Supreme Court of India Mrs. Helen C. Rebello & Ors vs Maharashtra State Road Transport ... on 18 September, 1998 Author: Misra Bench: K. Venkataswami, A.P. Misra. PETITIONER: MRS. HELEN C. REBELLO & ORS.

Vs.

RESPONDENT: MAHARASHTRA STATE ROAD TRANSPORT CORPN. & ANR.

DATE OF JUDGMENT: 18/09/1998

BENCH: K. Venkataswami, A.P. Misra.

JUDGMENT:

MISRA, J.

The question raised in this appeal is of great importance on which the High Courts in India are divided. Importance of this question is underlined and revealing since 19^ century where there is full debate in the English Courts having divergent views leading to legislation and amendments to set at rest this controversy. So far as our country is concerned, as aforesaid, we have divergent views of the various High Courts, but so far this Court, it has not dwelled this question in depth, except passing references in a few cases to which we shall be reining later. The question is. whether the life insurance money of the deceased is to be deducted from the claimants' compensation receivable under the Motor Vehicles Act, 1939? The minimum matrix of the facts to appreciate the controversy is stated hereunder: The husband of appellant No.1, father of appellants Nos.2 to 6, was travelling in the Maharashtra State Road Transport Corporation bus from Rathare Badruk to Pune on 12th April, 1973 at about 4.00 P.M. when this bus passed the village Umbraj and came near village Kotri near milestone No. 89/4, Karnataka State Transport bus was seen coming from the opposite direction, i.e., from Satara side towards Kolhapur. The drivers of the two buses were not able to control their buses resulting into collision between the two, seriously injuring the deceased clemant Rebello and Mr. Vincy John Pereira, in which Rebello received multiple fractures and died on the spot. The appellants filed a Specie Civil Suit No. 24 of 1975 against the aforesaid two State Road Transport Corporations. It was averred in the plaint that the deceased was aged about 40 years and was the sole bread winner of the family. He was a well known boat builder and businessman of the Bassein. He was doing business in partnership under the name and style of Marine Engineering Works. He was a person of great skill and hard worker. He was a person of robust health and sober habits. His income from the business and other activities was about Rs-40,000/- per annum. He was assessed for an income of about Rs.43,000/- by the Income Tax Authorities for the Assessment Year 1971-72. Being the sole bread winner, he used to provide the family with the support of Rs.25,000/per year. The claim made by the appellants for damages/compensation under the

various admissible heads of damages was for Rs. 4 lacs. The claim of the appellants was allowed by the Civil Judge, Senior Division, Satara, holding that the death was caused due to rash and negligent driving on the part of the driver of respondent No.2, namely, Karnataka Road Transport Coloration. It was also held that the deceased had supported his family with an amount ofRs.25,OOOA per annum. It was found that as the deceased was of 40 years old at the time of his death and his father had lived upto the age of 85 years, the normal longevity of his life would have been 25 years from the date of death, but since the claimants had claimed a compensation only taking a period of 20 years, the Trial court held that the appellants were entitled to a compensation of Rs3,80,000/by way of pecuniary loss and Rs.l0,000/ on account of pain and suffering, in total Rs.3,90,000/^ However, in view of the Division Bench judgment of the Bombay High Court in Jaikumar Chhaganlal Patni and Others vs. Many Jerome D'souza and others (AIR 1978 Bombay 239), the Trial court deducted the amount of life insurance received by the appellants to the tune of Rs.3,15,067.95p from the aforesaid compensation calculated and held that only the balance amount of Rs.74,939.05p with interest at the rate of six per cent per annum is payable by the respondent No.2 to the claimants. Through the witness Shashikant Dattatraya Kale, Exhibit 67, who was serving in LIC at Bombay, it was elicited that the deceased clement had insured his life under the said policy. The claimants were entitled to get an amount of Rs.4,40193.65p, out of which an amount of Rs.l,52,125.70p was deducted by way of estate duty and the remaining amount of Rs.3,15,067.95p was paid to the aforesaid heirs. It is this amount, as aforesaid, which was deducted in view of the decision of the Bombay High Court referred to above. On appeal, preferred both by the appellants and also the respondents, the High Court rejected the cross appeal of respondent No .2, namely, Karnataka State Road Transport Corporation. However, the appeal (No.. 209/81) of the appellants was dismissed as it could not be pressed in view of the decision of the Bombay High Court, as aforesaid. It is against this judgment, this appeal has been preferred by the appellants. At the outset, learned counsel, appearing for the respondents made a preliminary objection that this appeal is not maintainable since the appeal in the High Court was dismissed as not pressed. We have no difficulty in holding that this preliminary objection of the respondents has no merit. We find that the High Court had rejected the appeal with the following observation: "As regards the other appeal, bearing No.209 of 1981, Mr. Chaphkar, the learned counsel for the appellants, has urged that in view of the (Full Bench) decision of this Court, he does not press the appeal as the same does not survive." (Full Bench, was wrongly recorded for the Division Bench) This only reveals that since the question of deduction, as aforesaid being covered by the earlier decision of the same court, he could not press the point in that appeal in that court. It is for this reason the appellants challenge this point before us for our consideration. In this case, we are not concerned with the question of compensation assessed under the Motor Vehicles Act as the same is not under challenge before us. This became final as the cross objections filed by respondent No.2 were dismissed by the High Court which challenged the fixation of the quantum of compensation

