Kumar Jain's case (supra). For the identical reasons, I would respectfully record my dissent therefrom.

16. Both on principle and precedent it is held that the filing of a valid application under section 18 of the Act for a reference must be deemed as a protest against the compensation awarded and the subsequent acceptance thereof would in no way bar the claim of enhancement thereof.

17. To conclude, this set of writ petitions is hereby allowed with costs in the terms specified in paragraph 12 above. Counsel fee Rs. 500 in each case.

Rajendra Nath Mittal, J.—I agree.

I. S. Tiwana, J.—I also agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital and M. M. Punchhi, JJ.

BHAGAT SINGH SOHAN SINGH,—*Appellant.*

versus

SMT. OM SHARMA and others,—*Respondents.*

First Appeal from Order No. 159 of 1980.

November 23, 1982.

Motor Vehicles Act (IV of 1939) (as amended by Act 56 of 1969)—Sections 110, 110-A to 110-F—Fatal Accidents Act (XIII of 1855)—Sections 1-A and 2—Compensation in a motor accident case—Actual receipt of insurance, provident fund, pension or gratuity by the dependents of the deceased—Whether to be taken into consideration in assessing the amount of compensation payable to them—Principles underlying the grant of just compensation—Provisions of the Fatal Accidents Act—How for applicable.

Held, that it is well settled that under the general law in case of injuries, insurance benefits are to be excluded from consideration. There appears to be no reason why the same principle should

not be applicable where such personal injury may ultimately prove to be fatal. It is not easy to support the rationale that had the injured been maimed for life he would have had the benefit of his contract of accident insurance but if he dies of the same injury his dependents, who legally represent him, would lose the same benefit. Therefore, both as regards personal injury as also in cases culminating in the death of the victim under the general law as also under the Fatal Accidents Act, Insurance benefits cannot be taken into consideration in mitigation of damages. (Para 12).

Held, that the intrinsic nature of benefits like the provident fund, family pension or gratuity is that they are the deferred fruits of satisfactory service, injury, thrift, contributions and foresight of the employee. Equally, these may be the necessary incidents, of statutory service rules, employment contracts, or beneficient legislation rooted in the employment of the deceased. To attribute these payments entirely to the fortuitous circumstance of the accident and the resultant death appears to be untenable. It is more than plain that if the deceased happened to be a person who was not in the employment at all or one who had neither made any contribution to any provident fund nor rendered qualifying satisfactory service entitling him to gratuity or made any payments for a family pension, then none of these benefits would arise to his dependents despite his death. It is indeed the aforesaid pre-conditions which are true fountain head for these benefits and not *ipso facto* the incidence of the accident and the consequent death. Herein what deserves highlighting is the sharp distinction between benefits arising on account of death alone and those that are merely deferred earnings payable on superannuation or the death of the employee. Provident fund, family pension or gratuity fall clearly in the latter class. Insurance benefits have always been excluded from consideration, both on ground of public policy and the fact that the deceased had bought the insurance policy and paid the premium therefor. Similarly, sums of money paid as private or public benevolence, have on principle been rightly excluded because their benefactors could never intend that their munificence should go to the torfeasor and not to the deceased victim and his dependents. Herein what has endemically rankled the judicial conscience is the fact that financial benefits which are essentially the deferred fruits of a person's labour, thrift, foresight or contribution cannot be allowed to enure to the benefit of the wrong-doer alone and go in mitigation of the damages payable by him. (Paras 23 and 24).

Dr. Ram Saran and another *v.* Smt. Shakuntala Rai, A.I.R. 1961 Punjab 400.

Joginder Nath and another *v.* Shanti Devi and others, 1967, A.C.J. 150.

Bhagat Singh Sohan Singh *v.* Smt. Om Sharma and others
(S. S. Sandhawalia, C.J.)

Unique Motor & General Insurance Co. Ltd. *vs.* Mrs. Krishna Kishori and others, 1968 A.C.J. 318. *Overruled.*

Sushila Devi and others *v.* Ibrahim and another, 1974 A.C.J. 150.
Pervatamma and others *vs.* Syed Ahmed and others, 1977 A.C.J. 72.

Orissa Road Transport Co. *vs.* Sibananda Patnaik and others, 1979 A.C.J. 45. *Dissented from.*

Held, that the wide sweep of the language of Section 110-B of the Motor Vehicles Act, 1939 liberates the issue of assessment of damages from the earlier shackles and overly rigid adherence to the Fatal Accidents Act. Herein just compensation is, therefore, to be awarded on well known principles and the larger considerations of equity, good conscience and public policy. The heart of the matter herein is to evenly balance as if in a golden scale, the financial loss to the dependents on the one side and the financial gain or benefit directly arising from the death of the victim on the other. However, the somewhat ticklish question is as to what are the financial gains arising on account of the death which alone can be put in the balance. In this balancing operation the Court has to be on its guard that on one hand the dependents should not be put to any financial loss whatsoever and on the other hand that the death of the victim and the resultant grant of damages should not serve as a windfall to them. Particularly in India where as yet the firmly bonds are strong the death of the bread-winner is a catastrophe which is both irreparable and irremediable. It is true that solatium is alien to the concept of compensation and perhaps one of the reasons therefor is the damages in this field would be wholly speculative in nature. However, it cannot on the other extreme be said that the exclusion of the financial benefits like insurance, provident fund, family pension or gratuity for computing compensation would amount to a windfall for the dependents. (Paras 17 and 25).

