

Naresh Kumar and Ors Vs. The New India Assurance Co. Ltd.

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Court : Delhi

Decided On : Mar-27-2015

Judge : G.P. Mittal

Appellant : Naresh Kumar and Ors

Respondent : The New India Assurance Co. Ltd.

Advocate for Pet/Ap. : Mr. Manish Kaushik, Mr. K.L.Nandwani, Mr. Badri Dass, Mr. Dev Dutta

Judgement :

\$-11 &12 * IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

27. h March, 2015 + MAC.APP. 683/2013 NEW INDIA ASSURANCE CO. LTD.
Through: Appellant Mr. Manish Kaushik, Adv. for Mr. K.L.Nandwani, Adv.
versus NARESH KUMAR & ORS. Through: Respondents Mr. Badri Dass, Adv.
with Mr. Dev Dutta, Adv. for R-1 to R-3. + MAC.APP. 178/2014 NARESH KUMAR
& ORS Through: Appellant Mr. Badri Dass, Adv. with Mr. Dev Dutta, Adv. for
R-1 to R-3. versus THE NEW INDIA ASSURANCE CO. LTD. Through:
Respondent Mr. Manish Kaushik, Adv. for Mr. K.L.Nandwani, Adv. CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

JUDGMENT

G. P. MITTAL, J.

(ORAL) 1. These two appeals arise out of judgment dated 18.05.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ` 18,74,400/- was awarded for the death of Dinesh Kumar, who suffered fatal injuries in a motor vehicular accident which occurred on 27.06.2012.

2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of car bearing registration no.DL-9CB-3506 by Respondent Ashish Mahendru. The Claims Tribunal further found that the deceased was working as a Maintenance Technician with M/s. Kone Elevator India Pvt. Ltd. and was earning an income of `67,200/- per annum. The Claims Tribunal made addition of 50% towards future prospects, deducted 50% towards personal and living expenses as the deceased although a bachelor had responsibility of younger siblings and applied a multiplier of 18 as per the age of the deceased to compute the loss of dependency at `18,14,400/-.

3. For the sake of convenience, the Appellant in MAC.APP.683/2013 shall be referred to as the Insurance Company, whereas the Appellants in MAC. APP. 178/2014 shall be referred to as the claimants.

4. The finding on negligence has not been disputed by the learned counsel for the appellant Insurance Company at the time of hearing of the appeal. Hence, the same has attained finality.

5. The following contentions are raised on behalf of the Insurance Company:(i) Addition of 50% towards future prospects was not justified in the absence of any evidence with regard to good future prospects; (ii) Deceased was a bachelor, multiplier ought to have been adopted as per the age of the mother of the deceased, who was 42 years on the date of the accident; and (iii) The Claimants were paid a sum of `10 lacs towards accidental death on account of Group Insurance obtained by the employer. The amount of `10 lacs is liable to be deducted.

6. The learned counsel for the Claimants on the other hand urged that the compensation awarded is on the lower side. It is contended that the multiplier of 18 is justified as one of the Claimants was aged 22 years.

7. The learned counsel for the Claimants submits that as per the salary slip Ex.PW-1/3, the deceased was earning an income of `15,123/- per month. He was a confirmed employee getting increments, therefore, the Claims Tribunal ought to have taken the income of the deceased to be `15,123/- p.m. and ought to have added 50% towards future prospects. Relying on Vimal Kanwar & Ors. v. Kishore Dan & Ors., 2013 (6) SCALE705 it is also submitted that the amount received by the Claimants under Group Personal Accident Policy is not liable to be deducted. INCOME & FUTURE PROSPECTS⁸ It is borne out from the record and is sufficiently established that the deceased was appointed as Maintenance Technician in M/s. Kone Elevator India Pvt. Ltd. on a monthly salary of `12,000/-, which included Dearness Allowance, House Rent Allowance, Conveyance Allowance, Special Allowance, etc. The Claimants examined PW-3 Shri Rajiv Gusain, who testified that the deceased was confirmed in his job on 06.06.2012. He also proved the salary certificate Ex.PW1/3 to show that the deceased was getting a salary of `15,123/- p.m. at the time of his death. The fact that the deceased was confirmed and his salary increased from `12,000/- in 2011 to `15,123/- within two years speaks volumes that the deceased had bright future prospects. Addition of 50% towards future prospects therefore, is permissible. (Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC121.

