanam is overruled and we hold that the cross-objections are maintainable.

24. The next question for consideration is whether the lower Tribunal is justified in awarding compensation only in a sum of Rs. 16,600/-.

25. Before considering this question it would be necessary to clear the ground regarding the age of the deceased. It was specifically stated in the petition that the age of the deceased is only 35 years. It was substantiated in the evidence adduced in support thereof there is no evidence contra. Therefore the finding of the lower Tribunal that the deceased was aged 40 years is an obvious mistake so we conclude that the age of the deceased is 35 years.

26. The next question for consideration is as to what would be the expected longevity of the deceased. In this regard also there are catena of decisions holding that in recent years the life span of citizens in India has been considerably increased.

27. In Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, their Lordships of the Supreme Court have held that (at p. 1162):-

".....in the present economic conditions the life of an average Indian has increased more than twofold. It is therefore reasonable to expect that if the deceased had not died due to accident he would have lived up at least up to the age of 65 years if not more".

28. A division Bench of the Delhi High Court consisting of the Hon'ble Sri Justice K.S. Hegde (as his Lordship then was) and the Hon'ble Sri Justice I.D. Dua (as his Lordship then was) CJ 41 (Delhi) had considered the question of life span and held that in recent years the longevity has appreciably increased in this country. Therefore in a matter like this there can be no hard and fast rule. It is essentially a question of estimation. But that question must be a judicial one taking into consideration all the facts and circumstances of the case.

29. In Shiv Prasad Gupta Agarwala Vs. S.M. Sabir Zaidi, the Allahabad High Court has fixed the longevity at 70 years in T.V. Gnanavelu and Another Vs. D.P. Kannayya and Others, the Madras High Court has fixed the longevity between 70 and 75 years. In Sukhdev Singh v. Pepsu Road Transport Corporation Patiala 1969 A CJ 197 the Punjab and Haryana High Court fixed the longevity at 70 years. In view of the decisions referred to above. It is reasonable to hold that the longevity has been appreciably increased up to 70 to 75 years.

30. In this case there is no dispute that the deceased is aged about 35 years with robust health and there is no evidence contra adduced to prove that he was

suffering from any disease or infirmity. Therefore we can reasonably conclude that the deceased would have lived in the normal circumstances even up to the age of 70 years more particularly when he is a person hailing from working class But as extracted earlier in their claim petition. The claimants themselves have restricted the longevity of the deceased at 60 years and claimed that he would have been bread earned for 25 years and that the compensation has to be determined on that basis. Therefore we have to conclude on the facts in this case that the deceased would have lived up to 60 years.

31. The next question for consideration is whether the first claimant is entitled to compensation for loss of consortium and whether the lower Tribunal is justified in not awarding the same In this regard it may be straightway stated that the lower Tribunal did not assign any reasons for not granting any compensation for loss or consortium to the first claimant. As stated earlier, she claimed a sum of Rs. 8,000/- on this count.

32. It is an undisputed fact that the first claimant is aged about 27 years and it is now held that the deceased is aged about 35 years . Having taken the normal expectancy of life of the deceased being confined to 60 years the first claimant would have had enjoyed married life and conjugal society with the deceased for a period of 25 years she would have had enjoyed the association, assistance, care and affection from her husband for the said period of 25 years the children also would have had the love and affection of their father for a considerably long period.

33. A division Bench of the calcutta High Court in Pijush Kanti Ghosh Vs. Sm. Maya Rani Chatterjee and Others, awarded compensation towards loss of consortium in a sum of Rs. 4,000/- In K. Narayana Reddiar Vs. P. Venugopala Reddiar, a sum of Rs. 4,000/- was granted towards consortium In G. Venkatesham Vs. The General Manager, Andhra Pradesh State Road Transport Corporation, Musheerabad, a division Bench of this Court has confirmed the award granting compensation to the husband for the loss of the company of the wife in a sum of Rs. 6000/- as held by us the first claimant would have enjoyed the company of her husband for nearly 25 years had the accident not occurred. But giving a margin to the vagaries in health and the resultant consequences the loss of consortium can be put at Rs. 6.500/- Therefore we hold that the first claimant is entitled to a sum of Rs. 6.500/- towards loss of ocnsortium.

