Karnataka High Court Smt. Parvati @ Baby And Ors. vs Hollur Hallappa And Ors. on 26 June, 1997 Equivalent citations: I (1998) ACC 689, 1999 ACJ 344, 1998 (79) FLR 716, ILR 1997 KAR 2376 Author: R Raveendran Bench: P Krishnamurthy, R Raveendran, T Vellinayagam JUDGMENT R.V. Raveendran, J. 1. The following questions are referred by a Division Bench of this Court for consideration:- (1) Whether the family pension is liable to be deducted out of the compensation determined in the case? (2) Whether in view of the decision of the Supreme Court in N. SIVAMMAL AND OTHERS vs. THE MANAGING DIRECTOR, PANDIAN ROADWAYS CORPORATION AND ANOTHER, AIR 1985 SC 106 the view taken by this Court in SMT. SHANTHA @ SHANTABAI ANNAPPA GADIVADDAR AND OTHERS vs. CHANNABASAPPA DYAMAPPA GADADAVAR AND ANOTHER M.F.A.No. 457/1993 : 1993 ACJ 850 is correct? 2. The facts leading to the reference are: 2.1. In regard to the death of one Basavaraj in a motor accident on the midnight of 8/9.4.1983, his wife and children filed a claim petition. The Tribunal found that the deceased was an employee of Karnataka Electricity Board getting a salary of Rs. 1,300/-. The Tribunal determined the loss of dependency to the family as Rs. 900/ per month. Due to his death, his wife is getting family pension of Rs. 440/- per month. The Tribunal held relying on the decision of a Division Bench of this Court in DEPUTY GENERAL MANAGER, KSRTC vs. SAROJAMMA 1981(1) Kar.LJ. 528, that the family pension of Rs. 440/- per month had to be deducted from the amount fixed as loss of dependency. Hence after deducting the family pension of Rs. 440/-, the Tribunal determined the net loss of dependency at Rs. 460/- per month or Rs. 5,520/- per annum. Having regard to the age of the deceased, the Tribunal applied a multiplier of 12 and arrived at the total loss of dependency of Rs. 66,240/-. The Tribunal deducted 10% towards acceleration of receipt of insurance amount and rounded off the balance to Rs. 60,000/-. The Tribunal added Rs. 12,500/-towards loss of consortium, loss to the estate and funeral expenses. Thus, the total compensation found payable was Rs. 72,500/-. 2.2. The claimants filed M.F.A.No. 1926/1985 interalia contending that the Tribunal was not justified in deducting the family pension amount received by the wife for arriving at the net loss of dependency placing reliance on the decision of the Supreme Court in N.SHIVAMMAL v. PANDYAN TRANSPORT CORPORATION. On the other hand, the Insurer contended that the Supreme Court in SHIVAMMAL did not decide the question whether family pension should be deducted or not and therefore that decision was not applicable. The insurer further contended that the matter was covered by three decisions of this Court in PARVATAMMA v. SYED AHMED, 1977 ACJ 72. DEPUTY GENERAL MANAGER, KSRTC v. SAROJAMMA and SHANTHA v. CHANNABASAPPA DYAMAPPA GADADAVAR. In SHANTHA's case, the Division Bench held that in the case of Shivammal, the Supreme Court did not lay down any legal principle in regard to the question whether the family pension could be deducted or not and therefore it would not be a binding precedent and further held that the two earlier decisions of this Court continued to hold good. 2.3. When this appeal came up for consideration, the Division Bench found that several other Courts relying on the decision in

SHIVAMMAL, have held that family pension could not be deducted. It was also noticed that the facts of this case were similar to the facts of SHIVAMMAL. The claimants also contended that were the loss of dependency was determined by multiplier method (Davies Method) adopting an appropriate multiplier, the question of further deduction would not arise. In this back ground, it was felt that the two questions referred required consideration by a larger Bench. 3. The claimants contend that family pension is a service benefit. It is paid to the widow or other legal heir because the deceased had served the employer for a specified period and he terms of employment or conditions of service provide for payment of pension to the employee on his retirement and payment of family pension to the legal heir of the employee, on his death. It is not a benefit arising to the family of the employee, out of his death as a result of the motor accident, but is a deferred compensation for the services rendered by him to his employer, before his death. If the deceased had not died in the accident and had continued in service and retired in the usual course, he would have got the benefit of pension; and if the deceased had died a natural death either while in service or after retirement, the widow or other legal heir would have got family pension. There is a clear distinction between benefits arising out of the death of a person and amounts payable on the death of a person. While the former arises out of the death and would not be available without occurrence of the accidental death, the latter are benefits not dependent on the death, but which are independently available and become payable on the death. The genesis for these payments is not in the motor accident death, but in the thrift and saving adopted by the deceased and/or the services rendered by the deceased as an employee. While the benefits of the first kind will have to be taken note of by making suitable deduction while determining the compensation, the payments of the second kind cannot be taken into account for determination of the compensation. Family Pension as also Provident Fund, Gratuity and Life Insurance amounts fall under the second category of benefits. Therefore family pension, which is a service benefit payable to the family, on the death of an employee, cannot be treated as a benefit or pecuniary advantage arising by reason of the death, to be taken into account by making suitable deduction while determining compensation. In this behalf, the claimants place reliance on the decision of the Supreme Court in N. SHIVAMMAL v. MANAGING DIRECTOR PANDIAN ROADWAYS CORPORATION, decision of the Delhi High Court in BHAGWANTI DEVI vs. ISH KUMAR 1975 ACJ 56, the decision of the Himachal Pradesh High Court in RITA ARORA vs. SALIGRAM, 1975 ACJ 420 the Full Bench decision of the PUNJAB AND HARYANA HIGH COURT in BHAGAT SINGH SOHAN SINGH vs. OM SHARMA 1983 ACJ 203, the decision on the Full Bench of Gauhati High Court in SAMINDER KAUR vs. THE UNION OF INDIA 1987 ACJ 7, the decision of the Full Bench of the Madhya Pradesh High Court in KASHIRAM vs. RAJENDRA SINGH, 1983 ACJ 152 and the decision of the RAJASTHAN HIGH COURT in SMT. SUNDER vs. HEM SINGH 1993(2) AJR 173. 