9. Father of the deceased was a heart patient and was not active in his life. The deceased also had the responsibility of a younger sibling Ms. Priti. It was laid down in Sarla Verma (supra) that wherever a bachelor has the responsibility of the siblings, deduction towards personal and living expenses ought to be 1/3rd instead of 1/2. Thus, the Claims Tribunal erred in making deduction of 50% towards personal and living expenses.

10. The question of selection of multiplier was dealt with at great length by me in Shriram General Insurance Co. Ltd. v. Maneesha Karnatak and Ors., MAC APP655 of 2014 decided on 20.03.2015 and it was held that the multiplier will be as per the age of the deceased or the Claimant whichever is higher. In paras 10 to 34, this Court held as under:

10. Coming to the question of multiplier to be selected, the question of selection of multiplier was dealt with at great length by me in *Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors.*, ILR (2012) 6 Del 447. In that case, the learned counsel for the Appellant had relied on the following judgments (i) *Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, 2009 (6) SCC121 (ii) *Mohd. Ameeruddin v. United India Insurance Co. Ltd.*, 2010 (12) SCALE155 (iii) *P.S. Somanathan v. District Insurance Officer, I* (2011) ACC659(SC); (iv) *Bilkish v. United India Insurance Co. Ltd. & Anr.*, 2008 (4) SCALE25 (v) *National Insurance Co. Ltd. v. Azad Singh & Ors.*, 2010 ACJ2384(SC); (vi) *Oriental Insurance Co. Ltd. v. Deo Patodi & Ors.*, 2009 ACJ2359(SC) and (vii) *Divisional Manager, New India Assurance Co. Ltd. v. T. Chelladurai & Ors.*, 2010 ACJ382(SC).

11. I had discussed the law laid down in the earlier stated judgments and had further referred to the judgments in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*, (1994) 2 SCC176 U.P. *SRTC v. Trilok Chandara*, (1996) 4 SCC362 *Fakeerappa v. Karanataka Cement Pipe Factory*, (2004) 2 SCC473 and *New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC1 to hold that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher.

12. The learned counsel for Respondents No.1 and 2 has submitted that in view of the three Judge Bench decision in *Reshma Kumari v. Madan Mohan & Anr.*, (2009) 13 SCC422 and a later judgment of the Supreme Court in *M. Mansoor & Anr. v. United India Insurance Company Limited & Anr.*, (2013) 15 SCC603 the judgment in *Vijay Laxmi* (supra) of this Court needs to be revisited and the multiplier has to be as per the age of the deceased and age of the Claimant is not at all relevant for selection of the multiplier.

13. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should be a pittance. In other words, it should not be meager nor should be a windfall. In this connection, a reference may be made to the report of the Supreme Court in *State of Haryana v. Jasbir Kaur*,

(2003) 7 SCC484 which dealt with the grant of compensation in case of injury which principles equally apply in case of award of compensation in fatal accident cases. In Para 7, the Supreme Court held as under:

7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense damages which in turn appears to it to be just and reasonable. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be just and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be just compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of just compensation which is the pivotal consideration. Though by use of the expression which appears to it to be just a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression just denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.

14. Initially, the trend of the Courts was to ascertain the life expectancy, deduct the age of the deceased and to award the compensation on the basis of the residual life span. The Courts started deducting certain sums out of the sum as arrived above on account of lump sum payment.

15. However, in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors., (1994) 2 SCC176 an attempt was made for the first time to award just and reasonable compensation on the

basis of the multiplier method. The Supreme Court referred to the report in Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors., AIR 1962 SC1 and observed that actual pecuniary loss can be ascertained only by balancing, on one hand, the loss to the Claimant of the future pecuniary benefits and on the other hand, any pecuniary advantage which from whatever sources comes to them by reason of death. Paras 8 and 9 of the report in Susamma Thomas (Mrs.) (supra) are

8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant. Thus except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages.

