APPELLATE CIVIL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

SHRIMATI DAMYANTI DEVI ETC.,—*Appellants.*

versus

SHRIMATI SITA DEVI ETC.,—*Respondents.*

First Appeal From Order No. 24 of 1969.

November 19, 1971.

Motor Vehicles Act (IV of 1939)—Sections 110-A and 110-B—Fatal Accidents Act (XIII of 1855)—Sections 1-A and 2—Provisions of the two Acts—Whether conflicting—Restrictive provisions of section 1-A, Fatal Accidents Act—Whether apply to a claim under Motor Vehicles Act—'Just' compensation for loss of life in accident—Determination of—Assets left by the deceased—When can be taken into consideration—Insurance claim received by the heir of the deceased as nominee in the insurance policy—Whether can be deducted out of compensation payable to such heir—Deduction from the compensation determined—Whether can be made on account of lump sum payment—Possible increase in the income of the deceased in future years not taken into consideration while determining the compensation—Deduction of lump sum payment—Whether can still be made.

Held, that section 110-B of the Motor Vehicles Act is comprehensive enough to include the claims for which provision is made in sections 1-A and 2 of the Fatal Accidents Act. Under sections 1-A and 2 of the Fatal Accidents Act, action has to be brought by the executor, administrator or representative of the deceased for the benefit of one or more of the beneficiaries mentioned in section 1-A and the estate of the deceased mentioned in section 2. Section 110-A of the Motor Vehicles Act, on the other hand, prescribes that where death has resulted from an accident, an application for compensation arising out of that accident is to be made by all or any of the legal representatives of the deceased and where all the legal representatives of the deceased do not join in any such application for compensation, the application is to be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined are to be impleaded as respondents to the application. The application for compensation under section 110-A of Motor Vehicles Act is, therefore, for and on behalf of all the legal representatives of the deceased, that is, on behalf of the estate as represented by the legal representatives. The compensation has, however, to be determined qua each legal representative under section 110-B. The amount of compensation to be awarded is not only confined to the loss resulting to each legal representative but such amount as appears to the Tribunal to be just. The Tribunal is

also to specify the person or persons to whom the compensation shall be paid. The language of section 110-B of the Motor Vehicles Act clearly leads to the conclusion that compensation has to be determined in the first instance and that compensation has to be apportioned amongst the legal representatives as the Tribunal may determine, that is, according to the dependency or necessity of each claimant. The provisions of Motor Vehicles Act are, therefore, wider than those of the Fatal Accidents Act and there is really no conflict between the two. The principles for determining compensation which have been evolved under the provisions of the Fatal Accidents Act can be applied to the applications under the Motor Vehicles Act while determining the amount of compensation considered just. The restrictive provision of section 1-A of the Fatal Accidents Act, however, does not apply to a claim under the Motor Vehicles Act. Before the Tribunal, the whole estate of the deceased is represented by his legal representatives and the compensation is to be determined on the basis of the loss suffered by the estate which is to be distributed amongst the legal representatives. No separate amount has to be determined for the legal representatives and the estate.

(Para 6)

Held that under section 110-B of the Motor Vehicles Act, the Tribunal has been made the judge of the amount of compensation which is considered to be just, and while determining just compensation, the Tribunal has to take into consideration all relevant factors concerning the deceased and his legal representatives. In every case the nature and extent of the assets left by the deceased have to be determined, that is, if the assets are such of which benefit was being taken by or was available to the family during his lifetime, the value of those assets has not to be taken into consideration in mitigation of the damages. The accelerated succession to those assets does not bring any additional benefit to the heirs which is liable to set-off against the loss occasioned by the death. Again, if the assets are such which were being created by the deceased out of his savings to be utilised for the benefit of the members of the family on various occasions like marriage, higher education of the children, etc., those assets should also be kept out of consideration while determining the just compensation. Such assets cannot be said to confer any undue or untimely benefit on the legal representatives because of the death of the person on whom they were dependent. Damages have to be determined on the facts of each case and in such calculation, conjectures and surmises also play their part.

(Para 23)

Held, that any provision made by the deceased himself by taking out a policy of insurance cannot be said to be the benefit derived by the legal representatives on account of his death. The benefit, if any, from a policy of insurance accrues to the nominee or the legal representative not because

of the tortious act of the wrong-doer in causing the death of the policy-holder but on the footing of a contract which the deceased had entered with the insurer under which he paid the premia. The insurance amount really represents the compensation in respect of the capacity to save of the deceased which existed at the time of his death by accident and would have continued in future too. Where in determining compensation for an heir of the deceased dying in accident, the savings, which would have been made by him during his life time if he had lived his normal life, are not taken into consideration, no deduction can be made from the compensation payable to the heir on account of the insurance amount received by such heir as nominee of the deceased in the insurance policy. (Para 26)

Held, that because the benefit from the deceased, if he had not died in the accident, would have accrued to his heirs month by month, a deduction ranging between 15 per cent and 25 per cent may be made from the compensation as determined, on account of the fact that amount is paid in lump sum. The amount received by the claimants can yield some income if prudently invested, but when the compensation payable is determined only on the basis of the amount that was being contributed by the deceased towards their maintenance on the date of his death without taking into consideration the possible increase in that amount in future years, no deduction from the amount of compensation can fairly be made on account of lump sum payment, particularly when the claimants are deprived from receiving compensation for a number of years during the pendency of claim proceedings without interest for that period being allowed.

First Appeal from the order of Shri H. D. Loomba, (Sessions Judge) Motor Accident Claims Tribunal, Gurgaon, dated the 9th December, 1968 dismissing the claim application and leaving the parties to bear their own costs.

Anand Swaroop, Senior Advocate, with M. S. Jain, and M. B. Singh, Advocates, *for the appellants.*

L. M. Suri, Advocate, *for the Insurance Company,* with V. P. Gandhi and R. M. Suri, Advocates, *for the respondents.*

JUDGMENT

Judgment of the Court was delivered by:—

TULI, J.—(1) This judgment will dispose of F.A.O. 24 of 1969, L.P.A. 303 of 1967, L.P.A. 258 of 1970, L.P.A. 274 of 1970 and L.P.A. 287 of 1970, as they have been heard together owing to the fact that some questions of law arising in these cases are common.

(2) The facts of F.A.O. 24 of 1969 are that one Manohar Lal died in an accident on January 8, 1966, and his legal representatives, namely, widow, widowed mother and three minor children, filed an application claiming compensation of Rs. 1,11,000.00, the details of which are as under :—

1. Rs. 1,00,000.00 for the loss of life of the said Manohar Lal;
2. Rs. 1,000.00 for medical treatment and other religious rituals; and
3. Rs. 10,000.00 for agony, harassment, pain, mental torture and worry.

(3) Manohar Lal was going on a scooter when truck No. PNG 5202 dashed against him. The truck was going at such a great speed that Manohar Lal died on the spot and his scooter was also damaged. It was found by the learned Motor Accidents Claims Tribunal (District and Sessions Judge, Gurgaon) (hereinafter referred to as the Tribunal), that the accident was due to the rash and negligent driving of the truck by its driver. The applicants were held to be the legal heirs of Manohar Lal, but they were denied any compensation on the ground that they had received assets of the value exceeding Rs. 90,000.00 on the death of the deceased. As a result thereof, the application was dismissed on December 9, 1968. Smt. Dhanni Bai, widowed mother of the deceased, died on December 16, 1968, and the present appeal is on behalf of the widow and the three children of the deceased.

