

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.26/2020

STATE OF GOA, through Goa
Police Dept., Panaji Head
Quarters, Panaji-Goa 403001.

... APPELLANT

Versus

1) MR. MICHAEL JOAQUIM F.
D. SOUZA (Deceased) through
his Legal Heirs:

1(a) Ana Leopoldina Marta
Menezes (Widow)

1(b) Mathew Stephen D'Souza
(Son)

1(c) Nicolas Andrew D'Souza
(Son)

2) SHRI RAGHOBHA KRISHNA
NAIK, resident of Vasco Police
Station Barrack, Vasco da Gama,
Goa 400 802.

3) NATIONAL INSURANCE
COMPANY, 1st Floor, Subay
Chambers, Francis Luis Gomes
Road, Vasco – (Deleted as per
Order dtd. 30.03.2021)

... RESPONDENTS

Ms. Susan Linhares, Additional Government Advocate *for the
Appellant-State.*

Mr. Byron Rodrigues, Advocate *for the Respondents No.1.1, 1.2 and
1.3.*

Mr. James Lopes, Amicus Curiae.

CORAM: M. S. SONAK, J.

DATED: August 18, 2022

ORAL JUDGMENT:

1. Heard Ms. Susan Linhares, learned Additional Government Advocate for the Appellant-State, and Mr. Byron Rodrigues for the respondents-claimants.

2. At the outset, since an issue arose whether from out of the compensation amount of Rs.2,39,529/-, an amount of Rs.1,96,540/-, which the claimants received under a mediclaim insurance policy, was required to be deducted, this Court requested Mr. James Lopes to assist this Court as an Amicus Curiae. Mr. James Lopes accordingly appeared in this matter and rendered able assistance.

3. The Appellant-State challenges the judgment and award dated 16.02.2018 made by the Motor Accident Claims Tribunal (Tribunal) in Claim Petition No.226/2012/II, awarding the original claimant, Mr. Michael D'Souza compensation of Rs.2,80,000/- along with interest @ 9% p.a. for the injuries sustained by him in a vehicular accident on 13.08.2011.

4. During the pendency of this appeal, Mr. D'Souza expired. Accordingly, his legal representatives, i.e., respondent no.1(a) – widow and respondents no.1(b) and 1(c) - sons, were brought on record. Respondents 1(a), 1(b), and 1(c) are collectively referred to as claimants for the sake of convenience.

5. At the outset, Ms. Linhares, the learned Additional Government Advocate, submitted that there was no credible evidence to sustain the finding of rashness and negligence. Therefore, in the absence of rashness and negligence, the State could not be made to pay any compensation. Secondly, and without prejudice, she submitted that the compensation awarded was not backed by any legal evidence and did not represent just compensation. In particular, she pointed out that there was no evidence to justify the award of Rs.7,000/- towards the attendant charges. Finally, she submitted that even the award of Rs.2,39,529/- towards medical expenses is excessive and not supported by the evidence on record.

6. Ms. Linhares, by referring to paragraph 37 of the impugned award, pointed out that the claimant had already received an amount of Rs.1,96,540/- from the insurance company under a mediclaim policy for medical expenses. She submitted that this amount was required to be deducted from the compensation

amount of Rs.2,39,529/- as excessively determined by the Tribunal. She presented that otherwise, the claimant would get double benefits or a bonanza from out of the same accident. In support of this proposition, Ms. Linhares relied on *United India Insurance Co. Ltd. vs. Patricia Jean Mahajan & Ors. – (2002) 6 SCC 281*, *Cholamandalam MS General Insurance Co. Ltd. vs. A. Saravanan & Anr. - 2012 S.C.C. OnLine Mad 1082* and *The Manager, Tata A.I.G. General Insurance Co. Ltd. vs. Kathamuthu & Anr. - C.M.A. (M.D.) No.729/2017 decided on 13.04.2022.*

7. Mr. Rodrigues, learned counsel for the claimants, defended the impugned award based on the reasoning therein. He submitted that the evidence on record supports the Tribunal's findings. Finally, he proposed that no deductions of the amount received by the claimant under a mediclaim policy could be made given the law in the following decisions:-