3.1. In SHIVAMMAL's case, the Supreme Court held: "The High Court next proceeded to evaluate the pensionary benefits which the widow, appellant No. 1 as the widow of the deceased is entitled to pension at the rate of Rs. 120/- p.m. for a period of seven years whereafter the amount will taper down. The High Court evaluated the monetary benefit of pension and reduced the amount of compensation by Rs. 10,000/-. We are unable to appreciate this reduction. We find no justification for it. (emphasis supplied) 3.2. In BHAGWANTI DEVI's case, a Learned Single Judge of the Delhi High Court observed:"44. It, thus, appears that there is considerable judicial authority both in England and in this country in favour of exclusion of benefits received by the legal representatives on account of life insurance policy, pension, gratuity, provident fund and other such benefits from consideration in determining the amount of compensation which appeared to the Tribunal to be just on account of loss of pecuniary benefit arising out of death and this exclusion would appear to me to be just and reasonable because these are benefits for which the deceased had paid. These benefits are in the nature of quid pro quo and have relation to the savings effected by the deceased besides having their genesis either in the contract or in the past service and good conduct and these benefits could not be said to be benefits arising out of the death of a person in the sense in which the action for damages or inheritence could be related to such an event. There would be no justification, therefore, to give the benefit of these payments to the wrong doer, who, by his negligent act, has caused the death of a person. Such a conclusion would be justified even if the principles enunciated by the Supreme Court in the case of Gobald Motor Service (supra) were to regulate the determination of compensation under the Act because even on the application of the aforesaid principles, it appears to be that there is a clear distinction between benefits received on account of death and those that are merely payable on the death of a person. The former arise out of death and would not have been available without it, while the latter are benefits which are available independently of death but are payable on death. The deduction made by the Tribunal on these counts must, therefore, be ignored in computing the compensation to which the dependent would be entitled." 3.3 In RITA ARORA's case, a Learned Single Judge of Himachal Pradesh High Court held: "18. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the claimants of the future pecuniary benefits, and, on the other, any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must ascertained. The starting point is the amount of wages which the deceased was earning. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a basic figure which will generally be turned into a lumpsum by multiplying it with the number of years the deceased was expected to live minus the years he had already lived. The deductions may be made for lumpsum payment as that would be an accelerated benefit to the dependants. But regard must be had to future increments and chances of promotion. If such a regard is not possible due to any uncertainty, perhaps benefit for lump-sum payment need not be accounted for, in order to capitalize the monthly contribution of the deceased towards the maintenance of his family, which will of course be after deduction of his personal expenses, regard cannot be had to provident fund, gratuity, insurance or family pension. Whatever was payable on account of death has to be accounted for. It any amount is payable at the time of death the same is not liable to be accounted for. Insurance money is paid because of premium payment and obviously under insurance contract. The said money is never payable on account of the death of the person insured. Death is no doubt a step in the insurance contract. That will not mean that insurance money is payable because of death but it is payable because the premiums were paid a contract was entered into for such payment after death. Similarly provident fund, gratuity and family pension are not dependent upon death, but they are payable because of the saving or thrift practiced by the deceased. Whatever was contributed towards provident fund became payable. That did not depend upon the death of the person. The gratuity and family pension were paid because the deceased had served for a number of years. Therefore, the learned Tribunal committed the obvious error of accounting for these payments. The amount of compensation could not be decreased because of such payments made by the employer." 3.4. In BHAGAT SINGH's case, a Full Bench of High Court of Punjab & Haryana held: "23. From the aforesaid discussion, it clearly emerges that the intrinsic nature of benefits like the provident fund, family pension or gratuity is that they are the deferred fruits of satisfactory service, industry, thrift, contributions and foresight of the employee. Equally, these may be the necessary incidents, of statutory service, rules, employment contracts, or beneficent legislation rooted in the employment of the deceased. To attribute these payments entirely to the fortuitous circumstance of the accident and the resultant death, appears to me as untenable. It is more than plain that if the deceased happened to be a person who was not in the employment at all or one who had neither made any contribution to any provident fund nor rendered qualifying satisfactory service entitling him to gratuity or made any payments for a family pension, then none of these benefits would arise to his dependants despite his death, It is indeed the aforesaid preconditions which are the true fountain head for these benefits and not ipso facto the incidence of the accident and the consequent death. Herein what deserves highlighting is the sharp distinction (which sometimes has unfortunately gone un-noticed) between benefits arising on account of death alone and those that are merely deferred earnings payable on superannuation or the death of the employee, I am clearly of the view that provident fund, family pension or gratuity fall clearly in the latter class. . . . . . what has endemically rankled the judicial conscience is the fact that financial benefits, which are essentially the deferred fruits of a person's labour, thrift, foresight or contribution cannot be allowed to enure to the benefit of the wrongdoer alone, and go in mitigation of the damages payable by him". 3.5. In SAMINDER KAUR's case, the Full Bench of Gauhati High Court held: "11. . . When a Government servant retires, he becomes entitled to provident fund, pension and gratuity benefits. Provident Fund, or pension, or gratuity are the deferred payments of satisfactory service, savings and contributions of the deceased employee. These amounts his family would have in any case been entitled to get whether the employee died a natural death or died in an accident. Therefore, they ought not to be taken into consideration for determining the amount of just compensation, as they cannot be termed as pecuniary benefits. As regards family pension, the widow of a Government employee would be entitled to under the service conditions. We do not think that it is benefit received by the widow and the wrong-doer should be allowed to take advantage of the family pension and gain by it." 3.6. In KASHIRAM's case, the Full Bench of Madhya Pradesh High Court held: "25. Another item deducted by the Tribunal was"family pension", granted to the widow at Rs. 112/- per month. The question which arises before us is whether this family pension should be taken into consideration while determining the amount of compensation. Answer to this question will depend on several factors. Family pension may be contributory or non-contributory under the M.P. Civil Services (Pension) Rules, 1976, or under similar rules in that behalf. Family Pension may be payable on the basis of the contributions made by an employee in some form or the other or it may be entirely paid by the employer. Unless proper material is placed before the Tribunal about the nature and incident of such pension, which is the present case was not done, on rule can be laid down about deduction or otherwise of such amount which is paid to the dependant of a deceased employee. Secondly, assuming that such a pension is non-contributory, i.e. paid by the employer on his own, a deduction can be made only if the Tribunal has included all the probable benefits available to the deceased in his full span of life while determining the amount of compensation. For example if the Tribunal has taken into consideration the amount of pension payable to the deceased on his retirement and the contribution to be made by him for the benefit of his wife and children for the entire remainder of his life, then the amount of family pension may be reasonably deducted. Where, however, the Tribunal has not considered such benefits, i.e., probable increments to the deceased in salary and dearness allowance, prospects of his possibility of useful employment after retirement, as in the instant case, deduction on account of family pension paid to the widow and other dependants cannot be made. In the instant case, therefore, we hold that the family pension paid to the widow and the legal representatives of the deceased was not deductible." 