Workmen of M/s. Hindustan Motors Ltd

Vs

M/s. Hindustan Motors, Ltd. & Anr.

Civil Appeal No. 635 of 1965

(M. Hidyatullah, V. Bhargava, C. A. Viadialingam JJ)

21.11.1967

JUDGMENT

BHARGAVA, J. -

This appeal by special leave has been filed by the workmen of Messrs Hindustan Motors Ltd. against the decision of the First Industrial Tribunal, West Bengal in a dispute relating to a payment of bonus for the year 1960-61. The respondent, M/s. Hindustan Motors Ltd., (hereinafter referred to as "the Company") was established in the year 1942 and, initially, the work taken up by the Company was that of assembling of motor cars from components imported from foreign countries. Later on, Manufacture of components of motor cars was started and gradually the Company developed this work of manufacture of components by increasing the number of components manufactured by it until, at the present time, the Company is manufacturing more than 70% of the components utilised in the cars put on the market by the Company. The work of manufacturing components was taken in hand for the first time in the year 1949, according to the reply of the Company filed on 10th January, 1962, to the statement filed on behalf of the workmen before the Tribunal. At the initial stages of its existence, the Company was running at a loss and even, as late as the year 1956, the Tariff Commission's Report on the Automobile Industry mentioned that this Company was making a loss of Rs. 833 per car on the Hindustan Landmaster which was the car put on the market by the Company at that time. Even subsequently, for several years, no profit was shown in the profit and loss account and, consequently, no bonus was paid to the workmen until the dispute about it was raised for the first time in respect of the year 1959-60. We were informed that the dispute relating to the payment of bonus for the year 1959-60 is still pending before the Industrial Tribunal, while the dispute with respect to bonus for the next year 1960-61 has been decided and is now before us in this appeal. In this year 1960-61, the profit and loss account of the Company showed a net profit of Rs. 249.71 lacs. Out of this, a sum of Rs. 59.53 lacs was allocated for payment of dividend on ordinary shares @ 12% and a sum of Rs. 27.55 lacs for dividend on preference shares @ 8.57%. The total amount allocated for payment of dividends was thus Rs. 87.08 lacs. In view of the fact that, in this year, the Company had earned a net profit of over Rs. 249 lacs, the workmen demanded bonus equivalent to six months' wages. The monthly wage bill of the workmen is about Rs. 4 lacs, so that the total amount claimed towards bonus by the workmen came to Rs. 24 lacs. It was also stated on behalf of the workmen that, if this bonus to the extent of Rs. 24 lacs is awarded, the actual amount which the Company would have to pay will only be 55% of this amount, because 45% representing Income-tax on this amount would be refundable to the Company from the Government.

Before the Tribunal, there was no dispute between the parties that, in order to find out whether any surplus was available for distribution of bonus, calculations must be made on the basis of the Full

Bench Formula approved by this Court in The Associated Cement Companies Ltd., Dwarka Cement Works. Dwarka v. Its Workmen & Another [[1959] S.C.R. 925]. The Tribunal, after making all other deductions from the surplus which have to be made in accordance with the Full Bench Formula and without taking into account provision for rehabilitation, arrived at a figure of Rs. 87.80 lacs as the amount of surplus available. Thereafter, the Tribunal held that a sum of Rs. 373.62 lacs every year was needed for rehabilitation purposes and, since this amount very much exceeded the surplus otherwise available, there was no scope for granting any bonus at all. Consequently, the Tribunal decided the reference against the workmen and held that no bonus was payable for this year. The workmen have come up to this Court against this decision of the Tribunal.

In this appeal also, there is no dispute that the principles to be applied for working out the surplus available for distribution of bonus must be those approved by this Court in the case of Associated Cement Companies Ltd. [[1959] S.C.R. 925]. On behalf of the workmen, however, it was urged that the Tribunal committed an error in applying the Formula in respect of five different items involved in the calculation. These are :

(1) Rehabilitation,

(2) Return on reserves used as working capital,

(3) Return on paid-up capital,

(4) Interest on fixed deposits, and

(5) Home delivery commission.

Of these items, the most controversial is the first item of rehabilitation and that is also the most material one, because, if the figure of annual rehabilitation arrived at by the Tribunal is accepted, it is clear that no surplus can possibly remain out of the profits earned during the year for distribution of bonus. In the calculation of rehabilitation, various factors are involved which have been indicated by this Court in the case of Associated Cement Companies [[1959] S.C.R. 925]. The factors in calculation of rehabilitation accepted by the Tribunal which have been challenged by the workmen are :

(i) the divisor, which depends upon the life of the plant, machinery and buildings, the year of their installation or erection, and the residuary life which must be taken into account when working out the divisor.

(ii) the calculation of the multiplier for arriving at the replacement cost of the old machinery which requires rehabilitation, and

(iii) the deductions which should be made when working out the annual rehabilitation.

We shall now proceed to deal with these points.

When the dispute was taken up for adjudication by the Tribunal, the Company, on 31st May, 1962 filed statements showing calculations of rehabilitation provision required for rehabilitating the plant, machinery and buildings. Amongst these statements was a statement described as Schedule 1A (hereinafter referred to as "the first Schedule 1A") and in that statement it was claimed on behalf of

the Company that the average total life of its machinery was 6 years. On behalf of the workmen, it was urged that the life of the machinery should be taken to be 30 years and on this basis, after the arguments were over a rehabilitation cost calculation was filed on 21st November, 1962. Thereafter, in the course of arguments on 22nd November, 1962, some fresh statements were filed by the Company. These statements in respect of the machinery had two new Schedules, both marked as Schedule 1A. In one of these Schedules 1A filed on 22nd November, 1962, the multiplier taken for replacement of the machines installed in various years was higher then the multiplier in the first Schedule 1A. This Schedule shall be referred to as "the second Schedule 1A". At the same time, as mentioned earlier, another Schedule 1A was filed and, in this Schedule 1A, the multipliers were the same as in the first Schedule 1A. This shall be referred to hereinafter as "the third Schedule 1A". In none of these Schedules filed, either on behalf of the Company or on behalf of the workmen, was there any classification of plant and machinery into precision or non-precision machinery. Some statements for the purpose of calculation of rehabilitation were again filed on behalf of the Company on 28th December, 1962 under the directions of the Tribunal and it appears that, taking into account the evidence which had been led before the Tribunal, the Tribunal at this stage asked the Company to give separate Charts for precision machinery and non-precision machinery. Consequently, the statements filed on 28th December, 1962 classified the machinery into precision and non-precision machinery. It seems that the Tribunal, in making this direction, was also influenced by the circumstance that, under the Income-tax Law, the depreciation allowed in respect of precision and non-precision machinery is different, from which the Tribunal inferred that precision machinery will have a shorter life than non-precision machinery. In fact, the Tribunal was of the view that the proportion between the life of precision and non-precision machinery can be safely taken to be the same as the proportion between the depreciation allowed in respect of the two. Proceeding on this basis, the Tribunal, in the statements prepared for and annexed as part of the Award, classified the machinery into precision and non-precision machinery and worked out different life for the two kinds of machinery. In the course of arguments before us, it was urged on behalf of the workmen that the Company not having claimed that machinery classified as precision had a shorter life than machinery classified as non-precision either in the written statements or at the stage of filing the first Schedule 1A or even the second or third Schedule 1A, there was no justification for the Tribunal to accept this classification and work out different periods of life for different classes of machinery. Mr. Niren De, counsel appearing on behalf of the Company at no stage put forward the case that the machinery should be classified into precision and non-precision machinery and different life should be attributed to the two classes of machinery. According to him, the Company's case throughout has been that all machinery installed in the factory of the Company has an economic life of 6 years only, so that the Company is not prepared to justify the decision given by the Tribunal on the basis of this classification. Since both parties before us challenge the adoption of this classification by the Tribunal, we consider that it will be right to ignore this classification and to proceed on the basis that the total life of the machinery must be worked out on an average for all the machines installed in the factory of the Company, without making any distinction between precision machinery and non-precision machinery.

As we have mentioned earlier, the contention on behalf of the workmen was that the life of the whole machinery should be taken to be 30 years. Mr. B. Sen, counsel appearing on behalf of the workmen, drew our attention to a number of cases, in which the life of the machinery came up for consideration either before the Labour Appellate Tribunal or before this Court in connection with calculation of rehabilitation provision. The first case brought to our notice was Saxby & Farmer Mazdoor Union, Calcutta v. M/s. Saxby & Farmer (India) Ltd., Calcutta [[1959] L.A.C. 707], in which, for purposes of calculation of rehabilitation, the life of machinery was taken to be 30 years.