(Per Lord Macmillan in Davies v. Powell [(1942) AC601 617 : (1942) 1 All ER657(HL)].) Lord Wright in the same case said, The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death. These words of Lord Wright were adopted as the principle applicable also under the Indian Act in Gobald Motor Service Ltd. v. R.M.K. Veluswami [AIR 1962 SC1: (1962) 1 SCR929:

1962. MLJ (Cri) 120]. where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the

amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

16. The Supreme Court referred to *Davies v. Powell*, (1942) AC601 and *Nance v. British Columbia Electric Railway Company Limited*, (1951) AC601 and in Paras 13 and 14 of the report in *Susamma Thomas (Mrs.)* (supra), the Supreme Court observed as under:

13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

14. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in *Mallett v. McMonagle*, (1970) AC166: (1969) 2 All ER178(HL)]. where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

The starting point in any estimate of the amount of the dependency is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the

effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4 per cent the present value of an annuity for 20 years of which the first ten years are at 100 per annum and the second ten years at 200 per annum, is about 12 years' purchase of the arithmetical average annuity of 150 per annum, whereas if the first ten years are at 200 per annum and the second ten years at 100 per annum the present value is about 14 years' purchase of the arithmetical mean of 150 per annum. If therefore the chances of variations in the dependency are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the dependency used for the purpose of assessing the damages.

17. The purpose of adopting the multiplier as per the age of the deceased or as per the age of the Claimant whichever is higher was that if the Claimant is of much higher age, particularly in case of death of a bachelor where the mother or for that matter the parents may be double the age of the deceased, the dependency is to come to an end in a much lesser period as against the dependency of a widow or minor children of a deceased. In any case, the deceased was not to support more than his own life span and thus, by providing the dependency to the Claimants, it was held that the dependency has to be as per the age of the deceased or the Claimant whichever is higher.

18. The law laid down in *Susamma Thomas (Mrs.)* (supra) with regard to adoption of multiplier method and selection of multiplier according to the age of the deceased or the Claimant whichever is higher was affirmed by a three Judge Bench decision in *U.P. SRTC v. Trilok Chandra*, (1996) 4 SCC362. The three Judge Bench laid down that the multiplier cannot in all cases be solely dependant

on the age of the deceased and the age of the parents would also be relevant in case of death of a bachelor in the choice of multiplier. In para 18 of the report of the Supreme Court in Trilok Chandra (supra), it was observed as under:

18. Besides, the selection of multiplier cannot in all cases be solely dependant on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier

19. There was some confusion as to the selection of the multiplier because of the multiplier table as given in the Second Schedule of the Act under Section 163-A which was inserted w.e.f. 14.11.1994. Some of the cases had adopted the multiplier as given in the Second Schedule. Although, the three Judge Bench in Trilok Chandra (supra) had noticed some clerical mistakes in the multiplier table as given in the Second Schedule, it stated that the said table can be taken as a guide. Noticing the wide variations in the selection of multiplier, a two Judge Bench of the Supreme Court in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC121 noted the multiplier as adopted in Susamma Thomas, Trilok Chandra and New India Assurance Company Limited v. Charlie & Anr. (2005) 10 SCC720 and in the Second Schedule and in Para 40 of the report, it compared the same in a tabulated form which is extracted hereunder: Age of the deceased Multiplier scale as envisaged in Susamma Thomas [(1994) 2 SCC176:

1994. SCC (Cri) 335]. (1) Up to 15 yrs 15 to 20 yrs 21 to 25 yrs 26 to 30 yrs 31 to 35 yrs 36 to 40 yrs 41 to 45 yrs 46 to 50 yrs 51 to 55 yrs 56 to 60 yrs 61 to 65 yrs Above 65 yrs (2) 16 15 14 13 12 11 10 9 8 6 5 Multiplier scale as adopted by Trilok Chandra [(1996) 4 SCC362 (3) 18 17 16 15 14 13 12 11 10 08 05 Multiplier scale in Trilok Chandra⁴ as clarified in Charlie [(2005) 10 SCC720:

2005. SCC (Cri) 1657]. (4) 18 18 17 16 15 14 13 11 09 07 05 Multiplier specified in Second Column in the Table in Second Schedule to the MV Act (5) 15 16 17 18 17 16 15 13 11 8 5 5 Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation) (6) 20 19 18 17 16 15 14 12 10 8 6 5 20. The Supreme Court with a view to having a uniform multiplier held that the multiplier as given in Column (4) of the above table should be usually followed. In

Paras 41 and 42 of the report in Sarla Verma (Smt.), the Supreme Court observed:

41. Tribunals/ courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas [(1994) 2 SCC176:

1994. SCC (Cri) 335]. [set out in Column (2) of the table above].; some follow the multiplier with reference to Trilok Chandra [(1996) 4 SCC362 , [set out in Column (3) of the table above].; some follow the multiplier with reference to Charlie [(2005) 10 SCC720:

2005. SCC (Cri) 1657]. [set out in Column (4) of the table above].; many follow the multiplier given in the second column of the table in the Second Schedule of the MV Act [extracted in Column (5) of the table above].; and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation [set out in Column (6) of the table above].. For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas [(1994) 2 SCC176:

1994. SCC (Cri) 335]., 14 as per Trilok Chandra [(1996) 4 SCC362, 15 as per Charlie [(2005) 10 SCC720:

2005. SCC (Cri) 1657]., or 16 as per the multiplier given in Column (2) of the Second Schedule to the MV Act or 15 as per the multiplier actually adopted in the Second Schedule to the MV Act. Some tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163-A of the MV Act. In cases falling under Section 166 of the MV Act, Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC601: (1942) 1 All ER657(HL)]. is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas [(1994) 2 SCC176:

1994. SCC (Cri) 335]., Trilok Chandra [(1996) 4 SCC362 and Charlie [(2005) 10 SCC720:

2005. SCC (Cri) 1657].), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

21. It may be noted that the Supreme Court had gone into the history of adoption of multiplier method and referred to Nance v. British Columbia Electric Railway Company Limited, (1951) AC601 and Davies v. Powell, (1942) AC601. 22. Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC121 related to the death of a Scientist who died leaving behind his widow, three minor children, parents and grandfather. Thus, the Supreme Court while laying down that the multiplier has to be adopted as per Column 4 of the table as per the age of the deceased, was generally referring to the award of compensation in cases of death of a person who had a family consisting of widow, children and parents. Of course, general principles with regard to award of compensation in case of death of a bachelor were also laid down by the Supreme Court in Sarla Verma (Smt.), but it was not specifically laid down that even in the case of death of a bachelor, the age of the Claimants who may be aged parents will be totally irrelevant.

23. However, in Amrit Bhanu Shali v. National Insurance Company Limited, (2012) 11 SCC738 the Supreme Court stated that the selection of the multiplier has to be as per the age of the deceased and not on the basis of the age of the dependants. It was a case which related to the death of a bachelor.

24. On account of divergence of opinion in the earlier cases, a reference to a larger Bench was made by a two Judge Bench in Reshma Kumari v. Madan Mohan & Anr., (2009) 13 SCC422. The question of award of compensation in relation to multiplier and future prospects was gone into at great length by a three Judge Bench of the Supreme Court in Reshma Kumari & Ors. v. Madan Mohan &

Anr., (2013) 9 SCC65 The two referred questions by Reshma Kumari v. Madan Mohan & Anr., (2009) 13 SCC422 were:

1.1. Whether the multiplier specified in the Second Schedule appended to the Motor Vehicles Act, 1988 (for short the 1988 Act) should be scrupulously applied in all cases and 1.2. Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospects?.