(4) The details of the assets are a factory of the value of Rs. 80,000 which was being run by the deceased and was his source of livelihood, a house valued at Rs. 6,000 and insurance amount of Rs. 8,000. The learned Tribunal came to the finding that the deceased was contributing Rs. 150.00 per mensem for the maintenance of his family and, although he was only 37 years of age at the time of his death, the compensation was calculated for a period of fifteen years only at the rate of Rs. 150.00 per mensem, that is, Rs. 27,000 in all. The appellants have challenged the finding with regard to the quantum of compensation recorded by the learned Tribunal as well as the finding that the appellants were not entitled to receive any compensation on account of the assets of the deceased having been received by them as his heirs.

(5) The first point for determination is whether the claim under section 110-A of the Motor Vehicles Act has to be filed as is

prescribed in the Fatal Accidents Act, 1855, or without any reference to that Act. This Act was enacted, as the preamble shows, to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong as prior thereto no action or suit was maintainable in any Court against a person who, by his wrongful act, neglect or default, might have caused the death of another person. Section 110 of the Motor Vehicles Act was amended and Sections 110-A to 110-F were added by Motor Vehicles (Amendment) Act, 100 of 1956, in order to provide a summary and cheap remedy to the legal representatives of a person whose death is caused in an accident with a motor vehicle as also to adjudicate upon the claims of the persons receiving injuries in such accidents. It was held by a Division Bench of the Madras High Court in *Mohammed Habibullah and another* v. *K. Seethammal* (1) that—

> "the Legislature has deliberately enacted the Motor Vehicles Act, and provided by virtue of sections 110 to 110-F of that Act, not merely a self-contained code for the adjudication of claims to compensation on behalf of the victims of a motor accident, but also a complete machinery for the adjudication of such claims. Under section 110-F, the jurisdiction of the civil Court is specifically ousted by the Claims Tribunal for the area. The claim in the persent case is under sections 110 to 110-F of the Motor Vehicles Act. It has no connection whatever with the Indian Fatal Accidents Act (XIII of 1855) and is not advanced under any section or provision of that Act. It is noteworthy that sections 110 to 110-F that we have referred to, make no mention of any kind concerning any of the provisions of the Fatal Accidents Act, and do not incorporate any such provision even by the most oblique reference."

A similar view was expressed by a Division Bench of the Delhi High Court in *Smt. Ishwar Devi Malik and others* v. *Union of India,* (2) in the following words:—

> "The Act (Fatal Accidents Act, 1855), provides for compensation or damages—
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> (1) for the loss caused by the death of the person as a result of the accident to the representatives of the

(1) 1966 A.C.J. 349.
(2) A.I.R. 1969 Delhi 183.

deceased person, namely, wife, husband, parent and child; and

(2) for any pecuniary loss to the estate of the deceased.

It is thus a general law providing for compensation to the representatives of a deceased person or to his estate for the loss occasioned by his death as a result of an accident. On the other hand, the Motor Vehicles Act is a special law which, by sections 110 to 110-F provides for adjudication upon claims for compensation in respect of accidents involving the death of, or injury to, persons arising out of the use of motor vehicles. By section 110, a State Government is empowered to constitute one or more Motor Accidents Claims Tribunals for adjudicating upon the aforesaid claims for compensation. Section 110-A provides that an application for compensation arising out of an accident of the nature specified in Section 110(1) may be made by the person who has sustained the injury; or where death has resulted from the accident, by the legal representatives of the deceased, or by an agent duly authorised by the person injured or the legal representatives of the deceased, as the case may be, and also prescribes the period within which such an application may be made. Section 110-B provides for the holding of an inquiry into the claim and for the making of an award by the said Tribunal. Section 110-C contains provisions regarding the procedure and the powers of the Claims Tribunal. Section 110-D provides a right of appeal to the High Court to a person aggrieved by the award. Section 110-E provides for the recovery of money due from an insurer under an award as arrear of land revenue. Section 110-F bars the jurisdiction of civil courts to entertain any question relating to any claim for compensation which may be adjudicated upon by a claims Tribunal. The act purports to consolidate and amend the law relating to motor vehicles. The present sections 110 to 110-F were substituted in the place of the old section 110 by section 80 of the Motor Vehicles (Amendment) Act, 1956 (Act No. 100 of 1956) and were intended to provide a cheaper and speedier remedy by way of an application before a Claims Tribunal instead of the remedy of a suit in a civil court as

provided in the Fatal Accidents Act. Thus, the Act is a self-contained Act, and, as such, an application filed under section 110-A of the Motor Vehicles Act is governed by the provisions in the Motor Vehicles Act and not by the provisons in the Fatal Accidents Act."

The learned Judges relied on the judgment of the Madras High Court referred to above and a Single Bench judgment of this Court (Mahajan, J.,) in *Veena Kumari Kohli* v. *Punjab Roadways and others* (3), against which L.P.A. 303 of 1969 was filed and is being decided by this Judgment. In that case, Mahajan, J., distinguished the decision of the Supreme Court in *Gobald Motor Service Limited* v. *R. M. K. Veluswami* (4), by observing as follows:—

"That decision would have applied only if a claim under Fatal Accidents Act had been made before the Tribunal. No such claim was made. Therefore, it is idle to suggest that the Tribunal has gone wrong in not determining the claim on the principle enunciated by their Lordships of the Supreme Court in Gobald Motor Service Case."

A Division Bench of the Madhya Pradesh High Court did not accept this view in *Smt. Kamla Devi and others* v. *Kishan Chand and another* (5). The learned Judges expressed the view (as per head note A) that—

"A Claims Tribunal inquiring into a claim for compensation under section 110-B in respect of a fatal accident arising out of the use of a motor vehicle is bound to apply the law as contained in the Fatal Accidents Act (1855). The group of sections 110 to 110-F lays down the procedure and powers of the Tribunal and these sections do not deal with liability at all; they only provide a new mode of enforcing the liability in respect of accidents involving death or bodly injury which, before the constitution of the Tribunals, was being enforced by Civil Courts. The object of these sections is to provide a cheap and speedy mode of enforcement of liability arising out of use of motor vehicles. The

(3) 1967 A.C.J. 297.
(4) A.I.R. 1962 S.C. 1.
(5) A.I.R. 1970 M.P. 168.

power under section 110-B to make an award 'determining the amount of compensation, which appears to it to be just' conferred on the Tribunal does not creat any new basis or extent of liability. The Tribunal must determine the amount of compensation according to the substantive law of liability already in force. Section 110-B is in no way intended to give a go-by to the basis and limit of liability fixed by the substantive law. In case of fatal accidents, whether arising out of the use of motor vehicles or otherwise, the basis and extent of liability are determined by the substantive law contained in Sections 1-A and 2 of the Fatal Accidents Act."

(6) We have carefully gone through these judgments and have noted the arguments and we are of the opinion that section 110-B of the Motor Vehicles Act is comprehensive enough to include the claims for which provison is made in sections 1-A and 2 of the Fatal Accidents Act. In section 1-A of the said Act, only four persons, namely, wife, husband, parent and child, are mentioned for whose benefit the claim can be made and damages are to be allowed proportionate to the loss resulting from such death to the said beneficiaries. This claim has to be brought in the name of the executor, administrator or representative of the deceased person for the benefit of one or more of the beneficiaries mentioned in the section. Under section 2 of that Act, the executor, administrator or representative of the deceased is also permitted to insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased. It is also provided in section 2 that not more than one action or suit shall be brought for and in respect of the same subject-matter of complaint. It is thus evident that under sections 1-A and 2 of the Fatal Accidents Act, action has to be brought by the executor, administrator or representative of the deceased for the benefit of one or more of the beneficiaries mentioned in section 1-A and the estate of the deceased mentioned in section 2. Section 110-A of the Motor Vehicles Act, on the other hand, prescribes that where death has resulted from an accident, an application for compensation arising out of that accident is to be made by all or any of the legal representatives of the deceased and where all the legal representatives of the deceased do not join in any such application for compensation, the application

