A.F.R.

ORISSA HIGH COURT: CUTTACK

MACA NO.440 OF 2012

From an Award dated 27.06.2007, passed by 1st Motor Accident Claims Tribunal, Cuttack in Misc. Case No.545 of 2004.

The Divisional Manager,
National Insurance Company Ltd.,
Cuttack. ... Appellant.

-Versus-

Anusuya Samal and others ... Respondents.

For Appellant : M/s V.Narsingh, S.K.Senapati & S.Das

For Respondents : M/s A.S.Nandy, A.K.Singh & B.K.Singh

P R E S E N T :

THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA

Date of Judgment: 30 .03.2015

B.N.Mahapatra, J. The present appeal has been filed at the instance of the Insurance Company challenging the judgment dated 26.11.2011 passed by the 2nd Motor Accidents Claims Tribunal, Northern Division, Sambalpur (for short, 'Tribunal') in MAC Case No.294 of 2003 (D) raising an important question relating to determination of compensation amount under Motor Vehicles Act, 1988 (for short 'MV Act').

2. The undisputed facts leading to filing of the present Appeal are that on 16.10.2003 at about 10 PM, while the deceased Prakash Samal was proceeding in the motorcycle bearing registration NO.OR-06T-5623 towards Dhenkanal, near Malati Chowdhary Talashilpa Prakalpa, Podapada on NH-42 (Cuttack-Sambalpur road), a Marshal Jeep bearing registration No.OR-02L-0186 came from opposite direction and dashed against him, as a result of which Prakash Samal received serious injuries and became senseless. Immediately, he was shifted to Dhenkanal District Headquarters Hospital and then to S.C.B. Medical College and Hospital, Cuttack, where he succumbed to the injuries on the next day. At the time of accident, the deceased was 26 years old and was earning Rs.6,500/- per month as a Police Constable. The deceased is husband of respondent No.1, father of respondent No.2, son of respondent No.3 and brother of respondent No.4. The claimants filed claim petition against the owner and the insurer of the offending vehicle claiming compensation of Rs.10.00 lakhs.

3. Before the Tribunal, the owner of the offending Jeep filed the written statements taking stand that the said Marshal Jeep was duly insured with the National Insurance Company Limited, Cuttack and it was driven by Amiya Kumar Behera, who had a valid driving licence and in case of any award, the Insurance Company is liable to indemnify her (owner). However, at the later stage, the owner of the offending vehicle has not contested the claim.

4. The Insurance Company filed written statements calling upon the owner of the vehicle to produce the insurance policy and took the plea of general denial to the averments of the claimants.

5. On the rival contentions of the parties, the Tribunal framed the following issues.

(i) Whether, the deceased Prakash Chandra Samal died due to vehicular accident on 16.10.2003 at about 10.00 PM near Malati Chowdhary Talashilpa Prakalpa, Podapada on NH-42 due to rash and negligent driving of the driver of OR-02L-0186 (Marshal Jeep)?

(ii) Whether, the petitioner(s) is/are entitled to get any compensation? If so, from whom and to what extent?

(iii) What other relief the petitioner(s) is/are entitled to?

6. In order to substantiate the claims, the claimants examined three witnesses out of whom PW-1 and PW-2 are the petitioners and PW-3 is an independent witness and all of them have relied on the documents of GR Case registered in connection with the said accident.

Opposite parties though have not adduced any evidence but the opposite party-Insurance Company had relied on the investigation report.

7. The learned Tribunal taking into consideration both oral and documentary evidence adduced/produced by the parties held that the deceased Prakash Ch. Samal died on account of vehicular accident caused by

the Marshal Jeep bearing Registration No.OR-02L-0186 on 16.10.2003 and the accident occurred due to rash and negligent driving of the driver of the offending vehicle. Learned Tribunal applied multiplier 17 to determine the dependency taking the age of the deceased as 26 years at the time of accident. Taking into consideration the salary certificate issued by the Deputy Superintendent of Police, Sambalpur of Constable No.896, the Tribunal held the gross income of the deceased to be Rs.5,715/- which included special pay of Rs.150/-, KMA Rs.75/-, CA Rs.75/-, SDA Rs.200/-. After deducting allowances and professional tax, the Tribunal assessed the net monthly income of the deceased at Rs.5,400/- . Further deducting 1/3rd towards personal expenses, the monthly contribution to the family was calculated at Rs.3,600/-. Thus, the Tribunal determined the amount of compensation at Rs.7,34,400/-. Rs.5,000/-, Rs.3,000/- and Rs.2,600/- were also awarded towards loss of consortium, loss of estate and for funeral expenses respectively. Thus, the total compensation was determined at Rs.7,45,000/-. The prayer of the Insurance Company to reduce the amount of compensation suitably, as the wife of the deceased has got appointment on Rehabilitation Assistance Scheme was rejected by the learned Tribunal on the ground that she is getting salary for the services rendered by her. The learned Tribunal further held that the investigation report of the investigator of the Insurance Company (Ext.A) filed by the Insurance Company is of no help to the Insurance Company as the same has not been proved and there is nothing to show that there is violation of policy condition of the Marshal Jeep or the