(i) *Royal Sundaram Alliance Insurance Co. Ltd., Kolkata vs. Ajit Chandrakant Rakvi & Anr. - 2019 S.C.C. OnLine BOM 496.*

(ii) *Vrajesh Navnitlal Desai vs. Bagyam & Anr. - 2005 SCC OnLine BOM 156.*

(iii) *New India Assurance Company Ltd. vs. Bimal Kumar Shah & Ors. - 2019 ACJ 1532.*

- (iv) *National Insurance Co. Ltd. vs. Sohna Singh & Ors.* - 2019 SCC OnLine CAL 8283.
- (v) *National Insurance Co. Ltd. vs. Sohna Singh & Ors.* - S.L.P. (C) No.005103-005104/2020 decided on March 23, 2022.
- (vi) *Madhya Pradesh State Road Trans. Corpn. & Anr. vs. Priyank* – 1999 S.C.C. OnLine MP 18.
- (vii) *Kashiram Mathur vs. Rajendra Singh* – 1983 ACJ 152 (M.P.).
- (viii) *National Insurance Co. Ltd. vs. Aman Kapur & Ors.* - 2014 ACJ 1342.
- (ix) *Oriental Insurance Co. Ltd. vs. Kokilaben & Ors.* - C.D.J. 2015 GHC 705.
- (x) *Kamlesh Bhalla vs. G. T. Roadways & Ors.* - C.D.J. 2019 PHC 048.
- (xi) *Mrs. Rajeshwari G. Bhuyar & Ors. vs. Sindhu Travels & Anr.* - 2015 S.C.C. OnLine KAR 8622.
- (xii) *Reliance General Insurance Company Limited vs. Shashi Sharma & Ors.* - 2016 S.C.C. OnLine SC 986.

8. Mr. James Lopes learned Amicus Curiae submitted that the amounts received by a claimant under a mediclaim policy for which the claimant had regularly paid his premium could not be deducted from the compensation determined by the Tribunal. He submitted that the decisions of the Bombay High Court in *Ajit Chandrakant Rakvi (supra)* and *Vrajesh Desai (supra)* support

this view. He offered that a detailed discussion in support of this view is found in *Bimal Kumar Shah (supra)* and *Sohna Singh (supra)* – two decisions of the Division Bench of the Calcutta High Court. He submits that in *Bimal Kumar Shah (supra)*, the Division Bench of the Calcutta High Court has analytically discussed and distinguished the decision in *Patricia Jean Mahajan (supra)*. He distinguished the decisions relied upon by Ms. Linhares.

9. Mr. James Lopes submitted that there is a distinction between a contractual benefit and a statutory benefit, which must be borne in mind. He presents that where a claimant or a deceased insures himself by paying a premium, the same's benefit is purely contractual. Therefore, no advantage can be taken of such benefit by a tortfeasor or a joint tortfeasor. He relies on the decision of the Full bench of the Madhya Pradesh High Court in *Kashiram Mathur (supra)*.

10. Mr. Lopes also points out that mediclaim policies are usually annual. He pointed out that where the insurable event occurs during the policy term, this affects the further premium for the subsequent years. He submits that the claimant is invariably required to forego the benefit of the bonus usually extended to such policies. Finally, he presents that considering all

these aspects, there is no warrant to insist upon the deduction of the contractual benefits that a party or his dependents may secure in proceedings instituted to recover statutory benefits.

11. The rival contentions now fall for my determination.

12. Upon considering the rival contentions, the following points arise for determination in this appeal:

a) Whether the finding on rashness and negligence recorded by the Tribunal is supported by evidence on record?

b) Whether the compensation amount of Rs.2,39,529/- determined by the Tribunal represents just compensation based on the evidence on record?

c) Whether the Tribunal was required to deduct an amount of Rs.1,96,540/- from out of the amount of Rs.2,39,529/- awarded by the Tribunal towards medical expenses because there is unimpeachable evidence that the original claimant had already recovered this amount of Rs.1,96,540/- from the insurance company under a mediclaim policy taken out by him?