against which no appeal was preferred by the respondents. This leaves us to the only question for adjudication, as aforesaid, whether out: of the compensation amount payable to the appellants under the Motor Vehicles Act 1939, the money received by the appellants on account of life insurance policy of the deceased, is deductible or not which has been done in the present case through the impugned order? Adverting to the said Bombay High Court decision in the case of Jaikumar (supra), we find that it refers to the two sets of decisions of the various High Courts in India. One set, holding that life insurance money received by the heirs ought to be deducted and the other set, holding not to deduct from. the compensation payable under the aforesaid Act. The case of Jaikumar (supra), which is the foundation of the present appellants being deprived of the total compensation, the contention therein was, the amount received towards life insurance policy is the pecuniary advantage received by the claimant by reason of the death hence liable to be deducted in terms of the ratio in the case of Gobald Motor case (AIR 1962 S.C.I), Jaikumar (supra) holds: ".... Judicial opinion is also sharply divided on the question whether life policy amount can be said to have come to the claimants by reason of the death of the deceased to justify its deduction from the amount of compensation payable to the claimants towards their pecuniary loss. Our attention was drawn by Mr. Zaveri the learned advocate for the respondents, to a few judgements of the High Court of Gujarat in LIC of India V. Naranbhai Munjabhai, 1973 ACC CJ 226: (AIR 1973 Guj 216), High Court of Punjab and Haryana in Sood and Company v. Surjit Kaur, 1973 Acc CJ 414, as also Delhi High Court in Bhagwanti Devi v. Ish Kumar, 1975 Acc CJ 56 and several other judgments of same High Courts, which do support his contention that amounts so received are not liable to be deducted as the same cannot be said to have come to the claimants by reason of the death of the deceased. Mr. Dwivedee, on the other band, drew our attention to the judgments reported in Union of India v. S. Ghosh, AIR 1973 Pat 129, Sushila Devi v. lbrahim, AIR 1974 Madh Pra 181; Sabha Pati v. Rameshwar Singh, 1973 Acc CJ 319 (Orissa High Court) and Automobiles Transport v Dewalal AIR 1977 Raj 121, and a few other judgments of the same courts taking the contrary view. We may at once observe that Patna High Court supports deduction only of such policy amounts as are subscribed to meet accident contingency and not other policy amounts. It rather supports Mr. Zaveri's contention and not that of Mr. Dwivedee, Mr. Zaveri also drew our attention to some other judgments of Delhi High Court, including in the case of Orissa Road Transport Co. Ltd. v. Sibananda Pattanak, 1976 ACC CJ 497: (AIR 1976 Orissa 205) which justify deduction only of a portion and not of the entire policy amounts." After recording the divergent options by the various High Courts in India, said decision itself records the state of uncertainty in the following terms :- "The answer turns really on whether such policy amount can be said to be"pecuniary advantage' that come to the claimants 'by reason of the death of the deceased?' That such amounts amount to pecuniary advantage admits of little doubt. Controversy really centres round if it comes to the dependents 'by reason of death'. Reading of the decided cases only go to show how this very question can arise under variety of circumstances, giving rise to

