> for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide *Santosh Hazari* v. *Purushottam Tiwari (Deceased) By Lrs. (2001) 3 SCC 179*, SCC p. 188, para 15 and *Madhukar and Others* v. *Sangram and Others (2001) 4 SCC 756* SCC p. 758, para 5.)"

The Court of first appeal has jurisdiction to reverse or affirm the findings of the trial Court. When the Court of first appeal takes a different view, the judgment of the first appellate Court must show the conscious application of mind and record its findings based on the evidence adduced by the parties and the judgment must record the reasons as to why the first appellate Court differs from the judgment of the Trial Court. In this case, judgment of the lower appellate Court has not answered all the points arising for determination and the evidence adduced thereon. Likewise, the High Court has not recorded any finding either on fact or on law. The High Court proceeded on the footing as if the suit was a simple suit for redemption of mortgage. Without appreciation of evidence adduced by the parties and sale deed dated 21.12.1970, the High Court erred in ordering the redemption of mortgage and delivery of possession. The impugned judgment of the High Court cannot be sustained and is liable to be set aside.

37. In the result, the impugned judgment of the High Court in Second Appeal No.135 of 1998 dated 07.09.2007 is set aside and this appeal is allowed. Suit No. O.S. 130 of 1978 filed by the respondent-plaintiff is dismissed and the judgment and decree of the Trial Court is affirmed. No costs.

Appeal allowed.

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SUPREME COURT OF INDIA

Before: Madan B. Lokur, S. Abdul Nazeer & Deepak Gupta, JJ.

Civil Appeal No(S). 10588-89 of 2018 (@ SLP (C) No(S).12359-12360 of 2018) Decided on: 12.10.2018

Sebastiani Lakra & ors. Appellants

Versus

National Insurance Company Ltd. & anr. Respondents

A. Motor Vehicles Act, 1988 (59 of 1988), Section 168 – Compensation in Motor vehicle accident -- Just compensation – Concept of -- "just compensation" should be paid to the claimants -- Any method of calculation of compensation which does not result in the award of 'just

compensation' would not be in accordance with the Act -- The word "just" is of a very wide amplitude -- The Courts must interpret the word in a manner which meets the object of the Act, which is to give adequate and just compensation to the dependents of the deceased -- One must also remember that compensation can be paid only once and not time and again.

(Para 5)

B. Motor Vehicles Act, 1988 (59 of 1988), Section 168 – Compensation in Motor vehicle accident -- Just compensation – Other pecuniary benefits outcome or result of death – Deduction not permissible -- Law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased -- Claimants/dependents are entitled to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident -- Advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

(Para 12)

C. Motor Vehicles Act, 1988 (59 of 1988), Section 166, 168 – Compensation in Motor vehicle accident -- Life Insurance – Deduction is not permissible -- Deceased paid premium on life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death -- Similar would be the position in case of other investments like bank deposits, share, debentures etc. -- Tort-feasor cannot take advantage of the foresight and wise financial investments made by the deceased.

(Para 13)

D. Motor Vehicles Act, 1988 (59 of 1988), Section 166, 168 – Compensation in Motor vehicle accident – Pension and Gratuity -- Deduction is not permissible -- Amounts of pension and gratuity are paid on account of the service rendered by the deceased to his employer -- Pension and gratuity are the property of the deceased -- They are more in the nature of deferred wages -- Said amount cannot be deducted.

(Para 14)

E. Motor Vehicles Act, 1988 (59 of 1988), Section 166, 168 – Compensation in Motor vehicle accident – Deduction from -- Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.

(Para 16)

F. Motor Vehicles Act, 1988 (59 of 1988), Section 166, 168 – Compensation in Motor vehicle accident – EFB Scheme Monthly Payment

– Deduction of – Future prospects -- Amount of Rs.50,082/- is to be paid to the legal heirs under the EFB Scheme only till date of retirement of the deceased for a period of about 7 years – This payment will cease thereafter – Since the claimants are getting quite an advantage, MACT was right in not taking into consideration the future prospects in the peculiar facts and circumstances of the case -- Payment of the amount under the EFB Scheme more than offsets the loss of future prospects – This would be 'just' compensation.

