

NATIONAL INSURANCE CO. LTD.

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v.

REKHABEN & ORS.

(Civil Appeal No. 8867 of 2012)

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MARCH 07, 2017

[S. A. BOBDE AND L. NAGESWARA RAO, JJ.]

Motor Vehicles Act, 1988:

ss.163A, 166, 168 – Compensation – Salary received by the claimants from compassionate appointment whether deductible from the award of compensation made in favour of the claimants – Held: Compensation is awarded on the basis of the entire loss of income of the deceased or in a case of injury, for the loss of income due to the injury – The income from compassionate appointment offered to the dependants of the deceased or the injured, by the employer of the deceased/ injured, who is not the tortfeasor, cannot be deducted from the compensation receivable by him on account of the accident from the tortfeasor – The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources – Since the tortfeasor has not offered the compassionate appointment, an amount which a claimant earns by his labour or by offering his services, whether by reason of compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tortfeasor under the Act.

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Compensation – Determination of – Relevant factors – Held: The income of the deceased or the injured, which the claimants have lost due to death of the deceased or inability of the injured to earn is a relevant factor for determining the amount of compensation – The income of the dependant-claimant in case of death of earning member is generally not a relevant factor in determining compensation primarily because the law takes no cognizance of the claimant's situation, though in case of an injury, the income of the claimant who is injured is relevant.

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A Dismissing the appeals, the Court

B HELD: 1.1 The liability to pay the amount of compensation under Section 163A of the Motor Vehicles Act, 1988, is imposed on the owner of the motor vehicle or the authorized insurer, in the case of death or permanent disablement due to accident arising out of the use of motor vehicle. It is payable to the legal heirs or the victim, as the case may be. In other cases, an award may be made in respect of the claim arising out of the accident under Section 168 of the Act. The Tribunal may make an award

C determining the amount of compensation “which appears to it to be just”, specifying the person or persons to whom compensation shall be paid and in making the award, the Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. In these cases, compensation is claimed against the tortfeasor who may be the driver or owner of the vehicle or the insurer. In respect of an accident in which the tortfeasor is found to be liable, the owner or the driver of the vehicle or the insurer, as the case may be, may alone be held responsible for the payment of such compensation since the accident has resulted in the injury or death which gives rise to the claim of the claimants. No other party is involved in it. And certainly not the employer who may offer compassionate appointment to the dependants of the injured/ deceased. [Paras 10, 11] [697-A-E]

D 1.2 While awarding compensation, amongst other things, the Tribunal takes into account the income of the deceased and calculates the loss of such income after making permissible deductions to compensate the injured claimant for the loss of earning capacity in case of an injury, and to compensate the claimants dependent on him in case of death. Thus, the income of the deceased or the injured, which the claimants have lost due to the inability of the deceased or the injured to earn or to provide for them is a relevant factor which is always taken into consideration. The salary or the income of the claimant in case of death is generally not a relevant factor in determining compensation primarily because the law takes no cognizance of the claimant’s situation. Though in case of an injury, the income of the claimant who is injured is relevant. [Para 12] [697-E-G]

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1.3 In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they receive in the form of their salary, would be earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act. The compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on compassionate grounds to the dependants of the deceased/injured. The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources. Since the tortfeasor has not offered the compassionate appointment, an amount which a claimant earns by his labour or by offering his services, whether by reason of compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tortfeasor under the Act. In such a situation, the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount which is liable to be paid either by the owner/ the driver of the offending vehicle or the insurer. [Paras 18, 19] [701-H; 702-A-E]

Vimal Kanwar & Ors. v. Kishore Dan & Ors. (2013) 7 SCC 476 – relied on.

Bhakra Beas Management Board v. Kanta Aggarwal and Ors. [2008] 10 SCR 165 : (2008) 11 SCC 366 – held inapplicable.

Helen C. Rebello and others v. Maharashtra State Road Transport Corporation and another [1998] 1 Suppl. SCR 684 : (1999) 1 SCC 90; *United India Insurance Co. Ltd. & Ors. v. Patricia Jean Mahajan & Ors.* [2002] 3 SCR 1176 : (2002) 6 SCC 281; *Reliance General Insurance Company Limited v. Shashi Sharma*

A & Ors. [2016] 6 SCR 488 : (2016) 9 SCC 627 –
referred to.

Case Law Reference

	[2008] 10 SCR 165	held inapplicable	Para 13
B	[1998] 1 Suppl. SCR 684	referred to	Para 14
	[2002] 3 SCR 1176	referred to	Para 14
	(2013) 7 SCC 476	relied on	Para 14
C	[2016] 6 SCR 488	referred to	Para 15

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8867 of 2012.