contributory negligence of the deceased. Being dissatisfied with the order of the Tribunal, the Insurance Company has filed the present Appeal.

8. Mr.V.Narsingh, learned counsel for the appellant Insurance Company vehemently argued that the amount of compensation awarded by the Tribunal is not just and proper. It is at the higher side. Moreover, the amount of compensation determined should have been reduced by 50% as the wife of the deceased has been given appointment on Rehabilitation Assistance Scheme and is getting monthly salary of Rs.10,000/-, which is more than the salary last drawn by the deceased. In support of his above contention, he relied upon the judgment of the Hon'ble Supreme Court in the case of *Bhakra Beas Management Board vs. Kanta Agrawal (Smt.) and others*, (2008) 11 SCC 366.

Mr.Narsingh further argued that there was no eyewitness to the accident involving the vehicle insured with the appellant. Compensation has been calculated basing on the postmortem report even though the deceased was a Government servant. Placing reliance on the judgment in the case of the *State of Haryana Vs. Jashir Kaur*, (2003) 7 SCC 484, it was submitted that compensation should be just and it cannot be a bonanza. He further argued that the award of interest for a period of preceding three years from the date of impugned judgment is unwarranted as there is no laches on the part of the appellant-Insurance Company in the matter of disposal of claim petition.

9. Per contra, Mr.A.S.Nandy, learned counsel appearing on behalf of the respondent-claimants submitted that the amount of compensation awarded by the Tribunal is at lower side and it is contrary to the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma Vs. Delhi Transport Corporation*, (2009) 2 TAC 677. He further submitted that the appointment of the wife of the deceased on compassionate ground has no correlation with the accidental death of her husband and such appointment to the widow-wife of the deceased could have been offered had the deceased died for any other reason while in service. Therefore, the amount of compensation payable under the M.V. Act cannot be reduced by 50% as claimed by the appellant-Insurance Company.

Further contention of Mr.Nandy is that deduction of 1/3rd towards personal expenses is at higher side and the same should be 1/4th of the income of the deceased. It was argued that future prospects of the deceased have not been taken into consideration while computing the amount of compensation. Mr.Nandy further contended that the interest allowed at the rate of 6% by the Tribunal is not in consonance with the interest rate prevalent at the relevant time and the same should have been 9% per annum. In support of his above contentions, Mr.Nandy relied upon various judgments of the Hon'ble Supreme Court as well as High Courts.

10. In course of hearing, vide order dated 20.02.2015 the appellant-National Insurance Company was put to notice through Mr. V. Narasingh,

learned counsel for its response as to why in view of the judgment of the Hon'ble Supreme Court in the case of *Smt. Sarla Verma (supra)*, the amount of compensation awarded by the Tribunal should not be suitably enhanced on account of future prospects since the deceased was in a stable service as Police Constable and as to why deduction on account of personal expenses should not be reduced to 1/4th from 1/3rd of the total income of the deceased considering that the deceased had four dependants.

11. In compliance of the order dated 20.02.2015, Mr.Narsingh, learned counsel for the appellant-Insurance Company filed his objection on 20.03.2015stating therein that compensation can only be enhanced provided attending circumstances of the case warrant the same. In the present case, since the compensation awarded is at the higher side, it does not warrant enhancement mechanically relying on principles laid down in the case of Sarla Verma (supra). The issue relating to enhancement of compensation on account of future prospects has been referred to by the larger Bench *in (N.I.C.O. Vs. Puspa and others)*. Judgment of the Hon'ble Supreme Court in the case of *Vimal Kanwar and others Vs. Kishore Dan and others,* 2013 (3) TAC 6 (SC) relied upon by the claimants is not applicable to the present case in view of the judgment in *Bhakra Beas Management Board (supra),* as in the said judgment detailed law has been discussed.