Another case between the Workmen of M/s. Saxby & Farmer (India) Pvt. Ltd. v. M/s. Saxby & Farmer (India) Private Ltd. [Civil Appeal No. 152 of 1964 decided on 12-4-1965] in respect of a subsequent year came up before this Court. In that case, the Tribunal, in its Award, fixed the life of the machinery at 20 years and on behalf of the workmen it was urged that it should have been 30 years as accepted by the Labour Appellate Tribunal in respect of the earlier year in the case of Saxby & Farmer Mazdoor Union, Calcutta [1959] L.A.C. 707]. This Court held that the life of 30 years had been taken at a time when the machinery was being worked in two shifts, while, in the subsequent case, it was shown that the machinery was working in three shifts, so that it could not be said that the Tribunal was wrong in fixing the life in this subsequent case at 20 years. Relying on these cases, Mr. Sen urged that, in the present case also, we should take the life of the machinery to be 30 years. In The Millowners' Association Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay [[1950] L.L.J. 1247], the Full Bench of the Labour Appellate Tribunal, when laying down the formula that was later approved by this Court, appears to have accepted the life of textile machinery as 25 years, while this Court, in the case of the Associated Cement Companies Ltd. [[1959] S.C.R. 925], proceeded on the basis that the life of the machinery was 30 years. In the Honorary Secretary, South India Millowners' Association and Others v. The Secretary, Coimbatore District Textile Workers' Union [[1962] 2 Supp. S.C.R. 926], this Court confirmed the finding of the Tribunal that the estimated life of the textile machinery of the Company concerned in that case should be taken to be 25 years. It is on the basis of these decisions that the claim was put forward that the life of the machinery in the present case should also be taken to be 30 years or at least 25 years. In our opinion, this argument proceeds on an entirely incorrect basis. The life of a machinery of one particular factory need not necessarily be the same as that of another factory. Various factors come in that affect the useful life of a machinery. There is first, the consideration of the quality of machinery installed. If the machinery is purchased from a country producing higher quality of machines, it will naturally have longer life than the machinery purchased from another country where the quality of production is lower. Again, the articles on which the machinery operates may very markedly vary the life of a machine. If, for example, a machine is utilised for grinding of cement, the strain on the machine will necessarily not be the same as on a machine which operates on steel or iron. We are, therefore, unable to accept the suggestion that the life of the machinery in the present case should have been fixed on the basis of the life accepted in other cases in which decisions were given on bonus disputes either by the Labour Appellate Tribunal or by this Court.

The Tribunal, in its decision, worked out the life of the machinery on the basis of the percentage of depreciation allowed under the Income-tax Act. The application of this principle has been attacked before us by both the parties. It is urged that the artificial rule laid down in the Income-tax Act for calculation of notional depreciation can provide no criterion at all for determining the life of the machinery. We think that the parties are correct and that the Tribunal committed an error in proceeding on this basis.

Though, in the case of the Honorary Secretary, South India Millowners' Association [[1962] 2 Supp. S.C.R. 926], this Court, on the facts of that case, accepted the life of the textile machinery as 25 years, the Court also laid down the principle for finding out the life of machinery in the following words :-

> "We are not prepared to accept either argument because, in our opinion, the life of the machinery in every case has to be determined in the light of evidence adduced by the parties." (p. 933)

Obviously, this is the correct principle, because it is only when the life of machinery is determined

in the light of evidence adduced by the parties in a particular case that the authority determining the life can take into account all the factors applicable to the particular machinery in question. As we have indicated earlier, when determining the life of a machinery, factors, such as the quality of the material used in the machines and the nature of the material on which the machines are to operate, very materially affect their life. Further, the life of a machine will also depend on the manner in which it is handled in a particular factory. We, consequently, in this case proceed to examine the evidence given by the parties in this behalf.

In order to prove the life of machinery, one method usually adopted by the Companies is to tender evidence of experts. In the present case, the Company tendered in evidence the statement of an expert, Gerald Waplington, which was recorded earlier on 5th November, 1961 by the Fifth Industrial Tribunal in a dispute pending before it. That dispute was also between this very Company and its workmen. In giving the life of machinery, Waplington first classified the machines into two classes-general purpose machine tools and special or single purpose machine tools - and expressed the opinion that a general purpose machine tool used for one single operation is likely to have a shorter economic life than special or single purpose machine tool. According to him, a general purpose machine carrying on work of high accuracy will have an economic life of the order of 2 to 3 years only, while a special purpose machine doing similar work of high accuracy working 400 hours a month will have an economic life of 5 to 6 years. If the work taken from the machines is of less accuracy, then in his opinion, a general purpose machine may have an economic life up to 5 year, and a special purpose machine an economic life of 7 to 10 years. In his evidence, further, he made a distinction between economic life and useful life. He twice stated that economic life of a machine would to only 1/3rd of the useful life of the machine, so that if, on the basis of his evidence, the useful life of various classes of machines mentioned by him is to be worked out, the number of years given for each class by him above will have to be multiplied by 3. Thus, according to his evidence, the economic life of a machine will vary from 2 to 3 years as a minimum to 7 to 10 years at the maximum, and working out the useful life on the basis of his statement that economic life is only 1/3rd of the useful life, the machines would have a minimum of 6 to 9 years and a maximum of 21 to 30 years useful life. We shall consider what inferences can be drawn from his statement at a later stage when we have discussed the other evidence available in this case. It may, however, be noted that Waplington is the only expert who can be held to be entirely disinterested, because the other two experts examined are employed as Engineers by the Company itself. This independent witness, Waplington, was not asked whether he had seen the various machines in the factory of the Company, nor was he at any time requested to indicate how many different machines in the factory of the Company would fall in the various classifications mentioned by him for which he has given different periods in respect of economic life.

The Other two witnesses examined are Joseph Joyce, General Master Mechanic, and Girish Chandra Bansal, Master Mechanic, employed by the Company. Both of them have, in their statements given out their qualifications and experience which they have in dealing with automobile manufacturing machinery. According to Joyce, the economic life of the machinery of the Company cannot go beyond 6 years, and this statement was made on the basis of the machines working 16 hours a day in two shifts of 8 hours each. Later on, he added that, applying American standard, the life of the machines can only be 6 to 10 years. In giving the life, he qualified that work with "economic" or "economic useful", so that he equated economic life with economic useful life and gave the figures on this basis. In cross-examination, he, however, admitted that useful life of a machine is longer than its economic life. Thus, if various statements of his are taken into account and it is kept in view that he is an employee of the Company, it may be accepted that, according to him, the maximum economic life of the machinery of the Company will be between 6 to 10 years and the useful life

will be longer; how much longer, he has not indicated. If we were to assume that he is using the expressions "economic life" and "useful life" in the same sense in which they were used by Waplington, economic life would be 1/3rd of the useful life, with the result that, on his evidence, useful life of the machinery of the Company would work out to be anywhere between 18 to 30 years. The third witness, Girish Chandra Bansal, estimated the efficient economic life, based on 16 hours per day working, at 6 to 10 years, which coincides with the estimate by Joyce. In his case, however, no questions were put to elicit from him whether he would make any distinction between efficient economic life and useful life, so that his evidence does not appear to carry us any farther than the evidence of Joyce.

It may be added that both these witnesses in their evidence stated that the workmen employed by the Company were not very skilled workers and this was a factor that had to be taken into account in considering the life of the machines in this Company. It is obvious that, if a machine is handled by a more skilful worker, it will last longer and have a longer life. A statement was also made by Joyce that machines running at high speed will have shorter life than those running at lower speeds; but this general statement made by him offers no assistance to us in this case, because he has not indicated in his evidence how many and which of the machines of the Company run at high speed and which at lower speed.

Apart from this evidence of experts, the Company has attempted to provide some other date which can be of assistance in assessing the life of the machinery. In this connection, Mr. Niren De, arguing the case on behalf of the Company, drew our attention to the history of this Company which showed that, initially, this Company started the work of assembly of cars from parts imported from foreign countries some time in the year 1942-43, but, later, the policy was altered and manufacture of components was taken up and progressively increased so as to minimise foreign import. He also pointed out that this policy of progressive production of indigenous parts was pressed upon the Company by the Government and, for this purpose, drew our attention to the first and the second reports of the Tariff Commission in the years 1953 and 1956, as well as the report of the Ad Hoc Committee on Automobile Industry known as the Report of the Jha Committee, because Sri L. K. Jha was its Chairman. This report came out in the year 1960. It was urged by Mr. De that, due to this policy of progressive increase in manufacture of new components, it was not possible for the Company to find money to rehabilitate old machinery and, consequently, the fact that the Company continued to use old machinery for a number of years should not be taken as indicating that that machinery still had economic or useful life. It was argued that the Company per force had to continue use of these old machines, because it was under pressure to expand its activities by taking up manufacture of components and the Company was running at a loss. It has already been mentioned earlier that in the second report of the Tariff Commission in 1956 it was clearly stated that this Company was selling cars at a loss of Rs. 833 per car. It is this background that the evidence given by the Company should be judged to find out what is the life of the machinery possessed by the Company. He also drew our attention to the principles laid down in this connection by the Full Bench of the Labour Appellate Tribunal in the Millowners' Association's case [[1950] L.L.J. 1247], and by this Court in the Associated Cement Companies' case [[1959] S.C.R. 925]. In the former case, when laying down the principle that provision should be made for rehabilitation replacement and modernization of the machinery, the Tribunal held that :

> "It is essential that the plant and machinery should be kept continuously in good working order for the purpose of ensuring good return, and such maintenance of plant and machinery would also be to the advantage of labour, for the better the machinery the larger the earnings, and the better the chance of securing a good

> bonus."

In the latter case, this Court, when examining the scope of claim for rehabilitation, held that :

> "this claim covers not only cases of replacement pure and simple but of rehabilitation and modernisation. In the context, rehabilitation is distinguished from ordinary repairs which go into the working expenses of the industry. It is also distinguished from replacement. It is quite conceivable that certain parts of machines which constitute a block may need rehabilitation though the block itself can carry on for a number of years; and this process of rehabilitation is in a sense a continual process. Unlike replacement, its date cannot always be fixed or anticipated. So with modernisation; and all these three items are included in the claim for rehabilitation. That is why we think it is necessary that the Tribunals should exercise their discretion in admitting all relevant evidence which would enable them to determine this vexed question satisfactorily."

Proceeding further to distinguish between cases of replacement, modernisation and expansion, the Court held :

> "If it appears fairly on the evidence that the introduction of the modern plant or machine is in substance an item of expansion of the industry, expenses incurred in that behalf have to be excluded. On the other hand, if the employer had to introduce the new plant essentially because the use of the old plant - though capable of giving service - was uneconomic and otherwise wholly inexpedient, it may be a case of modernisation. Similarly, if by the introduction of a modern plant or machine the production capacity of the industry has appreciably increased, it would be relevant for the Tribunal to consider in an appropriate case whether it would be possible to apportion expenses on the basis that it is a case of partial modernisation and partial expansion."