3.7. In SUNDER's case, the Rajasthan High Court held: "The grant of family pension is a right which one inherits on the completion of qualifying service or on superannuation or on death. The benefits received by the dependants of the deceased in the form of pension etc., cannot be considered as a death benefit. As per the condition of the service, a government servant in his own right, is entitled to get the regular pension upon superannuation. His widow, is also, entitled to get the same if the government servant dies after his retirement. The pension comes as a result of his service career and it is an incidence of service payable to the employee on superannuation and is deeply rooted in the performance of the satisfactory service rendered by the employee and cannot be attributed to the fortuitous circumstances of the accident and the result of the death. The tort-feaser cannot be allowed to take the benefit of the pension received by the claimants by getting the credit for them in mitigation of the damages that he must pay. There is difference between the benefits received on account of the death and those which are payable on the death of a person. The grant of pension on attaining the age of superannuation is the benefit which is available independently of the death but is payable on the death or on the date of superannuation. The pensionary benefit which one inherits on account of the qualifying service or the death cannot be denied to a person entitled to such benefits on the pretext that he has received such other benefits. It is not the pecuniary gain as such but is an acceleration of pecuniary gain. It may be the value of the acceleration that can be taken into account while determining the amount of compensation and not the value of the benefits itself and some deduction, if possible, can be made for the payment received earlier. But the other aspect of the case, also, cannot be ignored and the amount of family pension cannot be slashed from the amount of compensation because the deceased has put in the qualifying service for the grant of pension if he would have survived till the age of superannuation, he would have put in 11 years more qualifying service for pensionary benefits and in the circumstance, he would have got more pension than what the claimants are getting now and after the superannuation age, the pension received by him would have formed a part of his estate and the dependants would have been entitled to inherit the same. In this view of the matter, also, taking the over-all view of the matter, the amount of family pension received by the claimants cannot be deducted from the. amount of compensation determined under Section 168 of the Motor Vehicles Act." 4. The claimants also placed reliance on certain off-quoted passages from two English decisions to contend that a tort-feasor who is found liable to pay compensation, cannot claim as deduction, any payment received by the family of a deceased, on account of previous contractual arrangements made by the deceased for his own benefit or for the benefit of his family. 4.1. In BRADBURN vs. GREAT WESTERN RAILWAY CO., 1874-80 All.E.R.Rep. 195 while dealing with the question whether insurance benefits received by an injured should go towards mitigating the damages payable by the tort-feasor, it was held: "there would be no justice or principle in setting off an amount which the plaintiff has entitled himself to, under a contract of insurance, such as any prudent man would make on the principle of, as the expression is 'laying by for a rainy day'. . . .It is true that there must be the element of accident in order to entitle him to the money; but it is under and by reason of his contract with the insurance company, that he gets the amount; and I think it ought not, upon any principle of justice, to be deducted from the amount of the damages proved to have been sustained by him through the negligence of the defendants." 4.2. In PERRY vs. CLEAVER, 1969 ACJ 363 the House of Lords considered the question whether disablement pension received by an injured should be deducted from the compensation payable to him. The majority of the Law Lords answered the question in the negative. LORD REID concluded that a decision that pension should not be brought into account in assessing damages at common Law is consistent with general principles. Lord WILBERFORCE held that pension represents the earnings, or reward of past saving, to the extent of his own contribution and his past service, as to the rest; and therefore an injured whose earning capacity is reduced by his injury, can recover damages for any loss of earning capacity as well as receiving his pension. Lord PEARCE observed: "55. If one starts on the basis that Bradburn's case decided on fairness and justice and public policy, is correct in principle, one must see whether there is some reason to except from it pensions which are derived from a man's contract with his employer. These, whether contributory or non-contributory, flow from the work which a man has done. They are part of what the employer is prepared to pay for his services. The fact that they flow from past work equates them to rights which flow from an insurance privately effected by him. He has simply paid for them by weekly work instead of weekly premiums. Is there anything else in the nature of these pension rights derived from work which puts them into a different class from pension rights derived from private insurance? Their"Character" is the same, that is to say, they are intended by payer and payee to benefit the workman and not to be a subvention for wrongdoers who will cause him damage." 5. The Respondents contend that all pecuniary advantages received by the claimants, from whatever source, without exception, should be taken note of while ascertaining the pecuniary loss. Family pension, being a pecuniary advantage received by the spouse or progeny, by reason of the death, an appropriate deduction should be made on that account while ascertaining the pecuniary loss. They contend that in the case of the death of a person holding a pensionable post, the loss of dependency per month should be calculated by deducting from the monthly salary of the deceased, not only his personal living expenses, but also the family pension amount received by the family; or in the alternative, the total loss of dependency may be determined first, without reference to the Family Pension and then a lump-sum deduction be made towards the fair estimate of the total value of the Family Pension, to arrive at the loss of dependancy. It is pointed out that family pension becomes available every month, on account of the untimely death, from the date of death, and when the salary income of the deceased stops, the income by way of family pension starts flowing. As the family is provided with a monthly payment which replaces the benefit from the salary received by the deceased, the Family Pension amount shall have to be taken into consideration, in arriving at the loss of dependancy and consequently, just compensation. It is argued that Family Pension is not an amount which would have been paid to the family, if the deceased had not died and therefore it is a pecuniary benefit arising out of the death; and payment of 'just compensation' does not mean conferring a double benefit on the claimants or punishing the wrong-doer by making him to pay an amount which will be more than the pecuniary loss to the family on account of the death. 