34. The next question for consideration is whether the lower Tribunal is justified in granting Rs. 2000/- on the ground of pecuniary loss to the estate of the deceased i.e. Loss of expectation of life of the deceased and mental pain and suffering to the claimants on account of the tragic death of the deceased. The fist claimant is at the prime of her married life and the tragic instantaneous death of the deceased would have caused a great shock, metal pain and anguish and it is not unreasonable to conclude that the first claimant would have suffered great mental pain and suffering due to the untimely demise of her husband at the prime of their marital life. Similarly the young children aged 10 and 4 years

respectively would have had the parental affection and love of their father for a long period and that the untimely death of their father would have caused great pain and anguish to them as well similarly the fourth claimant the father who expects in his old age the assistance of his son and maintenance by him would have normally suffered great pain on the death of his son.

35. The Supreme Court in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , has confirmed the decree for a sum of Rs. 5,000/- awarded towards the mental pain and suffering and loss of dependence But in this case the claimants themselves have laid their claim for a sum of Rs. 4,000/- on this count. We are aware that normally the findings of the original Tribunal on quantum awarded may not be disturbed But when it is found that the compensation awarded is too low or ridiculously meagre or not just commensurate with the loss suffered by the legal representatives of the deceased, or relevant factors were not taken into account, the appellate Court can reassess the evidence and come to its own conclusion. While assessing the compensation the lower Tribunal should make a fair estimate of the compensation taking into account the economic value of the deprivation to the wife of her husband's company forever and the shock felt by the children the Tribunal also should take into account that the death of the deceased creates a serious economic problem to his family which he leaves behind and of their problem not only for eking out their problem not only for eking out their livelihood but also settlement to have a sustained living. Therefore the award of the Tribunal is reversed and a sum of Rs 4,000/- is awarded to the claimants.

36. The next question for consideration is whether the lower Tribunal is justified in fixing the daily earning capacity of the deceased at Rs. 6/- and computing his expected age of living at 55 years . we have already held that the expected life span of the deceased would have been 70 years. But since the claimants themselves have confined to 60 years we have held that the deceased would have had his expected life up to 60 years. The only question then remains to be considered is what is the earning capacity of the deceased. The claimants have stated that at the time of the death of the deceased he was daily earning a profit of Rs. 25/- being a vegetable merchant. In support thereof, oral and documentary evidence was adduced. It was suggested to PW 3 the younger brother of the deceased that the deceased would not have been earning more than Rs. 5/- to Rs 6/- per day. Obviously the lower Tribunal has taken this as the basis and determined the daily profit of the deceased at Rs. 6/- But we may straightway say that except making suggestions to the witnesses that the deceased would be getting a profit of Rs. 5/- or Rs. 6/- per day there is no tangible evidence adduced in rebuttal either by Devasthanam or by the company on many an occasion it proves that the suggestions in the cross-examination would be a desperate attempt either to cast a doubt or slur on the veracity of the evidence or credibility of the witness or in matters to minimise the liability that may be fastened on the respondents. Therefore the Court has to take care to see whether there are justifiable grounds available on record either from

documentary oral or circumstantial evidence in support thereof and if it is found that there are grounds to accept the suggestions. Then some times they may be accepted, otherwise they have to be considered as suggestions in desperation. In this case P.W. 3 is no other than the brother of the deceased. It is his case that he had been assisting his brother in business. Therefore it can be inferred that he would be having intimate knowledge regarding the earning of his brother and the profits he would be deriving. P.W. 5 is a neighbouring vegetable vendor doing the same business. Therefore he too is also not only having his personal knowledge in the earning they would be deriving in the business of vending vegetables but also the profits which the deceased would be earning from the business of vending the vegetables. No evidence contra was adduced the lower Tribunal did not give any reasons much less cogent to discard the evidence of P.W. 3 and 5 and no satisfactory reasons have been given satisfying the judicial conscience of the Court to limit the earning of the deceased at Rs. 6/- we have carefully considered the evidence of P. Ws 3. And 5 and we are convinced that their evidence is trustworthy and was not embellished on any ground and can be relied upon. Relying upon their evidence and giving a slight margin we have no hesitation to hold that the daily net earning of the deceased would be not less than Rs. 10/- per day.