13. So far as the first point is concerned, there is evidence that the claimant was proceeding from his residence at Dabolim to Vasco on his Activa scooter bearing registration No.GA-08-B-6815. At that time, Raghoba Krishna Naik (original respondent

no.2 in the claim petition) was driving a Police recovery vehicle, without either looking into the rearview mirror or without giving any signal, took a sudden 'U-turn in a rash and negligent manner due to which, the rear wheel cover of the Government vehicle hit the claimant's Activa scooter. As a result, the claimant lost balance and fell along with his son Nicolas who was riding pillion. In addition, the claimant's left foot came under the vehicle's right rear tire, due to which the claimant sustained significant injuries.

14. The claimant examined himself and his son Nicolas D'Souza who was riding pillion along with him. The Tribunal, relying on *Dulcina Fernandes & Ors. vs. Joaquim Xavier Cruz & Anr. - (2013) 10 SCC 646* correctly held that the issue of rashness and negligence has to be decided on the touchstone of preponderance of probabilities.

15. The Tribunal has correctly analyzed evidence of the claimant and his son Nicolas who was riding pillion. Both the witnesses have deposed how they halted at the red signal and, after the signal turned green, were moving slowly. Both the witnesses have deposed to the rashness and negligence of the Government vehicle's driver. They have also deposed about how the driver took a 'U-turn without adequate signaling resulting in the accident.

16. Ms. Linhares, however, focused on the evidence of RW1 - Head Constable Vikram Khanolkar and RW2 - P.S.I. John Fernandes who suggested that the accident occurred due to the fault and rashness of the claimant himself. The Tribunal noted that both these witnesses had deposed that they were at the traffic outpost near the airport at the time of the accident, and it was only after they heard the sound of the accident that they went to see the spot. Based on such testimonies, the Tribunal correctly concluded that both these witnesses had not actually witnessed the accident.

17. The Tribunal has also considered the evidence of Raghoba Krishna Naik (RW3), the driver of the Government vehicle, i.e., the Goa Police Recovery Van. The Tribunal noted that RW3, in his cross-examination, deposed that he had seen in the rear-view mirror for vehicles on his rear side before taking the 'U-turn but that he had not seen the Activa scooter. From this, the Tribunal correctly inferred that the driver's version of the claimant driving the Activa scooter at a fast speed was quite doubtful. The Tribunal also took cognizance of the panchanama and the sketch, including the fact that there was neither any brake mark nor skid mark of the scooter. The Tribunal also took cognizance of Raghoba's changing versions on the issue of skid marks or brake marks.

18. The Tribunal has quite correctly assessed and analyzed the evidence on record, and the finding of rashness and negligence is supported with cogent evidence. Raghoba was admittedly a driver of a police recovery van. RW1 and RW2 are police officials who do not appear to have seen the accident but deposed in favor of their departmental colleagues. The Tribunal, having considered the oral and documentary evidence on record, has correctly answered the issue of rashness and negligence. No case has been made to interfere with this finding.

19. The approach of the Tribunal, in this case, is quite consistent with the law laid down in *Mangala Ram vs. Oriental Insurance Co. Ltd.* - (2018) 5 SCC 656, *Sunita And Others vs. Rajasthan State Road Transport Corporation And Others* – (2020) 13 SCC 486, *Anita Sharma and others v. New India Assurance Company Limited and another* – (2021) 1 SCC 171 and *Vimla Devi & Ors. vs. National Insurance Company Ltd.* - (2019) 2 SCC 186. Accordingly, the Tribunal has quite correctly relied on *Dulcina Fernandes (supra)*.

20. The first point is determined against the appellant for all the above reasons.

21. Regarding the second point, the Tribunal has awarded the sum of Rs.2,39,529/- towards the pecuniary damages, i.e., the expenses relating to the treatment, hospitalization, medicines, etc. In fact, this award is mainly towards the medical costs incurred by the claimant.

22. The Tribunal has also awarded Rs.7,000/- towards the attendant charges by computing these charges at a nominal rate of Rs.200/- per day. Finally, the Tribunal has awarded Rs.10,000/- towards the transportation charges against the claim of Rs.35,000/-.

23. The award is on a relatively conservative basis. There is evidence of the injuries sustained by the claimant and the four operations he had to undergo to treat such injuries. The claim is backed by oral as well as documentary evidence. The award towards attendant charges and transportation is also justified and supported by the reasonability evidence, though some guesswork is inevitable in such matters. The Tribunal has given cogent reasons in support of such determination.

