



C.M.A(MD)No.350 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:01.08.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

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and

C.M.P(MD)No.4527 of 2020

The New India Assurance Co.Ltd.,
through its Branch Manager,
office at Thiruvananthapuram. : Appellant/2nd Respondent

Vs.

1.Mrs.Renga Bai
2.Thangaraj :1st & 2nd Respondents/
Petitioners
3.K.S.R.T.C.Fort,
Through its Managing Director,
Office at Thiruvananthapuram,
Kerala State-695 023. :3rd Respondent/1st Respondent
4.Suji



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5.Suresh

6.The Oriental Insurance Company Ltd.,
Through its Divisional Manager,
Office at 1st Floor, DDJ Centre,
Opposite to Vadasery Bus Stand,
Vadasery, Nagercoil.

:4 to 6 Respondents/
3 to 5 Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order passed by the learned Motor Accident Claims Tribunal/Principal District Judge, Tirunelveli in M.C.O.P.No.1595 of 2014, dated 30.01.2020 as against the appellant and allow the appeal.

For Appellant	: Mr.N.Dilipkumar
For R1 & R2	: Mr.V.Sasikumar
For R3	: Mr.S.Srinivasa Raghavan
For R4	: Mr.S.Mahalingam
For R6	: Mr.C.Jawahar Ravindran
For R5	: No appearance

JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN .J.**]

The second respondent in M.C.O.P.No.1595 of 2014, on the file of the Motor Accident Claims Tribunal/Principal District Judge, Tirunelveli has filed this appeal challenging the award passed in the above said claim petition.



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2. The respondents 1 & 2, who are the claimants, filed a claim petition in M.C.O.P.No.1595 of 2014 with the following averments:-

(i) On 23.07.2014 at about 05.00 p.m., their son namely Sujin Kumar drove the Yamaha motorcycle bearing registration No.TN-75-Q-3855 along with one Suresh as pillion rider along the Tiruvandram to Nagercoil main road from Thuckalay to Nagercoil. When he was riding the said vehicle in a slow speed observing traffic rules towards East, a bus bearing registration No.K.L.15-8661 belonging to the third respondent herein insured with the appellant Insurance Company came from the opposite direction in a negligent manner and hit the motorcycle of the deceased.

(ii)As a result, the deceased along with the pillion rider sustained injuries. The deceased sustained serious head injuries and died on the spot itself. Therefore, FIR was registered in Cr.No.573 of 2014, for the offences under Sections 279, 337 & 304-A IPC.

(iii) At the time of accident, the deceased was working as Police Constable in the Indo Tibetan Border Police and earned more than Rs.25,000/- per month. The respondents 1 & 2 are the mother and father



of the deceased and the fourth respondent herein is the wife of the deceased.

3. The first respondent in the claim petition filed counter denying the negligence and there was no denial of the involvement of the accident and stated that the fourth respondent, who is the wife of the deceased, has every chance to get a job of the husband on compassionate ground and due to the negligence of the deceased, the accident had occurred. Therefore, the Insurance Company, namely, the 6th respondent herein is liable to pay the compensation.

4. The appellant/second respondent in the claim petition filed counter stating that the driver of the first respondent did not possess the valid driving licence. He also stated that the police officer has registered a case and from the averments made in the FIR, negligence is only on the part of the deceased. Hence, he seeks for dismissal of the claim petition.

5. The third respondent, viz., the wife of the deceased in the claim petition filed counter stating that she is entitled to seek compensation.



6. The 5th respondent in the claim petition, who is the insurer of the two-wheeler, filed counter reiterating the averments made by the claimants in the claim petition and stated that only due to the negligence of the driver of the bus, the accident had happened.

7. To prove the case of the claimants, they examined two witnesses as P.W.1 and P.W.2 and marked Ex.P1 to Ex.P9 and on the side of the respondents, R.W.1 and R.W.2 were examined and marked Ex.R1 to Ex.R5.

8. The learned Tribunal Judge accepting the evidence of P.W.2, who is the independent eye witness to the occurrence and disbelieving the evidence of R.W.2 driver of the bus, fixed the negligence on the part of the second respondent insurance company/appellant and award amount was calculated as per the dictum laid down by the Hon'ble Supreme Court in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**.