different considerations, pregnant with equally different legal implication, and it is by no means easy to lay down any inflexible rule as to which pecuniary benefit can be said to have been received 'by reason of the death.' It is pertinent to note that in the absence of any provision to the contrary such policy amounts form part' of the estate of the deceased and come to his heirs or dependents by way of inheritance, unless it is sought to be disposed of by deceased otherwise. Nominee mentioned therein is not necessarily the beneficiary but invariable happens to be merely an authorised collector thereof for the benefit of all heirs. We are unable to see any difference between this amount, and any other income yielding estate. That comes to the dependents either by way of inheritance or pursuant to any will or settlement. The causal connection between receipt of such amounts, and death is too apparent and both really stand on the same footing legally. Donations by the charitable trusts, or provisions for such dependents by sonic public spirited institutions, or gifts or contributions by relatives or sympathisers, of course stand on different footing and arc clearly distinguishable and can never be treated as advantages or benefits or having received by reason of the death of the bread winner, though the death may furnish an occasion for such receipts. We are ourselves unable to see how and why the policy amount or other amounts from income yielding assets, such as bank balances, or interests thereon, or on fixed deposits, or dividends from shares and securities, left or settled by the deceased on the dependents, cannot be said to have come to the claimants by "reason of the death" of the deceased and why it should not be balanced against the pecuniary losses caused by the death of the bread winner in terms of Gobald Motor's case (AIR 1962 SC 1) (supra). The Supreme Court has been at pains in the above quoted passage to indicate how source of such pecuniary advantage is irrelevant by words 'from whatever sources'. It should not be forgotten that these essentially are compensatory and not punitive damages." It records from the decided cases that there may arise variety of circumstances giving rise to different consideration and it is by no means easy to lay down any inflexible rule. In fact, answer to the question raised in this appeal would mainly depend on defining this "pecuniary benefit" in the context of the law under the Motor Vehicles Act with its preceding historical facts. The state of fluidity shows writ at large when the court records while considering the 'pecuniary benefit' by further circumscribing its periphery which is evident from the following: "It is nobody's case that it was an accident policy entitling the claimants to such amount, on the death of the deceased only in such an accident, and the amount could not have been received by them, had the death been. due to otherwise than such an accident. We express no opinion if this could have made any difference as there is no unanimity in the decided cases as to the liability of even such amounts to deduction from compensation". Leaving this state of affairs so tar as Indian courts are concerned, we may now advert to the courts in England, right from the 19th century on this issue. It seems that they have also been oscillating with different interpretations under various facts and circumstances. The uncertainty went for a long time which was ultimately resolved by making legislation and the statutory amendments to set at rest this question. Now this question is no more res integra there and

is settled that life insurance policy is not deductible from the compensation assessed on account of the death of the deceased. As aforesaid, before this, even in England, this question, as in Indian courts, varied its interpretation depending on the facts of each case, one set by strict interpretation deciding against; the claimant while other based on equity, justice, reasonableness and public policy deciding in favour of claimant. In England, the insurance policy amount was initially considered to be such pecuniary advantage, coming to the dependents on the deceased death, which was held deductible under the common law from the amount of compensation payable under the Fatal Accidents Act, 1846. This situation was reversed by the Fatal Accidents (Damages) Act of 1908 which was further rendered advantageous to the claimants by Law Reforms (Personal Injuries) Act of 1948 and finally altered drastically by the Fatal Accidents Act of 1959 ensuring various kinds of insurance and pensionary benefits not to be excluded from the compensation payable by the tortfeasors. In India, first such legislation was the Fatal Accidents Act 1855 analogous to English, Fatal Accident Act, 1846. In fact, the interpretation given by the Bombay High Court in Jaikumar (supra), which is also the submission by the learned counsel for the respondents that principle of deduction with reference to the Fatal Accidents Act, 1855 has to be the same as in the Fatal Accidents Act, 1846. Thus, Jai Kumar (supra) concludes, it is difficult to find any basis or trace for any rationale not to deduct such life policy amounts when on the face of it, this amounts to the pecuniary advantages and are received by the heirs by reason of the death of the bread winner. The question that arises, firstly, whether language of the provisions under 1855 Act and 1846 Act are the same and even if same, whether language of 1939 Act is similar to 1855 Act? So far as the first question is concerned, though something may be said but since the present case is only under 1939 Act, it is not necessary to go into this question In this case, we would be examining whether there is difference of language between 1855 Act and 1939 Act or not, if yes, what difference it would makes. Now we refer to the relevant provisions both of 1855 Act and 1939 Act. Relevant section of the Fatal Accidents Act, 1855 is quoted hereunder; "(A) Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong. - Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages: in respect thereof, the party who would have been liable if death had 3101 ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person, injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime. And in every such action, the court may give such damages as it may think, proportioned to the loss resulting from such death to the parties respectively, for whom and 'for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the court' by its judgment or decree shall direct." Similarly Section 110-B of the aforesaid 1939 Act is quoted hereunder: "110-B