25. While answering the points, in Para 43, the Supreme Court observed as under:

43. In what we have discussed above, we sum up our conclusions as follows:

43. 1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above. 43.2. In cases where the age of the deceased is up to 15 years. 43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act. 43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma v. DTC, (2009) 6 SCC121 for determination of compensation in cases of death..

26. In Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC65 these were general observations that the steps and guidelines stated in para 19 of Sarla Verma (Smt.) have to be followed. In Sarla Verma (Smt.), it was laid down that having regard to the age of the deceased and period of active career, the active multiplier should be selected and the multiplier should be chosen from the table with reference to the age of the deceased. As I have observed above, it was not the intention in Sarla Verma (Smt.) to apply the multiplier of 18 in case of death of a bachelor aged 25 years where the dependants may only be the aged parents. Thus, in Reshma Kumari also, it was not laid down that the multiplier has to be according to the age of the deceased even when the deceased is a bachelor having dependency of the parents only.

27. Of course, in *M. Mansoor & Anr. v. United India Insurance Company Limited & Anr.*, (2013) 15 SCC603 the two Judge Bench observed that the multiplier has to be as per the age of the deceased and even in case of death of a bachelor aged 24 years, the multiplier will be 18.

28. However, there is a three Judge Bench decision of the Supreme Court in *New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC1 wherein a bachelor aged 25 years lost his life in a motor vehicular accident which occurred on 11.11.2002. The Claims Tribunal adopted a multiplier of 17, as per the age of the deceased (25 years). On appeal filed by the New India Assurance Company Limited before the High Court, it was contented that the multiplier has to be as per the age of the Claimants (in that case) and not as per the age of the deceased. The Division Bench of High Court of Uttarakhand declined to accept the contention and dismissed the appeal. In the SLP filed by the Insurance Company, the multiplier of 17 was reduced to 5 on the age of the mother of the deceased being 65 years.

29. Also, in the latest judgment of the Supreme Court in *Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma & Anr.*, (2015)2 SCC180 a two Judge Bench of the Supreme Court dealt with the questions of multiplier and the appropriate multiplier in case of death of a bachelor in the said case was taken as 13, keeping in mind the age of the parents of the deceased. Para 11 of the report is extracted hereunder:

11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs 25,000 p.m. i.e. Rs 3,00,000 p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per *Oriental Insurance Co. Ltd. v. Deo Patodi* [(2009) 13 SCC123: (2009) 5 SCC (Civ) 29 : (2010) 1 SCC (Cri) 963]. and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in *Sarla Verma* case

[Sarla Verma v. DTC, (2009) 6 SCC121: (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002]., we arrive at a total loss of dependency at Rs 26,00,000 [(Rs 3,00,000 minus $\frac{1}{3}$ Rs 3,00,000) 13]..

30. Thus, right from the two Judge Bench decision in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors., (1994) 2 SCC176 which for the first time held that the multiplier method is the best way of awarding just compensation, which was approved in U.P. SRTC v. Trilok Chandara, (1996) 4 SCC362 wherein it was held that the multiplier has to be as per the age of the deceased or the Claimant whichever is higher, which is reiterated in New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC1 by applying the multiplier as per the age of the mother of the deceased (bachelor), the consensus of the larger Bench decisions seems to be that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher. The judgment in Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors., ILR (2012) 6 DEL447 has thus, correctly interpreted the law. Three Judge Bench decision in U.P. SRTC v. Trilok Chandara, (1996) 4 SCC362 shall be taken as a binding precedent in the matter of selection of multiplier as per the age of the deceased or the Claimants.

31. Moreover, even if there is divergence of opinion in subsequent two Judge Bench decisions or three Judge Bench decisions (although there is no divergence by three Judge Bench decisions), the law laid down by three Judge Bench in Trilok Chandra (supra) shall be taken as a binding precedent. In this connection, a reference may be made to Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra & Anr., (2005) 2 SCC673 wherein, in para 12, the Supreme Court observed as under:

12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms: (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. (2) A Bench of lesser quorum cannot disagree or dissent from

the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted. (3) The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh* [(1989) 2 SCC754 and *Hansoli Devi* [(2002) 7 SCC273.