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9.Challenging the same, the Insurance Company has filed this appeal. Even though, at the time of admission, notice of motion was ordered only on the question of negligence aspect, the learned counsel for the Insurance Company made a submission that since the third respondent, who is the wife of the deceased, got the compassionate appointment, the claim petition filed by the respondents 1 & 2, who are the parents of the deceased, is not maintainable.

10.The learned counsel for the Insurance Company/appellant would submit that the sketch marked under Ex.R2, Ex.R3- Observation Mahazer, Ex.R4-MVI Report and Ex.R5-MVI Report and from the evidence of P.W.2 and R.W.2, it is seen that the deceased was responsible for the accident. Even otherwise, the learned Tribunal failed to apply the contributory negligence, in the case of head on collision as per the judgment in *Bijoy Kumar Dugar vs. Bidya Dhar Dutta and others* reported in *2006(3) Supreme Court Cases 242*, the learned Tribunal ought to have fixed the contributory negligence on the deceased also. Hence, there was no proper appreciation on facts and law by the learned Tribunal relating to the negligence and prayed for interference of this Court.



11. The learned counsel for the appellant/Insurance Company also submitted that as per the evidence of P.W.2, the deceased did not wear the helmet. As per the judgment in *Porkodi and another vs. Sathish and others* reported in *2018 SCC Online Mad 2375*, there shall be a contributory negligence on the part of the deceased. The learned counsel further submitted that the deceased sustained head injury. Non-wearing of the helmet caused the head injury, hence, he seeks for fixing the negligence on the part of the deceased.

12. The learned counsel for the claimants/respondents 1 & 2 would submit that in the sketch there was no clear indication of the movement of the bus and the vehicle. The independent witness P.W.2 was examined and he clearly deposed that the bus was coming towards negligently in the opposite direction and dashed against the motorcycle of the deceased. Even though, P.W.2 was subjected to detailed cross-examination, no fruitful answer was elicited to disbelieve his version. Further, in his cross-examination, he has specifically admitted that only due to the negligence of the bus driver, the accident occurred.



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13. He further submitted that non-wearing of helmet is not the reason for the accident and hence, the arguments of the learned counsel for the appellant/Insurance Company cannot be accepted.

14. Further, there was no evidence to show that non-wearing of the helmet by the deceased is meant to be a negligence. Without any evidence that non-wearing the helmet caused the accident, the case of the appellant cannot be accepted.

15. The contention of the learned counsel for the appellant, that the claim petition has to be dismissed on the ground that the compassionate appointment has been given to the wife, is not a ground to decline the grant of compensation. It is a well settled principle that it is not a ground to decline the compensation to the dependants of the deceased.

16. This Court considered the rival submissions made by both parties and the judgment relied on by both parties.



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17.Following points for determination arise in this appeal:

- (i) Whether the contention of the appellant that both the driver of the vehicles had contributed their negligence is acceptable or not?
- (ii) Whether the award passed by the tribunal is just and reasonable one?

18. According to both parties, on 23.07.2014 at about 05.00 p.m., the deceased Sujin Kumar drove the Yamaha motorcycle bearing registration No.TN-75-Q-3855 along with one Suresh as pillion rider on Tiruvandram – Nagercoil main road from Thuckalay – Nagercoil. When it reached near Vellikodu, the driver of the appellant insured bus bearing Registration No.K.L.15-8661 drove the vehicle in a rash and negligent manner and hit the motor cycle driven by the deceased. The same was clearly deposed by the P.W.2. P.W.2 is an independent witness and his presence is never disputed by the appellant Insurance Company. Even though, he was subjected to lengthy cross-examination, there is no reason to disbelieve the evidence and his presence in the scene of occurrence. In the said circumstances, the learned Tribunal correctly viewed the evidence of P.W.2 and fixed the negligence on the part of the appellant/insurance company.



