

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24th May, 2012

Pronounced on: 2nd July, 2012

+ **MAC APP. 346/2010**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr.S.L. Gupta with Mr. Ram
Ashray, Advocates
versus

R.K. JAIN & ORS. Respondents
Through: Mr. Sanjiv Sharma, Advocate
for Respondent No.1

WITH

+ **MAC APP. 279/2011**

R.K. JAIN & ORS. Appellants
Through: Mr. Sanjiv Sharma, Advocate
versus

NATIONAL INSURANCE CO. LTD. Respondents
Through: Mr.S.L. Gupta with Mr. Ram
Ashray, Advocates

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These two Appeals (MAC APP. No.346/2010 and MAC APP. No.279/2011) arise out of a judgment dated 22.03.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹3,03,883/- along with interest @

8% per annum was awarded in favour of R.K. Jain who suffered injuries in a motor accident which occurred on 21.07.1999.

2. For the sake of convenience, the Appellant National Insurance Co. Ltd. (Appellant in MAC APP. No.346/2010) shall be referred to as the Insurance Company, whereas the Cross-Objector (MAC APP. No.279/2011) shall be referred to as the Claimant.
3. On 21.07.1999, the Claimant was driving down his car No.DL-3CG-4426 from Bharatpur to Delhi. A truck No.RJ-25G-0104 while being driven in a rash and negligent manner by the Second Respondent hit the Claimant's car from behind; as a result of the forceful impact windscreen of the Claimant's car broke into pieces. Some of the screen pellets pierced on to the face and other parts of the Claimant's body. After getting first aid in Bharatpur, the Claimant was shifted to Apollo Hospital, New Delhi. He remained admitted there from 22.07.1999 to 26.07.1999 and an outdoor patient till 29.08.1999. The Claimant also remained under treatment of Dr. Atul Singh, an Ophthalmologist and one Dr. S. Chauhan.
4. On appreciation of the evidence, the Claims Tribunal opined that the accident was caused because of rash and negligent driving of the truck by the Respondent No.2. The Claims Tribunal awarded a compensation of ₹3,03,883/-, which is tabulated hereunder:

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Pain and Suffering	₹20,000/-
2.	Medical Expenses	₹ 1,24,025/-
3.	Disfigurement	₹ 50,000/-
4.	Special Diet and Conveyance	₹ 10,000/-
5.	Loss of Salary	₹ 99,858/-
	TOTAL	₹ 3,03,883/-

5. Following contentions are raised on behalf of the Appellant Insurance Company:

- (i) A sum of ₹1,24,025/- was paid by the United India Insurance Co. Ltd. (UIIC) against the mediclaim and personal accident policies taken by the Claimant. This sum was required to be deducted while awarding the compensation, otherwise this would amount to double payment to the Claimant;
- (ii) No deduction towards Income Tax was made in the sum of ₹99,858/- which was awarded towards loss of leave for seventeen days.

6. On the other hand the grounds set up by the Claimant are that he had suffered permanent disability in his left eye on account of

the injuries suffered in the accident. The Claimant was, therefore, entitled to a sum of ₹32,77,800/- on account of loss of his future earning capacity. It is contended that a sum of ₹1,24,025/- was paid on account of contract of insurance with UIIC in pursuance of two separate contracts of insurance (mediclaim policy and a personal accident policy). The Appellant Insurance Company was not entitled to gain any benefit because of the contract of insurance between the Claimant and the UIIC. The amount of ₹1,24,025/- was, therefore, not liable to be deducted from the compensation awarded.

7. I shall be dealing with the submissions one by one.

WHETHER AMOUNT REIMBURSED BY UIIC IS LIABLE TO BE DEDUCTED FROM THE COMPENSATION AWARDED:

8. A learned Single Judge of this Court in *Jaswant Kaur Sethi v. Tamal Das & Ors.*, MAC. APP. No. 352/2006 decided on 26.10.2009, *Udam Singh Sethi v. Tamal Das and Bajaj Allianz General Insurance Co. Ltd. v. Ganapat Rai Sehgal*, MAC APP. No.191/2000 decided on 03.01.2012 following the Supreme Court judgment in *United India Insurance Co. Ltd. & Ors. v. Patricia Jean Mahajan & Ors.*, (2002) 6 SCC 281 held that the Claimant is not entitled to be paid medical expenditure reimbursed under the mediclaim policy as this would amount to double payment to the Claimant/victim.