It will thus be seen that, when considering the question of rehabilitation, what is essentially to be taken into account is that the old plant, though capable of giving service, was uneconomic and otherwise wholly inexpedient when provision for its replacement and rehabilitation, even though it will include modernisation, would be fully justified.

In this context, it may be worthwhile examining at this stage the difference between economic life and useful life on which emphasis has been laid by Mr. Sen on behalf of the workmen. We have already indicated earlier that even the expert examined on behalf of the Company, Gerald Waplington, made a distinction between economic life of machinery and its useful life. Further, in giving the life, he applied American standards which may not be applicable in India. This Court, in various cases where the question of rehabilitation has been discussed, has laid emphasis on useful life rather that on economic life and, even in the Associated Cement Companies' case [[1959] S.C.R. 925] in the extract quoted above, the Court held that modernisation is justified when the use of the old plant becomes uneconomic and otherwise wholly inexpedient. Thus, two tests were laid down, first, that it should be uneconomic and second, that it should be also otherwise wholly inexpedient. The economic life, as envisaged by Waplington, was not, therefore, considered the appropriate test for determining when rehabilitation of the plant and machinery would be justified. In fact, one of the very major considerations that should be taken into account is the actual practice of the manufacturers using the machinery and if evidence be available, to find out how long the

manufacturers continue to use the machinery as a rule. It may be that, during the last few years of use, the machinery may be continued to be utilised because of want of resources and compulsion to retain the machinery, because replacement is not possible at all. It is in the light of this situation that we proceed to examine the evidence given by the Company about the behaviour of its machinery and the steps taken by the Company to have the old machinery rehabilitated.

In this connection, two statements filed on behalf of the Company are of significance. One of these is a list of obsolete and/or discarded machines prepared on 26th October, 1962 and marked as Ext. 28. It is to be noticed that, though 40 different machines were discarded by 26th October, 1962 when this statement was prepared, none of the machinery discarded was that installed up to the year 1947-48. In fact, this situation is also borne out by the three Schedules 1A which have been referred to earlier by us. In those Schedules 1A, the machinery discarded and written off from books is shown as being worth Rs. 35,000/- out of machinery of the value of Rs. 89.75 lacs installed in the year 1947-48. Thus, the machinery of that year discarded was nominal in value. None of the machinery installed between the years 1948-49 to 1951-52 was discarded. Again, the machinery installed in 1952-53 was discarded to the extent of the nominal value of Rs. 39,000/- out of Rs. 11.06 lacs, and no machinery installed in 1953-54 was discarded. The machinery discarded was primarily that installed in the years 1954-55 to 1957-58, and its value was in the region of Rs. 46 lacs. Thus, right up to 1962, the old machinery purchased up to the year 1954 was almost all continued in use and was to discarded, even though machinery installed in the next four years was considered unfit for further use and was discarded or written off.

The second statement is Ext. 21 which bears the heading "replacement programme condition of machine tools" and which was prepared in March, 1960 in order to claim foreign exchange from the Government for replacement of machinery. That list contains more than 200 machines, but, again, the machines installed during the year 1947-48 or earlier included in it are only 5 in number, whereas the majority of machines included in that list are those installed in later years. Significance attaches to this factor, because the machines installed in the year 1947-48 were of very large value, their cost being in excess of Rs. 89 lakhs. In fact, that is the year in which the investment on installation of machinery was highest, barring the year of bonus and the year immediately preceding it. This statement thus shows that, even though the Company wanted replacement of a number of machines which had been installed even in the year 1949-50 and some machines installed in later years, the replacement of those machines was given preference over the replacement of machines installed earlier in the year 1947-48. In this statement, in the remarks column, it was mentioned that these machines are to be scrapped, but there was not statement that machines which had been installed in the year 1947-48 were also in such a condition that they required scrapping. Thus, these statements provide some indication of the life of machinery which point both ways. The fact that old machinery of 1947-48, though of large value, was not considered to be in such a condition as to require immediate replacement in preference to machinery installed later would point towards that machinery having a fairly long life. On the other hand, there is the factor that machinery installed in later years was actually scrapped or was sought to be scrapped, and this necessarily means that that later machinery was considered as having shorter life.

In this connection, another statement of which notice may be taken is Ext. 29 which shows prices of certain machines originally purchased by the Company which is to be rehabilitated, and the prices of the same machines which were purchased in the two years preceding the time when Girish Chandra Bansal was examined before the Tribunal. Girish Chandra Bansal's evidence was recorded on 14th November, 1962 and in his statement before the Tribunal he stated that Ext. 29 was prepared to compare the prices of same machines in earlier years when they were purchased originally and again

when similar machines were purchased a second time in the past two years. This statement has the significance that, though in the past two years the Company took the step of purchasing machines which would perform the identical functions which the old machines were performing, the Company chose to add these machines as new ones as a part of its scheme of expansion rather than replace those old machines. In the year 1961-62, therefore, the Company was still of the opinion that it was preferable to add a new machine of the same type rather than replace an old machine doing the same work, and an inference would necessarily follow that that old machine must have been considered to be sufficiently serviceable. This is the view that the Company appears to have held in respect of machinery which was installed 14 or 15 years earlier.

On behalf of the Company, some statements were also filed to show that there were very frequent break-downs in the machinery of the Company and, as an illustration, our attention was drawn to the statement for the period January, 1960 to September, 1960. It is true that, it there are very frequent break-downs in machinery, this would give an indication of the condition of the machinery and lead to the inference that their useful life is coming to an end. There is, however, one great difficulty in drawing any conclusion from the statistics of number of break-downs of the machinery put forward on behalf of the Company. The Company has, no doubt, shown us statements that a number of machines had break-downs during the last few years preceding the year of bonus, but no material was brought to our notice from which it might have been possible to compare how the same machinery was behaving in earlier years or within the first few years after it was installed. Unless it be possible to compare the number of break-downs when their life is claimed to be over with the number of break-downs when the machine was almost new or was running its economic or useful life, no assistance is available for assessing the life of the machinery from a mere table showing the number of break-downs. Further, it was not possible from these statements to find out which of the machines installed in which year were subject to the break-downs, nor did these statements give us any picture about the percentage of machines installed in different years which were included in these statements. Consequently, we have felt handicapped in drawing any inference from these statements.

Reliance was also placed on some statements showing that, for purposes of granting incentive bonus, a rated time was prescribed for various machines and progressively this rated time in respect of a large number of machines has had to be increased in order to enable the workmen to earn bonus, because the machines themselves are not working efficiently and if the rated time is not increased, the workmen would fail to qualify for incentive bonus for no fault of their own and simply because the machines on which they were required to work had deteriorated in condition. It is true that the statement given of increase of rated time gives some indication that the condition of the machinery in this factory has been going down and though this factor is relevant in determining the useful life of machinery, it cannot carry us very far, because there is no evidence which would enable us to lay down a correlation between the increase in the rated time and the expiry of the useful life of the machinery. It is not possible on the evidence to discover how much the rated time is expected to increase before it can be said that the machinery has completely run out its useful life.

Mr. De also drew our attention to the statements of some of the witnesses who deposed that machinery running at high speed has a shorter life than that running at low speed. This general statement, however, is of no assistance, because the Company did not attempt to classify its machines between high speed and low speed ones and to give evidence in that behalf.

Lastly, it was urged by Mr. Sen on behalf of the workmen that another factor which should be taken into account is that, according to the Full Bench Formula, for calculation of rehabilitation the

machinery is treated as scrapped when its value is reduced to 5%, because the break-down value of 5% is all that is deducted when calculating the requirements for rehabilitation. The argument was that the fact that the break-down value is taken at 5% indicates that the machinery for purposes of rehabilitation is treated as still useful unless its value is reduced to that low figure.

This is, no doubt, another aspect that must be taken into account, though we are unable to accept the submission that a machinery should be deemed to have useful life until it reaches the stage of having a break-down value of 5%. No such absolute rule can be inferred.

In this case, the Tribunal, in fixing the life of the machinery, as we have mentioned earlier, proceeded to calculate it on the basis of the depreciation rate permitted under the Income-tax Act. That basis was not acceptable to either of the parties before us. On behalf of the workmen, it was urged that it was an entirely wrong principle of calculating the life, and even on behalf of the Company no attempt was made to support this method adopted by the Tribunal. In the Honorary Secretary, South India Millowners' Association's case [[1962] 2 Supp. S.C.R. 926], this Court also rejected the argument that the calculation of the life may be based on the depreciation rate permitted by the Income-tax Act.