is to be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined are to be impleaded as respondents to the application. It is thus evident that the application for compensation under section 110-A of the Motor Vehicles Act is for and on behalf of all the legal representatives of the deceased, that is, on behalf of the estate as represented by the legal representatives. The compensation has, however, to be determined *qua* each legal representative under section 110-B. The amount of compensation to be awarded is not only confined to the loss resulting to each legal representative but such amount as appears to the Tribunal to be just. The Tribunal is also to specify the person or persons to whom the compensation shall be paid. The language of section 110-B of the Motor Vehicles Act clearly leads to the conclusion that compensation has to be determined in the first instance and that compensation has to be apportioned amongst the legal representatives as the Tribunal may determine, that is, according to the dependency or necessity of each claimant. In our view, therefore, the provisions of the Motor Vehicles Act are wider than those of the Fatal Accidents Act and there is really no conflict between the two. The principles for determining compensation which have been evolved under the provisions of the Fatal Accidents Act can be applied to the applications under the Motor Vehicles Act while determining the amount of compensation considered just. The restrictive provision of section 1-A of the Fatal Accidents Act, however, does not apply to a claim under the Motor Vehicles Act. Before the Tribunal, the whole estate of the deceased is represented by his legal representatives and the compensation is to be determined on the basis of the loss suffered by the estate which is to be distributed amongst the legal representatives. No separate amount has to be determined for the legal representtatives and the estate..

(7) The leading judgment of the Supreme Court under the Fatal Accidents Act is *Gobald Motor Service Ltd. and another* v. *R. M. K. Veluswami and others* (4) (Supra). That judgment was delivered under the Fatal Accidents Act, 1855, before its amendment by Act 3 of 1951, as the accident in that case had occurred on September 20, 1947. On Rajaratnam died on September 23, 1947 as a result of the injuries received in an accident. The suit was filed by his father, widow and sons for compensation under section 1 of the Fatal Accidents Act for loss of pecuniary benefit sustained by them personally and under section 2 thereof for the loss sustained by the estate

on account of the death of Rajaratnam. The learned trial Court allowed Rs. 3,600.00 to the father of the deceased and Rs. 25,200 to his widow and sons under section 1 of the Act and Rs. 5,000 to his widow and sons under section 2 of the Act. On appeal, the High Court affirmed the amount of compensation awarded to the widow and the sons both under sections 1 and 2 of the Fatal Accidents Act but in regard to the father, the amount of compensation was reduced from Rs. 3,600 to Rs. 1,000. Their Lordships upheld the judgment of the High Court as correct and dismissed the appeal. Their Lordships referred to the judgment of the House of Lords in *Devies* v. *Powell Duffryn Associated Collieries Ltd.* (6) and of the privy Council in *Nance* v. *British Columbia Electric Ry. Co. Ltd.*, (7) and observed—

> "It would be seen from the said mode of estimation that many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the respondents may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained.
>
> The burden is certainly on the plaintiffs to establish the extent of their loss."

Their Lordships then pointed out the respective scope of claims under section 1 and section 2 of the Fatal Accidents Act as under:—

> "The cause of action under section 1 and that under section 2 are different. While under section 1, damages are recoverable for the benefit of the persons mentioned therein, under section 2 compensation goes to the benefit of the estate; whereas under section 1 damages are payable in respect of loss sustained by the persons mentioned therein, under section 2 damages can be claimed *inter alia* for loss of expectation of life. Though in some cases parties

(6) 1942 A.C. 601.

(7) 1951 A.C. 601.

that are entitled to compensation under both the sections may happen to be the same persons, they need not necessarily be so; persons entitled to benefit under section I may be different from those claiming under section 2. *Prima facie* as the two claims are to be based upon different causes of action, the claimants, whether the same or different, would be entitled to recover compensation separately under both the heads. But a difficulty may arise where the party claiming compensation under both the heads is the same and the claims under both the heads synchronize in respect of a particular sub-head or in respect of the entire head. In that situation, the question is whether a party would be entitled to recover damages twice over in respect of the same wrong.....". (Para 11).

The law on this branch of the subject may be briefly stated thus: The rights of action under sections 1 and 2 of the Act are quite distinct and independent. If a person taking benefit under both the sections is the same, he cannot be permited to recover twice over for the same loss. In awarding damages under both the heads, there shall not be deplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into the calculation of the personal loss under section 1 of the Act, that portion shall be excluded in giving compensation under section 2 and *vice versa.*" (Para 12).

It is in the light of these principles that the amount of compensation to be awarded to the claimants in each case has to be determined. In fact, the amount of compensation has to be determined by the Tribunal on the ground of justness and, therefore, each case is to be decided on its own facts.

(8) In the case in hand, it has first to be determined what pecuniary loss was suffered by the legal representatives of Manohar Lal. The evidence on this point brought on the record is as under :—

(9) P. W. 4 Krishan Parkash stated that Manohar Lal was the sole proprietor of the factory which was being run under the name of Manohar Lal and Sons. That factory manufactured rubber components used in motors and there were three workers employed therein. Manohar Lal himself also worked in that factory

and earned nearly Rs. 7,000.00 per annum from the business. This witness is married to the sister of Manohar Lal and used to keep accounts of the concern. He produced the orginal account-books which had been written by him and copies of the accounts for the year 1964-65 and 1965-66 were exhibited as P. 2 and P. 3. According to the witness, the entire assets of the factory were of the value of Rs. 30,000, while the site and the building of the factory were worth Rs. 50,000.00. Manohar Lal also owned a house worth about Rs. 6,000.00 in which the family resided. He was also insured but the amount of insurance was not known to the witness.

(10) P.W. 5 Dev Nath is the brother of the widow of Manohar Lal. According to him, Manohar Lal used to earn about Rs. 500 or Rs. 600 per mensem from the factory and was insured for Rs. 8,000.

(11) P. W. 7 is Smt. Damyanti Devi, widow of Manohar Lal, who appeared as her own witness and stated that Manohar Lal died at the age of 37 years and used to earn Rs. 700 per mensem at the time of his death. He owned the factory where he himself also worked. After his death the factory had closed down. The deceased left three minor children who were all school-going, the eldest being a daughter aged about 14 years. In cross-examination, she stated that the deceased used to spend nearly Rs. 300 or Rs. 400 per mensem on his ownself and the balance he used to give to her for the maintenance of his family.

(12) These statements of witnesses were not challenged by cross-examination and no evidence was adduced on behalf of the respondents.

(13) Exihibit P. 2, the balance-sheet for the year 1964-65, shows that the deceased earned a net profit of Rs. 3,881.75 in that year and that his own capital in the firm was Rs. 13,474.98, while Rs. 5,400.16 represented the amounts due to others from him. In the balance-sheet it is mentioned "Manohar Lal Ka Ghar Khata— Rs. 3000.87" which means that he had withdrawn this amount for the expenses of his household.

(14) The balance-sheet for the year 1965-66 shows that Manohar lal earned a net profit of Rs. 7,150.75 and his capital was Rs. 14,355.86. The amount due to others was Rs. 5,578.92 and he withdrew Rs. 3,681.28 for his household expenses. During 1965-66, Manohar Lal paid Rs. 6,120 on account of salaries of his staff.