24. Accordingly, even the second point for determination will have to be answered against the appellant.

25. In so far as the third point for determination is concerned, there is evidence that out of the determined amount of Rs.2,39,529/-, the claimant received an amount of Rs.1,96,540/- from the insurance company with whom he had obtained a mediclaim policy. Therefore, the question is whether this amount of Rs.1,96,540/- must be deducted from the compensation amount of Rs.2,39,529/- determined by the Tribunal towards medical expenses.

26. Admittedly, in this case, the Government vehicle was not insured by any insurance company. However, there is also no dispute that the claimant has taken out a mediclaim policy with the National Insurance Company, which was impleaded as respondent no.3 in the claim petition. For this, it is the claimant who had paid the premium. Thus, the mediclaim policy was an independent contract between the claimant and the said insurance company with which the appellant-State had neither any concern nor made any contribution towards the premium. Though Ms. Linhares did not dispute this position, she submitted that the claimant could not get double benefits from the same accident. Therefore, she proposed that the loss, if any, was recouped, and the Tribunal erred in not deducting the amount received by the claimant under the mediclaim policy.

27. Ms. Linhares's contention indeed finds support in *A. Saravanan (supra)* and *Manager, Tata A.I.G. General Insurance Co. Ltd. vs. Kathamuthu (supra)*, both the decisions rendered by learned Single Judges of the Madras High Court. In both these decisions, relying on *Helen Rebello vs. Maharashtra State Road Transport Corporation – 1999 A.C.J. 10* and *Patricia Jean Mahajan (supra)*, it was held that the amounts received under the insurance policy taken out by the claimant are required to be deducted.

28. Ms. Linhares also relied on the observations in paragraphs 24 and 26 of *Patricia Jean Mahajan (supra)* to submit that such observations support the proposition advanced by her.

29. The Division Bench of the Calcutta High Court in *Bimal Kumar Shah (supra)*, in paragraph 10, has explained the import of the decisions in *Helen Rebello (supra)* and *Patricia Jean Mahajan (supra)* in the following terms:

"10. So far as the judgments which Mr. Singh cited in his favour are concerned, pertaining to the judgments rendered by the Hon'ble High Courts which allow such deduction, as briefly referred to in paragraph 7 of this judgment I must point out the following. These cases started and ended on a possible interpretation of the judgment in *Rebello (supra)* as noticed synoptically by Their Lordships in *Patricia Jean Mahajan's case (supra)*. The interpretation depends upon

parts of paragraphs 37 and 36 reported in A.C.J. in the former case. Very briefly, these cases interpret the entire ratio of the judgment in Rebello (supra) without considering paragraph 38 of the report as if the Hon'ble Supreme Court held that only in cases of life insurance would deduction not be permissible. which ignores the rest of the ratio that makes it clear that even in case of accidental injury or death, the same principle applies and as if the test is whether the two sums paid are no for the same occurrence, that is to say, death, since in one case it is paid under a contract of life insurance and in the other case, even by efflux of time without death. The said other judgments have tried, therefore, to construe the said judgment in Rebello (supra) and Patricia Jean Mahajan (supra) as if the ratio is that "when we seek the principle of loss or gain, it has to be on the same plane having nexus inter se between them and not to which, there is no semblance of any correlation." Taken out of context, it is possible that this would be an interpretation which would appeal to any Court of Law. However, in the instant case, I cannot lose sight of the principles which control the entire ratio--first, that the liability of an insurer of the offending vehicle to pay a third party compensation for injury or death caused in an accident by the offending vehicle is statutory whereas the liability to pay a sum to the insured victim for such accidental death or injury, or for any other kind of death, is contractual, and second that the sum paid by the insurer of the victim (rather than the offending vehicle) in both cases is due to the premium paid by the victim from his own earnings. Once these important differences and similarities as I have extracted above are appreciated, it will appear, with the greatest of respect to the learned Coordinate Benches of the other Hon'ble Courts or the learned Single Benches of those Hon'ble Courts, that none of the judgments referred to in

paragraph 7 and sub-paragraphs a, b, c, d, or e, lay down the law, in the teeth of the ratio laid down by the Hon'ble Supreme Court in the case of Rebello (supra) as noticed by me above."