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19. The contention of the learned counsel for the appellant is that the pillion rider namely Suresh was not examined. This contention is not acceptable, since as per the evidence of P.W.2, both sustained head injury and hence, both were taken to the hospital through 108 Ambulance. In this case, an independent witness was examined and proved the accident. Ex.R2 was marked through R.W.1 Sub-Inspector of Police. He specifically admitted that he has not conducted any investigation. The same can be disclosed only by the Investigating Officer. He was not the author of Ex.R2. Further, he specifically stated that there was no mentioning about the place of the vehicle involved in the accident. He further stated that there was no material to show that the deceased drove the vehicle on the wrong side and also tried to over take any of the vehicle. For better appreciation, it is relevant to extract the following portion of cross-examination of R.W.1:-

எங்கள் ஆவணங்களின்படி வரைபடமானது

24.07.2014 அன்று 6 மணிக்கு தயாரிக்கப்பட்டது என்றால்

சரிதான். இவ்வழக்கில் உள்ள பார்வை மகசூர், வரைபடம்,

ஆகியவற்றை நான் தயாரிக்கவில்லை. இந்த வழக்கில்



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புலன் விசாரணை நான் செய்யவில்லை. பார்வை மகசர், வரைபடம் ஆகியவற்றில் உள்ள விவரங்களை விசாரணை அதிகாரியால்தான் சரியாக சொல்ல முடியும். எங்கள் ஆவணங்கள்படி இரு சக்கர வாகனத்தை ஓட்டிச்சென்ற நபர் மீது எந்த குற்றமும் சொல்லப்படவில்லை. கேரள போக்குவரத்துக் கழக பேருந்து ஓட்டுனர் மீதுதான் குற்ற அறிக்கை தாக்கல் செய்யப்பட்டுள்ளது.

அரசு பேருந்து தவறான பாதையில் ஓடி, அந்த இரு சக்கர வானத்தில் மீது மோதியதில் தவறான இடத்தில் விபத்து ஏற்படுத்த வாய்ப்பு உண்டு. அந்த சாலையில் தென் பக்கத்தில் பிரிவு சாலை எதுவும் கிடையாது. கடைகள்தான் உண்டு. எங்களது ஆவணங்களின்படி இரு சக்கர வாகனம் தவறான வழியில் வந்ததாகவோ, வேறோரு வாகனத்தை முந்த முயற்சித்ததாகவோ எதுவும் கூறப்படவில்லை.

R.W.2/driver of the bus deposed that the deceased drove the vehicle, without wearing of helmet on the wrong direction and dashed against the bus. But the said evidence is contrary to the testimony of R.W.1. Apart from that, FIR was registered against R.W.2 and the final report has also been filed. From the above evidence, the arguments made by the learned counsel for the appellant cannot be accepted.



20. To consider the aspect of contributory negligence, it is relevant to refer the principle laid down by the Hon'ble Supreme Court to apply the theory of contributory negligence.

20.1. In the case of ***Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak***, reported in ***(2002) 6 SCC 455 at page 458***

6. The next question that arises for consideration is whether the High Court was justified in holding that there was contributory negligence on the part of the appellant. The Tribunal found that the accident happened due to the negligence of the truck driver but the High Court, by the impugned judgment held that the appellant was also partly negligent and thus, there was contributory negligence on his part and the total compensation payable to the appellant was reduced.

7. The High Court found that there was contributory negligence on the part of the appellant for two reasons. Firstly, the appellant who was driving the car did not slow down his vehicle when he saw that the truck coming at a high speed from the opposite direction was



trying to overtake another car ahead of the truck and, secondly, the High Court found that there was a three-feet width of the road on the left side of the car of the appellant and on seeing the oncoming truck, the appellant could have swerved his vehicle to the left side.

8. We do not think that these two reasons given by the High Court fully justify the accepted principles of contributory negligence. The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as “negligence”. Negligence ordinarily means breach of a legal duty to care, but when used in the expression “contributory negligence” it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an “author of his own wrong”.

9. Subject to non-requirement of the existence of duty, the question of contributory negligence is to be decided on the same principle



on which the question of the defendant's negligence is decided. The standard of a reasonable man is as relevant in the case of a plaintiff's contributory negligence as in the case of a defendant's negligence. But the degree of want of care which will constitute contributory negligence, varies with the circumstances and the factual situation of the case. The following observation of the High Court of Australia in Astley v. Austrust Ltd. [(1999) 73 ALJR 403] is worthy of quoting:

“A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of



contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property."