Held, that cases of fatal automobile accidents are now additionally governed by sections 110, 110-A to 110-F of the Motor Vehicles Act, 1939 apart from the Fatal Accidents Act which is general in nature. It is manifest from the plain language of these provisions that the whole thrust of the legislative amendment was to create an altogether new forum for claims arising out of the automobile accidents whether fatal or otherwise and to liberate such Tribunals from the procedural shackles of the civil Courts and further widen the award of compensation on the larger grounds of what appeared just to the Tribunal. It would thus be evident that in rendering the award for compensation, the Tribunal would not *stricto sensu* be exclusively governed by the provisions of the Fatal Accidents Act alone. Again there are obvious differences of

language and import betwixt sections 1-A and 2 of the Fatal Accidents Act and Section 110-B of the Motor Vehicles Act. Under section 1-A of the Fatal Accidents Act, the court is to give such damages as it may think proportionate to the loss resulting from such death to the parties respectively for whose benefit such action is brought whereas section 110-B is limited by no such restraints. Whilst section 1-A talks narrowly of damages, section 110-B is rested on the broader consideration of compensation and that too what appears to be just to the Tribunal. There is, however, no inherent or headlong conflict betwixt the principles underlying the grant of damages under the Fatal Accidents Act and compensation under the Motor Vehicles Act and on sound cannons of interpretation, the two statutes can be harmoneously construed. Lastly, in this context it has to be borne in mind that Fatal Accidents Act is general in nature applicable in all cases where death of a person has been caused by a wrongful act, neglect or default of another. The relevant provisions of sections 110-A and 110-B of the Motor Vehicles Act are, however, specific and deal particularly with injuries or death resulting from motor vehicles accidents. It would thus follow on the well known cannon of construction that the special provisions of the Motor Vehicles Act would govern in addition to and, if necessary, exclude the general provisions of the Fatal Accidents Act. (Paras 13 and 14).

(*Case referred by a Single Judge Hon'ble Mr. Justice M. M. Punchhi to a Larger Bench on 7th January, 1982, for the decision of an important question of law involved in the case. The Larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hin'ble Mr. Justice S.C. Mital and Hon'ble Mr. Justice M.M. Punchhi again referred the case to the learned Single Judge on November 23, 1982 after answering the relevant questions, for decision of the case on merits.*)

First Appeal from order of the court of Shri Balwant Singh Teji, Motor Accident Claims Tribunal, Jullundur, dated the 28th November, 1979 allowing the compensation to the petitioners under following two heads :—

(1) *Actual contribution by the deceased out of the emoluments towards family expenses.*

1.	Smt. Om Sharma	50×12×10	Rs. 9,600·00
2.	Uttra Sharma	100×12×11	Rs. 13,200·00
3.	Lalita Sharma	100×12×15	Rs. 15,600·00
4.	Anil Sharma	100×12×14	Rs. 16,800·00
5.	Nandni Sharma	100×12×13	Rs. 15,600·00
6.	Smt. Lajwanti	Token damages	Rs. 1,000·00
			Rs. 71,800·00

(2) *Loss of life, love and affection mental and bodily agony, consortium to the widow and widowed mother and some provisions for the marriages of minor children of deceased.*	2,200.00
Grand total :	Rs. 74,000.00

All the respondents will be jointly and severally responsible for payment of the aforesaid claim to the petitioners. Since the truck is insured with respondent No. 3 whose liability is upto Rs. 50,000.00 therefore the compensation to that extent will be paid by respondent No. 3, while the remaining compensation amount of Rs. 24,000.00 will be paid by respondent Nos. 1 & 2. A period of four months is allowed to the respondents to make the payment of the aforesaid compensation amount failing which it will carry an interest at the rate of 6 per cent per annum. The amount of compensation allowed to Smt. Om Sharma and Smt. Lajwanti will be paid to them immediately while the amount of compensation allowed to the minors shall be deposited in some Nationalised Bank and they will be entitled to withdraw the same on their attaining the age of majority.

Cross Objection No. 30-CII of 1980.

Objections on behalf of Respondents 1 to 6 praying that the Cross Objections may kindly be accepted and the compensation awarded by the Motor Accident Claims Tribunal be enhanced to Rs. 6,00,000 or whatever amount this Hon'ble Court deems fit in the circumstances of the case be awarded.

R. S. Ahluwalia, Advocate, *for the Appellant.*

D. S. Bali, Advocate, *for respondents 1 to 6.*

L. M. Suri, Advocate, *for respondent No. 8.*

I. B. Bhandari, Advocate, *for respondent No. 7.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the actual receipt of insurance, provident fund, pension, or gratuity benefits by the dependants of a victim of an automobile accident must be taken into consideration for fixing a suitable multiplier in their claims of compensation under section 110-B of the Motor Vehicles Act, is the significant question in this reference to the Full Bench.

2. At the very threshold one must dutifully notice that herein there is undoubtedly a sharp cleavage of judiciai opinion. There are two distinct and rival schools of thought. On one side is the somewhat liberal view that insurance, provident fund, pension or gratuity are the products of the employee's service or his thrift. Their true character is such that it was never intended nor is it just that a tort-feasor should take over the benefit of these by getting a credit for them in mitigation of the damages that he must pay. They are the deferred returns of a man's thrift, prudence and foresight which are the true source of these benefits to his dependants and not the acciden tas such. Arrayed on the other side is the stricter view that damages are not to be punitive, that the claimant's actual financial loss to his pocket can alone be recovered, and that since the accident brought these financial benefits as well as losses *both must* be taken into account in balancing liquidated damages payable.