From the Judgment and Order dated 28/29.03.2012 of the High Court of Gujarat at Ahmedabad in First Appeal No. 736 of 2012

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C. A. No. 3812 of 2017.

E Dr. Meera Agarwal, Ramesh Chandra Mishra, Vishnu Mehra, Ms. Manjeet Chawla, Alok Bhachawat, Ms. K. V. Bharathi Upadhyaya, Advs. for the appearing parties.

The Judgment of the Court was delivered by

S. A. BOBDE, J.

Civil Appeal No. 8867 of 2012

F 1. The appellant–Insurance Company has preferred this appeal against the impugned judgment and order dated 28/29.03.2012 passed by the High Court of Gujarat at Ahmedabad in First Appeal No.736 of 2012, whereby the High Court partly allowed the appeal of the claimants to the extent of enhancing the sum awarded by the Motor Accident Claims Tribunal in MACP No.1239 of 1999 dated 10.12.2010.

G 2. The deceased, Girdharbhai Pansuriya @ Girish, an employee of Gujarat Electricity Board was travelling from Wankaner to Mendarda village, when his motorcycle was hit by a matador bearing registration no. GJ.1.T.T. 9761 insured by the appellant-National Insurance Co. Ltd. The matador, moving at a high speed on the opposite side of the road,

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dashed against the vehicle of the deceased from the front resulting in the fatality.

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The wife of the deceased was given employment by the employer of the deceased with a regular salary on grounds of compassionate appointment.

3. The claimants viz., the wife, one minor child and the parents of the deceased, filed a claim petition before the Motor Accident Claims Tribunal (for short, the 'Tribunal'). On the date of the accident, the deceased was working as Store Keeper with Gujarat Electricity Board. The Tribunal awarded an amount of Rs.2,22,372/- with interest at the rate of 9% per annum as compensation after deducting the amount of Rs.7,000/- per month from the salary of the deceased as this amount of Rs.7,000/- per month after deduction was received by respondent no.1 as salary from the employment which was given to her on compassionate ground by the employer due to the death of her husband. Being aggrieved, the claimants preferred an appeal before the High Court. The High Court allowed said appeal and enhanced the compensation to Rs.14,90,000/- along with interest at the rate of 7.5% per annum on the enhanced amount.

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4. The High Court refused to deduct the amount received by the widow as salary on account of compassionate appointment in the Gujarat Electricity Board granted to her by the employer due to her husband's death. Being aggrieved, the appellant preferred this appeal against the impugned judgment and order dated 28/29.03.2012, passed by the High Court in First Appeal No.736 of 2012.

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Civil Appeal No. 3812 of 2017 @ SLP (C) No. 26882/2013

Leave Granted.

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5. The appellant—Insurance Company has preferred this appeal against the impugned judgment and order dated 15.02.2013 passed by the High Court of Gujarat at Ahmedabad in First Appeal No.1398 of 2002, whereby the High Court dismissed the appeal and affirmed the award passed by the Motor Accident Claims Tribunal in MACP No.193 of 1994 dated 05.11.2001.

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6. The injured, Ramrajsinh, an employee of Gujarat Electricity Board, was travelling in a matador van bearing registration no. GJ.3.T.9537 in the course of his employment. A truck bearing no. GJ.3.T.906 insured by the appellant—National Insurance Co. Ltd came from the opposite

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A side of the road and collided with the van. As a result of the collision, the victim was seriously injured and suffered 70% permanent disability of his entire body. He was found unfit for further continuation in the job.

The wife of the injured was given employment by the employer of the injured in the same post on grounds of compassionate appointment.

B 7. The claimant viz. the wife of the injured filed an application for compensation before the Motor Accident Claims Tribunal at Bhuj (for short, the 'Tribunal') from the opponents for the injuries sustained by her husband. By an award dated 05.11.2011, the Tribunal allowed the application for compensation and awarded total compensation of
C Rs.8,95,000/- with interest at the rate of 9% per annum to the claimant. Being aggrieved, the appellant challenged the said award by filing an appeal before the High Court under Section 173 of the Motor Vehicles Act, 1988, *inter alia*, on the ground that since the wife of the injured had been given appointment on compassionate grounds, the Tribunal should have taken into consideration the income receivable by the wife from
D such appointment for calculating the pecuniary loss suffered by the victim.

The High Court while affirming the award of the Tribunal, dismissed the appeal. Being aggrieved, the appellant—Insurance Company preferred this appeal against the impugned judgment and order dated 15.02.2013, passed by the High Court in First Appeal No.1398 of 2012.