Award of the claims Tribunal- On receipt of an application for compensation made under Section 110-A the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears 'to it to be just and specifying the person or persons to whom compensation shall be paid', and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer (or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.)" (Emphasis suppled) Prima facie we find that the language of the aforesaid two enactments are not similar, the later clearly clearly enlarges scope of computing the compensation about which we shall be considering later. Returning, to the English decision: In Bradurn Vs. Great Western Rail Co. (1874-80 All England law Reports 195) it held: "Where a plaintiff suffers personal injuries through the negligence of the defendant, the damages awarded arc not to be reduced because the plaintiff has insured himself against accidental injury. In such a case the plaintiff is entitled to receive the amount payable by the insurer in addition to the damages recoverable from the defendant." In this case, the plaintiff got himself insured against accident by railway in the railway accident insurance office and on account of the injury received, he received for his treatment from the insurance a sum of 31 pounds. The jury found a verdict for the plaintiff and assessed the total damage sustained on account of the accident at 217 pounds, out of which an amount of 31 pounds was deducted, thus making the payment of 186 pounds. But the Court on these facts held : "Because he had sustained these damages somebody else gave him 31 pounds, and, therefore, it is said he has not been damaged to the amount of 217 pounds. It is because he has been damaged to the amount of 217 pounds that he got the 31 pounds; and really it would be the most unreasonable think in the world if he were not to be allowed to get it, because a man pays his premiums on these insurances against accidents with the intention and object of getting them back again, if he should have the misfortune to meet with an accident and be injured." In this decision, another earlier decision is also referred, which may have some relevance, is quoted hereunder: "It is not worth while to go into it, but the subject of insurances will be found to have been thoroughly discussed a few years ago in Dalby V. India and London Life Assurance Co. (1854 (15) C.B. 365) in the Court of Common Pleas. A man pays the premiums upon these accident policies upon this kind of footing, namely, that his right to an indemnity in case of an accident shall be an equivalent for the mischief or injury that happens to him. He gets more, no doubt, if the mischief happens than all the premiums which he has paid would amount to; but he runs the chance that he will not get anything at all; and therefore it is, I say, that he ought to have this sum in addition to the damages that he may have sustained at the hands of the defendants by reason of the accident itself; for otherwise he would be a loser by insuring against accidents in a case where the railway company was in the wrong. I am, therefore, clearly of opinion that the verdict stands at present for the right amount." The Grand Trunk Railway of Canada Vs. Jennings, (1888) 13 A.C. 800, held that at the Common law, pecuniary benefits from insurance policies, whatever the source,

and pension schemes whether contributory or non-contributory, were deducted. The various English Courts' decisions reveal the unsettled state of adjudication regarding the deductions from the compensation payable under the Fatal Accidents Act, 1846. Various divergent opinions were expressed, some favorable to the claimant to exclude any sum payable on life insurance or pensions from deduction out of the compensation payable to the claimant and other not to deduct till, as aforesaid, the matter was set at rest by various legislations culminating into the Fatal Accidents Act, 1959. Till before this, within the limitation of the restrictive language of the Act and in the absence of any motivating and guiding words under the statute the general principles under the common Jaw was applied to ascertain the pecuniary loss and gain. Thus, the 'pecuniary advantage' from whatever source comes to the claimant by reason of the death, was interpreted giving its widest meaning. This amplitude of large sphere has been the cause of concern of the Courts, Legislative and the Jurists with reference to the insurance, pension, gratuity etc. whether it is a pecuniary gain deductible, if it is, whether one's conscience, equity and fairness are eroded, specially if it is applied with reference to the provisions of Motor Vehicles Act? To salvage from this onslaught, some decisions declined to interpret for deduction and some other, even after holding deductible, expressed their conscience in favour of the sufferer. This we find both in the English decisions and the Indian decisions. In Parry Vs. Cleaver (1969 (Vol. 1) All England Law Reports p.555) records uncertainty in England, which is evident from the following words: "My Lords, the facts of this case are of a pattern becoming increasingly common. The appellant was in pensionable employment. By the negligent driving of the respondent he was disabled from continuing in that employment. So he received a disablement pension. How arc damages for his financial loss to be assessed? In particular how is the disablement pension to be dealt with? The authorities are not consistent with each other, so I find it necessary to begin by considering general principles." Two questions were raised for the adjudication, first what did the appellant lose as a result of the accident? What are the sums which he or his dependents would have received but the the accident but which, by reason of the accident, he or his dependents can no longer get? And second, what are the sums which he or his dependents did in fact receive as a result of the accident but which he or his dependents would not have received if there had been no accident? The Court while dealing with the second point also felt the same difficulty, to which we are in, which is recorded hereunder : "None of the noble and learned Lords who took part gave it more than a passing reference, and I am satisfied that none of them intended to go out of their way to pronounce on it. Before Gourley's case (1955 (3) All.E.R. 796) it was well established that there was no universal rule with regard to sums which came to the plaintiff as a result of the accident but which would not have come to him but for the accident. In two large classes of case such sums were disregarded - the proceeds of insurance and sums coming to him by reason of benevolence. In Gourley's case (i.e. The Fatal Accidents Act, 1846) had any bearing on this matter it must have impinged on these classes. But no one suggests that it had any effect as regards sums coming to the plaintiff by reason of benevolence, and