(15) From this evidence it is clear that during the year 1964-65 Manohar Lal gave Rs. 250 per mensem to his wife for household expenses, while in 1965-66 he paid a little more than Rs. 300 per mensem to her for that purpose and the balance amount of the profit he used to plough back into the business. That is why Smt. Damyanti Devi stated that he used to spend nearly Rs. 300 to Rs. 400 per mensem on his ownself and the balance amount he used to give to her. The family consisted of three adults and three children who were being maintained on Rs. 300 per mensem. It can be safely assumed that out of this amount of Rs. 300 the expenses on the deceased used to be about Rs. 75 per mensem while the remaining amount of Rs. 225 was being spent on the maintenance of the other members of the family, who were left behind to claim compensation after his death. As his business was developing, Manohar Lal would have contributed higher amounts for the maintenance of his family in subsequent years. That his business was prospering is evident from the balance sheets and the fact he purchased a scooter in the second year of his starting the factory. The factory seems to have been started in the year 1964-65. The deceased was only 37 years of age and was in good health which leads to the conclusion that he would have lived a normal life. According to the statistics collected by the Government, the average life of a male in the quinquennium 1965—70 was about 60 years while in the next quinquennium it is expected to increase to 63 years. Even if it is taken that the deceased would have lived up to the age of 60 years, the appellants are entitled to compensation on the basis of his contribution for 23 years. Calculating on that basis, the compensation due to the appellants comes to Rs. 62,100 at the rate of Rs. 225 per mensem for 23 years. There is another mode of determining the compensation payable on the death of Manohar Lal, that is, the loss of his earning capacity. It is in evidence that, apart from supervising the work in his factory, he used to work himself and, if the factory had continued after his death, it would have been necessary to engage some person to carry on the business in his place. It has also been stated that three other workers were employed in the factory and their annual salaries amounted to Rs. 6,120.00, that is, on the average each worker was getting about Rs. 2,040.00 per annum and no suitable person would have been available except on a monthly salary of Rs. 300.00 or more. From that point of view also, the compensation at the rate of Rs. 225.00 per mensem does not appear to be on the high side.

(16) It is submitted on behalf of the respondents that as against the compensation determined above, the value of the assets received by the appellants should be set off. We, however, do not agree to this submission on the facts of this case. The house worth Rs.. 6,000.00 was being used for the residence of the family during the lifetime of Manohar Lal and is still being used for that purpose. There is, therefore, no change in the user of that house nor has it become a source of income to the family after his death. The contribution made by Manohar Lal for the family was in addition to the provision of the residential house. As regards the factory, it was closed down after his death because there was nobody to look after it. The factory site and the building constituted immoveable property owned by Manohar Lal which was being used for his business. This property was available to the family even during his lifetime and has now come to be owned by the appellants as his heirs under the Hindu Succession Act. In *Gobald Motor Service case* (4) (*supra*), the family of the deceased Rajaratnam owned a building worth about Rs. 2,00,000.00 at Palni and 120 acres of *nanja* land worth Rs. 1,000.00 per acre. The family was engaged in the manufacture of Indian patent medicines from drugs and had been running a Sidhha Vaidyasalai at Palni for a period of thirty years and had also branches in Colombo and Madras. Rajaratnam studied in the Indian School of Medicine for two years and thereafter set up his own practice as a doctor having registered himself as a practitioner in 1940. He took over the management of the family Vaidyasalai at Palni and was earning Rs 200.00 to Rs. 250.00 per month from his private practice in addition to the income from business. No deduction was made out of the amount awarded to his widow and sons on account of the property that was inherited by them including the business and the compensation was determined on the basis of the loss of income from his private practice. In *M/s Sheikhupura Transport Co. Ltd.* v. *Northern India Transporters Insurance Co. Ltd. and another,* (8), their Lordships considered the case of Bachan Singh in para 2 of the report. He was 42 years old when he died in the accident. He had an annual income of about Rs. 9,000.00 out of which Rs. 2,000.00 was his income from immoveable property. That income continued to accrue to the benefit of his wife and children and, therefore, only the income other than the

(8) A.I.R. 1971 S.C. 1624.

income from the immovable property which Bachan Singh was earning from his contract business was taken into consideration. No deduction was made on account of the immoveable property left by Bachan Singh which was inherited by his widow and children after his untimely death. For similar reasons, we do not consider that the value of the factory including the site and the building should be deducted out of the compensation payable to the appellants. The learned counsel for the respondents has, however, relied on certain decided cases in support of his submission and has also submitted that some amount should, in any case, be deducted on account of acceleration of succession. Those cases were decided on their own facts under the Fatal Accidents Act and cannot be taken as precedents in every case particularly when under section 110-B of the Motor Vehicles Act, the Tribunal is to determine the compensation which appears to him to be just. No doubt, in some of the decided cases a deduction was made on account of acceleration of succession but no uniform rule can be laid down in that behalf. It will depend on the facts of each case according to the nature of the succession and untimely benefit accruing to the legal representatives in the wake of the death of the person to whom they succeed, while balancing the gains and losses in order to determine the just compensation to which the legal representatives are entitled mainly on account of their dependency on the deceased. The following cases have been brought to our notice in this behalf:—

1. *Public Trustee (W.A.)* v. *Nickisson,* (9), decided by the High Court of Australia, wherein the claimant was the son aged seven years whose parents had died in a road accident. At the time of his death the father was aged 40 years and was earning about £1600 per annum with bright prospects. The learned trial Court did not award any damages to the son on account of the death of his father on the ground that he had left an estate of £2,750 which was inherited by the son in its entirety and that the amount of loss to the son was less than the value of that estate. In appeal, it was held that the lower Court under-estimated the average annual value of the final benefit that the son was likely to derive from his father. The reasonable assessment of damages was held to be not

(9) 1966 A.C.J. 194.

less than £5000. With regard to the estate of £2,750, it was observed:—

> "I, therefore, think, with respect, that in the present case his Honour should not have treated the whole £2,750 as a benefit resulting to Gregory from his father's death. Doing the best I can make a reasonable allowance on this aspect of the case, I think that no more than £1,000 should be deducted from the damages otherwise allowable."

The son had been allowed £1,500 as damages on account of the death of his mother. The appellate Court enhanced that amount by £4,000 on account of the damages accruing to the son in consequence of the death of his father. It was observed by Menzies, J., who proposed only the deduction of £500 instead of £1,000 by the other two Judges that—

> "In arriving at the figure of £4,000, which I regard as the proper award, I have made a deduction of £500 by reason of Gregory's inheritance at the age of seven of the whole of his father's estate of £2,700. Had the father not died when he did, Gregory might never have inherited the whole of his estate and, furthermore it is probable that any inheritance would have had to wait for a long time. An estate of about £2,700 will produce about £3 a week, leaving the capital intact, and this is of sufficient significance, even having regard to Gregory's prospects while his father was alive of getting more later, to warrant some deduction from what would have been the appropriate award if there had been no inheritance."

(17) 2. *Ball* v. *Kraft* (10), is a case decided by a learned Single Judge of the Supreme Court of British Columbia, Canada. In that case, the claimants were the widow and two sons aged 13 and 16. The widow remarried 19 months after the death of her husband. The learned Judge held that if she had not remarried, he would have awarded $30,000 to her, $6,000 to the son aged 13 years and $4,000 to the son aged 16 years but because of her remarriage the amount awarded was $1500, $2000 and $1500, respectively. The loss of the widow

(10) 1967 A.C.J. 235.

during the period of 19 months that she remained unmarried after the death of her husband was assessed at $3,500 out of which the sum of $2000 was deducted which she had received from her husband's portion of the real estate on his death. Similarly, in the case of the children the remarriage of their mother was taken into consideration. Evidently, this case has no applicability to the facts of the present case and was decided on the peculiar facts of that case due to the remarriage of the widow.