37. Taking the earning capacity as held above to be at Rs. 10/- per day and his expected life span being at 60 years then what would be the net income which he would be the net income which he would be the net income which he would have derived had he alive, is to be determined. Calculating the net income at the rate of Rs. 10/- per day the monthly net income would be Rs. 300/- Then we can reasonably expect that the deceased would be having his expenses for himself and transportation charges and giving a margin of rs 150/- per month for his expenses and transport the balance amount would be considered to be spent towards the maintenance of his family and education of the children. Therefore Rs 150/- would be the probable amount that would be spent towards claimants 1 to 3 and that would be the loss they had suffered. Calculating the loss at Rs. 150/- per month and the expected remaining life span as held by us being 25 years the deceased would have spent on the claimants 2 and 3 and therefore Rs. 45,000/- would be the probable amount but since the claimants themselves have confined their claim for a sum of Rs. 37,000/- we hold that Rs. 37,000/- will be the compensation to the claimants on this count.

38. The next question for consideration is when we are awarding a lump sum amount to the claimants 1 to 3, whether any deduction should be made from the amount now to be awarded to them. It is an admitted fact that the deceased died on 24-4-1976 and 6 and half years have elapsed from the date of the death till date and they did not realise any amount so far. In the interregnum, cost of living has been mounting up and the value of the money has gone down miserably to the ebb and now the official figures put the value of the rupee at twenty-two paise per rupee. Taking these factors into consideration the lapse of time would be taken as "set off" for deduction from the lump sum amount we have held that

the claimants are entitled to. The fact that there is steep fall in the value of money has received judicial notice by the highest Court of the land in Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, wherein their Lordships of the Supreme Court have held thus (at p. 2060):

"The delay in the final disposal of motor accident compensation cases, as in all other classes of litigation takes the sting out of the laws of compensation because an infant child who seeks compensation as a dependant of his deceased father has often to await the attainment of majority in order to see the colour of the money. Add to that the monstrous inflation and the consequent fall in the value of the rupee. Compensation demanded say ten years ago is less than quarter of its value when it is received today".

39. In *Union of India v. Viranwali* 1967 ACJ 41) a division Bench of the Delhi High Court consisting of their Lordships Chief Justice Hegde (as His Lordship then was) and I.D. Dua (as His Lordship then was) have held in paragraph 13 that:

"The benefit of getting a lump sum payment is offset by the increase in prices and the progressive decrease in the value of the rupee".

Following the law thus laid down we hold that the loss of the value of the money in the interregnum i.e. between 24-4-1976 till date of receipt of compensation be the set off and no deduction need be made from the total compensation awarded to the claimants. No doubt it can be said that this amount is given as a windfall due to the fortuitous circumstances of the death of the deceased. In a recent decision rendered by their Lordships of the Supreme Court in *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, the deduction as set off was not accepted. The said decision was followed by a division Bench of this Court consisting of our learned brethren Madhava Reddy J. (As His Lordship then was) and Ramachandra Raju J in *United India Fire & General Insurance company v. K. Anuradha* (1980) 1 APLJ 34 and held that:

".....We are bound by the later decision of the Supreme Court in *Manjushri v. B. L. Gupta* supra referred to above. Further the judgment dated 1-8-1979 in C.M. As Nos 195 and 495/- 76 to which one of us (Madhava Reddy J.) was a party following the above decision of the Supreme Court awarded compensation by multiplying the life expectancy without making any deduction. We, therefore do not see the amount of compensation payable to the claimants in accordance with the decision of the Supreme Court in *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, would be much higher than what is actually claimed by them".