(Para 21)

Cases referred:

1. Sarla Verma v. DTC [(2009) 6 SCC 121].

2. Reliance General Insurance Co. Ltd. v. Shashi Sharma [(2016) 9 SCC 627].

3. Helen C. Rebello v. Maharashtra SRTC [(1999) 1 SCC 90].

4. United India Insurance Co. Ltd. v. Patricia Jean Mahajan [(2002) 6 SCC 281].

5. National Insurance Co. Ltd. v. Pranay Sethi, 2018(1) L.A.R. 1 (SC LB).

6. Vimal Kanwar v. Kishore Dan [(2013) 7 SCC 476].

7. Perry v. Cleaver [1969 ACJ 363].

JUDGMENT

DEEPAK GUPTA J. –

Leave granted.

2. These appeals filed by the claimants-appellants are directed against the judgment dated 21.12.2017 delivered by the High Court of Orissa at Cuttack whereby compensation of Rs.40,90,000/- awarded by the IInd Addl. District Judge cum Vth Motor Accidents Claim Tribunal, Rourkela (hereinafter referred to as 'the MACT') has been reduced to Rs.36,00,000/-.

3. The MACT found that the revised basic pay of the deceased was Rs.51,328/- and he was entitled to DA of Rs.7,237/- at the time of his death i.e. he was getting a total salary of Rs.58,565/-. However, the MACT, for the purposes of compensation, assessed the monthly income of deceased at Rs.50,000/- per month and deducted 1/3 for his personal expenses leaving a datum figure of Rs.33,333/- per month. Since the deceased was 52 years old, the MACT following the judgment of this Court in ***Sarla Verma v. DTC***[1] **[[1](2009) 6 SCC 121]**, applied a multiplier of 11 and assessed compensation at Rs.40,00,000/- for loss of income, Rs.25,000/- was added for funeral expenses, Rs.5,000/- for the loss of estate, Rs.50,000/- towards loss of consortium and Rs.10,000/- for loss of affection i.e. total compensation of Rs.40,90,000/- was awarded to the claimants. The claimants and the insurance company filed appeals challenging the quantum of compensation. The main ground raised by the insurance company was that the claimants were being paid a sum of Rs.50,082/- per month under the Employees Family Benefit Scheme (for short 'the EFB Scheme'). The High Court, without giving any

reasons, has reduced the compensation by almost Rs.5,00,000/-, to Rs.36,00,000/-. Reasons are the heart and soul of any judicial pronouncement. No judicial order is complete without reasons and it is expected that every court which passes an order, should give reasons for the same.

4. We have heard learned counsel for the parties and it is not disputed before us that the last drawn income of the deceased including DA was Rs.58,565/- per month. According to the insurance company, since the claimants are getting a sum of Rs.50,082/- under the EFB Scheme, this amount should be deducted in terms of the judgment of this Court in ***Reliance General Insurance Co. Ltd. v. Shashi Sharma***[2] **[[2](2016) 9 SCC 627].** On the other hand, the claimants/appellants submit that no deduction should be made in view of the judgments rendered by this Court in the case of ***Helen C. Rebello v. Maharashtra SRTC***[3] **[[3](1999) 1 SCC 90]** and ***United India Insurance Co. Ltd. v. Patricia Jean Mahajan***[4] **[[4](2002) 6 SCC 281]**. The appellants further contend that, in fact, as per the judgment rendered in ***National Insurance Co. Ltd. v. Pranay Sethi***[5] **[[5](2017) 16 SCC 680] = [2018(1) L.A.R. 1 (SC LB)],** 15% should be added towards future prospects.

5. Section 168 of the Motor Vehicles Act, 1988 (for short 'the Act') mandates that "just compensation" should be paid to the claimants. Any method of calculation of compensation which does not result in the award of 'just compensation' would not be in accordance with the Act. The word "just" is of a very wide amplitude. The Courts must interpret the word in a manner which meets the object of the Act, which is to give adequate and just compensation to the dependents of the deceased. One must also remember that compensation can be paid only once and not time and again.

6. The traditional view was that while assessing compensation, the Court should assess the loss of income caused to the claimants by the death of the deceased and balance it with the benefits which may have accrued on account of the death of the deceased. However, even when this traditional view was being followed, it was a well settled position of law that the tortfeasor cannot not take benefit of the munificence or gratuity of others.