Further, there being no cross objection filed, the question of enhancing the compensation would not arise. The basic proposition of law is

that a party who suffers due to an order or a decree and does not appeal against it or assail it would normally not be permitted at the appellate stage to try and take advantage of the situation by claiming enhancement. The lower Court has rightly deducted 1/3rd on account of personal expenses keeping in view the marriageable age of claimant No.4 and lack of dependency of claimant No.1, who is a salaried person.

12. On the rival contentions of the parties, the following questions fall for consideration by this Court.

(i) Whether the amount of compensation awarded by the learned Tribunal is just and proper?

(ii) Whether Tribunal has erred in not taking into account the future prospects of the deceased?

(iii) Whether deduction towards personal expenses at the rate of 1/3rd of the gross income is just and proper in the facts and circumstances of the case?

(iv) Whether amount of compensation payable to the claimants under the provisions of the M.V. Act is liable to be reduced by 50%, as claimed by appellant-Insurance Company on the ground that wife of the deceased has been given appointment on compassionate ground under Rehabilitation Assistance Scheme by the employer of her deceased husband?

(v) Whether the rate of interest and period for which payment of interest allowed is just and proper?

13. Since question Nos.(i), (ii) and (iii) are interlinked they are dealt with together.

14. While the appellant-Insurance Company contends that the amount of compensation awarded under the M.V. Act is at the higher side; claimants on the contrary seriously contended that it is at the lower side and contrary to law laid down by the Hon'ble Supreme Court in several judgments.

15. Under the M.V. Act, law postulates determination of just compensation. Determination of just compensation as required under Section 168 of the M.V. Act has nothing to do with the amount of compensation claimed by the claimants.

16. The Hon'ble Supreme Court in the case of ***Sanobanu Nazirbhai Mirza and others vs. Ahmedabad Municipal Transport Services,*** *(2013) 4 T.A.C. 369 (S.C.),* held that it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased which they are legally and legitimately entitled to mitigate their hardship and agony. [also see ***Rajesh and others vs. Rajbir Singh and others,*** *(2013) 9 SCC 54]*

17. This Court in the cases of ***Kunibala Sahoo & Others vs. Jagmohan Majhi and another and M/s. Oriental Insurance Company Ltd. vs. Kunibala Sahoo & others***, 2011 (1) ILR CUT 115, held as follows:-

"Section 168 of the M.V. Act deals with award of Claims Tribunal. The said section empowers the Claims Tribunal to determine the amount of compensation which appears to it to be just. Therefore, the Tribunal is duty bound to determine the just compensation under Section 168 of the M.V. Act in the given circumstances in a particular case. There is no restriction that the compensation could be awarded only up to the amount claimed by the claimants. This being the intention of the legislature, the determination of just compensation as required under Section 168 of the M.V. Act is nothing to do with the amount of compensation claimed by the claimants. Amount of just compensation determinable under Section 168 of the M.V. Act may be less or more than the amount of compensation claimed by the claimant depending upon the facts and circumstances of a particular case.

In the case of ***Nagappa vs. Gurudayal Singh and others, AIR 2003 SC 674,*** the apex Court held that under the provisions of Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimants. In an appropriate case where from the evidence brought on record if the Tribunal/Court considers that claimant is entitled to get more compensation than the amount claimed, the Tribunal may pass such award. Only embargo is — it should be 'Just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act.

This Court in ***Mulla Md. Abdul Wahid vs. Abdul Rahim and another, 76 (1993) C.L.T. 605*** held that the Tribunal has the duty to determine the amount of compensation which appears to it to be just. The expression "just compensation" would obviously mean what is fair, moderate and reasonable and awardable in the proved circumstances of a particular case and the Tribunal has the power to award compensation more than the amount claimed by the claimants."

18. This Court in the case of ***Divisional Manager, New India Assurance Company Limited Vs. Manjulata Jena and others,*** 2011 (II)

OLR 63 held that even in absence of an appeal by the claimant in an appropriate case, this Court can enhance the quantum of compensation payable under the M.V.Act.

19. So far as future prospects of the deceased is concerned, law is well-settled that if the deceased is in a permanent job, his future prospects should be taken into consideration for the purpose of determination of the compensation. Hon'ble Supreme Court in the case of ***Sarla Verma (supra)*** held as under:

> "**Question (i)-addition to income for future prospects:**
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> **20.** Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.
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> **21.** In ***Susamma Thomas,*** this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs.1032/- per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs.2000 as gross income before deducting the personal living expenses.
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> **22**. The decision in Susamma Thomas was followed in ***Sarla Dixit v. Balwant Yadav,*** 1996 (3) SCC 179, where the deceased was getting a gross salary of Rs.1543/- per

month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs.3000/-. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs.2200/- per month.