30. In *Bimal Kumar Shah (supra)*, the Division Bench of the Calcutta High Court, upon due consideration of several decisions on the subject, concluded that there is no warrant for deduction of the amounts that a claimant might have received under the contracts of insurance like mediclaim. In the leading judgment by Protik Prakash Banerjee, J., discussion on this issue is to be found in paragraph 14, which reads as follows:

"14. Thus, the seduction which first swayed me off my judicial feet, due to the persuasive skills of Mr. Singh could not survive the cold light of forensic analysis of the judgments he had relied upon and like most infatuations, this too ended. Once the matter is considered, apart from the rhetoric of the argument, it will be found that the analogy depends upon the payment being made as a charity and relates to death of a person. The precedents cited in favour of this position, on the other hand, go against the express ratio of Rebello (supra) interpreted both by the Hon'ble Supreme Court as by me, as above. The case of Shashi Sharma (supra), is on a different point and on different facts and can be distinguished. In none of the precedents of the Hon'ble High Courts relied upon by Mr. Singh, was the question of a contractual right created by payment of premium by the victim for an accident suffered by him against his insurer, as distinguished from a statutory duty imposed on the insurer of an offending vehicle due to

third party risk imposed by statute, and whereunder payment was liable under statute to be made to someone other than with whom it had a contractual relationship, considered. Those cannot, therefore, with the greatest respect, be authorities for deciding the present case. A decision is only an authority for what it decides, and not what can be logically deduced from it, and this is well settled, among others, in the case of Quinn v. Leathern, (1901) AC 495, which has been followed in India in several cases including Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and Others, MANU/SC/1092/2002 : VII (2002) SLT 322 : A.I.R. 2003 S.C. 511 and before that in Mafatlal Industries Ltd. and Others v. Union of India and Others, MANU/SC/1203/1997 : 1996 (S.L.T. Soft) 384 : (1997) 5 S.C.C. 536. Therefore, the arguments advanced do not pertain to a right of getting just compensation, created by a statute, in favour of an innocent by-stander, who has been tragically robbed of the use of his right leg from just above the knee, by amputation, because of the accident, where the fault is squarely of the offending vehicle. That statutory right was created as a liability of the owner of any vehicle, towards a third party since the owner of the offending vehicle chose to ply a vehicle on the public thoroughfare, where his duty to take care towards everyone else on the street is not in question. The duty from which the liability arises under statute, can be shown to have been duly discharged if contributory negligence could have been proved. Then that liability could have been mitigated or rebutted. When it has not been proved, this becomes an absolute statutory liability, whose risk the Insurance Company has assumed and on which it has been imposed, under the Motor Vehicles Act, 1988. It cannot wriggle out of its statutory liability by pleading a contractual benefit which the victim has, under a contract between the victim and its separate insurer, for which benefit it has been

paying a premium. The liability of an insurer providing insurance through Medclaim to the victim for the medical expenses incurred by him for an accident or hospitalization, subject to a limit and based on the premiums paid by the victim by bilateral contract between the victim and his insurer, is distinct, separate and wholly different form, and independent of the liability imposed on the appellant as the insurer of the offending vehicle and its owner from third party risks in case of accident, and is provided for, created and imposed by the Motor Vehicles Act, 1988. It is not contractual as far as the victim, a third party, is concerned."

31. Dipankar Dutta, J. (as His Lordship then was), in his concurring judgment, made the following significant observations in support of the conclusion in paragraph 27, which reads as follows:

"27. The argument of Mr. Singh was that compensation that is determined under Section 168 of the Act of 1988 should not be a bonanza for the victim and care must be exercised to ensure that the victim does not receive 'double benefit'. True it is, the Tribunals/High Courts should guard against determination of just compensation which would amount to a bonanza for an accident victim or his family. But, at the same time, is it not the duty of the Tribunals/High Courts to determine just compensation in a manner that an Insurance Company, which is under a statutory liability to pay, does not escape the rigours of paying compensation and thus evade its obligation under the contract of insurance that exists between it and the owner of the offending vehicle? Should such an Insurance Company despite receiving premiums from the insured to indemnify him be allowed to achieve gains merely because