3. In the aforesaid context there appears to be a global controversy ranging from the mother country to the Common Wealth of Australia in the south and to that of Canada in the West. The aforesaid conflict of views is perhaps best symbolised by the narrowly divided House of Lords in *Perry* v. *Cleaver* (1). Therein, by a majority of three to two the liberal first School of thought has been authoritatively adopted. Undoubtedly, herein the choice is not easy because eminent judicial minds have subscribed to either of the two views. With respect, for the detailed reasons delineated hereinafter, we opt wholly for the majority view in *Perry* v. *Cleaver* (supra).

4. In view of the pristinely legal nature of the question involved. the facts giving rise thereto pale into insignifance. It suffices to mention that the issue arose pointedly in (*Bhagat Singh Sohan Singh* v. *Smt. Om Sharma*) (2) before my learned brother Punchhi, J. sitting singly. Noticing the significance of the moot question, whether the pecuniary benefits of gratuity, pension and provident fund would partake of the same character as insurance and the divergence of views thereon within this Court itself, he had referred the matter for adjudication by the Full Bench. In Letters Patent Appeal Nos. 251, 279 and 300 of 1979, the identical questions arose and were consequently directed to be heard by the same Bench as well.

(1) (1969)1 All. E.R. 555.

(2) FAO 159 of 1980.

5. At the very threshold what perhaps calls for pointed notice is the wide ranging language of Section 110-B of the Motor Vehicles Act, 1939 (hereinafter called the Act), which cannot be without significance.

> S. 110-B. "*Award of the Claims Tribunal.*—On receipt of an application for compensation made under Section 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and *may make an award determining the amount of compensation which appears to it to be just* and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims 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."

The plain language of the above warrants the Tribunal to determine the amount of compensation which appears it to be just. In essence, therefore, the dependents entitled to a just compensation for the loss. In a way, the question is liberated from narrow technicality and has to be decided on the larger perspective of justice, equity and good conscience. The language of such wide amplitude as used in Section 110-B of the Act, undoubtedly gives the Court some leverage & elbow room to determine as to what indeed would be just compensation to ameliorate the loss of the dependants of a deceased victim of a highway accident.

5-A. Within this jurisdiction, at the very out-set this issue calls for examination from a peculiar angle as well. The Full Bench of five Judges in *Lachhman Singh and others* v. *Gurmit Kaur and others*, (3), after an exhaustive discussion of principle and precedent formulated the following amongst other propositions :—

> " — — —
>
> (3) The suitable multiplier; as referred to in 2 above, shall be determined as held in Sudhakar's case (supra) decided by the Supreme Court as well as in Mallet's case (1969 ACC CJ 312) (HL) (supra) by taking into consideration the

(3) AIR 1979 Pb. & Hary. 50.

number of years of the dependency of the various dependents, the number of years by which the life of the deceased was cut short and the various imponderable factors such like early natural death of the deceased, his becoming incapable of supporting the dependents due to illness or any other natural handicap or calamity, the prospects of the remarriage of the widow, the coming up of age of the dependents and their developing their independent sources of income as well as the pecuniary benefits which might accrue to the dependents on account of the death of the person concerned. *Such benefits, however, should not include the amount of the insurance policy of the deceased to which the dependents may become entitled on account of its maturity as a result of the death.*"

It is thus manifest that binding precedent here lays down that insurance amounts received by the dependents, within this Court, are not to be taken into consideration for mitigating the damages payable by the tort-feasor. Therefore, the question of insurance being covered on all fours has to be straightaway taken out of the ken of controversy. We are bound by the view in *Lachhman Singh and others case* (supra), yet for academic interest it may be noticed that in the tenuous challenge which was vaily sought to be raised (by Mr. L. M. Suri for the respondent), no meaningful argument could be advanced which could possibly persuade us to take a different view. Indeed we unreservedly agree with the formulation in the case aforesaid. Now once it is held that the financial benefits accruing from the insurance claims of the deceased to his dependents are to be excluded from consideration, the issue at once arises—whether payments like gratuity, pension or provident fund are not at least financial benefits akin or analogous to insurance money. The question is, if insurance money can be excluded from consideration for determining just compensation, either on principle or binding precedent, why cannot gratuity, pension or provident fund be at par therewith.

6. Proceeding then from the firm premise that insurance money cannot go in mitigation of damages leviable on the tort-feasor it is nevertheless both apt and indeed necessary to first view this aspect

in the correct perspective of the Legislative history. In England because of the dictum of Lord Ellenborough in *Maker* v. *Bolton* (4), which was declaratory of the existing rule of common law that the death of a human being could not be complained of as an actionable injury for which damages could be awarded to his dependents. The harsh rigour of this rule was, however, alleviated by the passing of the Fatal Accidents Act, 1846 commonly known as Lord Campbell's Act. Substantial changes have been subsequently made in England by legislative amendments in the aforesaid Act as also in complementary legislation.

7. In India as in England the legal position was the same, following the English Common Law till the passing of the Fatal Accidents Act (Act 13 of 1855) as is evident from the preamble thereof :—

> "Whereas no action or suit is now maintainable in any court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often-times right and expedient that the wrongdoer in such cases should be answerable in damages for the injury so caused by him."

It deserves highlighting that the language of the Indian Fatal Accidents Act as originally enactad was virtually in *pari-materia* with its English counterpart barring some marginal procedural differences therein. Consequently, the legal position under both the statutes was inevitably somewhat similar.