23. In ***Abati Bezbaruah v. Dy. Director General, Geological Survey of India*** (2003) 3 SCC 148), as against the actual salary income of Rs.42,000/- per annum, (Rs.3500/- per month) at the time of the accident, this Court assumed the income as Rs.45,000 per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

24. In ***Susamma Thomas,*** this Court increased the income by nearly 100%, in ***Sarla Dixit*** the income was increased only by 50% and in ***Abati Bezbaruah*** the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax'. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the Courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

> "In view of imponderables and uncertainties, we are in favour of adopting as a rule of Thumb, an addition of 50% of the actual salary to the income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years. Where the annual income is in the Taxable range the words "actual salary" should be read as "actual salary less tax". The addition should be only 30% if the age of the deceased was 40 to 50 years."
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> *(Underlined for emphasis)*

20. In ***K.R. Madhusudan and others Vs. Administrative Officer and another***, reported in 2011 (1) TAC 874 (SC), the Hon'ble Supreme Court held as under:-

> "10. The present case stands on different factual basis where there is clear and incontrovertible evidence on record that the deceased was entitled and in fact bound to get a rise in income in the future, a fact which was corroborated by evidence on record. Thus, we are of the view that the present case comes within the 'exceptional circumstances' and not within the purview of rule of thumb laid down by the Sarala Verma (supra) judgment. Hence, even though the deceased was about 50 years of age, he shall be entitled to increase in income due to future prospects."
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> *(Underlined for emphasis)*

21. In ***Shakti Devi Vs. New India Insurance Co. Ltd. and another***, 2011(1) TAC 4 (SC), the Hon'ble Supreme Court held as under:-

> "12. So far as the present case is concerned, at the time of accident, the deceased was 22 years old and not married. He was running a general store from his house and earning about Rs.1,000/- per month from the business. In Sarala Verma (supra), this Court stated that where the deceased was self-employed, the Court shall usually take only the actual income at the time of death; a departure from there should be made only in rare and exceptional cases involving special circumstances. Does the present case involve special circumstances? In our

> view, it does. The evidence has come that the deceased was to get employment in the forest department after the retirement of his father. Obviously the evidence is based on the Government policy. The deceased, thus, had a reasonable expectation of the Government employment in near future. In the circumstances, the actual income at the time of deceased's death needs to be revised and taking into consideration the special circumstances of the case, in our view, the monthly income of the deceased deserves to be fixed at Rs.2,000/-."

22. The Hon'ble Supreme Court in the case of ***Santosh Devi Vs. National Insurance Co. Ltd. (2012) 6 SCC 421,*** held that a person who is self employed or he is engaged on fixed wage will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the quantum of compensation.

23. In the instant case, undisputedly, the deceased was serving as a Constable under the Superintendent of Police, Sambalpur and the salary certificate issued by the Deputy Superintendent of Police, Sambalpur of Constable No.896 for the month of September, 2003 shows that the gross income of the deceased was Rs.5,715/- which included Special Pay of Rs.150/-, KMA Rs.75/-, CA Rs.75/-, SDA Rs.200/-. Learned Tribunal deducting the allowances and professional tax assessed the net income of the deceased at Rs.5,400/-. At the time of death, the deceased was 26 years old. Undisputedly, the deceased was in a permanent job with future promotion and increment in salary. In view of the same, 50% of the actual salaried income of the deceased towards future prospects shall be added for the purpose of

computation of compensation, which comes to Rs.8,100/- (Rs.5,400/- + Rs.2,700/-).

24. So far as deduction towards personal expenses is concerned, the learned Tribunal deducted 1/3rd towards personal expenses. Deduction towards personal expenses depends upon the size of the dependant family members. If the size of dependant family members is less, the personal expenses of a person will be more and vice versa. The Hon'ble Supreme Court in the case of ***Sarla Verma and others (supra)*** held as under:-

> "…We are of the view that where the deceased was married the deduction towards personal and living expenses of the deceased should be one third (1/3rd), where the number of dependant family members is 2 to 3, one fourth (1/4th), where the number of the dependent family members is 4 to 6, and 1/5th, where the number of dependant family members exceeds six."