(18) 3. *Daniels* v. Jones, (11). In that case, the action was brought by the widow on behalf of herself and her children for damages resulting from the death of her husband in a motor accident. It was found that the net earnings of the deceased for three years preceding the accident were £3,400, £2,900 and £3,750. His annual average earning was, therefore, taken to be £3,300 net. It was also estimated that his income would have increased by £200 every year net. The deceased was 52 years old at the time of his death and the damages were calculated on the basis of 13 years' income. The existing value of 13 years' damages because of payment in lump sum was determined at £33,000. The deceased had left assets which were valued at £30,750 out of which a sum of £10,000 was deducted on account of death duties. The learned trial Court found that the widow had an expectancy in the husband's assets, the value of which was 12½ per cent, that is, £2,650. After deducting this amount from the sum of £20,750, the next benefit derived by the widow was determined as £1,200 and this amount was deducted out of £33,000 which were determined as damages payable to the widow and her children. In the result, judgment was given for the plaintiffs in the sum of £14,800 besides £90 for funeral expenses. The widow appealed to the Court of Appeal which was dismissed.

(19) 4. *Eoxley and another* v. *Olton* (12), is a case of personal injuries sustained by the claimant and it was held that the unemployment benefit, to which the plaintiff was entitled by virtue of unemployment caused by the defendant's wrongful act, is to be taken into account in mitigation of the plaintiff's loss and is to be deducted out of the damages which would otherwise be awarded but national assistance grants were not so deductible. This case also has no application to the facts of the present case.

(11) (1961) 3 All. E.R. 24.
(12) (1964) 3 All. E.R. 248.

(20) 5. *Whittome* v. *Coates* (13). In that case, the claim was made by the widow whose husband was killed by the negligent act of the defendant at the age of 58 years. His widow was his sole dependent and was in good health. Her expectation of life was taken as 12 years. The deceased had left £386 in cash and it was pleaded that the benefit of that amount would be received by the plaintiff. Those amounts would have been payable if the deceased had lived up to the age of 65 years. The trial Court had awarded £5,250 to the widow out of which the Court of Appeal deducted £1,000 on account of the assets of the estate left by the deceased including the sum of £386.

(21) 6. *Bir Singh and another* v. *Smt. Hashi Rashi Banerjee and others* (14). In para 26 of the report, the following observation appears:—

> "The Court is required to take into consideration the benefits which might accrue and the loss which is incurred by the claimants on the ground of the death as a result of the accident. If the person claiming damages gets into possession of a large estate because of the death of his relative who is killed by an accident, there is no loss. The claimant is really gainer by the event. Whenever a person gets into possession of properties by reason of death in question, that fact has to be taken into consideration, 'Bradburn v. *Great Western Ry. Co.* (15).

The judgment does not show that there was any such question arising in the case before the learned Judges of the Calcutta High Court and the above observation is, therefore, merely an *obiter dictum*.

(22) 7. *Amarjit Kaur and others* v. *Vanguard Insurance Co. Ltd. and others* (16), is a judgment of Deshpande J., of the Delhi High Court. In that case, the deceased had left an interest worth Rs. 5,000.00 in the purchase of an industrial plot which was inherited by the claimants as heirs of the deceased. One-third of the amount was deducted out of the compensation payable to the claimants on

(13) (1965) 3 All. E.R. 268.
(14) A.I.R. 1956 Cal. 555.
(15) (1874) 10 Ex. 1(D).
(16) 1969 A.C.J. 286.

account of acceleration of succession. Similarly, the widow had received Rs. 1,000.00 from the chit fund of which the deceased was a member and one-third of that amount was also deducted.

(23) I have carefully gone through the judgments relied upon by the learned counsel for the respondents and am of the opinion that in every case the nature and extent of the assets left by the deceased is to be determined, that is, if the assets are such of which benefit was being taken by or was available to the family during his lifetime, the value of those assets has not to be taken into consideration in mitigation of the damages. The accelerated succession to those assets does not bring any additional benefit to the heirs whch is liable to set-off against the loss occasioned by the death. Again if the assets are such which were being created by the deceased out of his savings to be utilised for the benefit of the members of the family on various occasions like marriage, higher education of the children etc. etc., those assets should also be kept out of consideration while determining the just compensation. Such assets cannot be said to confer any undue or untimely benefit on the legal representatives because of the death of the person on whom they were dependent. In every case it has been emphasised that damages have to be determined on the facts of that case and in such calculations, conjectures and surmises also play their part. Under section 110-B of the Motor Vehicles Act, the Tribunal has been made the judge of the amount of compensation which is considered to be just, and, while determining just compensation, the Tribunal has to take into consideration all relevant factors concerning the deceased and his legal representatives. In the present case, Smt. Damyanti Devi did not state anything about the assets left by the deceased, but P.W. 4 (Krishan Parkash) stated that Manohar Lal owned a factory of the value of about Rs. 30,000.00, apart from the site and the building thereof which were valued at about Rs. 50,000.00. He did not specifically say that the land and the building belonged to Manohar Lal exclusively. The accounts produced on the record show that on the assets side of the factory, the value of the site and the building has not been included, which leads me to conclude that the site and the building of the factory belonged to the family. I am fortified in this conclusion by the statement of Krishan Parkash P.W. 4 that Manohar Lal used to run the business under the name of 'Manohar Lal and Sons' which clearly means that the business was or was intended to be a joint family business. It was for the respondents to

prove that the business carried on by the deceased was his proprietary business in which the family had no interest. No evidence having been led on that point, it is legitimate to conclude that the business that was being run by Manohar Lal deceased was joint family business. In similar circumstances, their Lordships of the Supreme Court did not deduct any amount on account of the assets of the business of Rajaratnam in *Gobald Motor Service case* (4), (*supra*) and the compensation was determined on the basis of the loss of his earning capacity. Respectfully following that judgment, I hold that no amount can be deducted out of the compensation payable to the appellants on account of the assets of the factory including the site and the building.

(24) Another argument advanced on behalf of the appellants is that damages in respect of loss on account of expectancy of life of the deceased should be awarded to the estate as was done in *Gabald Motor Service case* (4) (*supra*), *Abdulkadar Ebrahim Sura and another* v. *Kashinath Moreshwar Chandani and others* (17), and *T. V. Gnanavelu and another* v. *D. P. Khannayya and others* (18). The cases before the Supreme Court and the Bombay High Court were under the Fatal Accidents Act according to which separate damages have to be claimed by the dependent legal representatives mentioned in section 1-A and the estate under section 2 of that Act Those judgments are, therefore, not relevant to determine the compensation under section 110-B of the Motor Vehicles Act. The Madras case was, however, under the Motor Vehicles Act. In that case, one Doriaswami Pillai died in an accident on November 30, 1961, at the age of 60 years. The claimants were not dependent on him and a sum of Rs. 4,000.00 was awarded for the loss of expectancy of life and Rs. 1,000.00 as compensation under the head of pain and suffering by the Tribunal. That award was upheld by the learned judge. The amount of compensation was awarded to the estate because there were no dependants and that amount was apportioned amongst the legal heirs. I have already held above that, according to section 110-B of the Motor Vehicles Act, the loss has to be determined to the estate and then apportioned amongst the legal representatives representing that estate according to the benefit that they were receiving or would have received from the deceased if he had not died. At the time of

(17) A.I.R. 1968 Bom. 267.

(18) A.I.R. 1969 Mad. 180.

apportionment, the extent of dependency of each legal representative on the deceased has to be taken into account. In such a case where the dependency is to a very great extent and the compensation is to be determined on the basis of a fairly long number of years, it will be duplication of the damages if any separate damages are allowed to the estate due to the loss of expectancy of life of the deceased. I, therefore, hold that in the present case no amount need be awarded as damages for loss of expectancy of life of Manohar Lal to the appellants. I am further of the view that the amount of insurance received by Smt. Damyanti Devi fairly represents such loss as was foreseen and provided for by the deceased himself.