9. The learned counsel for the Claimant argues that the judgment of this Court in *Jaswant Kaur Sethi (supra)* and other decisions referred to earlier require reconsideration as the judgment in *Helen C. Rebello (Mrs.) & Ors. v. Maharashtra State Road Transport Corporation and Anr., (1999)1 SCC 90* and *Patricia Jean Mahajan(supra)* were not rightly construed. It is urged that in *Helen C. Rebello(supra)* and *Patricia Jean Mahajan(supra)*, the Supreme Court held that if any money comes to the victim under a contract of insurance, it would be unjust and unreasonable to withhold that money. It was observed that the benefit of the payment of premium could not enure for the benefit of the tortfeasor.
10. It is argued that in case of injury in an accident, a Claimant has options to file an Application under Section 163-A (where he need not prove negligence) or under Section 166 of the Motor Vehicles, 1988 (the Act). Under Section 163-A of the Act, the compensation is to be paid as per the structured formula. If an amount payable under Section 163-A is not deductible, then it would be unreasonable to hold that the same would be deductible in a compensation awarded in a Petition under Section 166 of the Act.
11. The learned counsel for the Appellant Insurance Company refers to the report of the Supreme Court in *Uttaranchal Road Transport Corpn. & Ors v. Mansaram Nainwal, AIR 2006 SC 2840* in support of his contention that reliance on a decision

without looking into the factual background of the case before it is impermissible. A decision is precedent on its own fact. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. It is contended that the Supreme Court in *Helen C. Rebello*(*supra*) and *Patricia Jean Mahajan* (*supra*) made a general reference about balancing on the one hand the loss to the Claimants of the future pecuniary benefits and on the other with pecuniary advantages from whatever source come to them by reason of death is not the ratio as the Court was concerned with the payment received from the Life Insurance Corporation (in *Helen C. Rebello* (*supra*) and payments under the social security scheme in *Patricia Jean Mahajan*(*supra*) which were held to be not deductible. The learned counsel for the Claimant places reliance on paras 18, 19 and 20 of the report in *Helen C. Rebello* (*supra*), which are extracted hereunder:

“18. The Court while dealing with the second point also felt the same difficulty, 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 case 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. If

Gourley 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.

** * **

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.”

19. 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 for 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. This, we fully endorse. Under life insurance, in case one lives up to 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 a contingency occurs the claimant is the gainer as he receives the amount even before paying the full premium 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 up to the maturity of policy by paying full premium and the contingency of injury or death may not happen. On each of such matured policies, the Life Insurance Corporation having its gain in mind enters into its business, to offer to the policy-holders in terms, 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 31 of 1956), quoted hereunder:

“An Act to provide for the nationalization 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.”

20. Many invest through this policy for a 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 a 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 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 gain to the wrongdoer in proportion to the higher scale of premium paid by the insured for no contribution of his 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—which is the foundation of the decision in Jaikumar. The passage relied upon is quoted hereunder:

"... 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."

12. The learned counsel relies on a judgment of this Court in *Dr. A.C. Mehra v. Behari Lal & Anr*, 1998 ACJ 379 wherein in a case relating to the damages to the Appellant's motor car, it was held that the payment received by the Appellant under the contract of insurance with his own Insurance Company was not deductible from the damages payable under the Motor Vehicles Act as the amount was paid by the Appellant's insurer under a separate contract between the owner and the insurer of the car.

It was held that the tortfeasor could not take advantage of the owner's contract with a third party.

13. Section 168 of the Act enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should be a pittance. In *State of Haryana v. Jasbir Kaur*, (2003) 7 SCC 484, the Supreme Court held as under:

“7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense ‘damages’ which in turn appears to it to be ‘just and reasonable’. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be ‘just and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be ‘just’ compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of ‘just’ compensation which is the pivotal consideration. Though by use of the expression ‘which appears to it to be just’ a wide

discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

14. In *Helen C. Rebello (supra)*, the question before the Supreme Court was whether the amount received under Life Insurance Policy was liable to be deducted on the principle of balancing the loss and gain. The Supreme Court referred to the Law of Torts by Fleming and differentiated between the amount received under the Life Insurance Policy and an accident insurance policy. Amount received under Life Insurance Policy is payable to legal representatives or to the policy holder if he survives the term of the policy irrespective of the death or even because of death. It was, thus held that the payment received under the Life Insurance Policy was not deductible whereas the payment received under the personal accident insurance was deductible. The reason was that in case of payment received under the accident insurance policy, the amount was receivable only on account of death in an accident and not otherwise, whereas in case of Life Insurance Policy, the amount was receivable irrespective of the death. Thus, the fact that the payment was made under independent contract of insurance was not of much import. Moreover, the use of the word "just" in Section 168 of the Act, confers wider discretion to the Claims Tribunal. The Claims Tribunal, therefore, has to see that the

compensation awarded is neither niggardly nor a source of profit. Paras 26, 27 and 28 of the report in *Helen C. Rebello (Mrs.) & Ors. v. Maharashtra State Road Transport Corporation and Anr.*, (1999)1 SCC 90 is extracted hereunder:

“26. 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 the 1939 Act. There is another case of this Court in which there is a passing reference to the deduction out of the compensation payable under the Motor Vehicles Act. In N. Sivammal v. Managing Director, Pandian Roadways Corpn. this Court held that the deduction of Rs 10,000 receivable as monetary benefit to the widow of the pension amount, was not justified. So, though deduction of the widow's pension was not accepted but for this, no principle was discussed therein. However, having given our full consideration, we find there is a deliberate change in the language in the later Act, revealing the intent of the legislature, viz., to confer wider discretion on 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.