In these circumstances, we have to consider the cumulative effect of the various pieces of evidence and circumstances which we have discussed above and, on its basis, to estimate what should be considered to be the useful life of the machinery of this Company. Reference may briefly be made to the various conclusions arrived at. The evidence of the independent expert and of the engineer employees of the Company gives a figure for useful life of machinery which may be anywhere between 6 years to 30 years. The lower figures given by them cannot be accepted as they relate to economic life in the strict sense of that expression and are based on American standards. At the same time, the maximum life worked out from their evidence is on the hypothesis that the useful life stated by Waplington to be three times that of economic life is also the useful life in the same proportion to economic life as given in the evidence of Joyce. Then, there is the evidence that this Company itself has been running its old machinery for quite a large number of years and even after 13 or 14 years of use, the Company in quite a large number of cases preferred, when buying similar machines, to utilise them for expansion rather than for rehabilitation. On the face of it, replacement of old machinery would have been preferred to expansion, if the old machinery had really completed its useful life. In some cases, however, machinery purchased in later years had to be rehabilitated after much shorter periods, but no detailed information is available why such early replacement became necessary. No material was provided to show the comparative quality of machines which have been run for a long time and machines which were replaced or sought to be replaced after shorter periods of us. After taking into consideration the various factors mentioned by us above, and on the evidence before us, we think that in this case, it would be appropriate to hold that the average life of the machinery of this Company in respect of different kinds of machines obtained from different sources may be appropriately taken as 15 years. This life of 15 years arrived at by us, it may be mentioned is on the basis that the machines of the Company have been running during most of the period, to which the evidence relates, in two shifts only. Girish Chandra Bansal, one of the Engineers of the Company, examined as a witness, stated that the machines in this Company were working in two shifts only, until, for the first time in 1959-60, the factory started on run round-the-clock, i.e., in three shifts. He added that the factory had been working in two shifts from the time it was founded. It is also clear that, if the factory had been working in only one shift, the life of the machinery would have been longer, and we think that in that case it would have been appropriate to take the life of the machinery as 25 years. On the other hand, after the machines are being worked in three shifts, the life of the machinery is bound to be lower and, consequently, if the

machines be worked in three shifts, it would be appropriate to take the life of the machinery at 10 years. In the present case, however, we are accepting the average life as 15 years for all the machines requiring rehabilitation, because the evidence, as mentioned above, shows that the machines have been working in two shifts only from the time when the factory started functioning, with the exception that, in the first few years, they were worked in only one shift while, from the year preceding the year of bonus, they have been worked in three shifts. Consequently, it may be taken that, up to the year of bonus, the machines have been worked on the average, in two shifts. In working out the divisor, however, it will have to be kept in view that future life of the machinery will have to be calculated on the basis of three shifts and, consequently, on the basis of the figure of 10 years as the useful life of the machinery. We may also incidentally mention that this Court, in the case of National Engineering Industries Ltd. v. The Workmen & Vice Versa [Civil Appeals Nos. 356-357 of 1966 decided on 6-10-1967], accepted the life of the precision machinery of the Company concerned in that case as 15 years, so that the conclusion arrived at by us on the evidence in the present case happens to coincide with the figure of life accepted in that case.

In this connection, we may also taken notice of one point urged by Mr. De on behalf of the Company. It appears that, when working out the divisor and finding out what machinery required rehabilitation, the Tribunal did not take into account machinery installed during the bonus year itself for making provision for rehabilitation. We think that Mr. De is right in urging that, if any machinery is installed in bonus year, the Company would be justified in claiming that it must immediately start making provision for its rehabilitation, though the period for rehabilitation of that machinery would only start at the end of the bonus year. Once machinery has been installed and is in existence in the bonus year, the Company is entitled to say that it will require rehabilitation in future and that provision should be made for rehabilitation of that machinery also and the Company should start keeping reserves for that purpose from the year of bonus itself. Thus, in the present case, the machinery installed in the year 1960-61 should have been included in the rehabilitation statement, though the divisor in respect of that machinery will, on our decision given above, be 15 on the basis of two shifts and 10 on the basis of three shifts, as the machines will still have a residuary life of 15 or 10 years, computing the period from the bonus year which is also the year of installation.

The second factor entering the calculation of rehabilitation requirement about which there was controversy between the parties is the multiplier. We have already mentioned the fact that, in the first and the third Schedules 1A, the Company gave one set of multipliers, while in the second Schedule 1A higher multipliers were given. The Tribunal took both sets of multipliers into account and worked out the average and accepted that as the correct multiplier, representing the rise in the price rate of the machinery requiring rehabilitation. Thereafter, the Tribunal held that the machinery which was to replace the old one would have a larger production and proceeded to work out figures for reducing the multipliers on that account. The Tribunal held that it would be justified to reduce the average multipliers arrived at by .75 for machinery installed up to 1951-52, by .55 for machinery installed during the years 1952-53 to 1955-56, and by .35 for that installed during the years 1956-57 to 1960-61. Before us, this method adopted by the Tribunal was criticised by counsel for both parties. On behalf of the workmen, it was contended that there was no justification for the Tribunal to take the average of the multipliers in the first and the second Schedules 1A and that the Tribunal should only have proceeded on the basis that the multipliers given in the first Schedule 1A were proved and were correct ones. On behalf of the Company, it was urged that the Tribunal should have accepted the multipliers given in the second Schedule 1A and should not have reduced them by taking into account those given in the first Schedule 1A, and, further, that there was no justification at all for the Tribunal to reduce the figures of the multipliers for the various blocks of

machinery by .75, .55 or .35 on the ground that the machinery to be installed in replacement would have a higher production.

We were taken by learned counsel for parties into the evidence tendered on behalf of the Company to prove the multiplies. We have found that the correctness of the multipliers shown in the first Schedule 1A has been very satisfactorily proved. It appears that those figures were arrived at by comparing the prices of the old machinery installed in various years with similar machinery purchased in subsequent years. That comparison was contained in statement Ext. 29. The Company's witness Bansal not only proved this statement, but also clearly stated that the machines originally purchased and those purchased later shown in that statement Ext. 29 were the same machines. In cross-examination, he further specifically arrested that the production capacity of these new machines mentioned in Ext. 29 was very much the same as that of the original machines which were to be replaced when they were new. It is also significant that these figures of multipliers included in the first Schedule 1A were not challenged on behalf of the workmen before the Tribunal. So far as the figures contained in the second Schedule 1A are concerned, it was suggested on behalf of the Company that they were based on subsequent quotations received for replacement machinery which formed part of a series Ext. 31. Learned counsel for the Company was, however, unable to point out any statement in the evidence of any witness which would show that the figures for multipliers incorporated in the second Schedule 1A were actually calculated from the quotations contained in Ext. 31. In fact, no such evidence was possible, because the second Schedule 1A was filed on behalf of the Company after the evidence of parties was over and that second Schedule 1A not being a part of the record before the Tribunal when evidence was recorded, it was not possible for any witness to give evidence proving those figures for multipliers. In these circumstances, we must hold that the Tribunal committed an error in taking into account the multipliers given in the second Schedule 1A and that the only figures for multipliers that could have been and should be accepted are those in the first Schedule 1A.

At the same time, we must also accept the contention on behalf of the Company that the Tribunal had no justification for reducing the multipliers by deducting .75, .55, and .35 in respect of the three blocks of machinery sought to be replaced. As we have indicated earlier, the Tribunal proceeded to hold that this deduction was justified on the ground that the new machines which had been purchased and which were being compared with the original machines sought to be replaced must necessarily have more productive capacity. We have not been able to find any evidence on the record of any witness which would support this conclusion. It is true that the statements made by Company's witnesses, particularly Bansal show that the new machines were more efficient and were likely to produce better quality goods. At no stage, however, in the cross-examination of Bansal was any statement made admitting that these new machines, whose prices were being compared with those of the old machines for rehabilitation, had a larger productive capacity than those original machines. In fact, as we have pointed out earlier, in his cross-examination Bansal made a definite statement that these new machines will produce exactly the same number of pieces as the original machines when they were new. This Court in the case of the Associated Cement Companies Ltd. [[1959] S.C.R. 925] had indicated that it is only if, by the introduction of a modern plant or machine, the production capacity of the industry has appreciably increased that it would be relevant for the Tribunal to consider in an appropriate case whether it would be possible to apportion expenses on the basis that it is a case of partial modernisation and partial expansion. If, however, the increased production is not of a significant order, it may be regarded as incidental to replacement or modernisation and the question of apportionment may not arise (p. 969). It is, of course, possible that Bansal, in stating that the new machines, the prices of which formed the basis of calculation of multipliers, have exactly the same capacity as the original machines to be replaced, may not be quite

correct; but there was no material at all from which the Tribunal could have justifiably inferred that the increase in production would be so material as to attract the principle for apportionment laid down by this Court in the case cited above and, consequently, the Tribunal fell into an error in reducing the multipliers merely on the assumption that the new machines must necessarily have a larger production capacity than the original machines. In these circumstances, we hold that the rehabilitation provision should have been calculated by the Tribunal on the basis of the multipliers given by the Company in the first Schedule 1A, without taking an average of those multipliers and the multipliers given in the second Schedule 1A and without decreasing the multipliers by .75, .55 and .35 in respect of various blocks.

The third contested question with regard to rehabilitation relates to the deductions which have to be made out of the total rehabilitation requirement to arrive at the annual provision for that purpose which must be allowed in working out the available surplus for distribution of bonus. In the Associated Cement Companies Ltd. case [[1959] S.C.R. 925], when approving the Full Bench Formula, this Court indicated how the calculations should be made. It was held :-

> "Before actually awarding an appropriate amount in respect of rehabilitation for the bonus year certain deductions have to be made. The first deduction is made on account of the break-down value of the plant and machinery which is usually calculated at the rate of 5% of the cost price of the block in question. Then the depreciation and general liquid reserves available to the employer are deducted. The reserves which have already been reasonably earmarked for specific purposes of the industry are, however, not taken into account in this connection. Last of all the rehabilitation amount which may have been allowed to the employer in previous years would also have to be deducted if it appears that the amount was available at the time when it was awarded in the past and that it had not been used for rehabilitation purposes in the meanwhile. These are the broad features of the steps which have to be taken in deciding the employer's claim for rehabilitation under the working of the formula." (p. 970).