We respectfully agree with the reasoning of our learned brethren in this case also the claimants would have been entitled to more than what they claimed as found by us but for the fact that the claimants themselves have restricted their claim to the amounts referred to above. In view of these facts, we are of the opinion that no further deduction need be made from the amount awarded we therefore hold that the claimants 1 to 3 are entitled in equal share to Rs. 37,000/- under

subcounts (a) to (d) of count I, in the petition filed by them which was extracted already and Rs. 6,500/- under count II i.e., for loss of consortium to the first claimant and under count III the claimants 1 to 4 are equally entitled to a sum of Rs. 4,000/- as stated earlier the lower Court has awarded compensation to the father the 4th claimant on the third count and ordered to receive in equal share. We confirmed the said finding . Therefore this amount of Rs, 4,000/- should be shared equally by all the four claimants The 4th claimant is entitled to Rs. 1,000/- on this count. The claimants are entitled to interest at 6% per annum from the date of the petition as awarded by the lower Tribunal on the amounts awarded by us as stated above.

40. Then the next question for consideration is as to who has to pay this compensation awarded to the claimants i.e. whether the Devasthanam should pay the entire amount limiting the liability of the company to Rs. 5,000/- as held by the lower Tribunal or whether the entire compensation has to be recovered from the company as claimed by the appellant-devasthanam.

41. Before considering the respective contentions of the learned counsel for the Devasthanam and the learned counsel for the company it would be profitable to extract the contract itself namely the Insurance policy Ex. B.1 Ex B-1 was admittedly produced by the company and market at their instance. Therefore it has come from the custody of the company. So. They cannot dispute the specific recitals contained therein . In Ex. B-1 under the count "Limits of liability" it is stated thus:

Limit of Liability: Limit of the amount of the company's liability u/s II-I (I) in respect of any one accident. Limit of the amount of the company's liability under S. II-I (ii) in respect of any claim or series of claims arising out of one event. Rupees 75,000/-".

Section II reads thus:

"Section II- Liability to Third parties.

1. Subject to the limits of liability the company will indemnify the insured against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of -

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the motor vehicle".

42. None of the provisions to subsection (1) of section II have any application to the facts in this case. Therefore they need not be considered.

43. Now the question for consideration is whether the company has undertaken unlimited liability as contended by the counsel for devasthanam or whether the

liability should be limited to Rs. 5,000/- as contended by Sri somayajulu, the learned counsel for the company and held by the power Tribunal has to be accepted.

44. The object of chapter VIII of the Motor vehicles Act. As stated by their Lordships of the Supreme Court in *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, , in para 12, is as follows:

"Chapter VIII of the Act, it appears from the heading makes provision for insurance of the vehicle against thirdparty-risks that is to say its provisions ensure that third parties who suffer on account of the user of the motor vehicle would be able to get damages for injuries suffered and that their ability to get the damages will not be dependent on the financial condition of the driver of the vehicle whose user led to the causing of the injuries. The provisions have to be construed in such a manner as to ensure this object of the enactment".

In the same decision the question whether the company is liable for the entire amount has come up for consideration. After considering all the relevant provisions under this chapter, their Lordships have held in paragraph 22 as follows:

"Thus the contract between the insured and the company may not provide for all the liabilities which the company has to undertake vis-a-vis the third parties, in view of the provisions of the Act. We are of opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy the third parties" right to recover any amount under or virtue of the provisions of the Act is not affected by any condition in the policy. Considering this aspect of the terms of the policy it is reasonable to conclude that proviso (s) of para 3 of section II is a mere condition affected the policy and the persons to whom the cover of the policy was extended by the company and does not come in the way of third parties claim against the company on account of its claim against a person specified in para 3 as one to whom cover of the policy was extended".

45. Sri somayajulu the learned counsel for the company also contended that section 95 of the Motor vehicles Act provides the upper limit at Rs 5,000/- and that the lower tribunal has correctly limited the liability only for Rs. 5,000/- It is contended that in the original policy of Ex. B-1 the liability is limited to Rs. 5,000/- though it was not carried out in Ex B-1 and therefore the liability should be limited only to Rs. 5,000/- As stated earlier It is the company that produced the certificate Ex. B-1 If really there is a mention in Ex. B-1 that their liability is limited only to Rs. 5,000/- it is beyond one's comprehension as to what prevented them from incorporating the same in Ex. B-1 it is not open to the company now to contend that Ex. B-1 is not correctly stated and that it is open to the company to contend for the said position. It is normally expected that it is their very duty to correctly incorporate all the items in several clauses limiting their liability Their omission cannot be said to be accidental. Therefore we should conclude that the company did not limit its liability to Rs. 5,000/- as enjoined