the victim of the accident has received some money out of faithful discharge of contractual liability by another Insurance Company? The answers to the aforesaid questions cannot be in favour of the Insurance Company which is under a statutory liability to pay. One should not forget that what the victim gets from his Medclaim policy is the return for making payment of premiums. It is the hard earned money that he puts in, in insurance business as premium, that is returned to him upon happening of an accident. The money received, thus, does not come free. In most cases, the accident and its aftermath are not only heart breaking for the victim but may also result in severe physical disability to him. To lead a paralysed life, is sometimes more painful than death itself. Such an accident victim may ask "why me"? The return that he receives from his insurer on the claim arising out of Medclaim policy is consolation money, in the circumstances. To consider such return as a benefit received from other sources while determining compensation, to my mind, would be an approach of a narrow-mind, not intended in the best interests of the victim who might be left high and dry, battling for the rest of his life to survive only on the compensation money. I hold that any money received by an accident victim as return for money invested by him ought not to be comprehended as a benefit received and, therefore, question of the victim in this case being doubly benefited does not and cannot arise."

32. In *Sohna Singh (supra)*, the same Division Bench of the Calcutta High Court reiterated the above position by relying on *Bimal Kumar Shah (supra)*. Accordingly, *special Leave Petition Nos.005103-005104 of 2020* challenging the decision in *Sohna*

Singh (supra) was dismissed by the Hon'ble Supreme Court of India on 23.03.2022.

33. In *Vrajesh Desai (supra)*, the learned Single Judge of our High Court has held that the amount recovered by a claimant under the insurance contract for which he had paid the premium could not be deducted from the compensation payable under the MV Act. For this, the learned Single Judge relied on the judgment of the Madhya Pradesh High Court in *Madhya Pradesh State Road Trans. Corpn. & Anr. vs. Priyank (supra)*.

34. In *Ajit Chandrakant Rakvi (supra)*, another learned Single Judge of our High Court, noted the cleavage of judicial opinion on the point as to whether the amount of reimbursement received under a mediclaim policy should be deducted from the compensation payable under the MV Act, in the judgments of various High Courts. However, after analyzing several such decisions, the learned Single Judge chose to follow the Division Bench of Calcutta High Court in *Bimal Kumar Shah (supra)*.

35. The reasoning of the learned Single Judge, as reflected in paragraphs 28, 29, and 30, commends reproduction:-

"28. In the light of aforesaid enunciation as regards the statutory liability of the insurer, the nature of general

contract of medical insurance needs to be noted. The medical insurance covers a variety of ailments and medical expenses therefor, which are not otherwise specifically excluded. Often there is a upper limit. The duration is also stipulated by the terms of the contract. In this backdrop, the matter can be looked at from another angle. If the claimant exhausts the upper limit or substantial part of the insured amount, for meeting the expenses of treatment, for the injury which is suffered in an accident, the claimant would not be entitled to the benefit of the medical insurance, if the occasion again arises on account of certain other ailments unconnected with the accident. If the policy is in the nature of Family Floater Plan and the limit is exhausted for meeting the expenses in connection with an injury suffered in an accident, by one member, the other members of the family cannot have the benefit of the medical insurance.

29. In the backdrop of these variables, the nature of the proceedings under the Act, becomes significant. A claim petition for compensation in regard to a motor accident filed by the injured before Tribunal constituted under Section 165 of the Act, is neither a suit nor an adversarial lis in the traditional sense. Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. (United India Insurance Co. Ltd. Vs. Shila Datta & Ors. 7). This being the nature of the proceedings before the Tribunal, even in respect of the parties before it, in my view, the benefits emanating from an independent and unconnected contract of insurance cannot be considered by the Tribunal, as it besets with variables rooted in contract.

30. From this stand point, in the context of the distinction between the contractual ability under the contract of insurance (medical) and the statutory liability under the Act, the aforesaid proposition, not to deduct the amount of reimbursement received, under a mediclaim policy, appears to be in consonance with the principle of beneficial interpretation and advances the object of the Act. Hence, I am not persuaded to agree with the submission on behalf of the appellant that the said amount of Rs.1,20,000/- ought to have been deducted."