The dispute in the present case relates to the deduction of the depreciation and general liquid reserves. One aspect in controversy in this behalf raised on behalf of the Company is that even depreciation should not be deducted unless it is available to the employer for purposes of rehabilitation. The argument was that in the sentence "Then the depreciation and general liquid reserves available to the employer are deducted" the word "depreciation" should be read with the words "reserves available to the employer" and, consequently, the deduction should only be made of depreciation reserves available to the employer. We are unable to accept this submission, because the very principle on which rehabilitation provision is allowed when making calculations for awarding bonus militates against this interpretation. This Court, in the same case, in explaining why rehabilitation is granted, held :

> "We have already noticed that the object of providing depreciation of wasting assets in commercial accounting is to recoup the original capital invested in the purchase of such assets; but the amount of depreciation which is allowed under the formula can hardly cover the probable cost of replacement. That is why the formula has recognised the industry's claim for rehabilitation in addition to the admissible depreciation." (p. 966)

It will thus be seen that the purpose of providing for rehabilitation charges is to enable the industry

to cover the difference between the amount of depreciation which is recouped by making provision for it in accordance with the principles of commercial accounting and the amount that would be required to purchase the new machinery for replacement. Once the price of the new machinery is known, the rehabilitation amount would be the difference between that price and the amount provided as depreciation of wasting assets in accordance with the principles of commercial accounting. The deduction of depreciation provision made in the accounts is not, therefore, on the basis that that amount must be available for purchasing the replacement machinery even in the year when provision for rehabilitation is being made. That amount is deducted from the price of the machinery which will be required to be purchased in order to determine what amount the industry is going to require for rehabilitation in spite of having been allowed depreciation. In our view, therefore, this Court, when it later held that the depreciation and general liquid reserves available are to be deducted in calculating the rehabilitation amount, did not intend to lay down that the depreciation must also be available in the year of bonus. The words "available to the employer" were intended to qualify the expression "general liquid reserves" only and not the word "depreciation". General liquid reserves are to be deducted on the principle that if such reserves are in the hands of the industry and are not earmarked for binding purposes, the industry must utilise those reserves for rehabilitating the old machinery instead of asking for provision to be made out of profits in the year of bonus and in future years. The principle adopted is that provision for rehabilitation is to be made only to the extent of the different between the price of the machinery which will have to be paid for replacing the old machinery and the amount of depreciation provision shown in the accounts according to the commercial system of accounting and even that rehabilitation requirement must first be met by the industry out of available liquid reserves rather than by asking for provision to be made out of profits. In the present case, the Tribunal, when calculating the provision for rehabilitation, took the entire price of the replacement machinery as required to be provided out of profits and did not take into account that that price should have been reduced to the extent of the depreciation provided for in the accounts. The annual report of this Company for the year of bonus 1960-61 was produced before us and at page 24 it showed that at the beginning of the year 1960-61 depreciation to the extent of Rs. 325.48 lacs had been provided in the balance-sheet of the Company. This amount has, therefore, to be deducted from the price of the machinery which is to replace the original machinery when rehabilitation is resorted to.

The second question on this aspect that arises is whether there were any liquid reserves available which should also have been deducted. In the balance-sheet of the Company contained in the Annual Report, various kinds of reserves have been shown. There was a reserve for contingencies to the extent of Rs. 10.00 lacs on 31-3-1960 and a development rebate reserve of Rs. 39.51 lacs on the same date. On behalf of the workmen, it was urged that this amount of Rs. 39.51 lacs should at least be deducted when calculating the requirement for rehabilitation. From the balance-sheet itself an inference was sought to be drawn that this reserve existed in the form of a liquid reserve available for rehabilitation. For this purpose reference was made to the entries on the assets side of the balance-sheet which shows a sum of Rs. 220 lacs as lying in fixed deposit account. The argument was that if the Company had such a large sum as Rs. 220 lacs in the fixed deposit account, it could not possibly urge that the sum of Rs. 39.51 lacs in respect of development rebate reserve was not a part of it and was not available as a liquid reserve. It is but natural that in the balance-sheet the Company could not show any correlation between the amounts entered on the two sides, liabilities and assets, as that is not required by any principle of commercial accounting. The argument of learned counsel for the company was that this development rebate reserve had been used as a part of the working capital of the Company represented by various items shown on the assets side and this fact was proved by the affidavit of Satya Narayan Murarka, Commercial Manager of the Company,

who categorically stated that all the reserve had been utilised as part of the working capital. It seems to us that a mere statement by the Commercial Manager that the reserves have been utilised in the working capital cannot be accepted as conclusive evidence of that fact. When the balance-sheet itself shows that cash amounts in the form of fixed deposits were available which were far in excess of the development rebate reserve in question there would be no justification for holding that this development rebate reserve was not available as a liquid asset and had been included by the Company in its working capital. At the stage it is not necessary, therefore, to go into any further details to arrive at the conclusion that this development rebate reserve was a liquid asset available for rehabilitation and, consequently, liable to be deducted when calculating the rehabilitation requirement. We shall deal in greater detail with the question of what items were included in the working capital at a later stage when dealing with the controversy relating to the claim of the Company for return on working capital which is allowed under the Full Bench Formula, when calculating the surplus available for distribution of bonus.

On the question of calculation for provision for rehabilitation, the only point raised on behalf of the workmen with regard to buildings was that the Tribunal, in taking the life of the factory buildings at 25 years and non-factory buildings at 40 years, was not correct and that the life of the two types of buildings should have taken at 40 years and 50 years respectively. At the time of the hearing before the Tribunal, the Company had claimed that factory buildings have a normal life of 25 years only and non-factory buildings 30 years, while the claim of the workmen was that the factory buildings had a life of 40 years and the non-factory buildings 50 years. In arriving at its decision, the Tribunal primarily took into account the provisions of Rule 9 of the Rules framed under the Income-tax Act, 1922 which lays down the principle for calculation of depreciation in respect of buildings. That principle, no doubt, cannot be taken as giving any correct indication of the life of buildings for purposes of calculation of rehabilitation provision, but, in this case, there was the difficulty that the Tribunal did not accept the evidence given by the Company to prove the age of the buildings as claimed by it, while no evidence was given on behalf of the workmen in support of their claim that the life of the buildings should be taken at the figures contended on their behalf. In the course of arguments before us, all that learned counsel did was to refer to the decision of this Court in the Associated Cement Companies Ltd. case [[1959] S.C.R. 925] at p. 993 where the calculations made in the Chart show that the life of the various buildings concerned in that case were taken to be between 30 and 35 years. We do not think that, in the absence of evidence showing that the buildings of the Company were similar to those buildings whose life came up for consideration in the case cited above, it is possible to derive any assistance from the figures accepted in that case. In these circumstances, the position before us is that neither on behalf of the Company, nor on behalf of the workmen is there any reliable evidence brought to our notice on the basis of which we can arrive at a correct estimate of the life of the buildings of the Company and, consequently, we do not think that there will be any justification for us to vary the decision given by the Tribunal in this behalf.

The last controversy in the calculations for rehabilitation provision is on the question whether the depreciation and the liquid reserves available should be deducted from the total amount of rehabilitation requirement or whether it should be taken into account at the very first stage when the machinery or the buildings requiring earliest rehabilitation are taken into consideration and the annual requirement in respect of them is worked out. On behalf of the workmen, we think, it was rightly urged that, if depreciation and liquid reserves available are to be deducted, they must be incorporated in the accounts against the replacement cost of those items which required replacement earliest in time. It is obvious that if funds in the form of depreciation provision and other liquid reserves are available, the Company claiming provision for rehabilitation must utilise them in

rehabilitating those machines and buildings which require rehabilitation at the earliest point of time. There is no principle at all that the depreciation in respect of a particular machinery must be deducted when calculating the rehabilitation requirement in respect of that machinery itself. The Full Bench Formula approved by this Court only recognises the industry's claim to make provision out of profits for rehabilitation of machinery which might require replacement even in future only on the ground that the industry may not be able to meet those replacement cost out of funds available in its hands. The provision for future requirement of rehabilitation must at any time depend upon what is immediately available and what is going to be required in future. If some machines have fully run out their lives, they must necessarily be replaced out of resources available immediately and there would be no justification for keeping the available resources in reserves for future rehabilitation, while not providing out of those available resources for immediate replacement of the machinery. Then, there is the second aspect that an employer in order to claim more and more rehabilitation provision, will have a tendency to keep old blocks of machinery running and to avoid adoption of such a device it would be fair that he is required to utilise available resources at the very first opportunity when the old blocks of machinery require replacement and claim annual provision for future only in respect of that machinery which will require replacement later on. It appears that this Court in The Associated Cement Companies Ltd. case [[1959] S.C.R. 925] proceeded on this very basis when calculating the rehabilitation requirement, though without discussing this question in detail. In that case, reserves to the extent of Rs. 311 lacs were found to be available. The machinery which required to be rehabilitated was divided into four blocks, the earliest block consisting of machinery installed up to 1939 in respect of which the rehabilitation requirement was Rs. 1172.76 lacs. In respect of three later blocks, the rehabilitation requirement was Rs. 70.40 lacs, 270.37 lacs and Rs. 768.50 lacs. The total requirements for rehabilitation in respect of all the four blocks was thus Rs. 2282.03 lacs. When calculating the annual requirement the Court did not deduct the sum of Rs. 311 lacs in respect of available reserves out of this total of Rs. 2282.03 lacs, but instead deducted this amount from the cost of the machinery required to replace the pre-1939 block for which the amount arrived at was Rs. 1172.76 lacs. After deducting this amount of reserves from the replacement cost of that block, the balance was divided by the divisor 7 which was treated as the remainder life of the machinery falling within that block. This calculation adopted in that case, therefore, fully bears out our view that the depreciation and available reserves must be taken into account when calculating the annual provision in respect of that machinery which requires earliest replacement and should not be deducted out of the total rehabilitation cost as urged by learned counsel for the Company.