25. In the instant case, as stated above, the claimants are four in number; they are wife, father, daughter and unmarried sister of the deceased. In view of the same, deduction towards personal expenses should be 1/4th of the salary of the deceased, which comes to Rs.2,025/-, i.e., 1/4th of Rs.8,100/-.

26. As regards application of multiplier, the Hon'ble Supreme Court in ***Sarla Verma*** case (supra) held as under:

> "42 We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an

> operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

Thus in the present case, the deceased being 26 years old at the time of accident, the appropriate multiplier would be 17.

27. In view of the above, the amount of compensation comes to Rs.12,39,300/- (Rs.8,100/- -- Rs.2,025/- x 12 x 17).

28. Question No.(iv) is whether the amount of compensation should be reduced as claimed by the appellant-Insurance Company by 50% on the ground that the wife of the deceased has got employment on compassionate ground under Rehabilitation Assistance Scheme.

29. Placing reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Bhakra Beas Management Board*** *(supra),* Mr. Narasingh submitted that the Tribunal erred in not reducing the amount of compensation computed under M.V. Act by 50% as the wife of the deceased has been given appointment on Rehabilitation Assistance Scheme and is getting salary of Rs.10,000/- per month. The contention of Mr.Narsingh is that the principle of balancing the losses and gains by reason of death to arrive at the amount of compensation is a general rule.

On the other hand, the contention of Mr. A.S. Nandy, learned counsel for the respondents is that appointment of the wife of the deceased under Superintendent of Police, Sambalpur has no correlation with the accidental death of her husband and such appointment to the wife of the deceased would have been given had the death caused to the husband for any other reason while he was in service.

30. Mr. Nandy, learned counsel for the claimants/respondents filed an affidavit indicating that the claimant-widow was given appointment under Rehabilitation Assistance Scheme with the scale of pay at Rs.3050-75-3950-85-4590 by the employer of her husband who is serving as a Police Constable No.801 in the office of Superintendent of Police, Sambalpur and in the present case the employer is no way connected with the accidental death of her husband and therefore, Superintendent of Police, Sambalpur is not liable to pay any compensation under the M.V. Act. Thus, appointment of the wife of the deceased as Constable under Superintendent of Police, Sambalpur has no correlation with accidental death of her husband.

In support of his contention, Mr. Nandy, learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of ***Vimal Kanwar and others (supra)*** and the judgment of the Allahabad High Court in the case of ***Smt. Lalita Rathore and Another vs. Darshan Lal and others***, 2013 (2) T.A.C. 579 (All.)

31. At this juncture, it would be beneficial to refer to the following decisions of the Hon'ble Supreme Court.

32. The Hon'ble Supreme Court in the case of ***Helen C. Rebello (Mrs.) and others vs. Maharashtra State Road Transport Corporation,*** *(1999) 1 SCC 90,* while deciding whether the amount received under life insurance policy was liable to be deducted on the principle of balancing the loss and gain held as under:

> "**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.
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> **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:*
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> "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…

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. In *Law Lexicon*, 5th Edn., by T.P. Mukherjee "just" is described:

"The term 'just' is derived from the Latin word *justus*. It has various meanings and its meaning is often governed by the context. 'Just' may apply in nearly all of its senses, either to ethics or law, denoting something which is morally right and fair and sometimes that which is right and fair according to positive law. It connotes reasonableness and something conforming to rectitude and justice, something equitable, fair (vide p. 1100 of Vol. 50, *Corpus Juris Secundum*). At p. 438 of *Words and Phrases*, edited by West Publishing Co., Vol. 23 the true meaning of the word 'just' is in these terms:

'The word "just" is derived from the Latin justus, which is from the Latin jus, which means a right and more technically a legal right-a-law. Thus "*jus dicere*" was to pronounce the judgment; to give the legal decision. The word "just" is defined by the *Century Standard Dictionary* as right in law or ethics and in *Standard Dictionary* as conforming to the requirements of right or of positive law, in *Anderson's Law Dictionary* as probable, reasonable, *Kinney's Law Dictionary* defines "just" as fair, adequate, reasonable, probable; and

justa cause as a just cause, a lawful ground. Vide *Bregman* v. *Kress* NYS at p. 1073.' "

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32. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words "pecuniary advantage" from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the "pecuniary advantage" resulting from death means pecuniary advantage coming under all forms of

death then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the section states:

"… for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, …".

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.

34. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to be the "pecuniary gain" only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no corelation between the two amounts. Not even remotely. 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 corelation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject to the contract to the contrary or any provisions of law.