I see no reason why it should have made any difference as regards insurance." It further records: "The common law has treated this matter as one depending on justice, reasonableness and public policy. xxx xxx xxx As regards moneys coming to the plaintiff under a contract of insurance, I think that the real and substantial reason for disregarding them is that the plaintiff has bought them and that it would be unjust and unreasonable to hold that the money which he prudently spent on premiums and the benefit from it should enure to the benefit of the tortfeasor. Here again I think that the explanation that this is too remote is artificial and unreal. Why should the plaintiff be left worse off than if he had never insured? In that case he would have got the benefit of the premium money; if he had not spent it he would have had it in his possession at the time of the accident grossed up at compound interest" It is true that the aforesaid two English decisions were cases of injuries, but the principle as spelt out is equally applicable in cases of death. The English Court held that any money coming under the contract of insurance, it would be unjust and unreasonable to hold that the money which he prudently spent: on premiums, the benefit from it should enure to the benefit of the tortfeasor. To this, we fully endorse. Under the life insurance, in case one lives upto the time of maturity, after paying full premium he receives the assured money back, based on the terms of the contract. In fact, he receives less than the total premium paid. It is for this gain to the insurer it is obliged to pay to the extent the sum assured; to the claimant in case of injury or death under the contract. In other words, payable only on the contingency as referred, if the contingency of injury or death does not happen, the insurer is the gainer as it receives more under premium than to pay on maturity of the policy, and in case contingency occurs the claimant, the gainer as he receives the amount even before paying the full premiums and the gain is to the proportion of the balance unpaid premium, whether it is injury or death. A Large number of persons, under the policy may live upto the maturity of policy by paying full premium and the contingency of injury or death may not happen. On each of such. matured policies. Life Insurance Corporation has their gain in mind enters into its business, to offer to the policy holders in term, in case of happening of the said contingency to pay the full amount assured, if it takes place earlier, without paying the full premium. It is this game of gain or loss the Life Insurance Corporation enters into the contract. This fact is revealed by the Preamble of the Life Insurance Corporation Act, 1956 {Act No. 31 of 1956), quoted hereunder: "An Act to provide for the Nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation, and control of the business of the Corporation and for matters connected therewith or incidental thereto." Many invest through this policy for variety of reasons, maybe, to secure the sum for himself as forced saving, maybe, as in India, for deduction towards his income-tax liability, to secure loan by himself in case needed on a meagre interest for building his residence or to secure sum in case of happening of the said contingencies etc.. He enters into this contract with an open eye, as an act of wisdom, of course, not towards the gain to the tortfeasor. The English Court expressing concern on this aspect in

the aforesaid decision recorded; "why should the plaintiff be left worse off than if he had never insured". Thus, the interpretation of deduction of life insurance would result" into the gain to the wrong doer in proportion to the higher scale of premium paid by the insured for no contribution of bus and loss to the claimant in proportion to the higher scale of premium paid, as he would have received the compensation amount without payment of any premium. Before we proceed to decide the question raised, it is necessary to refer to the decision of this Court in Gobald Motor case (supra) which is the foundation of the decision in Jaikumar (supra). The passage relied upon is quoted hereunder:- "Only by balancing on the one hand the loss to the claimants of the further 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. . . " This was a case under the Fatal Accidents Act, 1855 as it stood before its amendment by the Act (3 of 1951). This Court, in this case, was not called upon to consider regarding any deduction out of the compensation payable as assessed, either under the aforesaid Act or under the Motor Vehicles Act. The question of life insurance deduction, which is in issue here or the deduction of pension, gratuity or any other pecuniary advantage received by the claimant was neither raised, considered or adjudicated. The passage quoted above only referred to the general principle under the common law with reference to tile decisions of the English Courts made under the Fatal Accidents Act of 1846. In that case the Gobald Motor Service Ltd. (Company) was engaged in the business of transporting passengers by bus, when one of its bus met with an accident causing death to some of the passengers in which one Rajaratnam died. The Claimants, the heirs of Rajaratnam, filed a suit against this company, claiming compensation under Section I of the Fatal Accidents Act, 1855 for the loss of pecuniary benefit sustained by them personally and under Section 2 for the loss sustained by the estate on account of the death of Rajaratnam. 'the Court awarded damages to the claimants. On appeal to the High Court, it confirmed the compensation awarded with some modification in the quantum of compensation. In this background, this Court was called upon to decide the limited question raised by the counsel for the appellant, which is evident from the following: "Learned counsel for the appellants raised before us the following points: (I) The finding of the High Court that the bus was driven at an excessive speed at the place where the accident occurred, based on probabilities, was erroneous. (2) The concurrent finding of the two courts' that respondents 2 to 7 would be entitled to damages in a sum of Rs.25,200/- for the loss of pecuniary advantage to them was not based upon any acceptable evidence but only on surmises. (3) The High Court went wrong in awarding damages separately for loss of expectation of life under S.2 of the Act as damages under that head had already been taken into consideration in giving compensation to respondents 2 to 7 for the pecuniary loss sustained by them by the death of Rajaratnam." These questions, raised itself, reveal that the Court was adjudicating limited issue raised. It is true, in adjudicating the said questions that the Court did scrutinise two English decisions based on its Section 9 under the Fatal Accidents Act, 1846 as that Act was similar to Section I of our