Mr. De in this connection drew our attention to a decision of the Labour Appellate Tribunal in Saxby & Farmer Mazdoor Union, Calcutta [1955] L.A.C. 707] at pp. 711-712. In that case, the Tribunal first worked out the total rehabilitation and replacement cost of the machinery at Rs. 43.81 lacs. From this amount were deducted a sum of Rs. 14.75 lacs in respect of available reserve, a sum of Rs. 9.03 lacs as the total depreciation on the plants and machinery and a sum of Rs. 0.737 lac in respect of the break-down value of the machinery at 5 % of the cost price, leaving a balance of Rs. 19.364 lacs as the rehabilitation requirement. Then the Tribunal noticed that, on the basis of total requirement of Rs. 43.81 lacs over the several periods during which rehabilitation and replacement was to take place, the annual requirement was worked out at Rs. 8.04 lacs. Applying the simple arithmetic of ratio, the Tribunal held that the proportionate annual requirement would be Rs. 3.54 lacs, if the total requirements are reduced to Rs. 19.364 lacs. In that case, thus, the Tribunal proceeded on the basis which has been canvassed on behalf of the Company before us. The total rehabilitation requirement was first worked out, while the annual requirement was also worked out on the basis of that requirement, without taking into account the depreciation, available liquid

reserves and the break-down value of the machinery to be replaced. Thereafter, the total rehabilitation requirement was reduced by the amount of depreciation, liquid reserves available and break-down value of the machinery, and the annual requirement was reduced in respect of each block of machinery in the same proportion as the proportion between the total requirement and the net amount available arrived at, after deducting depreciation, available liquid reserves and break-down value. We do not think that the principle adopted by the Labour Appellate Tribunal was correct and should be accepted. On the face of it, it introduces a very anomalous position. In a case where some machinery may require immediate replacement in the year of bonus in question and resources may be available for meeting the cost of the entire machinery required to replace it, the principle adopted by the Tribunal would still permit the industry not to replace that machinery, but claim future provision for its replacement on the basis that the available resources are to be proportionately allocated to machinery which may require replacement in much later years. We hold that in approving this course, the Tribunal did not adopt the correct principle according to which calculation should be made, when applying the Full Bench Formula for calculation of bonus. Learned counsel also referred us to the decision of this Court in M/s. Titaghar Paper Mills Co. Ltd. v. Its Workmen [[1959] Supp. 2 S.C.R. 1012 at p. 1042] to show that, in that case, this Court also, when calculating the rehabilitation provision, deducted the entire depreciation and reserves available from the total rehabilitation requirement and did not adopt the course of deducting it from different blocks of machinery requiring rehabilitation. That case, however, does not support the view taken by the Labour Appellate Tribunal, because in that case this Court had accepted the decision of the Tribunal that all the machinery in whichever year it may have been installed had a uniform residuary life of 10 years, so that all the machinery was to be rehabilitated simultaneously during the next 10 years. There was, therefore, no distinction between machinery installed in one year and that installed in other years insofar as the year in which it was to be replaced was concerned. It is true that, in some cases while describing the Full Bench Formula, this Court has mentioned that the total depreciation and liquid reserves available are to be deducted from the total rehabilitation requirement, but we do not think that it was intended to lay down in those cases that the method of deduction to be adopted is that laid down by the Labour Appellate Tribunal in Saxby and Farmer Mazdoor Union, Calcutta [[1955] L.A.C. 707]. On the other hand as we have already indicated this Court, in The Associated Cement Companies Ltd. case [[1959] S.C.R. 925], very clearly proceeded to apply the principle which we are accepting in this case. Consequently, we hold that the depreciation provision of Rs. 325.48 lacs and available development rebate reserve of Rs. 39.51 lacs must be taken into account when calculating the annual provision for rehabilitation required for replacement of the earliest installed machinery until it is exhausted, whereafter the annual requirement for the remaining blocks of machinery will have to be calculated, ignoring these available resources.

The next contest between the parties in this appeal relates to the claim of the Company to return on reserves and other funds used as working capital during the bonus year when calculating the surplus available for distribution of bonus. That a Company is entitled to return on reserves used as working capital was recognised by the Full Bench of the Labour Appellate Tribunal in The Millowners' Association's [[1950] L.L.J. 1247] case, when laying down the formula for calculation of available surplus which was approved by this Court in the case of The Associated Cement Companies Ltd. [[1959] S.C.R. 925]. In the latter case in dealing with this aspect of the matter, the Court pointed out that no distinction has been made by Tribunals between reserves used as working capital and depreciation fund similarly used. The Court approved the decision of the Labour Appellate Tribunal in The Millowners' Association Bombay v. The Rashtriya Mill Mazdoor Sangh [[1952] I.L.L.J. 518, 522], where the objection of the labour to depreciation fund earning any return, even if it was

utilised for or about the business of the year, was over-ruled and the Tribunal observed that "no essential difference could be made between the depreciation fund and any other fund belonging to the Company which could be invested so as to earn return.' The Court further held :

> "It is thus clear that what is material is not the origin of the fund. It is the fact that the fund in the hands of the concern has been used as working capital that justifies the claim for an adequate return on it. We think it is common-sense that if the concern utilises liquid funds available in its hands for the purpose of meeting its working expenses rather than borrow the necessary amounts, it is entitled to claim some reasonable return on the funds thus used". (pp. 964-65).

In this appeal, it is not disputed that the Company is entitled to claim a return on reserves which were actually utilised as working capital during the year of bonus, but Mr. Sen on behalf of the workmen urged that this return must be allowed only on reserves used as working capital and not on any other funds used at such. On the face of it, this argument cannot be accepted in view of the decision of this Court in the case of The Associated Cement Companies Ltd., [[1959] S.C.R. 925] where it has been clearly held that the origin of the fund is immaterial, though with the qualification that the fund should be one which is available for investment before a claim can be made by the employer for a return on it. This principle has been affirmed or followed in a number of cases subsequently decided by this Court, but we do not consider it necessary to refer to them in view of the fact that Mr. De on behalf of the employer conceded that this is the settled law and only contended that, in this case, the Company has in fact discharged the burden of proving that all the reserves shown in the balance-sheet for the year of bonus were actually utilised as working capital. Consequently, we proceed to examine this submission made on behalf of the Company.

Mr. De, in support of this submission, drew our attention to the affidavit of Satya Narayan Murarka who is the Commercial Manager of the Company. In this affidavit, Murarka stated that all the sums shown as reserves and surpluses in the balance-sheet were available for being utilised as working capital and were, in fact, so utilised. Murarka was also tendered for cross-examination, so that the workmen hand an opportunity of testing the correctness of his evidence by cross-examining him. It was urged by Mr. De that there was nothing in the cross-examination of Murarka which would justify rejection of the statements made by him in his affidavit that all the reserves and surpluses available had been employed as part of the working capital of the Company, and, in this connection, drew our attention to some decisions of this Court where the evidence given on behalf of the employer on affidavit has been accepted by this Court as sufficient proof. The first case cited by him is The Tata Oil Mills Co. Ltd. v. Its Workmen and Others [[1960] 1 S.C.R. 1 at p. 10]. In that case, question arose whether the Company concerned was entitled to claim return on the amount of depreciation reserves used as working capital. Dealing with this claim, the Court held :

> "An affidavit was made on behalf of the Company that it had used its reserve funds comprising premium on ordinary shares, general reserve, depreciation reserve, workmen's compensation reserve, employees' gratuity reserve, bad and doubtful debt reserves and sales promotion reserve as working capital. The Tribunal, however, allowed return at 4 per centum on a working capital of Rs. 31.88 lacs. This excluded the depreciation reserve but included all other reserves which were claimed by the company and having been used for working capital."

Proceeding further, the Court held :-

> "It is enough to say that the affidavit of the Chief Accountant filed on behalf of the company was not challenged before the Industrial Tribunal on behalf of the respondents. It would, therefore, be impossible for us now to overlook that affidavit, particularly when the Tribunal gave no reason why it treated the working capital as Rs. 31.88 lacs only."

The Court, thus, accepted the evidence of the affidavit, though it was added that it will be open to the workmen in future to show by proper cross-examination of the Company's witnesses or by proper evidence that the amount shown as the depreciation reserve was not available in whole or in part to be used as working capital and that whatever may be available was not in fact so used in the sense explained above.

In Anil Starch Products Ltd. v. Ahmedabad Chemical Worker's Union and Others [A.I.R. 1960 S.C. 1346 at p. 1348] this Court, dealing with the question of proof that depreciation reserve had been used as working capital, held :

> "It is enough to say in that connection that an affidavit was filed by the manager of the company to the effect that all its reserves including the depreciation fund had been used as working capital. The manager appeared as a witness for the company before the Tribunal and swore that the affidavit made by him was correct. He was cross-examined as to the amount required for rehabilitation, which was also given by him in that affidavit; but no question was put to him to challenge his statement that the entire depreciation reserve had been used as working capital. The Tribunal also did not go into the question whether any money was available in the depreciation reserve fund and had been actually used as working capital. It dismissed the claim for return on the depreciation reserve on entirely different grounds. In the circumstances, we must accept the affidavit so far as the present year is concerned and hold that the working capital was Rs. 34 lacs. It will, however, be open to the workmen in future to show by proper cross-examination of the company's witnesses or by proper evidence that the amount shown as depreciation reserve was not available in whole or in part as explained above to be used as working capital and that whatever was available was not in fact so used."

In Khandesh Spg. & Wvg. Mills Co. Ltd. v. The Rashtriya Girni Kamgar Sangh, Jalgaon, [[1960] 2 S.C.R. 841 AT p. 850] this Court, again dealing with the question of proof of working capital, referred to the earlier cases and held :

> "This judgment again reinforces the view of this Court that proper opportunity should be given to the labour to test the correctness of the evidence given on affidavit on behalf of the management in regard to the user of the reserves as working capital."

On the basis of these views expressed by this Court, it was urged that, in the present case, the affidavit of Murarka should be accepted as sufficient evidence in proof of the company's claim that all the reserves and funds mentioned in the affidavit were in fact used as working capital, so that the company is entitled to claim to return on them.

