reproduced above and there is no question of the impulse generated coming to an abrupt end as soon as it meets the word "accident" in the middle of the phrase. The word compensation always qualifies the injury that is sought to be compensated and there is no question of this word qualifying the type of accident. The word makes it clear to my mind that the injury sought to be compensated is bodily injury or death and this meaning is made further clear by section 110A(1) which does not provide for the entertainment of any claims in respect of damage or injury to property.

(17) I am, therefore, of the view that the plaint was wrongly returned by the trial Court for presentation to the Tribunal.

(18) The appeal deserves to succeed and the Sub-Judge Chandigarh is directed to entertain the suit and to dispose it of on merits. His order returning the plaint under Order VII, Rule 10, Code of Civil Procedure, is set aside. The defendant-respondent shall pay the appellant's costs of the litigation up to this stage. Costs for the proceedings that follow shall abide the event. Parties should appear before the Senior Sub-Judge at Chandigarh for further directions on 16th October, 1970.

R. S. NARULA, J.—I agree.

N. K. S.

APPELLATE CIVIL

Before Man Mohan Singh Gujral, J.

DR. YOGINDER PAL SONI,—*Appellant.*

versus

PADMA SONI,—*Respondent.*

First Appeal From Order No. 38-M of 1970.

September 3, 1970.

Hindu Marriage Act (XXV of 1955)—Section 24—Maintenance pendente lite *payable to the wife under—Calculation of the income of the husband for—Voluntary contributions to the Provident Fund and payment of premia of insurance—Whether to be taken into consideration—Quantum of such maintenance—Whether to be one-fifth of the husband's income—Date from which the payment of maintenance is to be made—Whether of the main application or of application for such maintenance.*

Held, that only deductions of compulsory deposits are to be made from the income of the husband before calculating what is due to the wife as maintenance *pendente lite* under section 24 of Hindu Marriage Act and not voluntary deposits. Normally contributions to the Provident Fund and payment of insurance premia are voluntary deposits and are savings of the person which it is open to him to reduce or increase. Hence for the purpose of determining the amount of maintenance to which the wife is entitled, no allowance can be made for the deductions from the pay which are not to be made compulsorily under the law. The wife is entitled to her share out of the pay after allowing for compulsory deductions like income tax or other taxes.

(Para 4)

Held, that no limit has been prescribed in the Act as to the amount of maintenance allowance which can be granted to a wife but in the absence of special circumstances maintenance should normally be allowed at the rate of one-fifth of the income of the husband. (Para 5)

Held, that section 24 of the Act is silent about the date from which allowance under it is to be granted. It would depend on the facts and circumstances of each case as to which date should be fixed for this purpose. However, the object underlying the section appears to be that neither party may suffer by his or her inability to conduct the proceedings for want of money or expenses. Normally, therefore, it is after the party appears in Court in reply to the service of summons that the question of defending the proceedings arises. It would, therefore, be more appropriate to allow alimony from the date of application under section 24 and not from the date of main application under the Act.

(Para 6)

First Appeal from Order of the Court of Shri Udham Singh, District Judge, Patiala, dated 29th June, 1970, ordering that the maintenance allowance for Shmt. Padma is fixed @ Rs. 250 P.M., and this sum will be paid from the date of the presentation of the application under section 10 of the Act and further ordering that Dr. Yoginder Pal Soni, will also pay a sum of Rs. 700 in lumpsum to Shmt. Padma Soni so that she could meet the expenses of the litigation.

R. L. BATTA, ADVOCATE, for the appellant.

BAL RAJ BAHL, ADVOCATE, for the respondent.

JUDGMENT

This is an appeal against the order of the District Judge, Patiala, dated 8th December, 1969, whereby the respondent, Shrimati Padma Soni, was granted maintenance allowance of Rs. 250 per mensem and expenses of the litigation amounting to Rs. 700 in a

petition filed by the petitioner under section 10 of the Hindu Marriage Act. During the pendency of the proceedings under section 10 the respondent made an application under section 24 of the Act on the basis of which the impugned order was passed. Being aggrieved the husband, Dr. Yoginder Pal Soni, has come up in appeal to this Court.

2. It is not disputed that the petitioner has an income of Rs. 916 per mensem. This includes his basic pay of Rs. 560 plus allowances including the non-practising allowance. Besides this income the husband has also got a rental income of Rs. 75 per mensem. Though in the affidavit filed by Dr. Yoginder Pal Singh he has denied that he has any other income, but the learned counsel for the respondent has placed on record a certified copy of the statement of the appellant made in the Court of the Senior Subordinate Judge, Ferozepore, that he along with his two brothers are in receipt of a rent of Rs. 2,500 per annum. The share of the petitioner out of this would be Rs. 800 per annum and his total monthly income would come to Rs. 1,000. Out of this income Dr. Soni would have to pay about Rs. 50 as income tax.

3. The learned counsel for the petitioner has canvassed before me that the respondent should be allowed one-fifth of the total income after having regard to the deductions on account of provident fund and insurance premium. It is further urged that the expenses *pendente lite* should be granted from the date of the application under section 24 and not from the date of the petition under section 10. The third contention of the learned counsel for the petitioner is that the amount granted for the expenses of the litigation was excessive.

4. In support of the argument that the petitioner was entitled to the deduction of provident fund and insurance premium out of the total income reliance is placed on the following observations made in *Mukan Kunwar* v. *Ajeetchand* (1):—

> "If the Court comes to the conclusion that the applicant is entitled to maintenance and expenses then it has to consider their quantum. As for maintenance *pendente lite* Courts generally allow it at one-fifth the income of the respondent after deductions on account of income-tax and provident fund."

(1) A.I.R. 1958 Raj. 322.