Fatal Accidents Act, 1855. The relevant paragraph quoted in Jaikumar (supra) was in fact the quotations out of the two English decisions where the general rule under the common law was enunciated, viz.., loss and gain theory. The Court referred two cases, one of them was the case of Davies Vs. Powell Duffryn Associated Collieries Ltd.. 1942 AC 601. "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 dependent 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 dependent being considered separately". Lord Write elaborated the theme further thus at p. 611: "The damages arc 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 diminution 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". The second decision was of the Viscount Simon in Nance V. British Columbia Electric Railway Co. Ltd., 1951 AC 601. Here the Lords were considering the analogous provisions of the British Columbia legislation. Viscount Simon Said down the mode of estimate of the damages. This authority spelt out the method of calculating damages and thus held: "...It would be seen from the said mode of estimation that many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the respondents may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. 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 futile 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 dependent by the death must be ascertained." This Court in Gobald Motor Service (supra) considering the quantum of damages under Sections I and 2 of the Fatal Accidents Act, 1855, referred to the said principle as enunciated in the English decisions, since our provisions under the Act in consideration, was similar to Section 9 of the English Fetal Accidents Act 1846. This Court was neither called upon to consider computing damages under the Motor Vehicles Act nor to consider any form of deductions, whether justified under the Motor Vehicles Act. We have already referred to above the Section (1A) of the Fatal Accidents Act, 1855 and Section 110-B of the Motor Vehicles Act, 1939 under which compensation is payable to the claimant. Section I of 1855 Act was renumbered as Section I A through the amending Act No. 3 of 1951. We find that the language of Section 110-B of the 1939 Enactment is different than what is under Section IA of the 1855 Act. Section IA of 1855 Act provides that whenever death, occurs on account of wrongful act or neglect entitles the party injured to maintain a suit to recover damages from the party, who caused the injury or the death. This entitles the party to recover damages, whenever death is occasioned by the wrongful act,

negligence or default, which would have entitled the party injured (if death had not resulted) to maintain an action to recover damages in respect thereof. This provision was interpreted within the limitation of the words used therein and in the absence of any guiding words therein. The Courts rightly drew the general principle of common law of loss and gain. But Section 110-B of 1939 Act empowers the Tribunal to determine the compensation which appears to it to be just. The words used in Section 110-B are: "which appears to it to be just". Use of these words, widen the scope of determination of compensation which is neither under the Indian Fatal Accidents Act, 1855 nor under the English Fatal Accidents Act, 1846., So far, as observed above, apart from the conflictingly decisions of the Indian High Courts' no decision has been placed before us of this Court, determining any principle of deductibility of any amount, like, life insurance, gratuity, pension etc., from the amount payable under the Motor Vehicles Act. In M/s Sheikhupura Transport Company Ltd. Vs. Northern India Transporters Insurance Co. Ltd. (AIR 1971 SC 1624) this Court did consider the case of compensation under Section 110-B of the Motor Vehicles Act, 1939 and did refer to the decision in Gobald Motor Service (supra), in case the compensation is to be computed under 1855 Act. This inference was drawn by assuming if 1855 Act is applicable, however, it further holds that language used in the 1939 Act, is wider. This apart, again in this case neither any question was raised for fact were pleaded and adjudicated regarding the deduction of life insurance, gratuity, pension etc.. The relevant portion is quoted herein-under. "Under Section 110-B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation which appears to it to be just. The power given to the tribunal in the mater of fixing compensation under that provision is wide. Even if we assurane (we do not propose to decide that question in this case) that compensation under that provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1855 (Act 13 of 1855), the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture. 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 sources come to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained - See Gobald Motor Service Ltd. v. R.M.K.Veluswami, (1962) I SCR 929=(AIR 1962 SC 1)." This Court , in this case did observe, though did not decide, to which we refer that the use of the words, "which appears to it to be just" under Section 110-B gives wider power to the Tribunal in the matter of determination of compensation under 1939 Act. There is another case of this Court in which there is passing reference to the deduction out of the compensation payable under the Motor Vehicles Act. In N.Sivammal & Ors. Vs. Managing Director, Pandian Roadways Corporation & Anr., 1985 (1) SCC 18, this Court held that Rs. .10,000/receivable as monetary benefit to the widow of the pension amount, the deduction of which is not qualified. So, though deduction of widow's pension was not accepted but for this, no principle was discussed therein. However, having given our full consideration,