33. The Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan,*** *(2002) 6 SCC 281*, held as under:

> **"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.
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> **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. 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."

34. In view of the above, the principle of balancing the loss and gain must have some correlation with the accidental death by reason of which alone, the claimants had received the amount. It would not include any amount which the claimants received on account of other forms of death, which they would have received even apart from accidental death.

35. It may be relevant here to refer to the judgment of the Hon'ble Supreme Court in the case of ***Vimal Kanwar and others*** (supra), wherein, it has been held as under:

> "20. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction".
>
> "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."

36. In the instant case, undisputedly the deceased was working as Police Constable No.896 in the office of the Deputy Superintendent of Police, Sambalpur. The appointment was given to the widow of the deceased after death of her husband by the Superintendent of Police, Sambalpur under Rehabilitation Assistance Scheme. The appointment has no co-relation to the accidental death of the deceased-late Prakash Ch. Samal. Normally, such appointment would have been given to the widow of the deceased had the death of her husband been caused for any other reason while in service.

37. The judgment of the Hon'ble Supreme Court in the case of ***Bhakra Beas Management Board*** *(supra)* is of no assistance to the appellant-Insurance Company since the facts of that case are completely different from the facts of the present case.

At this juncture, it will be appropriate to refer here to relevant portion of the judgment of Allahabad High Court in the case of ***Smt. Lalita Rathore and Another*** *(supra),* wherein the facts of *Bhakra Beas Management Board (supra)* has been elaborately narrated as under:

> "17. ...Before applying the ratio of judgment of the Apex Court in the case of Bhakra Beas Management Board (supra), it would be appropriate to examine the facts of the case first. In that case, the deceased was travelling in a jeep which met with the accident with truck and the Management (the appellant) immediately after the death of deceased offered compassionate appointment to his wife and also provided residence to the wife. In this background, the Apex Court observed that such benefit has to be taken into account while fixing the compensation.

> 18. We find that the factual aspect in the case on hand, does not fit with the factual situation as was there in the case of Bhakra Beas Management Board (supra). The position will be different in a case where the employer who offered compassionate appointment is not in any manner liable to pay any amount towards compensation to the claimants, as it is here. If the employer happens to be a person who is liable to pay compensation for the loss caused in road accident, offers some pecuniary benefits by way of giving employment etc., the employer/defendant in the claim petition may come forward and say that the pecuniary loss which has been caused to the claimants has been set off by granting such compassionate appointment and this factor should be taken into consideration while assessing the pecuniary loss to the claimants."

38. In view of the above, the amount of compensation payable to the claimants under the provisions of M.V. Act cannot be reduced on the ground that the wife of the deceased has been given appointment on compassionate ground under Rehabilitation Assistance Scheme by the employer of her deceased husband.

39. Question No.(v) is whether the rate of interest and period for which payment of interest allowed is just and proper

40. Section 171 of the M.V. Act provides that where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim.

Considering the above provisions of law and the finding of the learned Tribunal that claimants/respondents were not diligent in prosecuting the claim petition for which delay has been caused in disposal of the claim petition, I don't find any illegality in the order of the learned Tribunal directing payment of interest for a period of preceding three years from the date of the judgment till the payment is made by the Insurance Company. In course of hearing, respondents/claimants have not brought any document/material to the notice of this Court that during the relevant period, the rate of interest was more than 6% per annum on bank deposits. Therefore, the Insurance Company is directed to pay interest at the rate of 6% per annum on the amount of compensation of Rs.12,39,300/- from 26th November, 2008, i.e., three years prior to the date of the judgment of the Tribunal dated 26.11.2011 till the date of payment.

41. In view of the above, the Insurance company is directed to deposit the amount of compensation of Rs.12,39,300/- (rupees twelve lakh thirty-nine thousand and three hundred) along with interest as directed in the preceding paragraph within eight weeks from today. On deposit of the revised amount of compensation along with interest, the Tribunal shall disburse the same among the claimants in the same manner it directed in the impugned judgment.

42. On production of evidence showing deposit of the awarded amount along with interest before the Tribunal, the Registrar (Judicial) of this Court is directed to refund the statutory amount as well as compensation

amount along with interest accrued thereon, which were earlier deposited in this Court, to the Insurance Company.

43. In the result, the appeal is disposed of with the aforesaid observations and directions.

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B.N. Mahapatra, J.

Orissa High Court, Cuttack
Dated 30th March, 2015/ss/skj/bks