It appears to us that the affidavit of Murarka in the present case is not such that it can be held to have discharged the burden which lay upon the Company to prove that all the reserves and other funds had, in fact, been utilised as working capital. In the affidavit, Murarka referred to the balance-

sheet and stated that the various funds claimed as having been used as working capital were shown at the beginning of the bonus year as in existence and the further entries indicated that those amounts were still intact at the end of the bonus year and were carried forward to the next year. Such a statement was made by him in respect of reserve for contingencies amounting to Rs. 10 lacs, forfeited dividends amounting to Rs. 450 lacs, profit and loss account balance amounting to Rs. 3.63 lacs, provision for depreciation amounting to Rs. 325.48 lacs, and development rebate reserve amounting to Rs. 39.51 lacs. It is to be noticed that the fact that these amounts were shown as in existence at the beginning of the bonus year as well as at the end of that year can certainly lead to a reasonable inference that these funds were all available to the company for being utilised in its business during the year; but the mere fact of these entries showing the existence of these funds at the beginning and at the end of the year cannot be the basis for a conclusion that these funds must have been utilised as part of the working capital of the Company. In order to claim to return, it is not enough for a Company to show that the amounts were available during the year for being utilised as working capital. The Company has further to discharge the burden of proving that those funds were in fact so utilised. This principle was clearly indicated by this Court in Bengal Kagazkal Mazdoor Union and Others v. Titagarh Paper Mills Company, Ltd. and Others [1963] II L.L.J. 358 at p. 364]. It was in that case that this Court gave an indication of how the availability of reserves and other funds for use as working capital can be inferred from the balance-sheet. It was said :

> "What is usually done is to take into account the liquid assets of various kinds available at the beginning of the relevant year and the total of such assets available at the beginning of the year is considered as working capital for that year, if there is evidence that it has been actually used during the year. But when we come to the end of the year and look at the balance-sheet, we have to find out the liquid assets available at the end of the year from which the amount available as working capital for the next year may be arrived at. But the liquid assets available at the end of the year will usually be of two kinds; firstly, there will be cash assets in the various reserves and secondly, there will be assets in the shape of raw materials, etc., and both together become the available working capital for the next year subject to necessary adjustments and also subject to the evidence that they were actually used as working capital."

Proceeding further, the Court, while dealing with the bonus year 1955-56, held :-

> "Now the working capital is generally arrived at by finding the liquid reserves available on 1st April, 1955. These liquid reserves may be in the form of reserves of various kinds, i.e., depreciation reserves, general reserve, renewal reserve, and so on, and also in the form of investments, advances and raw materials, etc. in stock. All these have to be taken into account in arriving at the working capital after necessary adjustments. As we have already pointed out, the amount of working capital thus arrived at, if there is evidence that it was actually used as working capital for the year, may be allowed interest in accordance with the Full Bench Formula."

In that case, thus, the two steps necessary for proving the claim were separately indicated. The first step in proving that reserves and other funds have been used as working capital is to show that they were available by proving the balance-sheet in which those reserves and funds are shown in existence at the beginning of the year. The second step indicated is that evidence must be given to prove that these reserves and funds were actually utilised as working capital during the year. Obviously, this proof is needed, because, even though the reserves and funds may be available, they

may not be utilised as part of the working capital and may form part of cash amounts kept by the Company or may be utilised for purposes other than that of working capital. The mere existence of the reserves and funds at the beginning of the year, even taken together with their existence at the end of the year, cannot lead to any inference that these reserves and funds must have formed part of the working capital during the year and could not form part of other items such as fixed deposits, investments, etc. Murarka in his affidavit, as we have indicated above, gave his conclusion that the various reserves were used as part of the working capital only on the basis that these reserves and funds were in existence both at the beginning and at the end of the year. The conclusion drawn by Murarka had, therefore, no basis at all. The facts on which he relied could only justify an inference that these reserves and funds were available, but they could not exclude the possibility that they were utilised for purposes other than that of working capital. The affidavit of Murarka in this case cannot thus be held to be sufficient proof of this second ingredient that the reserves and funds were in fact utilised as working capital. So far as the cases referred to by learned counsel are concerned, which we have discussed earlier, they do not, in our opinion, lay down the principle that, if in an affidavit filed on behalf of the employer a broad statement is made that all reserves and other funds were used as part of the working capital, that statement must be accepted as sufficient proof, even when the statement is coupled with an admission that it is based on an inference from the balance-sheet only and no other proof is furnished to show that these available reserves and funds were in fact brought in as working capital by the employer during the year in question. In these circumstances, even though in the cross-examination of Murarka on behalf of the workmen nothing very material was elicited on this question, we have to hold that the affidavit given by Murarka is not sufficient to discharge the burden which lay on the Company to prove that all the reserves and other funds shown in the balance-sheet as in existence at the beginning and at the end of the bonus year in question were utilised as working capital.

The balance-sheet, it appears to us, itself gives an indication that this claim made on behalf of the Company cannot be fully justified. In the balance-sheet, the assets of the Company are shown under various heads and it seems to us that items falling under certain heads only can be treated as working capital of the Company during the year, while others have to be excluded. The items which cannot be treated as part of the working capital are : fixed assets of the value of Rs. 411.08 lacs, investments of the value of Rs. 14.48 lacs, fixed deposit amount of Rs. 220 lacs, loans and advances recoverable in cash or in kind or for value to be received or pending adjustment amounting to Rs. 11.74 lacs, and loans and advances from Trust and other authorities amounting to Rs. 8.09 lacs. On the other hand, the working capital would consist of current assets of the value of Rs. 31.34 lacs, Stock in Trade of the value of Rs. 337 lacs, sundry debts of the value of Rs. 69.82 lacs, bank and cash balances of the value of Rs. 37.98 lacs, loans and advances of the value of Rs. 14.27 lacs, and insurance and other claims of the value of Rs. 7.61 lacs. Thus in the present case, the balance-sheet gives an indication that a sum of Rs. 498.02 lacs was the amount shown at the beginning of the year against items of assets which can be classified as part of the working capital, whereas the remaining sum of Rs. 665.38 lacs represent fixed assets, fixed deposits, investments and other loans and advances which cannot be classified as part of working capital.

Similarly, an examination of the items entered on the side of liabilities in the balance-sheet shows what were the sources from which moneys became available for acquisition of these assets. Amongst these, the reserves shown are only Rs. 10 lacs for contingencies and Rs. 39.51 lacs as development rebate reserve. Though the balance-sheet does not itself show the depreciation fund, it is also clear from the Schedule attached to the balance-sheet that, up to the beginning of the year, a depreciation provision had been made to the extent of Rs. 325.48 lacs. In order not to show it as available development reserve or fund in the balance-sheet, what the Company did was to show the

depreciated value of the capital assets at Rs. 411.07 lacs instead of the actual value of Rs. 736.56 lacs which was the amount paid in cash for acquiring those fixed assets. For purposes of dealing with the question whether any reserve was used as working capital, we must, therefore, proceed on the basis that there was a depreciation reserve of Rs. 325.48 lacs, while the investment on the fixed assets was Rs. 736.56 lacs and not merely Rs. 411.07 lacs. Taking this depreciation reserve also into account, it would thus appear that the reserves available at the beginning of the year were of the amount of Rs. 374.99 lacs. The subscribed capital and capital available from forfeited shares was Rs. 819.57 lacs. Funds available from other resources, such as profit and loss account balance, unsecured loans, current liabilities and provisions, provision for taxation, proposed dividends and contingent liabilities not provided for, amounted to Rs. 294.33 lacs. The question that arises is how much money from each of these sources had gone into the working capital and how much into fixed assets or other items of assets indicated by us above. In examining this position, the value of the fixed assets has to be taken as Rs. 736.56 lacs which was the actual amount spend in acquiring those assets and not at the written down value of those assets at Rs. 411.08 lacs. It seems to us that this being the position, there was no justification for Murarka to claim that all the amounts available in reserve had gone towards the working capital and did not represent other assets, such as the fixed deposit of Rs. 220 lacs and similar other items. In these circumstances, we have to hold that no reliance can be placed on the affidavit of Murarka that all the reserves, including the depreciation reserve and the contingent and development rebate reserve were actually used as part of the working capital during this year.

The question that next arise on this conclusion of ours is whether any return at all should be allowed to the Company on reserves or other funds claimed as having been utilised as working capital during this year. The exact figure on which the Company could claim return has not been proved by it, but it seems to us that at least some part of the reserves must necessarily have been utilised in the working capital. The Company had a paid-up capital of Rs. 819.57 lacs and it can safely be assumed that this money was utilised for acquiring the fixed assets, as that will be the primary purpose of obtaining capital from the shareholders. A sum of Rs. 736.56 lacs must, therefore, have gone in cash into the fixed assets out of this sum of Rs. 819.57 lacs, leaving a balance of Rs. 83.01 lacs. The sum available from other resources was Rs. 294.33 lacs which, together with the balance of the subscribed capital left over, gives a figure of Rs. 377.34 lacs. Consequently, for purposes of the working capital, a maximum amount of Rs. 377.34 lacs could have been available from the subscribed capital or other resources and the balance of the amount must necessarily come out of the reserves. The items of assets classified as representing the working capital, as we have indicated above, have a total value of Rs. 498.02 lacs. Deducting from this amount the sum of Rs. 377.34 lacs available from subscribed capital or other resources, there remains a balance of Rs. 120.68 lacs which must have necessarily come out of the various reserves, including the depreciation reserve, and this amount at least must be held to represent reserves acually used as working capital during the year by the Company. We think that, since the information available from the balance-sheet itself shows that at least Rs. 120.68 lacs out of the reserves did form part of the working capital of the Company, it would be fair to allow the Company 4% return on this amount, even though we are not inclined to accept the evidence of Murarka and have to hold that the Company on its part failed to prove that this amount or the whole of the amount of reserves had been utilised as part of the working capital during this year. Consequently, the amount which the Company has to be allowed as return on reserves utilised as working capital comes to Rs. 4.83 lacs.

In this connection, we may also take notice of the claim made by the Company that return should also be allowed on certain other sums used as working capital which have been described as working income. The Company claimed that it had money available from four different sources.