36. The Full Bench of the Madhya Pradesh High Court, while answering the issue as to whether the amounts received by a claimant or his dependents under a life insurance policy, provident fund, family pension, gratuity, and *ex gratia* payment must be deducted from out of the compensation amount determined by the Tribunal under the MV Act, at paragraph 22 made the following significant observations after referring to Lord Reid's remarks in ***Perry vs. Cleaver – 1969 ACJ 363*** (House of Lords):-

" 22. Damages for personal injuries are payable under the common law of England. Principles evolved under Common Law for personal injury cases so far as they can be applicable to cases of Fatal Accidents Act can provide the necessary guidelines for deciding the question posed before us. The leading case is Perry v. Cleaver decided by the House of Lords. The claimant in the cited case had sustained injuries in a motor accident as a result of which he was discharged from service. He was awarded

disablement pension and the question arose whether the pension received by him should be deducted while assessing the liabilities. For the claimant it was urged that pension, like life insurance was the product of the employee's past services or thrift and it was neither equitable nor just that the tortfeasor should take over the benefit of the same. On behalf of the opposite party the contention was that plaintiff was entitled only to the actual loss suffered by him and the pension received by him should be deducted. The Law Lords discussed the principle in great detail and covered all the English authorities up to date. It will be appropriate to reproduce certain relevant observations of Lord Reid setting out the principles in such cases (at para 7):

"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. I need not quote from the well known case of Bradburn v. Great Western Rly. Co. but I may refer to an old Scottish case, Forgie v. Henderson where the pursuer was assaulted by the defender. During part of his resulting illness he received an allowance from a

friendly society, and Lord Chief Commissioner Adam in charging the jury:

'I do not think you can deduct the allowance from the Society, as that is of the nature of an insurance, and is a return of money paid'."

Though the above case dealt with compensation for personal injury, the principle of compensation has been decided on the touchstone of equity and reasonableness which are the postulates under the Motor Vehicles Act and the Fatal Accidents Act also. Therefore, the principle enunciated in Perry's case can be applied mutantis mutandis to cases of fatal accidents as well. The principle is clear. If the deceased was entitled to the amount of insurance under a contract and for which he had paid premiums (as in the present case) the receipt of such an amount by the legal representatives is not deductible from the damages payable to them. The deceased had not insured himself and paid premiums all the years during his life time for the benefit of the tortfeasor. This sum represented his thrift for his own benefit and for the benefit of his family. It was, therefore, not for the tortfeasor to seek any advantage out of this receipt."

37. The Division Bench of the Madhya Pradesh High Court in *Priyank (supra)*, relying on the Full Bench in *Kashiram Mathur (supra)*, has held that no deductions are warranted towards the amounts received by a claimant under a contract for insurance for which the claimant had paid premium.

38. The Karnataka High Court in *Rajeshwari* (supra), the Punjab and Haryana High Court in *Kamlesh Bhalla* (supra), the Gujarat High Court in *Oriental Insurance Co. Ltd. vs. Kokilaben & Ors.* (supra) and the Delhi High Court in *National Insurance Co. Ltd. vs. Aman Kapur & Ors.* (supra) have all held that no deductions are warranted on account of the amounts received by a claimant or his dependents under the insurance policies for which the claimant had paid the insurance premium.

39. Thus, except for the two decisions of the Madras High Court relied upon by Ms. Linhares, the judicial opinion overwhelmingly supports the position that no deductions are warranted towards the amounts received by a claimant or his dependents under a contract of insurance for which the claimant paid the premium from out of the compensation amount payable under the MV Act.

40. As noted earlier, at least two decisions of our High Court in *Vrajesh Desai* (supra) and *Ajit Rakvi* (supra) have endorsed the above view. Accordingly, following these decisions, even the third point for determination will have to be answered against the appellant.

41. For all the above reasons, this appeal is liable to be dismissed and is hereby dismissed. Accordingly, there shall be no order for costs.

42. The Court records appreciation and gratitude to Mr. James Lopes, who rendered valuable assistance in this matter.

43. Now that this appeal is dismissed, the claimants will be entitled to withdraw the compensation amount deposited by the appellant in this Court and the interest that shall have accrued thereon. The claimants will have to furnish identification documents and bank details so that the Registry can directly transfer the amounts into their respective bank accounts.

44. The miscellaneous applications, if any, do not survive the appeal's disposal and are disposed of accordingly.

M. S. SONAK, J.