10. It has been accepted as a valid principle by various judicial authorities that where, by his negligence, if one party places another in a situation of danger, which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence if that other acts in a way, which, with the benefit of hindsight, is shown not to have been the best way out of the difficulty. In Swadling v. Cooper [1931 AC 1 : 1930 All ER Rep 257 : 100 LJKB 97 (HL)] AC at p. 9 Lord Hailsham said : (All ER p. 260 D-E)



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“Mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence. The plaintiff has no right to complain if in the agony of the collision the defendant fails to take some step which might have prevented a collision unless that step is one which a reasonably careful man would fairly be expected to take in the circumstances.”

11. It is important to note that the respondents did not contend before the Tribunal that there was contributory negligence on the part of the appellant, the driver of the car. There was not even an allegation in the written statement filed by the respondents that the car driver was negligent and the accident occurred as a result of partial negligence of the car driver. During the trial of the case, there was an attempt on the part of the respondents to contend that the driver of the car was trying to overtake a truck which was going ahead of the car. The appellant car driver had also pleaded that the truck driven by the second respondent was trying to overtake another car, which was going ahead of the truck. But these circumstances are not proved by satisfactory evidence. One expert had also given



evidence in this case but he had not seen the accident spot. His opinion was based on the observation of the damaged parts of the two vehicles. The total width of the tarred portion of the road was 22 feet and there were mud shoulders on either side having a width of three feet. It is proved by satisfactory evidence that the offending truck had come to the central portion of the road and there was only a three-feet width of the road on the left side of the car driven by the appellant. In this factual situation, the High Court was not justified in holding that there was contributory negligence on the part of the appellant. It would, if at all, only prove that the appellant had not shown extraordinary precaution. The truck driven by the second respondent almost came to the centre of the road and the appellant must have been put in a dilemma and in the agony of that moment, the appellant's failure to swerve to the extreme left of the road did not amount to negligence. Thus, there was no contributory negligence on his part especially when the second respondent, the truck driver had no case that the appellant was negligent.



20.2.In the case of ***Municipal Corpn., Greater Bombay v. Laxman***

***Iyer*, (2003) 8 SCC 731 reported in at page 736**

Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of the other's negligence. Whichever party could have avoided the consequence of the other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn., para 328.) It is now well settled



that in the case of contributory negligence, courts have the power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage is reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence. (See Pollock on Torts, 15th Edn., p. 361.)

20.3. In the case of **T.O. Anthony v. Karvarnan**, reported in (2008)

3 SCC 748 at page 750

where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely



by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

20.4. In the case of ***Tamil Nadu State Transport Corporation Limited v. V. Venkataragavan***, reported in ***2017 SCC OnLine Mad 1947***:

18. On perusal of the entire records, since the driver of the car died, it is the prime duty of the driver of the bus to prove that the driver of the car was negligent by causing the accident. Since the Motor Vehicles Act is a beneficial legislation and in the absence of any specific contra evidence produced by the appellant/first respondent and as a case was registered and laid charge sheet against the driver of the bus, in the absence of contra evidence to prove that the driver of the car also contributed his part of negligence to the accident, the Tribunal has come to the conclusion that the accident occurred only due rash and negligent driving of the driver of the bus. We are of the considered view that from the available records, there is no reason to interfere with the



findings of the Tribunal in respect of negligence and liability aspects are concerned. Thus for the above reasons, the point Nos. 1 to 3, arose for consideration are answered in favour of the respondents/claimants and against the appellant Sate Transport Corporation.

21. From the above, it is clear that the contributory negligence is a legal defense that comes into play in some cases. Under this defense, if the person who was hurt did anything himself that contributed to the accident or injury, then the defendant is not solely responsible for the injury.