under S. 95 (b) (ii) and that they have undertaken unlimited liability. Then immediately the question that arises for consideration is whether the company can undertake unlimited liability though the statute provides for its liability to a limit of Rs. 5000/- In this regard except raising the contention the learned counsel for the company did not refer to any relevant on the other hand we find that there are three decisions of the Gujarat High Court holding that it is unlimited liability even though the statute provides the liability to a limited extent. It is a contract between the insurer and the insured and the insurerCompany can always enter into a contract with the insured to any limit. This contract is not opposed to public policy. Therefore there is no illegality in the company entering into a contract with the Devasthanam to undertake unlimited liability.

46. In *United India Fire and General Insurance Co. Ltd. Vs. Minaxiben Harishcandra Joshi and Others*, a Division Bench of the Gujarat High Court the Judgment of which was rendered by Sri Justice S. H. Sheth has held that (at p. 109):

"It is always open to the Insurance company to insure it for a higher amount. If the company insures a vehicle for a higher amount. It always does so for the benefit of the insured. Therefore. If an insured is held liable to pay to the claimants more than the statutory limit prescribed by section 95 the company is liable to make good the additional liability within the overall limit of its contractual liability".

47. The same is the view taken by another Division Bench of the same Court in *Gujarat Mineral Development Corporation Ltd. Vs. Varjubhai Lallubhai Bhil and Others etc.*, : and yet another Bench in *premier Insurance company v. Gambhirsing* AIR 1975 Guj 133. Thus we hold that the company has undertaken unlimited liability and that the company shall pay the entire compensation awarded to the claimants in this case.

48. Sri Somayajulu the learned counsel raised a further contention that even though if we were to hold that the company is liable the question should be left open for recovery of the excess amount from Devasthanam and in support thereof he relied upon subsection (4) of S. 96 of the Motor vehicles Act, which reads thus:

"If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability the insurer shall be entitled to recover the excess from that person".

We are afraid that the said sub-section has no application to the facts in this case. In view of our finding that the company has undertaken unlimited liability to pay the compensation the company cannot fall back upon sub sec. (4) of S. 96 Therefore the contention of the learned counsel for the company that the company cannot be saddled with any liability more than the statutorily limited

one has to be rejected.

49. For these reasons we hold that the Insurance company is liable to pay the entire amount and the claimants are entitled to recover from the company the amount awarded to them"

50. Before parting with the case, we have to state that in recent times, it is a wise tak in the corridors of the courts and elsewhere that the benefits in the Award are not being received in full by the legal representatives of the deceased or the victims of the accidnent the middleman and in come cases, the persons involved in the adjudictory process are making hay taking advantage of the illiteracy ignorance and innocence of the legal representatives of the deceased or the victims of the accident. Many of the poor citizens are ignorant of their right and are not aware of how to vindicate their right and are not aware of how to vindicate their right and realise the fruits thereof. As a result a major part of the amount awarded is being knocked off by the Middlemen and in some cases, the persons and only a paltry sum is being received by the legal representatives of the deceased or the victims, as the case may be with a view to put an end to this pernicious evil percolating into the portals of the courts to maintain the administration of justice unsullied and to continue to infuse confidence of the public in the administration of justice we feel it expedient and absolutely necessary to indicate that the Claims Tribunal should take care to see that the amount awarded is received in full by the legalrepresentatives of the deceased or the victims of the accident. In that process, we are of the opinion that one of the methods is that the claims Tribunal should direct the claimants or the legal representatives to open a savings Bank Account either in the nearest nationalised bank or the post office and the number of that account should be furnished to the Tribunal and the Tribunal shoudl deposit the respective shares of the claimants to the said account so that the fruit of the award would be realised by the claimants to mitigate their hardship In this case, we direct that the amount payable to the minors-claimants 2 and 3 should be kept in the Fixed Deposit in any nearest nationalised bank till they attain majority and the interest accrued thereon should be paid in the manner indicated above. The amount to be paid to the first and fourth claimants should be deposited to the credi of their account as indicated above. Costs awarded may be paid direct to the claimants.

51. The appeal and cross-objections are allowed with costs to the extent indicated above.

52. Order accordingly.