E 8. In both these appeals, the appellant has challenged the impugned judgments and orders passed by the High Court holding that while granting compensation to the claimants in respect of fatal accidents under the Statute, the amount receivable by the claimants from compassionate appointment given to them by the employer, should not
F be deducted. In other words, compensation should be granted irrespective of the income received from compassionate appointment.

G 9. The main contention of the appellant in these appeals is that the amount of salary received by the claimants being appointed by the employers of the deceased on compassionate grounds must be reduced from the award of compensation made in favour of the claimants. Thus, the only issue before us in these appeals is whether the income of the claimants from compassionate employment is liable to be deducted from the compensation amount awarded by the Tribunal under the Statute.

H 10. The payment of compensation may be claimed under Section

163A of the Motor Vehicles Act, 1988 (for short, the 'Act'). The liability to pay the amount of compensation under Section 163A of the Act, is imposed on the owner of the motor vehicle or the authorized insurer, in the case of death or permanent disablement due to accident arising out of the use of motor vehicle. It is payable to the legal heirs or the victim, as the case may be. In other cases, an award may be made in respect of the claim arising out of the accident under Section 168 of the Act. The Tribunal may make an award determining the amount of compensation "which appears to it to be just", specifying the person or persons to whom compensation shall be paid and in making the award, the Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

11. In these cases, compensation is claimed against the tortfeasor who may be the driver or owner of the vehicle or the insurer. In respect of an accident in which the tortfeasor is found to be liable, the owner or the driver of the vehicle or the insurer, as the case may be, may alone be held responsible for the payment of such compensation since the accident has resulted in the injury or death which gives rise to the claim of the claimants. No other party is involved in it. And certainly not the employer who may offer compassionate appointment to the dependants of the injured/ deceased.

12. While awarding compensation, amongst other things, the Tribunal takes into account the income of the deceased and calculates the loss of such income after making permissible deductions to compensate the injured claimant for the loss of earning capacity in case of an injury, and to compensate the claimants dependent on him in case of death. Thus, the income of the deceased or the injured, which the claimants have lost due to the inability of the deceased or the injured to earn or to provide for them is a relevant factor which is always taken into consideration. The salary or the income of the claimant in case of death is generally not a relevant factor in determining compensation primarily because the law takes no cognizance of the claimant's situation. Though in case of an injury, the income of the claimant who is injured is relevant. In other words, compensation is awarded on the basis of the entire loss of income of the deceased or in a case of injury, for the loss of income due to the injury. What needs to be considered is whether compassionate appointment offered to the dependants of the deceased or the injured,

A by the employer of the deceased/ injured, who is not the tortfeasor, can be deducted from the compensation receivable by him on account of the accident from the tortfeasor. Certainly, it cannot be that the one liable to compensate the claimants for the loss of income due to the accident, can have his liability reduced by the amount which the claimants earn as a result of compassionate appointment offered by another viz. the employer.

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 C 13. The submission on behalf of the appellant in these cases is that the salary of the claimants receivable on account of compassionate appointment must be deducted from the compensation awarded to them. Reliance is placed in this regard on the judgment of this Court in the case of *Bhakra Beas Management Board vs. Kanta Aggarwal and Ors*¹, in which compensation was claimed against the employer of the deceased who was also the owner of the offending vehicle i.e. the tortfeasor. The tortfeasor offered employment on compassionate grounds to the widow of the deceased – i.e. the claimant. In the facts and circumstances of the case, this Court took the view that the salary which flowed from the compassionate appointment offered by the tortfeasor, was liable to be deducted from the compensation which was payable by the same employer in his capacity as the owner of the offending vehicle. We find this decision as being of no assistance to the appellant in the cases before us. In the present cases, the owner of the offending vehicle is not the employer who offered the compassionate appointment. As observed earlier, it is difficult to see how the owner can contend that the compensation which he is liable to pay for causing the death or disability should be reduced because of compassionate employment offered by another. In any case, it is difficult to determine how much the person offered compassionate appointment would earn over the period of employment which is not certain, and deduct that amount from the compensation.