we find there is deliberate change in the language in the later Act, revealing the intent of the legislature, viz., to confer wider discretion to the Tribunal which is not to be found in the earlier Act. Thus, any decision based on the principle applicable to the earlier Act, would not be applicable while adjudicating the compensation payable to the claimant in the later Act. Fleming, in his classic work; on the Law of Torts, has summed up the law on the subject in these words. This is also referred to in Sushila Devi and Ors. Vs. Ibrahim and Anr., 1974 MP 181: "The pecuniary loss of such dependant can only be ascertained by balancing, on the one hand, the loss to him of future pecuniary' benefit, and, on the other, any pecuniary advantage which, from whatever source, comes him by reason of the death. . . ". ". . . There is a vital distinction between the receipt of moneys under accident insurance and life insurance policies. In the case of accident policies, the full value is deductible on the ground that there was no certainty, or even a reasonable probability, that the insured would ever suffer an accident. But since man. is certain to die, it would not be Justifiable to set off the whole proceeds from a life insurance policy, since it is legitimate to assume that the widow would have received some benefit, if her husband had pre-deceased her during the currency of the policy or if the policy had matured during their joint lives. The exact extent of permissible reduction, however, is still a matter of uncertainty..,." Fleming has also expressed that the deduction, or set off of the life insurance could not be justifiable. When he uses the words "not be justifiable" he refers to one's conscience, fairness and contrary to what is just. In this context, the use of the word 'just', which was neither in the English 1846 Act nor in the Indian 1855 Act now brought in under 1939 Act, gains importance. This shows that the word "just' was deliberately brought in 110-B of the 1939 Act to enlarge the consideration in computing the compensation which, of course, would include the question of deductibility, if any. This leads us to an irresistible conclusion that principle of computation of the compensation both under the English Fatal Accidents Act, 1846 and under the Indian Fatal Accidents Act, 1855 by the earlier decision, were restrictive in nature In the absence of any guiding words therein, hence the courts applied the general principle at the common law of loss and gain but that would not apply to the considerations under Section 110-B of 1939 Act which enlarges the discretion to deliver better justice to the claimant, in computing the compensation, to see what is just. Thus, we find that all the decisions of the High Courts, which based its interpretation on the principles of these two Acts, viz., English 1846 Act and Indian 1855 Act to hold deductions, were valid cannot be upheld. As we have observed above, the decisions even with reference to the decision of this Court in Gobald Motor Service (supra), where the question was neither raised nor adjudicated and that case also. bang under the 1855 Act, cannot be pressed into service. Thus, these Courts by giving restrictive interpretation in computation of compensation based on the limitation of the language of the Fatal Accidents Act, fell into an error, as it did not take into account the change of language in the 1939 Act and did not consider the widening of the discretion of the Tribunal under Section 110-B. The word 'just", as its nomenclature, denotes equitability, fairness and reasonableness having large peripheral field. The

largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having force of law. In Law Lexicon, 5th Edn., by T.P.Mukherjee"Just" is described: "The term"just" is derived from the Latin word Justus. It has various meanings and its meaning is often governed by the context. 'Just" may apply in nearly all of its senses, either to ethics or law, denoting something which is morally right and fair and sometimes that which is right and fair according to positive law. If connotes reasonableness and something conforming to rectitude and justice something equitable, fair (vide page 1100 of of volume 50, Corpus Juris Secundum). At page 438 of Words and Phrases, edited by West publishing Co., vol.23 the true meaning of the word "just" is in these terms : "The word"Just" is derived from the Latin justus, which is from the Latin jus, which means a right and more technically a legal right-a-law. 'Thus JUS dicere' was to pronounce the judgment; to give he legal decision. The word ''Just' is denned by the Century standard Dictionary as right in law or ethics and in Standard Dictionary as conforming to the requirements of right or of positive law, in Anderson's Law Dictionary as probable, reasonable, Kinney's Law Dictionary defines 'Just" as fair, adequate, reasonable, probable; and justa cause as a just cause, a lawful ground. Vide Bregman v. Kress, 81 N.Y.S.1072, 1073, 83 App.Div. I." Thus; we have no hesitation concluding that the Tribunal, which computing the compensation under Section 110-B of the 1939 Act, has a wider discretion, than what it had under the 1855 Act. Various provisions of this Act indicate legislature's intend conferring visible benefit to the claimant by securing compensation through casting obligation in the tort-feasor and the insurer. Section 94 makes it obligatory to insure a vehicle against third party risk before putting on the road. Statutory obligatory and the limit of the insurer is provided under Section 95. Under Section 95-AA in addition to the deposits under See. 7 of the Insurance Act, 1938. the insurer has to deposit with the Reserve Bank of India or State Bank of India a security of thirty thousand for discharging any liability covered by the insurance policy. Then, Section 96 casts obligation on the insurers to satisfy judgements in respect of third party risks. No settlement between insurer and insured in respect of any claim to which the third party is entitled, is valid unless third party is a party to such settlement under Section 97. All these and such other provisions are clearly beneficial legislation, hence should be interpreted which confers benefit and not which usurp its benefit. This being so, we finally revert to the question, which is in issue for consideration, whether the compensation computed under 1939 Act, the life insurance amount received by the claimants occasioned by the death of the deceased, is deductible from it or not? Submission by the learned counsel for the appellants is, the insurance money is by virtue of a contractual relationship between the deceased and the Insurance Company and is payable to the legal heirs of the deceased in terms of the contract. Such money cannot be aid to have been received by the heirs only on account of the death of the deceased, but truly it is a fruit of the premium paid by the deceased during his