These observations no doubt support the argument of the learned counsel for the petitioner but these observations are more in nature of obiter. The husband was only having an income of Rs. 107 and it is not clear from the judgment whether any part of this income was being deducted for deposit in provident fund or for the payment of the insurance premiums. It could be that the provident fund deposit in this case may have been a compulsory deposit according to the terms of the employment. In my opinion, what emerges from the above observations is that only deductions of compulsory deposits are to be made from the income of the husband before calculating what is due to the wife as maintenance *pendente lite* and not voluntary deposits. Normally provident fund and insurance premiums are voluntary deposits and are savings of the person which it is open to him to reduce or increase. If these voluntary deductions of provident fund and insurance premiums are allowed to be deducted by the husband before calculating the amount due to the wife it would work great hardship as by making larger deductions from his pay on account of provident fund and insurance premiums the husband can deprive the wife of her due share in his income. I am, therefore, clearly of the view that for the purpose of determining the amount of maintenance allowance to which the wife is entitled, no allowance can be made for the deductions from the pay which are not to be made compulsorily under the law and the wife is entitled to her share out of the pay after allowing for compulsory deductions like income-tax or other taxes. Taking this view of the matter, I find that Rs. 950 would be available in order to determine what amount the respondent would be entitled to as maintenance allowance.

5. In *Mukan Kunwar's case* (1) cited above it was observed that no limit has been prescribed in the Hindu Marriage Act as to the amount of maintenance allowance which can be granted to a wife but in the absence of special circumstances maintenance should normally be allowed at the rate of one-fifth of the income of the husband. This was also the view expressed in *Prasana Kumar Patra* v. *Smt. Sureswari Patrani* (2). Keeping in view these observations, I hold that leaving exceptional circumstances apart one-fifth of the income of the husband would be a reasonable amount of maintenance allowance to which the wife would be entitled. Calculating on this

(2) A.I.R. 1969 Orissa 12.

basis, I assess the maintenance allowance to which the wife is entitled in this case at Rs. 200 per mensem as no circumstances of exceptional nature have been brought to my notice.

6. As to the date from which the allowance is to be granted through section 24 of the Hindu Marriage Act is silent about it but in Dr. *Tarlochan Singh* v. *Shrimati Mohinder Kaur* (3) it was observed that it could be granted from the date of the application under section 24 of the Hindu Marriage Act. For the contention that the allowance could also be granted from the date of the petition under section 10 the learned counsel for the respondent placed reliance on *Samir Banerjee* v. *Sujata Banerjee* (4) wherein the following observations appear:—

> "The next submission of the appellant is, that the learned Judge is wrong in allowing the maintenance for the period from September 1962, as the application for maintenance is filed only in February 1963. There cannot be any grant of maintenance, Mr. Mitter submits, of an earlier period, Mr. Dos however points out the said Bench decision of this Court in *Subhana Sen* v. *Amar Kanta* (5) (supra) and a decision of the Madras High Court in the case of *Mahalingam Pillai* v. *Amsavalli* (6) where their Lordships relied on the general rule, namely, that the maintenance is granted after the summons have been served on the defendant in such cases. In the instant case, as the summons has been served on the husband, on August 4, Mr. Dos submits that it is possibly for this reason that the maintenance has been granted from the month of September, 1962. Though the guiding principle of the general rule has been taken from the Matrimonial Causes Acts in England, what is the source of the "General Rule" is not known to any one of the learned Counsel appearing before us and they are frank to admit the same.
>
> On the provisions of the act however I am of the opinion that there is no warrant holding that the Court cannot pass a valid order for arrear maintenance from the date of the original application for judicial separation, though the application for maintenance might be made later. Section 24 of the Act does not lay down that the Court's discretion to

(3) 1963 P.L.R. 19.
(4) 70 C.W.N. 633.
(5) A.I.R. 1959 Cal. 455.
(6) 1956 (2) M.L.J. 289 (296-7).

pass an order for maintenance must be either from the date of the said application under Section 24 or any period subsequent thereto. It depends in our view upon the facts and circumstances of each case, having regard to which, the discretion under the said Section is to be exercised. Moreover, as the wife is not specific in her application in the present case as to from which date she is claiming the maintenance and as there is no appeal or cross-objection by the wife, the order of the learned Judge that the wife would get the maintenance from the month of September, 1962 is affirmed."

The above observations also do not imply that the maintenance allowance is to be granted from the date of the petition under section 10 of the Hindu Marriage Act. On the other hand, it was observed that it would depend on the facts and circumstances of each case as to which date was to be fixed for this purpose. Having regard to the entire circumstances of the case I am of the view that it would be proper to grant maintenance allowance from the date of the application under section 24 and not from the date of the petition under section 10 of the Hindu Marriage Act. Even in the *Sobhana Sen* v. *Amar Kanta* (5), to which reference was made by the learned counsel for the appellant, allowance was not granted from the date of the petition but from the date the wife was served. Moreover, in *Samir Banerjee's* case (4), this view was not followed and it was observed that it would depend on the facts and circumstances of each case. The object underlying section 24 appears to be that neither party may suffer by his or her inability to conduct the proceedings for want of money or expenses. Normally it is after the party appears in Court in reply to the service of summons that the question of defending the proceedings would arise. It would, therefore, be more appropriate to allow alimony from the date application under section 24 is made. Consequently, considering the circumstances in the present case, the respondent is allowed maintenance from the date of her application under section 24 of the Hindu Marriage Act.

7. The quantum of litigation expenses has been fixed at Rs. 750 and the learned counsel for the petitioner has not been able to show that the amount is excessive or that the reasons given by the trial Court for assessing this amount are not correct.

8. For the foregoing reasons, the appeal is allowed to the extent indicated above, but the parties are left to bear their own costs.

B.S.G.