(25) Whether the insurance claim received by Smt. Damyanti Devi as the nominee of Manohar Lal policy-holder can be deducted out of the compensation payable to the appellants, is the next question to be determined. In England, section 2(1) of the Fatal Accidents Act, 1959, has provided that—

> "In assessing damages in respect of a person's death in any action under the Fatal Accidents Act, 1846, there shall not be taken into account any insurance money, benefit, pension or gratuity which has been or will or may be paid as a result of the death."

In *Bradburn* v. *Great Western Ry. Co.* (15) (*supra*), it was held that "in an action for injuries caused by defendant's negligence, a sum received by the plaintiff on an accidental insurance policy cannot be taken into account in reduction of damages." In *Dalby* v. *India and London Life Assurance Company* (19), it was observed that—

> "One who pays premiums for the purpose of insuring himself, pays on the footing that his right to be compensated when the event insured against happens is an equivalent for the premiums he has paid; it is a *quid pro quo,* larger if he get it, on the chance that he will never get it at all."

Referring to this case, Bramwell B., said in *Bradburn* v. *Great Western Ry. Co.* (15) (Supra). :

> "That decision is an authority bearing on the present case, for the principle laid down in it applies, and shows that the

(19) (1854) 15 C.B. 365.

plaintiff is entitled to retain the benefit which he has paid for in addition to the damages which he recovers on account of the defendants' negligence."

Pigott B. in the same case said:—

"The plaintiff is entitled to recover the damages caused to him by the negligence of the defendants and there is no reason or justice in setting off what the plaintiff has entitled himself to under a contract with third persons, by which he has bargained for the payment of a sum of money in the event of an accident happening to him. He does not receive that sum of money because of the accident, but because has has made a contract providing for the contingency; an accident must occur to entitle him to it, but it is not the accident, but his contract, which is the cause of his receiving it."

(26) A judgment of a Division Bench of this Court in *Parkash Vati and others* v. *The Delhi Dayal Bagh Dairy Ltd.* (20), delivered on November 15, 1957, has been brought to our notice wherein it was held:—

"It is not denied that under the two policies of life insurance of deceased Mohinder Gupta, plaintiff No. 1, his widow, has already received Rs. 19,804/1/- and the learned trial Judge very correctly disallowed the claim on her part because in her case that financial gain by her on account of death of her husband has to be taken into consideration in arriving at the figure of any loss suffered by her. The learned counsel for the plaintiffs has not, in the circumstances, pressed the claim on her behalf in this appeal."

There is no other discussion on the point. That claim arose under the Fatal Accidents Act as the accident had occurred on July 4, 1949. Under section 1 of that Act, damages were to be awarded to the four heirs mentioned therein proportioned to the loss suffered by each of them. It was in that context that the amount of insurance received by the widow was set off against the amount of compensation to which she was held entitled. Such a consideration does not apply to a claim under section 110-A of the Motor Vehicles Act. Any provision made by the deceased himself by taking out a policy of insurance cannot be said to be the benefit derived by the legal representatives on account of his death. The benefit, if any, from a policy

(20) 1967 A.C.J. 82.

of insurance accrues to the nominee or the legal representatives not because of the tortious act of the wrong doer in causing the death of the policy holder but on the footing of a contract which the deceased had entered with the insurer under which he paid the premia. The insurance amount really represents the compensation in respect of the capacity to save of the deceased which existed at the time of his death by accident and would have continued in future too. Since in determining the compensation for the appellants we have not taken into consideration the savings which would have been made by Manohar Lal during his lifetime if he had lived his normal life, we do not propose to allow any deduction on account of the insurance amount received by the widow on his death.

(27) The next question that arises is whether any deduction should be made out of the amount of compensation determined on account of lump sum payment. It was held by a Division Bench of the Delhi High Court in *Union of India and others* v. *Viranwali and others* (21) that—

> "the benefit of getting a lump sum payment is off set by the increase in the prices and the progressive decrease in the value of the rupee. Taking all the facts of the case into consideration, we do not think that the damages fixed by the Court below can be considered as unreasonably excessive. As observed by the Punjab High Court in *Vanguard Fire and General Insurance Company, Limited* v. *Sarla Devi and others* (22) 'there is no quantitative scale of computing compensation for damages resulting from death and Courts of law must in the circumstances of each case exercise their discretion to arrive at a reasonable and fair figure. The task of the Court is to estimate as best as it can a capital sum which will represent a fair compensation for the loss of the actual pecuniary benefit which the dependants might reasonably have expected to enjoy if the deceased had not been killed.'
>
> In so doing, estimates are likely to differ and so long as the estimate made by the trial Court cannot be said to be unreasonable, even though a different estimate is possible, this Court will not interfere."

(21) 1967 P.L.R. Delhi Section 85.
(22) A.I.R. 1959 Pb. 297.

Some other judgments have been brought to our notice in which a deduction ranging between 15 per cent and 25 per cent was made from the amount of damages as determined on account of the fact that the amount was being paid in lump sum whereas the benefit from the deceased would have accrued to the claimants month by month. Since we have determined the compensation payable to the appellants on the basis of the amount that was being contributed by Manohar Lal towards their maintenance on the date of his death, and have not taken into consideration the increase in that amount in the future years, according to the increase in his income, as is evident from the accounts produced on the record, nor have enhanced that compensation on account of the continued and continuing rise in the prices of all commodities which has been more than 20 per cent since 1966, we consider that no reduction from the amount of compensation can fairly be made on this account. It is true that the amount that will be received by the claimants can yield some income if prudently invested but that is no ground to reduce the amount of compensation in view of what has been stated above. Another reason for not making any reduction is that the claimants have already been deprived of the compensation due to them for nearly six years, which account for 25 per cent of the number of years on the basis of which the compensation has been determined, and no interest for that period has been allowed. The needs of the appellants will also increase with the advancement of age which fact has not been taken into consideration while determining the just compensation and for that reason too no reduction is possible on this account.

(28) The last point argued in this case is the age upto which the dependency of the legal representatives is to be determined. This factor will depend on the facts of each case and the evidence brought on the record and no hard and fast rule can be laid down. In the case in hand, the deceased was 37 years of age at the time of his death, his widow was about 33 years of age and their eldest child, a daughter, was about 11 or 12 years old. The two sons were of still younger age. All the three children were attending school and have continued their education. The girl is now of marriageable age and will require money for her marriage. The sons are also completing their education and will require money to settle in life. Their dependence on the deceased was, therefore, for a sufficiently long number of years.

(29) Taking into consideration all the facts of the case, we determine the compensation payable to the appellants by the respondents as Rs. 60,000.00 although the figure of Rs. 62,100 has been arrived at, in order to make a round figure. Out of this amount Rs. 20,000.00 will be paid by the Insurance Company and the remaining amount by the other two respondents, the owner and the driver of the truck, jointly and severally. The liability of the Insurance Company has been restricted owing to the terms of the policy of insurance. The amount of compensation is apportioned amongst the claimants as under :—

Smt. Damyanti Devi (widow)	...	Rs. 21,000.00
Parvesh Kumari (daughter)	...	Rs. 15,000.00
Sarwan Kumar (son)	...	Rs. 12,000.00
Majinder Kumar (son)	...	Rs. 12,000.00

The amount that will be realized from the Insurance Company will be shared by the appellants in the same proportion.

(30) The appeal is accordingly accepted with costs throughout and a decree in the above terms is passed. The costs will be paid by the Insurance Company.

L.P.A. 303 *of* 1967.