8. However, one must first advert to cases of personal injuries which were governed by the common law before considering those resulting in death and consequently governed by the statute under the Fatal Accidents Act. In the former context two large and distinct classes of cases where financial benefits received by the injured persons were disregarded altogether for mitigating the damages were the proceeds of insurance money and all other sums given to the injured by reasons of public or private benevolence. It was indeed well-settled that whatever the injured may receive by

(4) (1808) 1 Camp 493; 10 RR 734.

way of charity or the benevolence of his friends or relaitons should not accrue to the benefit of the tort-feasor. The rationale for this is epitomised by the following observations of Sir James Andrews in *Redpath* v. *Balfast and County Down Railway* (5) where in the case of a railway accident, the sum received by the plaintiff from a distress fund was sought to be computed in mitigation of damages :—

> "that it would be startling to the subscribers to that fund if they were to be told that their contributions were really made in ease and for the benefit of the negligent railway company. To this last submission I would only add that if the proposition contended for by the defendants is sound the inevitable consequence in the case of further disasters of a similar character would be that the springs of private charity would be found to be largely, if not entirely, dried up."

9. A long line of unbroken precedent had settled the law that in cases of personal injury all sums received by the injured by reasons of public or private benevolence were out of ken for assessing damages. What was true in this class of cases seems to be even more true in the context of insurance benefits received by the injured because these were obviously the results of a contract and the payment of premia by him. In the celebrated case of *Bradburn* v. *Great Western Rly. Co.* (6), where the plaintiff had suffered injuries in a railway accident, the insurance benefits received by him were sought to be included in mitigation of damages on behalf of the defendant-railway. Rejecting such a stand, Pigott, B., observed :—

> " . . . there would be no justice or principle in setting off an amount which the plaintiff has entitled himself to under a contract of insurance, such as any prudent man would make on the principle of, as the expression is 'laying by for a rainy day' . . . It is true that there must be the element of accident in order to entitle him to the money; but it is under and by reason of his contract with the insurance company, that he gets the amount; and I think it ought not, upon any principle of justice, to be deducted

(5) (1947) N.I. 167.

(6) (1874) L.R. 10 Exch 1.

from the amount of the damages proved to have been sustained by him through the negligence of the defendants."

The aforesaid observation and the ratio in *Bradburn's case* had received unstinted affirmance thereafter including that by the House of Lords in *Perry* v. *Cleaver* (7). Therein Lord Reid succincitly summed up the rationale for excluding insurance benefits as under:

"As regards moneys coming to the plaintiff under a contract of insurance, I think that the real and substantial reason for disregarding them is that the plaintiff has bought them and that it would be unjust and unreasonable to hold that the money which he prudently spent on premiums and the benefit from it should enure to the benefit of the tortfeasor. Here again I think that the explanation that this is too remote is artificial and unreal. Why should the plaintiff be left worse off than if he had never insured? In that case he would have got the benefit of the premium money; if he had not spent it he would have had it in his possession at the time of the accident grossed up at compound interest. I need not quote from the well-known case of *Bradburn* v. *Great Western Ry. Co.*"

10. However, in England the legal position of claimants under Lord Campbell's Act remained somewhat ambivalent and insurance benefits were sometimes taken into consideration in mitigation of damages. This anomalous position was, however, rectified by the Fatal Accidents Act, 1959 whereby it was expressly provided in section 2(1) :—

"In assessing damages in respect of a person's death in any action under the Fatal Accidents Act, 1846, or under the Carriage by Air Act, 1932, 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."

Sub-section (2) of the said Act defined benefit in wide ranging terms including thereunder any benefit derived under the National

(7) 1969 A.C.J. 363.

Insurance Act and payment by a friendly society or trade union. Earlier similar changes had been enacted by the Law Reforms (Personal Injuries) Act of 1948. It seems to be plain that for reasons of public policy and to bring the law under the Lord Campbell's Act in line with the common law pertaining to personal injuries, the Parliament in England had expressly brought these changes in the statute law. These changes have been authoritatively interpreted as a recognition of public policy by the legislature requiring the insurance benefits should be disregarded in computation of damages and should not enure for the benefit of the tort-feasor. It is thus manifest that now in England both under the Lords Campbel's Act as also regarding personal, injuries governed by the common law, financial benefits stemming from insurance (amongst others) are excluded from consideration on larger public policy.

11. Now once it is held that considerations of public policy itself require that insurance benefits arising from the thrift, foresight, and the premia paid under the contract of insurance by the injured or deceased persons are to be excluded from consideration, I fail to see how these very principles would not be *stricto sensu* applicable within this country as well. It was tenuously contended by Mr. L. M. Suri on behalf of the respondents that these considerations would be irrelevant in the absence of a specific amendment in the Indian Fatal Accidents Act. I am unable to subscribe to such a stance and cannot easily be persuaded to hold that this country is either lacking or bereft of any large public policy. That consideration is as wide and as meaningful here as in any other country for that matter. Therefore, even if it is assumed that the Fatal Accidents Act is also applicable in this particular context (though for reasons delineated hereafter it does not seem to be exclusively so) the matter would now have to be construed on the larger considerations mentioned above.

12. Again it has to be pointedly borne in mind that in India there had been no authoritative line of precedent that insurance money was deductible for assessing damages under the Indian Fatal Accidents Act barring a few discordant notes here and there. Therefore, no legislative amendment, as had become necessary in England, was called for here in India. The absence of any subsequent amendment in Indian Fatal Accidents Act is, therefore, in no way conclusive. As has already been noticed, it is well-settled that under the

general law in case of injuries, insurance benefits are to be excluded from consideration. There appears to be no reason why the same principle should not be applicable where such personal injury may ultimately prove to be fatal. It is not easy to support the rationale that had the injured been maimed for life he would have had the benefit of his contract of accident insurance but if he dies of the same injury his dependents, who legally represent him, would lose the same benefit. I would, therefore, hold that both as regards personal injury as also in cases culminating in the death of the victim under the general law as also under the Fatal Accidents Act, Insurance benefits cannot be taken into consideration in mitigation of damages.