hie time. The deceased bought this insurance policy as an act of his prudence, to confer benefit either to himself or to his heirs in case of death. This amount is receivable by the claimant irrespective of the accidental death, even if he would have died the natural death. He further submits that the interpretation given by the High Court confers benefit to the tortfeasor for his negligence and wrong leading to the untimely death without any contribution by him. It permits him to escape from the liability cast by the statute. Thus, his submission is, any amount payable under any contract of social assurance or any insurance, ought not to be deducted as the same Is payable to the heirs because of the contract and not on account of the death of the insured person. Referring on the dictionary' meaning of the word 'compensation he submits it would mean anything given to make things equal in value. He submits that in this case the death of the deceased-husband of the claimant was due to the negligence of the respondents has to be offset by a. just equivalent, where claimants are put back in position where they would have been but for such death. On this, he draws the conclusion, the benefits of insurance policy cannot be deducted while awarding the compensation. On the other hand, learned counsel for the respondents restricted the argument as was advanced before the High Court and submitted, the High Court, after considering all aspects including English decisions and the decisions of this Court, rightly concluded to deduct the life insurance money out of the compensation payable to the claimant. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the 'pecuniary advantage which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, co-relating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident., through train, air flight not involving motor vehicle. would not be covered under the Motor Vehicles Act. Thus. the application of general principle under the common law of loss and gain for the computation of compensation under this Act must co-relate to this type of injury or deaths, viz, accidental. If the words "pecuniary advantage' from whatever source are to be interpreted to mean any form of death under this Act it would dilute all possible benefits conferred on the claimant and would be contrary of the spirit of the law. If the 'pecuniary advantage' resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets movable, immovable, shares, bank accounts, case and every amount receivable

under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accident death. Thus, under the present Act whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other form of death. The constitution of the Motor Accidents Claims Tribunal itself under Section 110 is, as the Section states;"....for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, ..." Thus, it would not include that which claimant receives on account other form of deaths, which he would have received even apart from accidental death. Thus, such. pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incidence may be an amount liable for deduction. However, our legislature has taken not of such contingency, through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of, in the course of employment of an employee. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family, which such person knows, under the law, has to go to his heirs after his death either by succession or under a will could be said to be the 'pecuniary gain' only on account of one's accidental death. This, of course, is pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicle Act. There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the

contract to the contrary or any provisions of law. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly., family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter so between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against torfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual. As we have observed the whole scheme of the Act, in relation of the payment of compensation to the claimant, is beneficial legislation, the intention of the legislature is made more clear by the change of language from what was in Fatal Accidents Act, 1855 and what is brought under Section 110-B of 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides where the death or permanent disablement of any person has resulted from an accident spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is addition to any other right to

claim compensation respect whereof under any other provision of this Act or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit to the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have given of this statute, evidenced by two distinct sets of decisions of the various high courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these consideration we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intends of the legislature under various provisions of the Motor Vehicles Act, 1"39. Accordingly, we set aside the impugned judgment dated 9th September, 1985 and restore the judgment of the tribunal dated 29 September, 1980 and hold that the amount received by the claimant on the life insurance of the deceased is not deductible from the compensation computed under the Motor Vehicles Act.. The concerned respondent shall make the payment accordingly, if not already paid in terms thereof. Accordingly, the appeal is allowed. Cost on parties.