6. The Fatal Accidents Act, 1855 provides for compensation to families for loss occasioned by the death of a person caused by actionable wrong. It enjoins the Courts to give such damages as it may think fit proportioned to the loss resulting from such death to the parties for whom and for whose benefit the action is brought, and the pecuniary loss to the estate of the deceased occasioned by such wrongful act. The Motor Vehicles Act (Section 110B of 1939 Act and Section 168 of the 1988 Act) requires the Claims Tribunal to make an award determining the amount of compensation which appears to it to be just. Though the Motor Vehicles Act was enacted in the year 1939, Sections 110 to 110 F, providing for constitution of Tribunals and award of just compensation, were introduced by Motor Vehicles (Amendment) Act, 1956 with effect from 16.2.1957. Till 16.2.1957, the Courts in India were determining compensation in regard to Motor Accident deaths, according to the well established principles of the Law of Torts and the Fatal Accidents Act, 1855. 7. The principles relating to determination of compensation in regard to a motor accident death (which occurred prior to Motor Vehicles (Amendment) Act, 1956) were clearly enunciated by the Supreme Court, with reference to the provisions of the Fatal Accidents Act, 1855, in GOBALD MOTOR SERVICE LTD. vs. R.M.K. VELUSWAMI as follows:- "Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other, any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained." The Supreme Court approved and adopted the principles laid down by the House of Lords in DAVIES vs. POWELL DUFFRYN ASSOCIATED COLLIERIES LIMITED 1942 A.C. 601 and by the Privy Council in NANCE vs. BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY LTD. 1951 AC 601 with reference to the corresponding English Fatal Accidents Acts. 7.1. The three relevant passages from the case of DAVIES CASE are: "The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts, is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately." (Lord Russel of Killowen). "The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in dimunition of the damages must be considered. . . . . The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other any pecuniary advantage which from whatever source comes to him by reason of the death." (Lord Wright). "Except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts, must take into account, any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages"(Lord Macmillan). 7.2. In NANCE'S case, VISCOUNT SIMON stated the principle thus:- "The claim for damages in the present case falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could reasonably have looked forward, what sums during that period would be probably have applied out of his income to the maintenance of his wife and family?." According to the said decision, the factors to be taken into account, evaluation of which could only be a rough estimate, are: Firstly the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by any other accident; secondly, the amount required for the future provision of his family should be estimated having regard to the amounts he used to spend on his family during his lifetime, and other circumstances; thirdly, the estimated annual sum of what he used to spend on his family has to be multiplied by the number of his remaining years of estimated span of life, and the amount arrived at must be discounted so as to arrive at the equivalent in the form of a lump-sum payable on his death; fourthly, deductions must be made for the benefit accruing to the family from the acceleration of their interest in his estate and for the possibility of the wife or other member dying earlier if the deceased had lived the full span of. life and the possibility of the widow re-marrying. 8. The position under Fatal Accidents Acts in England and India was the same, that is, in assessing damages, any pecuniary advantage which the dependants received from any source as a result of the death, must be set off against the pecuniary loss to the family. And if any money or pecuniary advantage received by the family by reason of the death would in any event have come to the family in due course, a deduction from the damages had to be allowed for the benefit of accelerated receipt. In view of it, while assessing damages, the Courts were estimating the benefits which the dependants were likely to obtain as a result of the death and making suitable deductions therefor from the amount which would otherwise be awarded as damages. 9. In England, the law underwent a drastic change and Section 2(1) of Fatal Accidents Act 1959 provided that in assessing damages in respect of a person's death in any action under the Fatal Accidents Act, 1846, there shall not be taken into account, any insurance money, benefit, pension, or gratuity which has been nor will or may be paid as a result of the death. 10. In India, this led to a sharp difference in opinion among several, High Courts, as to whether the principles enunciated in GOBALD continued to apply to Motor Accident deaths after the amendment to the Motor Vehicle Act, 1939, by Amendment Act 100 of 1956. One view was that the decision in GOBALD related to a motor accident prior to the said Amendment to the Motor Vehicles Act, 1939. The ambit of 'just' compensation introduced by Section 110B of the amended Motor Vehicles Act, 1939 is much wider than the concept of compensation contemplated in Section 1A and 2 of Fatal Accidents Act, 1855. Therefore while deciding claims under Section 110B, it is no longer necessary to strictly follow the principles of assessment laid down in GOBALD. And to promote justice, it is necessary to get out of the shackles of the decision in GOBALD and follow the more liberal English statutory trend and engraft into Indian law governing compensation, the statutorily modified English law principle barring deductions on account of pension, insurance money, benefit and gratuity received by the dependants. The High Courts of Delhi, Himachal Pradesh, Punjab & Haryana, Gauhati, Madhya Pradesh, Rajasthan, Bombay and Gujarat took the said view. Some of those decisions have been referred to in Para 3 above extensively. 11. The other view is that Section 110B of the Act providing for award of just compensation, did not alter the principles of determining the compensation. In England the law was drastically altered by the Fatal Accidents Act, 1959. The statutory modification brought by Fatal Accidents Act, 1959 in England cannot be applied in India, in the absence of a corresponding legislation in India. Therefore the common law principles set forth in DAVIES, approved and adopted by the Supreme Court in GOBALD, hold the field in India and while assessing damages in regard to claims under the