13. Be that as it may, on closer analysis I am inclined to hold that cases of fatal automobile accidents are now additionally governed by sections 110, 110-A to 110-F of the Act apart from the Fatal Accidents Act which is general in nature. As a matter of legislative history it may be recalled that sections 110, 110-A to 110-F were substituted by Act 56 of 1969. Thereby under section 110, the State Governments were empowered to constitute Motor Accidents Claims Tribunal for adjudicating upon claims for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles, Section 110-A (1) (b) expressly provides for an application for compensation where death had resulted by accident by all or any of the legal representatives of the deceased. As has already been noticed, section 110-B empowers the Tribunal to make an award determining the amount of compensation which appears to it to be just. Particular notice is called for to section 110-F which bars the jurisdiction of civil courts with regard to such claims for compensation in areas where a Tribunal has been constituted. It is manifest from the plain language of the aforesaid provisions that the whole thrust of this legislative amendment was to create an altogether new forum for claims arising out of the automobile accidents whether fatal or otherwise and to liberate such Tribunals from the procedural shackles of the civil Courts and further widen the award of compensation on the larger grounds of what appeared just to the Tribunal. It would thus be evident that in rendering the award for compensation, the Tribunal would not *stricto sensu* be exclusively governed by the provisions of the Fatal Accidents Act alone.

14. Again there are obvious differences of language and import betwixt Sections 1-A and 2 of the Fatal Accidents Act and Section 110-B of the Act whose larger width and sweep has been earlier commented upon. It is significant to recall that under section 1-A of the Fatal Accidents Act, the Court is to give such damages as it may think proportionate to the loss resulting from such death to the parties respectively for whose benefit such action is brought whereas Section 110-B of the Act is limited by no such restraints. Whilst Section 1-A aforesaid talks narrowly of damages. Section 110-B of the Act is rested on the broader consideration of compensation and that too what appears to be just to the Tribunal. There is, however, no inherent or headlong conflict betwixt the principles underlying the grant of damages under the Fatal Accidents Act and compensation under the Act and on sound canons of interpretation, the two statutes can be harmoneously construed. Lastly in this context it has to be borne in mind that Fatal Accidents Act is general in nature applicable in all cases where death of a person has been caused by a wrongful act, neglect or default of another. The relevant provisions of Sections 110-A and 110-B of the Act are, however, specific and deal particularly with injuries or death resulting from motor vehicle accidents. It would thus follow on the well known canon of construction that the special provisions of the Act would govern in addition to and, if necessary, exclude the general provisions of the Fatal Accidents Act. The principle herein is too well-known to call for any further elaboration.

15. The view that Section 110-B of the Act has no relevance whatsoever to the award of compensation in automobile accidents, is the other extreme which has to be shunned. Such a stand would virtually render the whole and at least the substantial part of Section 110-B of the Act as otiose. It is well-settled that every word has to be given a meaning in a statute and a construction which renders the whole provision as redundant must, if possible, be avoided.

16. The point herein is not *res integra* though there is undoubtedly a conflict of judicial opinion. However, the view I am inclined to take seems to be buttressed by the following observations of the final Court in ***Shekhupura Transport Co. Ltd.*** v.

Northern India Transporters' Insurance Co. Ltd. (8):—

> "Under Section 110-B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation which appears to it to be just. The power given to the tribunal in the matter of fixing compensation under that provision is wide. Even if we assume (we do not propose to decide that question in this case) that compensation under that provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1855 (Act 13 of 1855), the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture.———"

However, an elaborate and precise enunciation of the law has been made in the under-mentioned terms by the Division Bench in *Damyanti Devi and others* v. *Sita Devi and others,* (9), after an exhaustive discussion:—

> ".... 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 representatives and the estate."

(8) 1971 A.C.J. 206.
(9) 1972 A.C.J. 334.

within this jurisdiction, the aforesaid view has then been affirmed by the Full Bench presided over by Chinnappa Reddy, J. in *Joshi Ram* v. *Mrs. Naresh Kanta and others,* (10) in the undermentioned terms:—

> ".....The scope of compensation as contemplated under section 110-B of the Act is wider than under the Fatal Accidents Act, and the Courts while awarding compensation to the dependants of the deceased are to be guided by only one principle that the compensation assessed must be 'just'. In a fatal accident, the life of the victims is cut short by rash and negligent driving of the vehicles and the surviving dependents are deprived of the earnings of the deceased in addition to the consequent mental and emotional agony and breaking of the family fabric....."

I am in respectful agreement with the above view and indeed bound by the same. It is, therefore. unnecessary to advert individually to cases taking a different view which were cited at the bar. It suffices, therefore, to say that I would record my respectful dissent from the contrary view.

17. It would thus be manifest that the wide sweep of the language of Section 110-B of the Act liberates the issue from the earlier shackles and overly rigid adherence to the Fatal Accidents Act and the precedential interpretation thereof. Herein just compensation is, therefore, to be awarded on well-known principles and the larger considerations of equity, good conscience and public policy. In a way, the question herein is now one of realities and not of mere technicalities.

17-A. Equally it deserves reiteration that obviously in recognition of the aforesaid legal position, the Full Bench in *Lachhman Singh and others'* case, had in turn laid down that the amount of insurance policy of the deceased, to which the dependents may become entitled is not to be taken into consideration for determining a suitable multiplier for the grant of compensation. Though there is no discussion on this point by the Full Bench (to which I was a party) it is plain that this legal position was taken as axiomatic and thus deserving no further elaboration.

(10) 1978 A.C.J. 80.

