

constitute a separate cause of action, but under no circumstances, it can be taken as a ground for not vacating the premises. He further submits that proceedings in relation to payment of alleged dues are pending in a different forum.

20. Having heard learned counsel for the parties, this Court is of the opinion that insofar as prayer made in the application is concerned, the relief can be granted or denied irrespective of final adjudication of the controversy. This Court, either sitting in jurisdiction under Article 226 or under Article 227 of the Constitution of India, cannot ignore the fact that respondents are occupying official accommodations, which they claim to be associated with their services, and therefore, admittedly, those respondents who have attained the age of superannuation, cannot be allowed to remain in occupation in the accommodations, irrespective of the nature of their services or even on the ground that certain sums allegedly payable to them remain unpaid to them.

21. The High Court, in whatever jurisdiction it sits, always functions on the basic principles of equity, fairness and reasonableness, and therefore, the stand of the petitioner- Bharat Heavy Electricals Limited to the effect that scarcity of official accommodations is causing grave problems for the establishment as well as their regular employees on account of non vacation of the premises by the retired respondents, needs consideration and cannot be ignored merely on the ground that the writ petition finally has to be heard either under Article 226 or under Article 227 of the Constitution of India.

22. In view of the above discussion, the application is **allowed**. The respondents who have attained age of superannuation, i.e. 60 years, shall vacate the premises under their occupation on or before 15.07.2023. In case, such respondents fail to vacate the premises under their occupation and hand over peaceful and vacant possession to the petitioner, it shall be open for the petitioner to seek assistance from the police and District Administration to use necessary force for their eviction.

23. This order shall not come in the way of respondents to claim appropriate reliefs before any other forum in relation to their grievance for non payment of any sum, which aspect is beyond the scope of present writ petition.

24. The application is, accordingly, **allowed** in above terms.

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**(2023) 5 ILRA 1510**  
**APPELLATE JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 21.03.2023**

**BEFORE**

**THE HON'BLE DR. KAUSHAL JAYENDRA  
 THAKER, J.**

First Appeal From Order No. 719 of 1997

**Sri Hoti Lal & Ors. ...Appellants**  
**Versus**  
**Lakhpat Singh & Ors. ...Respondents**

**Counsel for the Appellants:**  
 Sri Madhav Jain

**Counsel for the Respondents:**  
 Sri Subhash Chandra Srivastava, Sri S.K.  
 Mehrotra

**Motor accident claim - Accident occurred  
 on 14.05.1985. Deceased was a 25-year-**

**old labourer (rajmistri) earning Rs. 1050/- per month. He was survived by his father, widow, and two minor children — a son and a daughter. Held: The father, brother, and sister cannot be granted non-pecuniary damages when the wife, falling under Class-1 heirs, is the recipient of the benefits. Income of the deceased was considered to be Rs. 750/- per month. As the deceased was 35 years old, 40% was added towards future loss of income, 1/3rd was deducted for personal expenses, and a multiplier of 18 was applied considering the age of the deceased. Additionally, Rs. 50,000/- was granted for non-pecuniary damages. Insurance company was held liable to pay interest from the date of filing of the claim petition, irrespective of when it was joined as a party respondent. Interest was awarded at 7% per annum from the filing of the claim petition until the judgment of the tribunal, and thereafter at 6% per annum on the awarded amount. (Para 9, 10)**

**Allowed.** (E-5)

**List of Cases cited:**

1. *Gobald Motor Services Ltd. & anr. Vs R.M.K. Velusamy, 1962 SCR (1) 929*
2. *V. Padma Vs Venugopal, reported in 2012 (1) GLH (SC), 442*
3. *Bajaj Allianz General Insurance Comp. Pvt. Ltd. Vs U.O.I. & ors., vide order dated 27.1.2022*

(Delivered by Hon'ble Dr. Kaushal  
Jayendra Thaker, J.)

1. Heard Sri Madhav Jain, learned counsel for the appellants and Sri Subhash Chandra Srivastava, learned counsel for the Insurance Company.

2. This appeal, at the behest of the claimants, challenges the judgment and order dated 29.04.1997 passed by

M.A.C.T/XVth-Additional District Judge, Agra (hereinafter referred to as "Tribunal") in M.A.C.P. No. 185 of 1987 awarding a sum of Rs. 98,000/- as compensation with interest at the rate of 10%.

3. The deceased is survived by his father, wife, son and daughter. Deceased being 25 years of age is not in dispute. He was a labourer doing labour work is not in dispute. The accident is not in dispute. The issue of negligence decided by the Tribunal is not in dispute. The respondent-Insurance Company has not challenged the liability imposed on them. The only issue to be decided is, the quantum of compensation awarded.

4. Brief facts as culled out from the record are that on 14.05.1985 at about 6:30 hrs, deceased Mohar Singh was going Agra from his by-cycle and when he reached near village Digner a bus bearing no. U.S.Y-9555 driven by its driver rashly and negligently dashed into the by-cycle of the Mohar Singh and as a result of which Mohar Singh died on the spot.

5. The accident occurred on 14.05.1985. The deceased was 25 year old labour (rajmistri) and was earning Rs. 1050/- p.m. He was survived by his father, widow and two minor children a son and a daughter. The tribunal has considered his income to be Rs.750/-, granted multiplier of 16 and Rs. 2000/- to his widow under non pecuniary damages and ultimately assessed the total compensation to be Rs. 98,000/- with 10% interest from 22.02.1993 till payment was made.