Motor Vehicles Act, 1939, the Court has to make proper deductions in regard to the pecuniary advantages received as a result of the death, in the form of insurance and pension. This Court has consistently subscribed to this view. The Delhi High Court in AMARJIT KAUR vs. VANGUARD INSURANCE CO. LTD., 1969 ACJ 286 and the Madhya Pradesh High Court in SUSHILA DEVI vs. IBRAHIM 1974 ACJ 150 have also taken the view. 11.1. In VAGEESH vs. CHANNAVEERAPPA, MFA 230/1969 : DD 13/14.3.72 this Court held: "Whatever the position of law in England may be, so far as our country is concerned, we are bound by the law laid down by the Supreme Court in GOBALD MOTOR SERVICE LTD.....if the appellants got under the insurance policies certain amounts much earlier than the time when he would have got them had he lived, then the benefit of such accelerated receipt of amounts, should also be taken into account in assessing........". 11.2. In PARVATHAMMA v. SYED AHMED, M.N. VEKATACHALAIAH J (as he then was) speaking for the Division Bench observed: "However, in India, the provision of the Fatal Accidents Act, have not been amended to bring its provisions at par with its amended English counter-part. The fact that in India the said statute has not been amended is a circumstance which requires the significance of the want of corresponding amendment to be kept sharply differentiated." "Life Insurance contract is really in the form of investment where there is no necessity to prove pecuniary loss and the amount covered by the policy becomes payable on the happening of the event, or events contractually contemplated. The view taken by Lal, J., in Arora's case and Anand, J., in Bhagawanti Devi's case proceeds on the premise that the benefit of life insurance arises not as a"result of death" but "independently of death" and is only "payable on death". With respect, the basis of this distinction pre-supposes and proceeds on the premise that what "results from death" and what is "payable on death" must needs be mutually exclusive. In our opinion the true test is whether the benefits in question would or would not have arisen at all, but for the death (See Damages for Personal Injuries and Death, Third Edition, by John Munkman). It may be correct to say that the benefits of life insurance arise independently of the cause of death except, of course, where contractually otherwise provided; but it cannot be said that the benefit of its acceleration would have arisen at all but for the death." "The benefit of a family pension of the kind with which we are concerned in the present case, being in the nature of an entitlement, which the deceased had paid for in terms of his past services or surrender of a part of his emoluments or both, has to be taken into account in assessing the compensation for pecuniary loss, inasmuch as the corresponding benefit of a pension which the deceased would be entitled to in the normal course would be a relevant consideration in determining the extent of the pecuniary loss." 11.3. In DY. GENERAL MANAGER, K.S.R.T.C. v. SAROJAMMA, another Division Bench of this Court held that no deduction need be given in regard to provident fund, as it is a fund deposited by the deceased and receipt of the amount by the dependants is not consequent to the death. In regard to gratuity, this Court held that as the amount was paid by the employer in pursuance of the contract and as the deceased would have anyhow got the amount even if there was no premature death, it need not be taken into account for purposes of deduction. In regard to life Insurance amount, this Court held that necessary deduction had to be given for the accelerated receipt of the amount. In regard to family pension, this Court held: "In view of the principles laid down by the Supreme Court in GOBALD MOTOR SERVICE CASE, unless the law is changed, as is done in England in 1959, making a specific provision for the exclusion of collateral benefits received by the dependents consequent upon the death, the collateral benefits, such as family pension, has to be taken into account and deduction has to be given for the amount so received in the amount of compensation awarded. The High Courts which have taken the contrary view are obviously influenced by the decision rendered by the House of Lords in PARRY v. CLEAVER, without fully appreciating that law in England is amended in 1959." In SHANTHA v. CHANNA BASAPPA another Division Bench reiterated, following the decision in PARVATHAMMA and in KSRTC, that deduction must be given for amount received as family pension. There are several decisions of other High Courts which take the view that Family Pension, being a pecuniary benefit, arising on death, should be deducted while assessing compensation. 12. Sections 110A and 110B of Motor Vehicles Act, 1939, superseded the provisions of Fatal Accidents Act, 1855, in regard to two matters, in so far as Motor Vehicle Accident deaths. The first is the persons for whose benefit, application for compensation could be made. The second is the manner in which the compensation awarded has to be distributed among them. (See G.S.R.T. CORPORATION vs. RAMAN BHAI . Section 110B however did not make any change in regard to principles of common law relating to torts and the provisions of Fatal Accidents Act, 1855 governing assessment of compensation. This is made clear in two decisions of the Supreme Court GENERAL MANAGER KERALA STATE ROAD TRANSPORT CORPORATION vs. SUSAMMA THOMAS, and U.P. STATE ROAD TRANSPORT CORPORATION vs. TRILOK CHANDRA ILR 1996 Kar 2127. 12.1. In SUSAMMA THOMAS, the Supreme Court reiterated the principles earlier stated in GOBALD MOTOR SERVICE and the decision of the House of Lords in DAVIES. The Supreme Court declared that the multiplier method evolved in DAVIES and approved in GOBALD is logically sound and legally well established. It deprecated deviations from the said method. Referring to the deviations made by some High Courts from the multiplier method, the Supreme Court observed thus: "We are aware that some decisions of High Court and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular Awards in individual cases. The proper method of computation is the multiplier method. Any departure except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110B of the Motor Vehicles Act, 1939 in so far as it envisages the compensation to the 'just', the statutory determination of a just compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a ‘just’ compensation which will make for uniformity and certainty of the Awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and from exceptional cases.” 12.2. Again in U.P. STATE ROAD TRANSPORT CORPORATION v. TRILOCKCHANDRA, the Supreme Court reiterated the principles of assessment of compensation laid down in its two earlier decisions, that is decision in GOBALD MOTOR SERVICE based, on the two English decisions in DAVIES and NANCE and decision in SUSAMMA THOMAS based on DAVIES. Referring to SUSAMMA THOMAS, the Supreme Court held: “It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110B of the Motor Vehicles Act 1939 (corresponding to the present provision of Section 168, Motor Vehicles Act, 1988) envisaged payment of ‘just’ compensation, since the multiplier method is the accepted method for determining and the ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country. We thought it necessary to reiterate the method of working of ‘just’ compensation because, of late, we have noticed from the awards made by Tribunal and Courts that the principles on which the multiplier method was developed has been lost sight of. The Supreme Court held that the two English decisions in DAVIES and NANCE provided the guidelines for assessing the loss occasioned on account of Motor Vehicle Accident Deaths. The only change effected was, instead of the maximum multiplier being taken as 16, the court held a maximum multiplier of 18 was permissible. 