18. To conclude on this aspect it seems to be well-settled that on the basis of legislative history, on general principle, on the language of section 110-B and on authoritative precedent insurance benefits accuring to the deceased victim of an automobile accident are not to be taken into account for assessing just compensation to his dependants.

19. In the light of the aforesaid finding, what remains for consideration now is that if insurance benefits are not deductible in assessing damages, whether analogous financial benefits like provident fund, pension or gratuity would be so deductible. It seems to be plain that the real distinction between receipts of amounts, which must not be taken into account, and those which may be, depends primarily on the intrinsic nature of such benefits. In considering the issue, two questions pointedly arise and it seems apt for clarity's sake to deal with them separately:—

(i) What is the true nature of service benefits (whether statutory, contractual or otherwise) like provident fund, gratuity or family pension received by the dependants of the deceased victim of an automobile accident; and

(ii) What should be the true principle underlying the grant of just compensation to the dependants; in the context aforesaid.

20. Adverting first to the aspect of provident fund, it bears recalling that contributions thereto and the mode and manner of payment may sometime be governed by elaborate statutory rules. So far as an employee in the State or Central services is concerned, detailed rules govern the provident fund of government employees. Legislative enactment like 'The Employees Provident Fund & Miscellaneous Provisions Act 1952 and provisions analogous thereto exist on the statute book.' Apart from these specific provisions even generally what is basic herein, is the element of financial contributions by the employee to the same. Often enough, the provident fund is primarily composed of the contributions of the employee himself with a generous rate of interest payable thereon and sometimes by a marginal or substantial contribution thereto by the employer. Usually, limitations are imposed regarding the withdrawal from such a fund. However, the significant legal feature which call for notice is that the true and the real nature of these

financial benefits is the saving and thrift of the employee in contributing these amounts to the provident fund and the prominent fact that these would even otherwise have been payable to him irrespective of his death by accident. Supposing that the deceased had lived his full life and retired at the age of superannuation then he would have been plainly entitled to his provident fund which might well raise the amount of money he may be spending upon his dependants. It would thus materially raise the quantum of dependency during his life. On his death, the provident fund would have been inherited by his legal representatives. This amount would consequently have come to the dependants in any case. Therefore, to view it as arising wholly from his death by accident is a plain misnomer.

21. What has been said in the context of a provident fund seems to apply equally with regard to gratuity. Herein again, the quantum and payment of gratuity may be governed by elaborate service conditions whether statutory or contractual. Statutes, like the payment of Gratuity Act 1972 and analogous provisions may also govern the issue. It would appear in the present context of service rules and employment contracts that gratuity is not invariably in the nature of a gift or a bounty, though in a particular case it may be so. Usually if not invariably, gratuity as a benefit is related to the length of satisfactory service rendered by the employee. In a way it is a deferred or additional payment for meritorious services rendered. As in the case of the provident fund, the employee, if he had lived till the age of superannuation or when he would become entitled to the payment of gratuity, he would have received the same irrespective of his death. His dependants therefore, would have the benefit of its enjoyment during his life and equally a right of inheritance thereto. Therefore, the real and intrinsic nature of the benefit of gratuity is the labour and industry and satisfactory service rendered by the employee and not the fortuitous circumstance of his dying in a highway accident.

22. The cace of a family pension payable to the widow or the dependants does not again appear to be on any different footing. This again may basically have its roots in statutory service rules or the specific terms of the employment contract. Usually, if not invariably, a contributory element for such a family pension may also exist. This apart, family pension may equally be no more than an incident of service like the ordinary pension payable to the employee

himself on superannuation or disablement. In essence, therefore, the pensions of this nature whether contributory or otherwise have their real source deeply rooted in the performance of satisfactory service by the employee. When delving into the wide varieties of family pensions, the true test herein is whether such a pension is something which by its intrinsic nature is deductible or that by its nature, it is not so. This matter cannot be more admirably put than has been done by Lord Reid in *Parry* v. *Cleaver* in the following words:—

> "What, then, is the nature of a contributory pension ? Is it in reality a form of insurance or is it something quite different ? Take a simple case where a man and his employer agree that he shall have a wage of £ 20 per week to take home (leaving out of account P.A.Y.E., insurance stamps and other modern forms of taxation) and that between them they will put aside £ 4 per week. It cannot matter whether an insurance policy is taken out for the man and the £ 4 per week is paid in premiums, or whether the £ 4 is paid into the employer's pension fund. And it cannot matter whether the man's nominal wage is £ 21 per week so that, of the £ 4, £ 1 comes from his "wage" and £ 3 comes from the employer, or the man's nominal wage is £ 23 per week, so that, of the £ 4, £ 3 comes from his "wage" and £ 1 comes from the employer. It is generally recognised that pensionable employment is more valuable to a man than the mere amount of his weekly wage. It is more valuable because by reason of the terms of this employment money is being regularly set aside to swell his ultimate pension rights whether on retirement or on disablement. His earnings are greater than his weekly wage. His employer is willing to pay £ 24 per week to obtain his services, and it seems to me that he ought to be regarded as having earned that sum per week. *The products of the sums paid into the pension funds are in fact delayed remuneration for his current work. That is why pensions are regarded as earned income.*"

It deserves pointing out that in the aforesaid passage, what was specifically under consideration was a contributory pension, but the aforesaid observations appear to me as equally if not even more strongly applicable in the case of family pension as well.