7. In ***Helen C. Rebello*** case (supra), the issue was whether the amounts received by the deceased by way of provident fund, pension, life insurance policies and similarly, in cash, bank balance, shares, fixed deposits etc., are 'pecuniary advantages' received by the heirs on account of death of the deceased and liable to be deducted from the compensation. This Court held that these amounts have no correlation with the compensation receivable by the dependents under the Motor Vehicle Act. The following observations were made by the Court:

> **"***35.* Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension

even otherwise than the accidental death. No corelation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no corelation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any corelation. The insured (deceased) contributes his own money for which he receives the amount which has no corelation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

8. In ***Patricia Jean Mahajan*** case (supra), the deceased was a doctor practicing in the United States of America. He died on a visit to India. His wife had received an amount of $ 2,50,000/- on account of life insurance policies of the deceased. She had also received unemployment allowance for 8 or 9 months and it was urged that these amounts should be deducted from the compensation assessed. After referring to the entire law on the subject including the decision in ***Helen C. Rebello*** case (supra) this Court held as follows:

"*36***.** We are in full agreement with the observations made in the case of *Helen Rebello* that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death

or it may be in the same sphere, absence *(sic)* the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns."

9. Thereafter, similar matter came up for consideration in ***Vimal Kanwar v. Kishore Dan***[6] **[[6](2013) 7 SCC 476]**. This Court, following ***Helen C. Rebello*** case (supra) held that the amounts received by the heirs by way of provident fund, pension and insurance cannot be termed as 'pecuniary advantage' liable for deduction. This Court also held that the salary received on compassionate appointment cannot be deducted.

10. In ***Shashi Sharma*** case (supra) this Court was dealing with the payments made to the legal heirs of the deceased in terms of Rule 5 (1) of the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (for short 'the said Rules'). Under Rule 5 of the said Rules on the death of a Government employee, the family would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee for periods set out in the Rules and after the said period the family was entitled to receive family pension. The family was also entitled to retain the Government accommodation for a period of one year in addition to payment of Rs.25,000/- as ex gratia. In this case, the three Judge Bench adverted to the principles laid down in ***Helen C. Rebello*** case (supra), followed in ***Patricia Jean Mahajan*** case (supra), and came to the conclusion that the decision in ***Vimal Kanwar*** case (supra) did not take a view contrary to ***Helen C. Rebello*** or ***Patricia Jean Mahajan*** case (supra). The following observations are relevant:

> **"15.** The principle expounded in this decision in *Helen C. Rebello* case that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under

> the Motor Vehicles Act. Further, the "pecuniary advantage" from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act of 1939, and must apply proprio vigore to the corresponding provisions of the Motor Vehicles Act, 1988. This principle has been restated in the subsequent decision of the two-Judge Bench in *Patricia Jean Mahajan case*, to reject the argument of the Insurance Company to deduct the amount receivable by the dependants of the deceased by way of "social security compensation" and "life insurance policy."

However, while dealing with the scheme the Court held that applying a harmonious approach and to determine a just compensation payable under the Motor Vehicles Act it would be appropriate to exclude the amount received under the said Rules under the Head of 'Pay and Other Allowances' last drawn by the employee. We may note that on principle this Court has not disagreed with the proposition laid down in ***Helen C. Rebello*** or in ***Patricia Jean Mahajan*** case (supra), but while arriving at a just compensation, it had ordered the deduction of the salary, received under the statutory rules.

11. The Indian courts have consistently followed the multiplier system while assessing compensation and the judgment of this Court in ***Sarla Verma*** (supra) has been reiterated by a Constitution Bench of this Court in ***Pranay Sethi*** (supra) in so far as choice of multiplier is concerned.

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

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures etc.. The tort-feasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer.

It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in ***Perry*** *v.* ***Cleaver***[7] **[[7]1969 ACJ 363]** the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrong doer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.

17. The issue before us is whether we should deduct the amount being received by the family members under the EFB Scheme while calculating the loss of income.

18. The EFB Scheme is totally different from the rules which were under consideration of this Court in ***Shashi Sharma*** case (supra). Under this Scheme, the nominee or legal heir(s) of the deceased employee have to deposit the entire amount of gratuity and all other benefits payable to them on the death of the employee.