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 G 14. At this juncture, it would be apposite to refer to some of the decisions rendered by this Court. In case of *Helen C. Rebello and others vs. Maharashtra State Road Transport Corporation and another*², the insurance company had claimed that the amount which was received by the claimant on account of life insurance was liable to be deducted from the compensation which is payable to the claimants. This contention was rejected by this Court in the following words:

¹ (2008) 11 SCC 366

H ² (1999) 1 SCC 90

“36. As we have observed, the whole scheme of the Act, in relation to the payment of compensation to the claimant, is a beneficial legislation. The intention of the legislature is made more clear by the change of language from what was in the Fatal Accidents Act, 1855 and what is brought under Section 110-B of the 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of the 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides that where the death or permanent disablement of any person has resulted from an accident in spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to the claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is in addition to any other right to claim compensation in respect whereof (*sic* thereof) under any other provision of this Act or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit on the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute, then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have been given of this statute, evidenced by two distinct sets of decisions of the various High Courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount, should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these considerations, we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving a restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intents of the legislature under various provisions of the Motor Vehicles Act, 1939.

37. Accordingly, we set aside the impugned judgment dated 9-9-1985 and restore the judgment of the Tribunal dated 29-9-1980 and hold that the amount received by the claimant on the life insurance of the deceased is not deductible from the compensation

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A computed under the Motor Vehicles Act. The respondent concerned shall make the payment accordingly, if not already paid in terms thereof.”

B Similarly, in the case of *United India Insurance Co. Ltd. & Ors. vs. Patricia Jean Mahajan & Ors.*³, this Court held that the amount received by the claimants on account of social security from an employer must have a nexus or relation with the accidental injury or death, in order to be deductible from the amount of compensation. Hence, this Court refused to deduct the said amount from the amount of compensation receivable on account of the motor accident.

C The facts of the case in *Vimal Kanwar & Ors. vs. Kishore Dan & Ors.*⁴ are similar to the facts of the cases in hand. The contention in the said case was that the amount of salary receivable by the claimant appointed on compassionate ground was deductible from the amount of compensation which the claimant was entitled to receive under Section 168 of the Motor Vehicles Act, 1988. This Court rejected the said contention and observed as follows:

D “21. “Compassionate appointment” can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one’s death and have no correlation with the amount receivable under a statute occasioned on account of accidental death.

E 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

F “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.”

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H ³ (2002) 6 SCC 281

⁴ (2013) 7 SCC 476

15. In the case of *Reliance General Insurance Company Limited vs. Shashi Sharma & Ors⁵*, this Court permitted the deduction of the amount receivable by the claimant under the scheme of the 2006 Rules framed by the State of Haryana which provided a grant of compassionate assistance by way of ex gratia financial assistance on compassionate grounds to the members of the family of a deceased government employee who died while in service/missing government employee. A
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16. The financial assistance was a sum equal to the pay and other allowances that were last drawn by the deceased employee in the normal course without raising a specific claim for periods up to 15 years from the date of the death of the employee if the employee had not attained the age of 35 years, and lesser periods of 12 years and 7 years depending on the age of the employee at the time of death. The family was eligible to receive family pension only after the period of financial assistance was completed. The Court held that ex gratia financial assistance was liable to be deducted on the ground that the claimant was eligible to it on account of the same event in which the compensation was claimed under the Motor Vehicles Act, 1988, i.e. the death of the employee. C
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17. This case seems to superficially support the case of the appellant Insurance Company before us. However, on a deeper consideration, it does not. In *Reliance General Insurance (supra)*, the family of the deceased employee became entitled to financial assistance of a sum equal to the pay and other allowances that were last drawn by the deceased for a certain period after his death, even without raising a specific claim. In other words the family became entitled to the pay & allowances that the deceased would have received if he would have not died, for a certain period of time. This financial scheme resulted in paying the family the same pay and allowances for a certain period and thus in effect clearly offsetting the loss of income on account of the death of the deceased. Thus, the amount of financial assistance had to be excluded from the loss of income, as to that extent there was no loss of income, and the compensation receivable by the family had to be reduced from the amount receivable under the Motor Vehicles Act. E
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18. In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum

⁵ (2016) 9 SCC 627

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

19. In the cases before us, compensation is claimed from the
owner of the offending vehicle who is different from the employer who
has offered employment on compassionate grounds to the dependants
C of the deceased/injured. The source from which compensation on account
of the accident is claimed and the source from which the compassionate
employment is offered, are completely separate and there is no co-relation
between these two sources. Since the tortfeasor has not offered the
compassionate appointment, we are of the view that an amount which a
D claimant earns by his labour or by offering his services, whether by
reason of compassionate appointment or otherwise is not liable to be
deducted from the compensation which the claimant is entitled to receive
from a tortfeasor under the Act. In such a situation, we are of the view
that the financial benefit of the compassionate employment is not liable
E to be deducted at all from the compensation amount which is liable to be
paid either by the owner/ the driver of the offending vehicle or the insurer.

Hence, we find no merit in these appeals and they are dismissed
accordingly.

F Devika Gujral

Appeals dismissed.