27. 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 v. Ibrahim:

“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 to him by reason of the death. ... There is a vital distinction between the receipt of moneys under accident insurance and life assurance 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 assurance 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....” (emphasis supplied)

28. 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 the 1939 Act, gains importance. This shows that the word “just” was deliberately brought in Section 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 the 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 decisions, 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 the 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 their interpretation on the principles of these two Acts, viz., the English 1846 Act and the Indian 1855 Act to hold that 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 where the question was neither raised nor adjudicated and that case also, being under the 1855 Act, cannot be pressed into service. Thus, these courts by giving a 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 a 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 the force of law.....”

15. Similarly, in *Patricia Jean Mahajan(supra)*, the Supreme Court while not deducting the sum received on account of family pension and social security had in its mind that these payments had no co-relation between the compensation payable on account of accidental death and the amount received on account family pension and social security scheme. The Supreme Court

emphasized that principle of balancing between losses and gains must have some co-relation with the accidental death by reason of which alone the Claimant had received the amounts. Paras 34 to 36 of the report are extracted hereunder:

“34. Shri P.P. Rao, learned counsel appearing for the claimants submitted that the scope of the provisions relating to award of compensation under the Motor Vehicles Act is wider as compared to the provisions of the Fatal Accidents Acts. It is further indicated that Gobald case is a case under the Fatal Accidents Acts. For the above contention he has relied upon the observation made in Rebello case. It has also been submitted that only such benefits, which accrued to the claimants by reason of death, occurred due to an accident and not otherwise, can be deducted. Apart from drawing a distinction between the scope of provisions of the two Acts, namely, the Motor Vehicles Act and the Fatal Accidents Act, this Court in Helen Rebello case accepted the argument that the amount of insurance policies would be payable to the insured, the death may be accidental or otherwise, and even where the death may not occur the amount will be payable on its maturity. The insured chooses to have insurance policy and he keeps on paying the premium for the same, during all the time till maturity or his death. It has been held that such a pecuniary benefit by reason of death would not be such as may be deductible from the amount of compensation.

35. It may be useful to quote para 33 of the decision which reads as under:

“33. Thus, it would not include that which the claimant receives on account of other forms 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 which 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 incident may be an amount liable for deduction. However, our legislature has taken note 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 and in the course of employment of an employee."

The Court has observed in the last part of para 34:

"How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract."

Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual. Principle of loss and gain has to be on the same line within the same sphere, of course, subject to the contract to the contrary or any provisions of law. The Court has further referred to receipts of provident fund which is a deferred payment out of contribution made by an employee during the tenure of his service. Such an amount is payable irrespective of accidental death of the employee. The same is the position relating to family pension. There is no correlation between the compensation payable on account of accidental death and the amounts receivable irrespective of such accidental death, which otherwise in the normal course one would be entitled to receive. This Court for taking the above view has also referred to certain English decisions as discussed in para 18 of the judgment.

36. We are in full agreement with the observations made in the case of Helen Rebello that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. (emphasis supplied). According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of

receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition “receipts from whatever source” is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.”

16. Thus, on the basis of the ratio in *Helen C. Rebello (supra)* and *Patricia Jean Mahajan (supra)*, it can be safely concluded that only those amounts which are payable to the Claimant/Claimants by reason of death or injury in an accident are only liable to be deducted.
17. A Division Bench of Madhya Pradesh High Court in *Jitendra v. Rahul*, 2008(5) MPHT 336 following *Patricia Jean Mahajan(supra)* held that the Claimant was not entitled to the amount received by him under the mediclaim policy although he may be entitled to the amount of premium paid for the mediclaim policy.