6. It is contended by Sri Madhav Jain, learned counsel for the appellants that income should be considered at Rs. 1000/- plus 40% to be added under future loss of

income even under the old act under the judgment of **Gobald Motor Services Ltd. and another v. R.M.K. Velusamy, 1962 SCR (1) 929** the should be added for future loss of income and 1/3rd may to be deducted for personal expenses and the multiplier of 18 would be admissible, Rs. 70,000/- may be given under non pecuniary damages.

7. As against this, Sri Subhash Chandra Srivastava, learned counsel for the Insurance Company vehemently submits that in absence of any evidence on record the income considered by the tribunal is just and proper, however, he could not point that addition of future loss of income which has not been given is just and proper, multiplier granted is just and proper.

8. While considering the facts and circumstances of the case, this Court accepts the the submission of Sri Subhash Chandra Srivastava, learned counsel for the Insurance Company that father, brother and sister cannot be granted non pecuniary damages when the wife is falling under class-1 and is the recipient of the benefits. This Court feels that income of the deceased can be considered to be Rs. 750/- p.m to which as he was 35 years of age and as to the thumb rule and in view of the decisions in **Gobald Motor Services (supra) and Susamma Thomas (supra)** 40% should be added towards future loss of income, 1/3rd will have to be deducted and multiplier of 18 looking to the age of the deceased will have to be granted and Rs. 50,000/-for non pecuniary damages will have to be granted.

9. Hence, the total compensation payable to the appellatant is computed herein below:

i. Income: Rs. 750/- per month

ii. Percentage towards future prospects : 40% namely Rs.300/-

iii. Total income : Rs.750 + 300= Rs.1050/-

iv. Income after deduction of 1/3rd towards personal expenses : Rs.700/-

v. Annual loss: Rs. 700 x 12 = Rs. 8400

vi. Multiplier applicable : 18

vii. Loss of dependency: Rs.84,00 x 18 = Rs.1,51,200/-

viii. Amount under non pecuniary heads : Rs. 50,000/-

ix. Total compensation : Rs.2,01,200/-

10. As far as issue of rate of interest is concerned, the tribunal has considered the grant of interest only after the insurance company was impleaded as a party respondent. The liability to pay compensation arises when the claim petition is filed. The question of interest even under the old act would be to pay compensation from the date claim petition is filed. The said decision of the tribunal requires reconsideration and the principles for grant of interest will have to be look into. The accident took place in the year 1987, the insurance company would be liable to pay interest not from 1993 but from the date of filing of the claim petition. Hence, the interest is to be from the date claim petition is filed irrespective of the joining of the insurance company as a party respondent. This takes this Court to the percentage of interest granted by the tribunal and objected by the insurance company. Thus rate of interest could not have been 10% in the year 1987, even the rapo rates in the year of accident and when the matter was decided in the year 1997 were not more than 9% is the submission of the learned counsel for the insurance company who has orally objected for

slashing the interest as the matter has remain pending before this Court also for no fault of the insurance company.. The oral objection under Order 43 Rule 1 C.P.C of Sri Subhash Chandra Srivastava is accepted. The interest is to be paid from the date of filing of claim petition which is the law and it cannot be from the date the insurance company was impleaded, however, due to passage of long time the said order is disturbed for awarded amount the interest at 7% from filing of the claim petition till the judgment of tribunal and thereafter it would be at 6% on the awarded amount.

11. No other grounds are urged orally when the matter was heard.

12. In view of the above, the appeal is partly allowed. Total compensation of Rs. 2,01,200/- is allowed with interest at 7% from the date of filing of the claim petition till judgment and award of the tribunal and 6% thereafter till amount is deposited. Award and decree passed by the Tribunal shall stand modified to the aforesaid extent. The amount be deposited by the respondent-Insurance Company within a period of 12 weeks from today with interest as directed above. The amount already deposited be deducted from the amount to be deposited.

13. On depositing the amount in the Registry of Tribunal, Registry is directed to first deduct the amount of deficit court fees, if any. Considering the ratio laid down by the Hon'ble Apex Court in the case of **A.V. Padma Vs. Venugopal, Reported in 2012 (1) GLH (SC), 442**, the order of investment is not passed because applicants /claimants are neither illiterate or rustic villagers.

14. Fresh Award be drawn accordingly in the above petition by the tribunal as per

the modification made herein. The Tribunals in the State shall follow the direction of this Court as herein aforementioned as far as disbursement is concerned, it should look into the condition of the litigant and the pendency of the matter and judgment of **A.V. Padma (supra)**. The same is to be applied looking to the facts of each case.

15. The Tribunal shall follow the guidelines issued by the Apex Court in **Bajaj Allianz General Insurance Company Private Ltd. v. Union of India and others** vide order dated 27.1.2022, as the purpose of keeping compensation is to safeguard the interest of the claimants. As long period has elapsed, the amount be deposited in the Saving Account of claimants in Nationalized Bank without F.D.R.

16. Record be sent back to tribunal forthwith.

17. This Court is thankful to both the learned Advocates for ably assisting this Court.

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(2023) 5 ILRA 1513

**APPELLATE JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 06.04.2023**

**BEFORE**

**THE HON'BLE AJAY BHANOT, J.**

First Appeal From Order No. 944 of 2018

**Smt. Meena & Ors. ...Appellants**  
**Versus**  
**U.O.I. & Anr. ...Respondents**

**Counsel for the Appellants:**

Sri Sanjay Kr. Srivastava, Sri Ajay Kr. Srivastava