22. In this case, there was no clear evidence that the deceased did anything to contribute to the accident. On contrary, the bus driver as per the evidence of P.W.2 drove the bus in a rash and negligent manner and hit against the motorcycle of the deceased and caused the accident. In the said circumstances, the plea of contributory negligence on the ground of head on collision is not acceptable. Hence, the judgment relied on by the counsel for the appellant in ***Porkodi and another vs. Sathish and others***



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reported in **2018 SCC Online Mad 2375** is not applicable to the facts of the present case.

23. The learned counsel for the appellant would submit that the third respondent in the claim petition, who is the wife of the deceased, got the compassionate appointment, therefore, she is not entitled to claim compensation is not accepted. It is a well settled principle that getting the compassionate appointment is not a ground to decline the compensation. The compassionate appointment is a succor to the family members of the deceased. The compensation is entirely different from compassionate appointment. It is well settled principle the amount earned by the claimants from the compassionate appointment cannot be deducted from the quantum of compensation receivable by them under the Motor Vehicle Accident. The said principle has been elaborated by the Hon'ble Supreme Court in the following cases:

23.1. In the case of ***Vimal Kanwar v. Kishore Dan BI*** reported in **(2013) 7 SCC 476 at page 485:**

21. “Compassionate appointment” can be one of the conditions of service of an employee, if a scheme to



that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate appointment but that cannot be termed as “pecuniary advantage” that comes under the periphery of the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.

23.2.In the case of *National Insurance Co. Ltd. v. Rekhaben*, reported in *(2017) 13 SCC 547 at page 554*



22. In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they receive in the form of their salary, would be earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, we are of the view that the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act.

23. In the cases before us, compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on compassionate grounds to the dependants of the deceased/injured. The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources. Since the tortfeasor has not offered the compassionate appointment, we are of the view that an amount which a claimant earns by his labour or by offering his services,



whether by reason of compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tortfeasor under the Act. In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount which is liable to be paid either by the owner/the driver of the offending vehicle or the insurer.

23.3.In the case of *National Insurance Co. Ltd. v. Mannat Johal*, reported in **(2019) 15 SCC 260 at page 270**

12.1. The aforesaid decision in Shashi Sharma [Reliance General Insurance Co. Ltd. v. Shashi Sharma, (2016) 9 SCC 627 : (2016) 3 SCC (Cri) 713 : (2017) 1 SCC (L&S) 90] has been explained and distinguished by another three-Judge Bench of this Court in Sebastiani Lakra [Sebastiani Lakra v. National Insurance Co. Ltd., (2019) 17 SCC 465 : 2018 SCC OnLine 1924] in the following : (Sebastiani Lakra case [Sebastiani Lakra v. National Insurance Co. Ltd., (2019) 17 SCC 465 : 2018 SCC OnLine 1924] , SCC paras 9-10)



“9. In *Shashi Sharma case* [*Reliance General Insurance Co. Ltd. v. Shashi Sharma*, (2016) 9 SCC 627 : (2016) 3 SCC (Cri) 713 : (2017) 1 SCC (L&S) 90] , this Court was dealing with the payments made to the legal heirs of the deceased in terms of Rule 5(1) of the *Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006* (for short “the said Rules”). Under Rule 5 of the said Rules on the death of a government employee, the family would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee for periods set out in the Rules and after the said period the family was entitled to receive family pension. The family was also entitled to retain the government accommodation for a period of one year in addition to payment of Rs 25,000 as *ex gratia*.

10. In this case, the three-Judge Bench adverted to the principles laid down in *Helen C. Rebello case* [*Helen C. Rebello v. Maharashtra SRTC*, (1999) 1 SCC 90 : 1999 SCC (Cri) 197] , followed in *Patricia Jean Mahajan case* [*United India Insurance Co. Ltd. v. Patricia Jean Mahajan*, (2002) 6 SCC 281 : 2002 SCC (Cri) 1294] , and came to the conclusion that the decision in *Vimal Kanwar case* [*Vimal*



Kanwar v. Kishore Dan, (2013) 7 SCC 476 : (2013) 3 SCC (Civ) 564 : (2013) 3 SCC (Cri) 583 : (2013) 2 SCC (L&S) 759] , did not take a view contrary to Helen C. Rebello [Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90 : 1999 SCC (Cri) 197] or Patricia Jean Mahajan [United India Insurance Co. Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 : 2002 SCC (Cri) 1294] cases. The following observations are relevant : (SCC p. 641, para 15)