(31) In this case, the accident occurred on September 23, 1960, between car No. PNF 5370 and bus No. PNJ 6441 belonging to the Punjab Roadways. Harpal Singh Thapar was one of the passengers travelling in the car who died as a result of the accident. The claim was filed by his mother Smt. Inder Kaur and by his widow Smt. Phool Kumari. Smt. Inder Kaur was held entitled to a compensation of Rs. 3,000.00 while Smt. Phool Kumari's claim was rejected *in toto* on the ground that she had received Rs. 25,000.00 on account of a policy of insurance. Against the award made by the Tribunal on September 10, 1962, F.A.O. 33 of 1963 was filed in this Court by Smt. Phool Kumari Thapar. That appeal was heard along with nine other appeals filed by the legal representatives of other persons who had died in the accident or by the persons who had suffered injuries. The Tribunal had come to the conclusion that the drivers of the car and the bus involved in the accident were equally guilty, and therefore, the claimants were entitled to 50 per cent of the amount of compensation determined for them from the

State of Punjab, the owner of the Punjab Roadways. In appeal, the learned Single Judge held that the negligence of the bus was 75 per cent and, therefore, the amount of compensation payable to each claimant was enhanced to 75 per cent of the amount determined. The learned counsel for the appellants submits that the driver of the bus alone was rash and negligent and the entire amount of compensation should have been awarded against the Punjab State. We have perused the evidence and have no reason to differ from the finding of the learned Single Judge on the point. In an appeal under clause X of the Letters Patent, the finding of fact recorded by the learned Single Judge is ordinarily binding unless it is shown to be perverse or unsupported by the evidence on the record. That finding is, therefore, affirmed.

(32) In the case of Smt. Phool Kumari, the Tribunal did not determine the amount of compensation payable to her on the ground that she had received Rs. 25,000.00 on account of insurance money on the death of her husband. In our view, the amount of Rs. 25,000.00 on account of insurance money could not have been taken into account by the learned Tribunal and the learned Single Judge, while determining the compensation payable to her. This case will have, therefore, to be remitted to the Tribunal, Jullundur, to determine the amount of compensation payable to Smt. Phool Kumari. The deceased was only 29 years old and his brother deposed that he was carrying on some business at Ludhiana. The Income Tax Practitioner, who handled the income tax cases of the deceased, appeared in the witness-box to state the annual income on which the deceased was assessed but there is no evidence on the record to show the income of the deceased from his business which alone has been lost to the widow. The learned Single Judge also did not go into this matter. We, therefore, accept this appeal, set aside the judgment of the learned Single Judge and remit the case to the Motor Accidents Claims Tribunal, Jullundur (District and Sessions Judge, Jullundur) to determine the amount of compensation payable to Smt. Phool Kumari after affording an opportunity to the parties to lead evidence with regard to the income of Harpal Singh deceased and the loss suffered by his legal representatives on account of his death. The amount of compensation will be determined in accordance with the observations made in *Damyanti Devi's* case. The parties are directed, through their counsel, to appear before the Tribunal on December 22, 1971.

L.P.A. 258 *of* 1970.

(33) In this case the accident occurred on August 22, 1960, as a result of which Shankar Dass died. He was only 33 years old at the time of his death and was employed as Sub Divisional Officer in the Public Works Department of the Himachal Pradesh Government. He was then drawing a salary of Rs. 560.00 per mensem. The claim was filed by his widow, Smt. Kaushalya Devi, on her own behalf and on behalf of her three minor children, two of whom are daughters and one is a son. The amount of compensation claimed was Rs. 3,38,800.00 but the Tribunal awarded a sum of Rs. 36,600.00 only. This amount was enhanced to Rs. 50,000.00 by the learned Single Judge in appeal out of which Rs. 32,000.00 were made payable to the widow and the share of each minor child was determined as Rs. 6,000.00. The amount of compensation is payable by the State of Punjab as the accident was the result of rash and negligent driving of the driver of a bus owned by the Punjab Roadways.

(34) The Tribunal expressed the opinion that the deceased might have lived another 15 years and, therefore, determined the compensation payable to his legal representatives on that basis. The Tribunal further accepted the salary of the deceased as Rs. 500.00 per mensem as stated in the claim application and determined the compensation on the basis of his contribution of Rs. 300.00 per mensem to the members of his family. The Tribunal thus calculated the amount of compensation payable to the appellants as Rs. 54,000.00 but he reduced this amount to Rs. 36,600.00 on the ground that the deceased must have left behind some assets or cash which had not been disclosed and the value of which he determined as Rs. 10,000.00. On account of lump sum payment, he deducted another sum of Rs. 7,400.00. Out of Rs. 36,600.00 he awarded Rs. 21,600.00 to Smt. Kaushalya Devi and Rs. 5,000.00 to each of her children. The three children were aged 8, 5 and 3 years and with regard to their share, it was directed that the amount should be invested in National Savings Certificates to be made available to them on attaining majority.

(35) At the hearing of this appeal, it has been vehemently argued by the learned counsel for the appellants that 15 years' period on the basis of which the compensation has been determined is too low bearing in mind that the average life of a male Indian is about 60

years. In some reported judgments, the age has been taken to be 70 years. The children left by the deceased are also of tender age and will have to be supported by their mother till the girls get married and the boy settles in life. The two girls were aged 8 and 5 years while the son was aged 3 years at the time of accident. The widow is also quite young and was probably about 30 years of age at the time of the death of her husband. She will require maintenance for a period of about 30 years or so. In my opinion, therefore, the compensation should have been determined taking into consideration the life expectancy of the deceased till the age of 60 years. It was for the State of Punjab or the Punjab Roadways to plead and lead evidence with regard to any assets or property which the deceased might have left. The learned Tribunal reduced the amount of compensation by a sum of Rs. 10,000.00 on pure conjectures for which there was no material on the record. Since the amount of compensation is being determined on the income of the deceased at the time of the accident, no reduction is called for in consideration of lump sum payment for the reasons recorded in F.A.O. 24 of 1969. The amount of compensation payable to the appellants is determined as Rs. 97,200.00 at the rate of Rs. 300.00 per mensem for 27 years. Out of this amount of Rs. 97,200.00, Smt. Kaushalya Devi shall be paid the sum of Rs. 50,000.00 while Asha Rani and Rajni Devi will be paid Rs. 15,000.00 each and Bhoo Dev Rs. 17,200.00. No claim has been made against respondents 3 and 4. The appeal as against those respondents is dismissed but it is accepted as against respondents 1 and 2, who shall pay the costs of this appeal to the appellants. A decree in the above terms is passed in place of the decree passed by the learned Single Judge.

L. P. A. 274 of 1970.

(36) In this case Bhim Sen Sharma, a school teacher, aged about 43 years, was knocked down by the Punjab Roadways bus No. PNE 8388 at about 3-45 p.m. on January 22, 1962, on the Grand Trunk Road near village Padhana. The deceased was going on a cycle. His widow Smt. Shanti Devi filed a claim for compensation under section 110-A of the Motor Vehicles Act, claiming an amount of Rs. 30,000.00. The Tribunal determined that a sum of Rs. 11,520.00 was payable as compensation to the legal representatives of the deceased but only allowed Rs. 3,000.00 to Smt. Shanti Devi with-holding the sum of Rs. 8,520.00 payable to her children on the ground that no claim had been made on their behalf. The Tribunal came to the conclusion that the income of the deceased was Rs. 135.00 per mensem and he was

contributing Rs. 80.00 per mensem to the family for maintenance. The compensation payable was determined in respect of only 12 years and thus the sum of Rs. 11,520.00 was arrived at. In appeal, the learned Single Judge enhanced the compensation to Rs. 20,000.00 allowing Rs. 8,000.00 to Smt. Shanti Devi and Rs. 3,000.00 to each of the children. The learned Single Judge was influenced by the fact that the sum of Rs. 20,000.00 can be invested at a reasonable rate of interest at 6 per cent per annum and if so invested will yield an income of Rs. 100.00 p.m. to the appellants. The learned Single Judge expressed the opinion that the deceased was contributing Rs. 100.00 per mensem to his widow and four children for their maintenance and determined the compensation payable at a round figure of Rs. 20,000.00. No evidence has been led in the case with regard to the longevity of life in the family nor have the ages of the appellants been stated anywhere on the record and, therefore, we are of the opinion that the learned Single Judge has correctly determined the compensation payable for a period of 17 years, that is, presuming that the deceased would have lived up to the age of 60 years. In a Letters Patent appeal we find no scope to interfere in the findings of the learned Single Judge and the amount of compensation determined by him. This appeal consequently fails and is dismissed but without any order as to costs.