12.3. The decisions in SUSAMMA THOMAS and TRILOKCHANDRA make it clear that the multiplier method evolved in DAVIES case, as approved by the Supreme Court in GOBALD, continues to be the proper method for calculation and the mere use of the words ‘just’ compensation in Section 110B does not in any way permit Courts to veer away from the principles laid down in DAVIES case. 12.4. The Indian Courts determine the liability for compensation as also the quantum of compensation according to the well established principles of the Law of Torts. The principles of English Law of Torts are applied by the Indian Courts on the ground that, in the absence of any statute, the Courts are to follow the principles of”justice, equity and good conscience“, which have been generally interpreted to mean the common law of England if found applicable to the Indian society and circumstances. The English Law of Torts underwent remarkable changes both by judicial decisions and by statute. The English Fatal Accidents Act, 1959 modifying the Law of Torts will not obviously apply to India. However, if the statutory modification in England embodied any principle of justice, equity and good conscience, no doubt such principle may be engrafted into the common law principles now applied, in the absence of any statutory provision. But in GOBALD, which was decided after the English Fatal Accidents Act, 1959 came into force, the Supreme Court chose to follow the rule in DAVIES and did not apply the English Law as amended by English Fatal Accidents Act, 1959. The supreme Court has reiterated in SUSAMMA THOMAS and TRILOKCHANDRA that the principle of DAVIES is the accepted principle and has ignored the change brought in English Law by the Fatal Accidents Act, 1959. In this background, unless there is a statutory change in India or until the Supreme Court decides that the principles of English Law of Torts, as amended by the English statute should be followed, the unamended Common Law embodied in DAVIES adopted by the Supreme Court in GOBALD and subsequent decisions, has to be followed. Therefore, any pecuniary benefit arising out of the death, from whatever source, has to be taken note of, to balance the pecuniary loss while determining compensation relating to a motor accident death. 12.5. We have earlier made detailed reference to the decisions relied on by the petitioners to show that they basically proceed on two assumptions to hold that pecuniary benefits like family pension need not be taken into account. The first is that the decision in GOBALD based on the common law principles, is no longer applicable having regard to introduction of the concept of 'just' compensation under Section 110B of Motor Vehicle Act, 1939. The second is that when the English Common law principles relating to Torts were modified statutorily in England (by Fatal Accidents Act, 1959) providing that no deduction shall be made for pension, insurance benefits and gratuity, we should apply in India, the common law principles as modified by the said English Statute. Our above discussion will show that both assumptions are without basis. We are therefore of the considered view that the decisions referred to in Para 3 above (except the decision in KASHIRAM) based on the said two assumptions, cannot be said to be good law. 12.6. We may also notice that the decision of Delhi High Court in BHAGWANTI DEVI in so far as Family Pension is concerned, was reversed in appeal by a Division Bench in ISH KUMAR v. BHAGWANTI DEVI though the appeal was finally dismissed, on the facts of the case. The decision of the Full Bench of Madhya Pradesh in KASHIRAM on a careful reading, supports our view, as it holds that Family Pension has to be taken into account, but on the facts of that case, it was not necessary to give any deduction therefor. 13. We will now examine whether 'Family Pension' is a pecuniary advantage by reason of or in consequence of, the death of the deceased. 13.1. Courts in India tend to deal with Family Pension, Insurance amount, provident fund amount and gratuity, as belonging to group. Provident Fund amount is a reimbursement or return of the contribution made by the employee (with a contribution from the employer in some cases) to his own benefit when he was in service. Gratuity is a payment made by the employer to the employee on termination of employment, if the employee has rendered satisfactory service for the prescribed number of years. Provident Fund and gratuity are paid to the employee on his retirement from service. In the event of death of the employee, it is paid to his nominee or family. Payment of these amounts are not consequential to the death of the employee. These amounts can be received by the employee before retirement, by leaving the service of employer. These amounts are not pecuniary advantages arising from the death and therefore not taken into account while assessing compensation. The payment on account of a policy of Life Insurance is in a different category. It is a benefit arising independently of the cause of death (except where otherwise provided by contract); but the death accelerates the receipt and therefore when assessing compensation, a deduction is made only towards the value of the benefit of acceleration. 13.2. Family pension is different from PF, Gratuity and Insurance. It is not a one-time payment, but a periodical payment made to a family member of a deceased employee. Family pension has its origin in pension and is part of the pension rights of the employee. But it differs from pension. Pension is a retirement benefit paid regularly to the employee, the amount so paid being normally based on the length of service of the employee and the emoluments received by him at the time of retirement. Pension can be either contributory or non-contributory. Where it is non-contributory, it is considered as a deferred compensation for services rendered. While death extinguishes pension, unless there is death, there can be no family pension. Pension is paid to the retired employee; family pension is a benefit given to the spouse/minor or unmarried child of the employee, after his death, payment of family pension may be governed by either contract, or a scheme in force in the employer's establishment or by statute. While acquiring a right to receive pension depends on a minimum number of years of service, (normally 10 years), there is no such minimum for becoming eligible for family pension. Normally a years' service prior to death is sufficient. However if the deceased had put in the prescribed years of service, an increased rate of family pension is paid for a specified period and thereafter the normal rate of Family pension is paid. While pension to the employee is on retirement, family pension always arises on the death. If there is no death, there is no family pension. The test to find out whether a pecuniary advantage accrues to a dependant by reason of or as a consequence of the death, is whether the benefit would or would not have arisen at all, but for the death. If the employee had lived, he would have got a pension, but the family would not have got the family pension. Further receipt of family pension is not an accelerated receipt of any amount which is otherwise due. If an employee died in 1980, the family pension becomes due from 1980; and if he dies in 1990, the family pension becomes due from 1990. There is neither accumulation nor acceleration. That is, if a person dies in 1990, no accumulated arrears are paid in regard to the period of service, when it was not claimed. Similarly, when a person dies in 1980 and family pension is paid, it is not a payment in acceleration of any amount due in future. Family pension is a monthly payment which becomes due only on the death. It is however a part and parcel of the pensionary rights of the employee. Hence, it is a benefit which has to be taken into account while balancing the pecuniary loss with pecuniary advantages. 