The details given were Rs. 249.71 lacs from profit as worked out in the Profit and Loss Account at the end of the year, Rs. 63.07 lacs as reserve for depreciation for the year. Rs. 36.00 lacs as development rebate for this year and Rs. 4.71 lacs as value of discarded fixed assets written off. The claim was that at least half the amount represented by these figures should be treated as a fund which was available during the bonus year for being utilised as working capital. This submission, in our opinion, cannot be accepted. There is nothing to show whether any of these amounts became available to the Company during the year and if so, when they became available. In fact, the profits as worked out in the Profit and Loss Account can be held to have accrued to the Company only when the Profit and Loss Account was worked out at the end of the year. We have already referred to the decision of this Court in Bengal Kagazkal Mazdoor Union and Others [[1963] 2 L.L.J. 358] where it was held that amounts shown as liquid assets at the beginning of the year are the only amounts which can be held to be available for utilisation as working capital in that year. Amounts which accrue during the year or at the end of the year cannot be held to be available, unless evidence is led on the basis of which a positive finding can be recorded that those amounts became available on a particular date during the year and were thereafter actually utilised as part of the working capital. Profit for the year and reserve or development rebate for the year in question cannot be proved to have accrued on any particular date during the year and, therefore, it is also not possible to hold that they were utilised as part of the working capital during that very year. This claim which is a novel one put forward on behalf of the Company for the first time in applying the Full Bench Formula for calculation of available surplus for distribution of bonus, must, therefore, be rejected.

A point that was raised on behalf of the workmen, but which was not seriously argued before us, was that the return on paid-up capital should not be allowed at least to the extent to which money had been invested in the subsidiary or other companies. The amount in question is Rs. 14.48 lacs already noticed by us earlier when dealing with the question of proof utilisation of reserves as working capital. In dealing with that question, we have already proceeded on the basis that the paid-up capital was either invested in fixed assets, or must have been utilised as part of the working capital, and have not accepted the plea that this sum of Rs. 14.48 lacs of investment came out of the paid-up capital. Consequently, no question can arise of reducing this amount from the paid-up capital when allowing 6% return on it in accordance with the Full Bench Formula.

Another deduction, while calculating the surplus out of the profits available for distribution of bonus, which has been challenged on behalf of the workmen relates to the income from home delivery commission. From the facts, it appears that this Company was manufacturing cars in collaboration with a foreign concern and the arrangement was that, if that foreign concern sold any of its goods in India, the Company would be entitled to its commission on those sales, even though the Company may not be a party to the transactions of those sales. This arrangement thus recognised the exclusive right of the Company in respect of sale of its cars and to reimbursement in case the foreign collaborator entered into transactions infringing that right. It seems to us that the income thus accruing to the Company has to be treated as extraneous income which was earned by the Company without any activities in which the workmen participated or contributed their labour. Learned counsel for the workmen referred us to the decisions of this Court in the Tata Oil Mills Co. Ltd. [[1960] 1 S.C.R. 1.] and Voltas Limited v. Its workmen [[1961] 3 S.C.R. 167]. The situations that were discussed in those cases were different. In those case, the principle laid down was that, if any income was earned in the course of the normal business of the Company in which the workmen were also engaged, that income must be included in the profits for calculation of surplus available for distribution of bonus. None of the instances that came up for consideration were similar to the one before us. The home delivery commission earned in the present case did not require any

contribution of work or labour on the part of the workmen, and accrued to the Company simply because of its agreement with the foreign collaborator which entitled the Company to claim the commission without going through any process of manufacturing or selling the cars or their components. In the circumstances, the deduction of the home delivery commission from the profits was fully justified.

The last point urged related to the interest on fixed deposits earned by the Company during the bonus year. We have already indicated earlier that a sum of Rs. 220 lacs was in fixed deposit account and the profit and loss account shows that a sum of Rs. 5.17 lacs was received as interest on it by the Company. This has also to be excluded when calculating the available surplus, because this income also accrued to the Company without any contribution on the part of the workmen. It was not the regular business of the Company to keep money in fixed deposits and earn interest thereon. At the same time, however, we feel that on equitable grounds, the Company should not be entitled to claim the sum of Rs. 2.16 lacs as an expenditure of the business of the Company in respect of interest paid to bank and others. When the Company was receiving interest on fixed deposits, it would be proper to hold that at least the interest paid by the Company should come out of the interest earned by it. There seems to be no justification for permitting a Company to keep money in a fixed deposit and treat the interest accruing on it as extraneous income, while, at the same time, permitting the Company to take loans, pay interest and treat that interest as business expenditure. Consequently, in this case, when calculating the available surplus, a sum of Rs. 5.17 lacs minus Rs. 2.16 lacs = Rs. 3.01 lacs only will be deducted as extraneous income which was earned without any contribution from the workmen and which cannot therefore, be taken into account when calculating available surplus.

On the basis of these decisions, we have worked out Charts showing the amount of annual rehabilitation provision which

CHART I (All figures in lacs of rupees)--Year Original Discarded Price Replacement Cost and Factor Cost written off or from books Multiplier-- 1 2 3 4 5--1942-43 to ..1946-47 .. 2.17 - 2.80 6.081947-48 .. 89.75 0.35 2.80 250.321948-49 .. 44.77 - 2.50 111.931949-50 .. 37.60 - 2.30 86.481950-51 .. 5.29 - 2.40 12.701951-52 .. 14.63 - 2.70 39.501952-53 .. 11.06 0.39 2.50 26.681953-54 .. 9.09 - 1.50 13.641954-55 .. 38.66 24.33 1.90 27.231955-56 .. 30.05 8.01 1.80 39.691956-57 .. 34.47 5.95 1.60 45.631957-58 .. 75.32 7.79 2.00 135.061958-59 .. 53.74 - 1.25 67.171959-60 .. 140.15 - 1.15 161.171960-61 .. 98.52 - 1.10 108.37---Less 5% Balance Deduct Balance Residuary AnnualCost depreciation requirement Age Rehabilitation & other requirement reserve available-- 6 7 8 9 10 11---0.11 5.97 364.99 Nil Immaterial -4.47 245.85 359.02 Nil " -2.24 109.69 113.17 Nil " -1.88 84.60 3.48 81.12 3 27.040.27 12.43 - 12.43 3 4.140.73 38.77 - 38.77 4 9.690.53 26.15 - 26.15 5 5.230.45 13.19 - 13.19 5 2.640.72 26.51 - 26.51 6 4.421.10 38.59 - 38.59 7 5.511.43 44.20 - 44.20 7 6.313.37 131.69 - 131.69 8 16.462.69 64.48 - 64.48 9 7.167.01 154.16 - 154.16 9 17.134.93 103.44 - 103.44 10 10.34 ----------

116.70--##

CHART II (All figures in lacs of rupees)--Annual Requirement for Rehabilitation for allthe Machinery .. 116.07Less Depreciation Provision for the Year of Bonus1960-61 .. 63.07 --------Net Requirement for Rehabilitation of Machineryin the Year 1960-61 .. 53.00Requirement for Rehabilitation of Buildings .. 11.97 -------Total Rehabilitation Requirement .. 64.97-- CHART III (All figures in lacs of rupees)-- Profit as per Profit & Loss Account . . . 249.71Add:Provision for Depreciation . . . 63.07Reserve for Development Rebate . . 36.00Charity and Donation . . . 0.35Expenses pertaining to previousyears (Sales Tax) . . . 0.01 ------- 99. 43 99.43

349.14Less :Income pertaining to previous years andProvisions no longer required . . . 5.70Surplus on Sale of Fixed Assets . . . 0.09Home Delivery Commission . . . 1.03Interest on Fixed Deposits . . . 3.01Normal Notional Depreciation . . . 69.26Income-tax Liability for the year . . . 112.376% Return on Ordinary Share Capital . . . 29.778.57% Return on Preference Share Capital . . 27.554% Return on Working Capital . . . 4.83Provision for Rehabilitation . . . 64.97 ------- 318.58 318.58

-------Net Surplus Available for Payment of Bonus . . 30.56

--* These figures have been corrected by us. In the statement filed by theCompany they were wrongly entered as 12.18 lacs and 129.89 lacsrepectively.##

must be allowed to the Company and, taking that into account, the amount of surplus available out of the profits for distribution as bonus. Chart I shows the annual rehabilitation requirement for machinery which works out at Rs. 116.07 lacs. Chart II gives the calculation, on the basis of this figure, of the net amount required for rehabilitation during the year of bonus for the machinery and buildings, after taking into account the depreciation provision for the year of bonus. This net amount is Rs. 64.97 lacs. Chart III, based on these figures and on other figures arrived at by us in our judgment, shows that a net amount of Rs. 30.56 lacs would be available as surplus for payment of bonus during this year. The Tribunal was, therefore, not right in arriving at its decision that this Company was not in a position to pay bonus at all.

As we have indicated earlier, the workmen have claimed bonus equivalent to 6 month's wages which would amount to a sum of Rs. 24 lacs. We do not find any justification for granting bonus at such a high rate. Though the Company has earned a large amount of profit during the year of bonus, it is to be noticed that, for quite a large number of years, the Company has been running at a loss. The Company has an expanding business and the total amount of surplus available for allocation between the capital and the labour is Rs. 30.56 lacs. In all these circumstances, we consider it just and proper that bonus should be paid to the workmen & 20% of their annual wages, so that a total sum of Rs. 9.60 lacs out of this surplus will be paid out as bonus, leaving the balance of Rs. 21.03 lacs with the Company for being utilised for other purposes.

The appeal is, consequently, allowed, the decision of the Tribunal is set aside and it is hereby ordered that the Company shall pay to the workmen a total amount of Rs. 9.60 lacs as bonus, representing 20% of the annual wage of the workmen. In the circumstances of this case, we direct

parties to bear their own costs of this appeal.

Appeal allowed.

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