18. The learned counsel for the Claimant places reliance on *Mansaram Nainwal*(*supra*). Para 13 of the report is extracted hereunder:

*“13. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that reinstatement was mandated. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *State of Orissa v. Sudhansu Sekhar Misra* and *Union of India v. Dhanwanti Devi*) A case is a precedent and binding for what it explicitly decides and no more. The words used by judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leatham*, *Earl of**

Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. ”

19. The judgment cited does not help the Claimant. Rather the same supports the Appellant Insurance Company. I have already discussed hereinabove the ratio of the decision in *Helen C. Rebello (supra)* and *Patricia Jean Mahajan(supra)*. Admittedly, it is not every observation but the *ratio decidendi* of a case which is binding. In the instant case as held earlier, the binding ratio is that any amount received by the Claimant/Claimants on account of accidental death or injury is liable to be deducted from the compensation payable under Section 166 of the Act.
20. Admittedly, a sum of ₹1,24,025/- was received by the Claimant on account of the mediclaim and personal accident insurance policy. The same is liable to be deducted from the amount of compensation payable to the Claimant.
21. Turning to the contention raised on behalf of the Appellant Insurance Company that deduction of tax from an amount of ₹99,858/- awarded towards loss of leave, I may say that the amount of tax payable was liable to be deducted. In *Jitendra v. Rahul (supra)*, a Division Bench of the Madhya Pradesh High

Court, it was held that the amount of premium payable by the Claimant would be liable to be reimbursed to him. In this case, no evidence has come as to what was the amount of premium paid by the Claimant. Since the Claimant had a salary of about ₹20,00,000/- per annum, he was in the highest Income Tax bracket. The liability of Income Tax on the amount of ₹99,858/- was about 30%. I would, however, not make any deduction on that count and treat the said sum towards the insurance premium paid towards the mediclaim and personal accident policies.

22. Now is the time to turn to the Claimant's contention that he should have been adequately compensated towards partial loss of vision in his left eye. While dealing with the injury, the Claims Tribunal held as under:

“Ld. Counsel for petitioner has argued that petitioner has suffered 10# permanent damage to his eye. It is seen from the record that when he was first time examined in Apollo Hospital where he had no complaint of any eye injury or loss of vision and there is no mention of any difficulty with the eye in hospital record, where first examined. PW2 Dr. Atul Singh, Eye Specialist deposed that he examined petitioner 09.08.99 and he had found his vision 6/6 in right eye without corrected glass and 6/6 in left eye after use of glass. He deposed that he could not say whether the petitioner was earlier having loss of vision or not. Though, according to him there was injury in cornea. In my considered view, the petitioner has corrected vision with glasses. It cannot be said to be case of permanent eye sight

loss and compensation claimed on the basis of permanent disability of eye is not well founded. It is also doubtful whether this vision loss was due to accident or it was continuing before the accident.”

23. Admittedly, the accident occurred on 21.07.1999. The Claimant received first aid in Bharatpur and was shifted to Apollo Hospital on 22.07.1999. He was discharged from Apollo Hospital on 26.07.1999. The Claimant has not produced any evidence, documentary or otherwise, to show that he was treated for the injury to his left eye (cornea) in Apollo Hospital. There is no gainsaying that this Hospital is a multi-specialty renowned Hospital in the NCT of Delhi. It is not the Claimant's case that the injury to his left eye escaped attention of Apollo Hospital's doctors. The Claimant contacted Dr. Atul Singh, an eye specialist in Singh Eye Centre, Noida only on 09.08.1999. Dr. Atul Singh was not able to tell whether the Claimant was using corrective glasses prior to the accident or after the accident. Of course, PW2 stated that the cornea injury had healed recently, this was, however, not established that the injury to the left cornea was received in the motor accident on 21.07.1999. In this view of the matter, the Claimant is not entitled to any compensation for alleged partial loss of vision in the left eye.
24. Otherwise also, no evidence has been brought by the Claimant to show that his earning capacity was affected on account of the injury to his left eye. The Claimant was working as Vice

President with Flex Industries and getting a salary of ₹1,82,100/- per month. It is not the Claimant's case that either his salary or earning capacity was affected on account of the injury.

25. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the difference between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. Paras 11 and 14 of the report are extracted hereunder:

“11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. 2010 (10) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

x x x x x x x

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

26. The compensation of ₹3,03,883/- awarded is just and reasonable, a sum of ₹1,24,025/- reimbursed to the Appellant is liable to be deducted from the sum awarded as stated earlier.
27. Thus the overall compensation is reduced from ₹3,03,883/- to ₹1,79,858/- on which the Claimant shall be entitled to interest

@ 8% per annum from the date of filing of the Petition as awarded by the Claims Tribunal.

28. By an order dated 26.05.2010, this Court had directed stay of the execution of the proceedings subject to deposit of ₹1,75,000/- with the Claims Tribunal. This amount shall be released to the Claimant forthwith, if not already released. The balance amount along with proportionate interest shall be deposited within six weeks in the name of the Claimant with the Claims Tribunal. On deposit, the entire amount shall be released to the Claimant.
29. Both the Appeals are disposed of in above terms.
30. The statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company on filing of the proof of deposit of the entire amount in terms of the orders passed by this Court.
31. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 02, 2012
pst