13.3. The following summing up in FLEMING on LAW OF TORTS Pages 688-91 is relevant:-"As regards pensions a distinction must be observed between contributory superannuation Schemes under which the employees' benefits vary in relation to the scale of his contribution and Government Schemes, where there is a flat rate of contribution and benefits, and its basis is public philonthropy rather than contract. The amount of the pension received by the widow from the latter source is deductible, but the benefits accruing under a superannuation Scheme arising from a contract between employer and employee have generally been treated in the same manner as life assurances, because such private pensions are in reality none other than annuities payable by instalments". 14. We next turn to the manner in which family pension should be taken into account. Though Davies method is the preferred method, we will, deal with both Nance method and Davies method to bring out the difference in the nature of deduction to be made on account of family pension. 14.1. Under the NANCE method, it is necessary first to estimate what was the deceased man's expectation of life, if he had not been killed in the accident. Next the Court should estimate what sums, the deceased would have applied to the support of his family having regard to the amount he used to spend on the family. On that basis, the annual sum which would have been applied for the benefit of the family is to be ascertained. That sum has to be multiplied by the number of years of lost, that is the remaining number of years of man's estimated span of life. The sum arrived at, should be discounted so as to arrive at its equivalent in the form of a lumpsum payable as damages. Then further deductions should be made for the benefit accruing to the family from the acceleration of their interest in his estate and on account of any member of family dying or getting married. For example, let us take a hypothetical case where the deceased died when he was 45 years, leaving him surviving his wife and two minor children. His life span is determined as 70 years and he was in a pensionable job where the superannuation age is 60 years. His monthly emoluments were Rs. 5,000/- and he was spending Rs. 3,750/- on the family. If he had survived and retired, he would have got a pension of Rs. 2,000/- out of which he would have spent Rs. 1,500/- on his family. After his death, his wife was entitled to get Rs. 1,000/- per month as family pension. On these facts, the position will be thus: The loss to the family will be calculated as Rs. 3,750/- per month for a period of 15 years (i.e., from 46th year to 60th year). Thereafter, the pecuniary loss will be reduced to Rs. 1,500/- per month for a period of 10 years (that is, from the 61st year to 70th year). Out of such sum, the amount received by the wife as family pension at Rs. 1,000/- per month for 25 years will have to be deducted. Thus the loss of dependency will be (Rs. 3,750 x 12 x 15) + (Rs. 1,500 x 12 x 10) less (Rs. 1,000 x 12 x 25) towards family pension, that is Rs. 8,55,000/- less family pension of Rs. 3,00,000/- which will be Rs. 5,55,000/-. This has to be discounted to arrive at its equivalent in the form of lumpsum payable as damages and then the indicated deductions on account of acceleration and deduction on account of likelihood of early death, remarriage or marriage of the family members shall be deducted. 14.2 The Davies method contemplates ascertaining a multiplicand and a multiplier. The annual loss of dependency to the family is the multiplicand. The starting point for arriving at the multiplicand is the amount of wages which the deceased was earning. Then the amount expended for his own personal and living expenses is estimated. The balance is the datum or basic figure which will be turned into a lumpsum by taking a certain number of years' purchase. That sum is taxed down by having due regard to uncertainties, like the possibility of the widow marrying again and thus ceasing to be dependant. The multiplier is determined by the age of the deceased, age of the claimants and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. Regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last. The maximum multiplier normally applied was 16 now increased to 18. 14.3. A pensionable employment is always considered to be more valuable to an employee than a non-pensionable employment. The reason is not far to seek. In a non-pensionable employment, the earning ceases on superannuation. In a pensionable employment, there is a regular income till death, to the employee and family pension thereafter to the family providing subsistence, succour, sustenance and security. But to provide this benefit to the employee, the employer has to put up an additional outlay. Where the terms of employment of an employee entitles him to pension rights, the employer is required to set apart money regularly to provide for and meet the pension rights of the employee. The 'pension rights' includes not only the right of the employee to get pension on his retirement or disablement, but the right of his family to get family pension in the event of his death, wherever provided. In view of it, the employer is prepared to pay more every month to an employee who does not want pension benefits than to an employee who opts for pension benefits. 14.4. As noticed above, the Davies method depends on arriving at a multiplicand and multiplier. The annual loss of dependency furnishes the multiplicand. To arrive at the annual loss of dependency, the base figure is the monthly wages or income. In the case of pensionable employee, the real earning of the employee consists of not only the monthly wages received, but a fair estimate of the amount that will have to be set apart by the employer to meet the pension rights of such employee (referred to in short as the 'pension factor'). 