23. From the aforesaid discussion, it clearly emerges that the intrinsic nature of benefits like the provident fund, family pension or gratuity is that they are the deferred fruits of satisfactory service, industry, thrift, contributions and foresight of the employee. Equally, these may be the necessary incidents of statutory service rules, employment contracts, or beneficient legislation rooted in the employment of the deceased. To attribute these payments entirely to the fortuitous circumstance of the accident and the resultant death, appears to me as untenable. It is more than plain that if the deceased happened to be a person who was not in the employment at all or one who had neither made any contribution to any provident fund nor rendered qualifying satisfactory service entitling him to gratuity or made any payments for a family pension, then none of these benefits would arise to his dependants despite his death. It is indeed the aforesaid pre-conditions which are the true fountain-head for these benefits and not **ipso facto** the incidence of the accident and the consequent death. Herein what deserves highlighting is the sharp distinction (which sometimes has unfortunately gone un-noticed) between benefits arising on account of death alone and those that are merely deferred earnings payable on superannuation of the death of the employee, I am clearly of the view that provident fund, family pension or gratuity fall clearly in the latter class.

24. Having held as above, the inevitable question that arises is with regard to the true principles underlying the grant of just compensation to the dependants. As has already been noticed insurance benefits have always been excluded from consideration, both on ground of public policy and the fact that the deceased had bought the insurance policy and paid the premium therefor. Similarly, sums of money paid as private or public benevolence, have on principle been rightly excluded because their benefactors could never intend that their munificence should go to the tortfeasor and not to the deceased victim or his dependants. Herein what has endemically rankled the judicial conscience is the fact that financial benefits, which are essentially the deferred fruits of a person's labour, thrift, foresight or contribution cannot be allowed to enure to the benefit of the wrongdoer alone, and go in mitigation of the damages payable by him. This was pithily voiced more than a century ago by Bramwell, B. in the celebrated case of **Bradburn** v. **The Great Western Railway Company**, (11) in repelling the contention that the amount of accident insurance payable to the injured

(11) (1874) L.R. 10 Exch 1.

should go in mitigation of the liability in damages of the defaulting railway in the following terms:—

> "Clearly there must be no rule. The jury have found that the plaintiff has sustained damages through the defendants' negligence to the amount of 217 L., but it is said that because the plaintiff has received 31 L, from the office in which he insured himself against accidents, therefore the damages do not amount to 217 L. One is dismayed at this proposition. In **Dalby** v. **Indian & London Life Assur. Co.** (12) it was decided 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 gets it, on the chance that he will never get it at all. That decision is an authority bearing on the present case, for the principle laid down in it applies and shows that the 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."

However, more recently, Lord Reid in **Perry** v. **Cleaver** (supra) put it more forthrightly as under:—

> "It would be revolting to the ordinary man's sense of justice and therefore, contrary to public policy, that the sufferer should have his damages reduced so that he would gain nothing from the benevolence of his friends or relations or of the public at large, and that the only gainer would be the wrong doer...."

25. Again one must recall the well-known principle of the assessment of damages generally and equally for the dependants of the victims of an automobile accident. The heart of the matter herein is to evenly balance, as it is a golden scale, the financial loss to the dependents on it one side and financial gain or benefit directly arising from the death of the victim on the other. However, the somewhat ticklish question is as to what are the financial gains arising on account of the death which alone can be put in the balance.. In this balancing operation the Court has to be on its

(12) 15 C.B. 365.

guard that on one hand the dependants should not be put to any financial loss whatsoever and on the other that the death of the victim and the resultant grant of damages should not serve as a windfall to them. This was so observed by the Full Bench in **Lachhman Singh's case** (supra). Particularly, in India where as yet the family bonds are strong the death of the bread-winner is a catastrophe which is both irreparable and irremediable. It is true that solatium is alien to the concept of compensation and perhaps one of the reasons therefor is that damages in this field would be wholly speculative in nature. However, can it on the other extreme be possibly said that the exclusion of the financial benefits, like insurance, provident fund, family pension or gratuity for computing compensation would amount to windfall for the dependants. I do not think so. As has been shown earlier these financial benefits are in essence the deferred earning of the victim of the accident or the result of his savings, his thrift or foresight. The dependants, even otherwise, would have had the benefit of these sums in due course. To take these away from the rightful claimants and to ensure them only for the benefit of the tortfeasor is something which rightly shocks the judicial conscience. I would, therefore, hold that in the light of the true principles underlying the grant of just compensation benefits like provident fund, family pension or gratuity cannot go in mitigation of damages payable by the tortfeasor and are, therefore, not deductible.

26. Having examined the matter on larger principle and within the parameters of the applicable statutory provisions, one must now inevitably turn to precedents. As was noticed at the outset herein there is a sharp conflict of judicial opinion. Pride of place must inevitably be given to other majority view in *Perry* v. *Cleaver* (supra). On behalf of the respondents this case was sought to be distinguished on the ground that it was one of the personal injury and not of a fatal accident. However, this distinction is one without a difference because the majority view turns primarily on the ground that the receipts which must be taken into consideration for assessing damages, and those that may not be so taken, depend not on their source but on their intrinsic nature. Lord Reid primarily analysed the true intrinsic nature of financial benefits like insurance, contributory pension and disablement pension etc. On those premises it was held that these cannot be taken into consideration for mitigation of damages. The ratio, therefore, is equally applicable in cases where such injury results in death. It has already

been observed that section 110-B of the Act liberates this matter from narrow technicalities and damages have to be assessed on the larger concept of just compensation.