19. In the present case, it stands proved that the claimants have deposited a sum of Rs.27,43,991/- received by them on the death of the deceased with the employer and are now getting about Rs.50,082/- per month. This amount of Rs.50,082/- is to be paid to the legal heirs under the EFB Scheme only till date of retirement of the deceased. Even if an interest @ of 12% per annum is calculated on the amount of Rs.27,43,991/-, that would amount to Rs.3,30,000/-per year or Rs.27,500/-per month. The appellants-claimants are getting about Rs.50,000/- per month i.e. about Rs.22,500/- per month more, but this is only to be paid for a period of about 7 years till 30.04.2021. This payment will cease thereafter.

20. The aforesaid payment is totally different to the payment made by the employer in ***Shashi Sharma*** case (supra) which was statutory in nature. Therefore, we hold that this amount cannot be deducted.

21. However, since the claimants are getting quite an advantage, we feel that the MACT was right in not taking into consideration the future prospects in the peculiar facts and circumstances of the case. Therefore, though we are not inclined to deduct the amount payable to the claimants, we feel that in the peculiar facts and circumstances of the case, they are not entitled to claim another amount @ of 15% by way of future prospects. The payment of the amount under the EFB Scheme more than offsets the loss of future prospects. This, in our opinion, would be 'just' compensation.

22. It is not disputed that the last drawn income of the deceased including DA was Rs.58,565/-. On this amount, the deceased would definitely have been paying some income tax. Since exact calculations of the same has not been given, we deduct about Rs.2,565/- per month for this purpose and for purposes of calculation of loss of income, assess the income as Rs.56,000/- per month. Out of this amount 1/3 is deducted i.e. Rs.18,667/-, for personal

expenses leaving a balance of Rs. 37,333/- per month as loss of dependency to the family, which works out to Rs.4,47,996/- per annum. Applying a multiplier of 11, the compensation works out to Rs.49,27,956/-. In addition thereto, according to the judgment of this Court in ***Pranay Sethi*** case (supra), the claimants are entitled to Rs.15,000/- for loss of estate, Rs.40,000/- loss of consortium, Rs.15,000/- for funeral expenses i.e. a total amount of Rs.49,97,956/- which is rounded off to Rs.50,00,000/-. On this amount, the claimants shall be entitled to interest @ of 9% per annum from the date of filing of the petition till the payment of the amount. Obviously, the insurance company shall be entitled to deduct/adjust the amounts already paid by it.

23. The appeals are allowed in the aforesaid terms. Pending application(s), if any, stands disposed of.

Appeals allowed.

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SUPREME COURT OF INDIA

Before: A M Khanwilkar & Dr Dhananjaya Y Chandrachud, JJ.

Civil Appeal No. 1129 of 2012 Decided on: 09.10.2018

Sushil Kumar Agarwal Appellant

Versus

Meenakshi Sadhu & ors. Respondents

A. Specific Relief Act, 1963 (47 of 1963), Section 14(3)(c)(i) – Construction of building – Vague contract -- Specific performance of -- Use of vague terms in the agreement such as "*first class materials*", "*residential apartment of various sizes and denomination*", "*etc.*", "similar condition", and "*special fittings*", while discussing the scope of work clearly shows that the exact extent of work to be carried out by the developer and the obligations of the parties, have not been clearly brought out – Parties have not clearly defined, *inter alia*, the nature of material to be used, the requirements of quality, structure of the building, sizes of the flats and obligations of the owner after the plan is sanctioned -- Further, agreement states that the owner shall pay the contractor costs, expenses along with agreed remuneration only after completion of the building on receiving the possession -- However, the exact amount of remuneration payable by the owner to the contractor is not to be found in the agreement -- Agreement between the parties is vague -- In such a case, specific performance cannot be granted.

(Para 26, 27)

B. Specific Relief Act, 1963 (47 of 1963), Section 14(3)(c)(ii) – Construction of building – Compensation can be quantified -- Specific performance of -- Before granting the remedy of specific performance, we need to analyse the extent of the alleged harm or injury suffered by the developer and whether compensation in money will suffice in order to make good the losses incurred due to the alleged breach of the agreement by the owner -- Developer incurred an expenditure of Rs.18,41,000/- towards clearing outstanding dues, security deposit and