14.5 In the case of an employee with pension rights the employer has to provide for the pension fund, in addition to paying the monthly salary. He need not make such provision for an employee who is not having any pension rights. Therefore, normally the salary paid to an employee without any pension rights will be more than the salary paid to an employee with pension rights. To illustrate, if an employee who has opted for a pensionable job is given a salary of Rs. 5,000/- per month, the employer will also have to incur an additional expenditure by contributing to the pension fund to the extent necessary to meet the pension rights of such employee. If the same employee had opted for a non-pensionable job, the employer will pay him a higher salary, say Rs. 6,000/- per month, as the employer need not provide for the pension rights of the employee. Under the multiplier method for arriving at the multiplicand the base figure is the monthly salary or emoluments. But for arriving at the multiplicand in the case of a deceased holding a pensionable employment, the base figure will be the monthly emoluments plus the value of the pension factor, less the family pension. However, having regard to the difficulties in determining the value of pension factor, it is normally omitted and only the actual monthly emoluments is taken into account for the purpose of determining the multiplicand. Consequently, no deduction is made towards pecuniary benefit of family pension to balance the omission to take into account the value of pension factor while calculating the pecuniary loss. In other words, while adopting the multiplier method, when no deduction is made on account of family pension, it is not because family pension is not a pecuniary advantage to be deducted, but because, the corresponding value of pension rights has not been added to the monthly emoluments to arrive at the real monthly income of the deceased. 14.6 That is why the Supreme Court frowned upon deduction on account of family pension in SHIVAMMAL's case. In that case, the widow of the deceased was entitled to family pension at the rate bf Rs. 120/- per month for a period of seven years and a reduced amount thereafter. The Tribunal did not make any deduction on account of such pension. Nor had it taken the value of pension factor while calculating the monthly loss of dependency. But the High Court, however, evaluated the pensionary benefits and reduced the compensation by Rs. 10,000/-, without taking note of the value of pension right while calculating the loss of dependency. The Supreme Court held that the High Court was clearly in error in reducing the compensation awarded by the Tribunal as there was no justification for it. Though no reasons are given by the Supreme Court, it is evident that it held so because the value of pension factor was not taken note of while determining the multiplicand. 14.7 If the family pension is deducted as a pecuniary benefit without taking into account corresponding pension factor as a pecuniary loss, for arriving at the multiplicand, it means taking a pecuniary benefit into account, without taking the corresponding pecuniary loss into account. Such a course will lead to distorted and absurd results. This can be demonstrated by again referring to the case of the hypothetical employee aged 45 years with wife and two children, working in an establishment where there is an option to have pension or not. If he opts for a non-pensionable job, he will get a monthly salary of Rs. 6,000/- and if he opts for a pensionable job, he will get a monthly salary of Rs. 5,000/-. One fourth is deductible for personal expenses. Let us now calculate the loss by different methods: a) The employee does not opt for pension. In that event, on his death the monthly loss to the family will be Rs. 4,500/-, (that is Rs. 6,000/- less Rs. 1,500/- for his personal expenses). There would be no deduction from the loss of dependency, for any family pension, as the family will not be getting any family pension. If his age is about 45 years and by adopting a multiplier of 12, the compensation will be Rs. 4,500 x 12 x 12, that is Rs. 6,48,000/-. The family will not get any family pension.

b) `The employee had opted for pension. On his death, while calculating the loss of depende`

c) The employee had opted for pension. On his death, while calculating the loss of dependency, neither the value of pension factor nor the family pension are deducted. The position will be thus : The monthly loss to the family will be the salary of Rs. 5,000/- less personal expenses of Rs. 1,250/ that is Rs. 3,750/-. Applying a multiplier of 12, the compensation will be Rs. 3,750 x 12 x 12 = Rs. 5,40,000/-. In addition, the family will get the monthly pension of Rs. 1,000.

d) The employee had opted for pension. If family pension is deducted as a pecuniary benefit, without taking note of the value of the pension factor, while calculating the pecuniary loss, the position will be thus : The monthly loss to the family is arrived at by deducting from the monthly salary of Rs. 1,000, a sum of Rs. 1,250/- towards the personal expenses of the deceased and Rs. 1,000/- towards family pension, that is, Rs. 2,750/-. Applying a multiplier of 12, the compensation will be Rs. 2,750 x 12 x 12, that is, Rs. 3,96,000/-. In addition, the family will get family pension. It would thus be seen that the more logical and appropriate method is either to take note of both the pecuniary loss (value of pension) and pecuniary benefit (family pension) or omit both, while calculating the loss of dependency. Taking note of only the pecuniary benefit (family pension) without taking note of the pecuniary loss (that is failing to add value of pension factor to monthly salary) will lead to unjust and illogical results. 14.8 Therefore when the compensation in regard to a deceased who was holding a pensionable job, is calculated, by the multiplier (Davies) method, if the monthly loss of dependency is arrived at with reference to only the monthly salary, without adding the value of the pension factor, then, there is no need to make any deduction towards family pension, as a pecuniary advantage. Determination of compensation is but a process of estimation, balancing the pecuniary losses and benefits. An arithmetically precise calculation is impossible to achieve having regard to several imponderables involved. So long as a conscious effort is made to broadly balance the losses and benefits and a uniform and well settled method is applied in calculation, slight imbalances may be ignored. We therefore hold that ignoring both the pecuniary loss of pension factor and pecuniary benefit of family pension while calculating compensation, is a satisfactory and practical solution having regard to the difficulty in ascertaining the monetary value of pension factor. Such a course has the seal of approval of the Supreme Court, as can be inferred from the, decision in SHIVAMMAL.

15. In view of the above, we answer the questions referred to the Full Bench as follows :

1) The family pension amount is a pecuniary benefit which has to be taken note of to balance the pecuniary loss, to arrive at the net loss, as a consequence of death, which constitutes the measure of damages;
2) While assessing the compensation as per the multiplier method (DAVIES method) in the case of the death of an employee in pensionable service, a deduction on account of family pension can be made (as a pecuniary benefit arising out of the death) only if the pension factor had been taken note of as a part of monthly emoluments of the deceased, while calculating the loss of dependency. If the loss of dependency is calculated only on the monthly emoluments received, without adding the value of the pension factor to such emoluments, then it is unnecessary to make any deduction on account of receipt of Family Pension.

(3) The decisions of this Court in PARVATHAMMA and SHANTHA (1977 ACJ. 72) & (1993 ACJ 850) are correctly decided in so far as they hold that

family pension should be taken into account while assessing damages. But while calculating the compensation by using the multiplier method, they fell into an error in deducting family pension, as the corresponding pension factor had not been taken into account for arriving at the pecuniary loss and only the actual emoluments had been taken as the basis for arriving at the monthly pecuniary loss.