27. In this field a somewhat refreshing break from the rather strict and narrow approach has been made, which is now well accepted in Australian Law. In *Paff.* v. *Speed*, (13) it was held that a pension received by a member of the police force who was compulsorily retired by reason of incapacity resulting from the injuries received through the negligence of the tortfeasor ought not to be used to metigate the damages payable to him by the latter. In *The National Insurance Company of New Zealand Ltd.* v. *Espagne*, (14), whilst assessing damages to be awarded in an action of personal injury caused by negligence the receipt of an invalid pension under the Social Services Act was disregarded. Windeyer, J., in a remarkably illuminating judgment concluded as follows:—

> "..... In assessing damages for personal injuries, benefits that a plaintiff has received or is to receive from any source other than the defendant are not to be regarded as mitigating his loss, if
>
> (a) they were received or are to be received by him as a result of a contract he had made before the loss occurred and by the express or implied terms of that contract they were to be provided notwithstanding any rights of action he might have, or
>
> (b) They were given or promised to him by way of bounty, to the intent that he should enjoy them in addition to and not in diminution of any claim for damages.
>
> The first description covers accident insurances and also many forms of pensions and similar benefits provided by employers.
>
> In those cases it is immaterial that, by subrogation or otherwise, the contract may require a refund of moneys paid, or an adjustment of future benefits, to be made

(13) 105 Common Wealth Reports 549.
(14) 105 Common Wealth Law Reports 569.

after the recovery of damages. The second description covers a variety of public charitable aid and some forms of relief given by the State as well as the produce of private benevolence. In both cases the decisive consideration is, not whether the benefit was received in consequence of, or as a result of the injury *but what was its character and that is determined, in the one case by what under his contract the plaintiff had paid for, and in the other by the intent of the person conferring the benefit. The test is by purpose rather than by cause.*"

Similar view has been later expressed in *Graham* v. *Baker*, (15).

Coming nearer home a Division Bench of the Gujarat High Court in *Life Insurance Corporation of India and another* v. *Legal representative of deceased Naranbhai Munjabhai Vadhia and others*, (16) following amongst others the rule in *Perry* v. *Cleaver* held that the insurance amount and death-cum-retirement gratuity should not be deducted from the compensation awardable under the Motor Vehicles Act. This view was reiterated by a Division Bench of the same High Court in *Shakurmiya Imammiya Shaikh and others* v. *Minor Surendra Singh Rup Singh and others*, (17) even after noticing the dissent from the earlier case by the Madhya Pradesh High Court in *Sushila Devi and others* v. *Ibrahim and another*, (18). In the Delhi High Court H. L. Anand J., examined the matter with great elaboration in *Bhagwanti Devi and others* v. *Ish Kumar and others*, (19) and relying basically on *Perry* v. Cleaver held that even in the context of a fatal automobile accident no deduction on account of gratuity, pension, provident fund and insurance could be allowed under section 110-B of the Act. Against this judgment the Letters Patent Appeal was dismissed. This view has been recently followed in *Nirmala Sharma and others* v. *Raja Ram and another*, (20). In *Rita Arora and others* v. *Salig Ram* and

(15) 106 Common Wealth Law Reports 340.

(16) 1973 A.C.J. 226.

(17) 1978 A.C.J. 130.

(18) 1974 A.C.J. 150.

(19) 1975 A.C.J. 56.

(20) 1978 A.C.J. 143.

others, (21) D. B. Lal J., categorically held that insurance, provident fund gratuity and family pension was not deductible from the compensation payable to the dependants.

28. In fairness to the learned counsel for the respondents his reliance on *Sushila Devi's case* (supra); *Parvatamma and others* v. *Syed Ahmed and others,* (22); and *Orissa Road Transport Co. Ltd.* v. *Sibananda Patnaik and others,* (23) *must be noticed.* Undoubtedly these judgments directly aid the stand taken on their behalf. However, I deem it unnecessary to advert to these cases individually, and in the light of the elaborate discussion in the earlier part of this judgment and the findings recorded therein I would respectfully dissert therefrom.

29. It remains to advert to the judgments of this Court as well where discordant views seem to have been taken. In *Dr. Ram Saran* v. *Shakuntala Rai,* (24) the Division Bench hesitatingly allowed a deduction of the provident fund benefits in assessing damages for the dependants. However, another Division Bench of this Court in *Damyonti Devi and others* v. *Sita Devi and others,* (25) did not allow deduction of the insurance amount from the compensation awardable to the widow of the deceased. D. K. Mahajan J., in *Joginder Nath and another* v. *Shanti Devi and others,* (26) however, allowed a deduction on account of provident fund in the compensation awarded. In *Unique Motor & General Insurance Co. Ltd.* v. *Mrs. Krishna Kishori and others,* (27) also the same learned Single Judge upheld the award of the Tribunal in deducting the insurance amount from the compensation. A reference to the aforesaid judgments taking a contrary view would show that the issue was not adequately debated and in particular the basic question of the intrinsic nature of these financial benefits was not even adverted to. To avoid repetition, for the detailed reasons already recorded, the views expressed on this specific point in *Dr. Ram Saran* v. *Shakuntla Rai; Joginder Nath* v. *Shanti Devi and Unique Motor &*

(21) 1975 A.C.J. 420.
(22) 1977 A.C.J. 72.
(23) 1979 A.C.J. 45.
(24) A.I.R. 1961 Pb. 400.
(25) 1972 A.C.J. 334.
(26) 1967 A.C.J. 150.
(27) 1968 A.C.J. 318.

General Insurance Co. (supra) do not lay down the law correctly and are hereby overruled.

30. To finally conclude, the answer to the question posed at the out-set is rendered in the negative and it is held that the receipt of insurance, provident fund, pension or gratuity benefits by the dependants of the victim of an automobile accident must be altogether excluded from consideration in the award of compensation to them under Section 110-B of the Motor Vehicles Act.

31. The individual cases are directed to be placed before the respective Benches for a decision on merits, in the light of the aforesaid answer to the significant legal question.

S. C. Mital, J.—I agree.

N.K.S.

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