L. P. A. 287 *of* 1970.

(37) Pt. Amar Nath, a Government contractor, aged about 53 years was going on a cycle along with Bawa Singh on April 1, 1962 at about 10.00 A.M. on Talwandi-Zira road, when he was struck by truck No. PNJ 8320 belonging to Smt. Soma Rani, respondent 1. As a result of that accident, Amar Nath died. The truck was being driven by Mohinder Singh, respondent 2, and was insured with Ruby General Insurance Company, respondent 3. A claim under section 110-A of the Motor Vehicles Act was filed by Smt. Puran Devi, widow of the deceased, on her own behalf and as the guardian of her minor son Brahm Datt and minor daughter Santosh Kumari. The deceased had also left behind two other daughters Vijay Bala and Swarna Devi and a son Surender Kumar, who were major. On the evidence led before the Tribunal, the income of the deceased was assessed as Rs. 400.00 per mensem out of which his contribution to the family for maintenance was determined Rs. 300.00 per mensem on the ground that the deceased must have been spending

Rs. 100.00 per mensem on his own maintenance. The age of the deceased was determined as 54 years at the time of death on the basis of the statement of his widow Smt. Puran Devi. The amount of compensation was determined as Rs. 18,000.00 on the basis of Rs. 300.00 per mensem for five years. This amount was divided into six equal shares and no amount of compensation was awarded to Surender Kumar on the ground that he did not stand in need of compensation as he could make his own living. The claim of Brahm Datt, the second son of the deceased aged about 17 years, was rejected on the ground that he was young enough to become self-supporting. The claim of Smt. Puran Devi, the widow of the deceased, was rejected on the ground that she had come into possession of cash amounting to Rs. 25,000.00 to Rs. 30,000.00 and two or three houses fetching a rent of Rs. 30.00 per mensem in addition to the residential house worth about Rs. 10,000.00. She had also received a sum of Rs. 2,800.00 on account of insurance policy and was to receive Rs. 2,581.38 which was payable by the Government to the deceased in respect of his contract. The other three legal representatives, namely, Santosh Kumrai, Vijay Bala and Swarna Devi were allowed Rs. 3,000.00 each. This award was made on March 7, 1964, against which an appeal was field in this Court. The learned Single Judge considered that the amount of Rs. 18,000.00 on account of compensation determined by the Tribunal was sufficient compensation for the family and that there was no reason to deprive the legal representatives of that amount. The learned Single Judge, however, did not award anything to Surender Kumar, the eldest son of the deceased but divided the compensation amongst the widow Rs. 6,000.00) and the other four children (Rs. 3,000.00 each). This order was made on March 4, 1970, against which the present appeal under clause X of the Letters Patent has been filed. At the time of death of the deceased, the daughters were aged 21, 15 and 9 years while the sons were aged 19 and 17 years and the widow was aged 51 years, according to the statement of Smt. Puran Devi as her own witness.

The learned Tribunal determined the age of Amar Nath deceased as 54 years on the ground that his widow Smt. Puran Devi had stated her age to be 52 years and that her husband was two years older than her. This statement was made on July 19, 1963, whereas the accident had occurred on April 21, 1962. According to this statement, the deceased was not more than 53 years of age at

the time of his death. His age should have been determined as 53 years instead of 54. Shri Ram Kishan, a younger brother of the deceased, appeared as A.W. 2, and deposed that their father had died at the age of 78 years. Thus, evidence was led in the case as to the longevity of life in the family and on that basis the grant of compensation for five years only was grossly insufficient. In the circumstances of this case, we think it can be safely assumed that the deceased would have lived at least up to the age of 65 years if his life had not been cut short by the accident. The compensation should have been worked out on the basis of 12 years.

(38) Smt. Puran Devi stated as A.W. 6 that the deceased was earning about Rs. 800.00 per mensem and gave her Rs. 500.00 for household expenses. The income-tax assessment orders filed in the case show that the assessable income of the deceased for the assessment years 1961-62 and 1962-63 was Rs. 6,001.00 and Rs. 6,827.00, respectively, so that his income at the time of death can be safely taken to be as Rs. 550.00 per mensem. However, his income from contracts was Rs. 5,331.00 for the assessment year 1962-63 and this was the only income that was lost to the family after his death. On that basis I think Rs. 300.00 per mensem was rightly determined by the learned Tribunal as the just compensation. That amount was also upheld by the learned Single Judge. The amount of compensation for 12 years at Rs. 300.00 per mensem works out to Rs. 43,200.00.

(39) The learned Tribunal recorded the finding that the deceased constituted a joint Hindu family which is apparent from the assessment orders. On that finding, therefore, there was no justification to take into consideration the immoveable property left by the deceased. That property belonged to the family and, therefore, the legal representatives of the deceased did not derive any untimely benefit from it owing to the premature death of the deceased by accident. The amount of insurance could not be taken into consideration for the reasons which have already been set out above while deciding F.A.O. 24 of 1969. The sum of Rs. 2,581.38 which was due to the deceased from the Government on account of the contract was to be received by all the heirs and not by Smt. Puran Devi alone and, therefore, on that basis she could not be denied the compensation. This amount also belonged to the joint Hindu family and, therefore, could not be deducted from the amount of compensation payable. No deduction is called for in this case on account of lump sum payment for the reasons recorded above. We accordingly allow

the appeal and decree the claims of the appellants for a sum of Rs. 43,200.00 to be divided amongst them as under :—

Smt. Puran Devi (widow)	...	Rs. 15,000.00
Swarna Devi (daughter)	...	Rs. 4,000.00
Surender Kumar (son)	...	Rs. 22,000.00
Braham Datt (son)	...	Rs. 4,000.00
Santosh Kumari (daughter)	...	Rs. 8,000.00
Vijay Bala (daughter)	...	Rs. 10,000.00

The amount that has been received or will be received from the insurance company will also be divided in the same proportion. The appellants are entitled to their costs of this appeal which will be paid by the insurance company.

K. S. K.

LETTERS PATENT APPEAL

Before R. S. Narula and Rajendra Nath Mittal, JJ.

SURJIT SINGH SUD,—*Appellant.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Letters Patent Appeal No. 522 of 1971.

January 21, 1974.

Punjab Town Improvement Act (IV of 1922)—Sections 4, 5, 7, 10, 12, 15, 93 and 94—Chairman of an Improvement Trust—Whether a trustee and liable for removal under section 10—Section 5—Whether ultra vires *Article 14, Constitution of India—Employment, Suspension, Removal and Conduct of Officers and Servants of the Trust Rules (1945)—Rules 17 to 19—Whether apply to the Chairman of the Trust.*

Held, that a review of sections 4, 5, 7, 10, 12, 15, 93 and 94 of the Punjab Town Improvement Act, 1922 shows that the word "trustee' includes 'Chairman' unless the context of a particular section shows otherwise. Section 10, therefore, is also applicable in the case of other trustees and he is liable for removal under that section.

(Para 5)