‘15. The principle expounded in this decision in Helen C. Rebello case [Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90 : 1999 SCC (Cri) 197] that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under the Motor Vehicles Act. Further, the “pecuniary advantage” from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act, 1939, and must apply proprio vigore to the corresponding provisions of the Motor Vehicles Act, 1988. This principle has been restated in the subsequent decision of the two-Judge Bench in Patricia Jean Mahajan case [United



India Insurance Co. Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 : 2002 SCC (Cri) 1294] , to reject the argument of the Insurance Company to deduct the amount receivable by the dependants of the deceased by way of “social security compensation” and “life insurance policy”. However, while dealing with the scheme the court held that applying a harmonious approach and to determine a just compensation payable under the Motor Vehicles Act it would be appropriate to exclude the amount received under the said Rules under the Head of “Pay and Other Allowances” last drawn by the employee. We may note that on principle this Court has not disagreed with the proposition laid down in Helen C. Rebello [Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90 : 1999 SCC (Cri) 197] or in Patricia Jean Mahajan [United India Insurance Co. Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 : 2002 SCC (Cri) 1294] , but while arriving at a just compensation, it had ordered the deduction of the salary received under the statutory Rules. ”

23.4.In the case of ***Sebastiani Lakra v. National Insurance Co. Ltd.***, reported in ***(2019) 17 SCC 465 at page 472***



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12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to “just compensation” under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.

23.5.In the case of *National Insurance Co. Ltd. v. Birender*, reported in **(2020) 11 SCC 356 at page 366**



17. *The view so taken by the High Court is not the correct reading of the decision of three-Judge Bench of this Court in Shashi Sharma [Reliance General Insurance Co. Ltd. v. Shashi Sharma, (2016) 9 SCC 627 : (2016) 3 SCC (Cri) 713 : (2017) 1 SCC (L&S) 90] for more than one reason. First, this Court was conscious of the fact that under Rule 5(2) of the 2006 Rules, the family pension receivable by the family would be payable, however, only after the period, during which the financial assistance is received, is completed. In that context, in para 24 of the reported decision, the Court clearly noted that the amount towards family pension cannot be deducted from the claim amount for determination of a just compensation under the Act. Further, the High Court has erroneously assumed that the family of the deceased would be entitled for family pension amount immediately after the death of the deceased employee. That is in the teeth of the scheme of the 2006 Rules, in particular Rule 5(2) thereof. The said Rules provide for financial assistance on compassionate grounds, as also, other benefits to the family members of the deceased employee and as a package thereof, Rule 5(2) stipulates that the family pension as per the normal rules would be payable to*



the family members only after the period of delivery of financial assistance is completed. The validity of this provision is not put in issue. Suffice it to say that the view taken by the High Court in Ajmero [New India Assurance Co. Ltd. v. Ajmero, 2017 SCC OnLine P&H 5370] is a departure from the scheme envisaged by the 2006 Rules, in particular, Rule 5(2). That cannot be countenanced.

24. Therefore, the contention of the learned counsel appearing for the Insurance Company to deduct the amount received through the compassionate appointment deserves to be rejected.

25. Accordingly, the questions are answered as against the appellant herein. In the result, the Civil Miscellaneous Appeal is dismissed. The judgment and decree passed by the Motor Accident Claims Tribunal (Principal District Judge, Tirunelveli in M.C.O.P.No. 1595 of 2014 is confirmed. The appellant Insurance Company is directed to deposit the award amount, less the amount if already deposited, within a period of eight weeks from the date of receipt of the judgment copy. On



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such deposit, the claimants are permitted to withdraw their share amount as per the apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
01.08.2024

Index :Yes/No
Internet :Yes/No
am/sbn



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To

1. The Motor Accident Claims Tribunal,
Principal District Judge,
Tirunelveli.

2. V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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**V.BHAVANI SUBBAROYAN.J.,
and
K.K. RAMAKRISHNAN.J.,**

am/sbn

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01.08.2024