32. Similarly, in *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi*, (2011) 2 SCC94 in para 27, the Supreme Court observed as under:

27. However, even assuming that the decision in WP No.35561 of 1998 did not operate as *res judicata*, we are constrained to observe that even if the learned Judges who decided WP No.304 of 2001 did not agree with the view taken by a coordinate Bench of equal strength in the earlier WP No.35561 of 1998 regarding the interpretation of Section 2 (c) of the Act and its application to the petition schedule property, judicial discipline and practice required them to refer the issue to a larger Bench. The learned Judges were not right in overruling the statement of the law by a coordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the

decision of the earlier Bench, the well-accepted and desirable practice is that the later Bench would refer the case to a larger Bench.

33. Also, in *Union of India and Ors. v. S.K. Kapoor*, (2011) 4 SCC589 while holding that the decision of the Coordinate Bench is binding on the subsequent Bench of equal strength, it was held that the Bench of Co-ordinate strength can only make a reference to a larger Bench. In para 9 of the report, the Supreme Court held as under:

9. It may be noted that the decision in *S.N. Narula* case [(2011) 4 SCC591 was prior to the decision in *T.V. Patel* case [(2007) 4 SCC785: (2007) 2 SCC (L&S) 98].. It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in *S.N. Narula* case [(2011) 4 SCC591 was not noticed in *T.V. Patel* case [(2007) 4 SCC785: (2007) 2 SCC (L&S) 98]. , the latter decision is a judgment per incuriam. The decision in *S.N. Narula* case [(2011) 4 SCC591 was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.

34. Thus, in view of this, the three Judge Bench decision in *Trilok Chandra* (supra), later reiterated in the three Judge Bench decision of *New India Assurance Co. Ltd. v. Shanti Pathak* (supra) shall be taken as a binding precedent. The multiplier will be as per the age of the deceased or the Claimant whichever is higher.

11. In the instant case, Claimant Priti is aged 22 years whereas the deceased was aged 25 years. Ms.Priti was to settle in her life in due course and she was not to remain dependent upon the deceased for a long period. In view of this, the multiplier has to be as per the age of the mother of the deceased. Claimant Gyanwati on the date of the accident was aged 42 years and thus, the appropriate multiplier in the instant case will be 14 as against 18 taken by the Claims Tribunal.

12. Salary of the deceased amounting to `15,123/- included the payment of `1650/- towards HRA, salary will therefore will become nontaxable.
13. The loss of dependency hence comes to `25,40,664/- ($15,123/- \times 12 + 50\% \times \frac{2}{3} \times 14$).
14. In addition, the Claimants are entitled to a sum of `1,00,000/- towards loss of love and affection, `25,000/- towards funeral expenses and `10,000/- towards loss to estate.
15. The overall compensation thus, comes to `26,75,664/-.
16. Coming to the contention of the Insurance Company that the sum of `10 lacs which was paid to the legal heirs of deceased Dinesh Kumar is liable to be deducted or not, it will be essential to find out as to under which policy the amount of `10 lacs was paid. It is stated by the learned counsel for the Claimants that the legal representatives of the deceased were paid a sum of `10 lacs because of Group Personal Accident Policy taken by the employer as a condition of employment. The relevant Clause of the appointment letter dated 01.11.2011 is extracted hereunder:
- Group Personal Accident Policy: You will be covered by Group Personal Accident Policy for `10 lakhs.
17. It is admitted by the learned counsel for the Claimant that sum of `10 lacs was paid on account of Group Personal Accident Policy taken by the employer. Referring to Vimal Kanwar (supra), the learned counsel for the Claimants urges that the insurance premium paid towards Group Personal Accident Policy was a benefit given by the employer and it was a part of the pay/income of the deceased. It is urged that this is not a pecuniary advantage receivable by the heirs on account of the deceaseds death and thus, the Claimants cannot be deprived of the said benefit of `10 lacs. Reliance is placed on para 19 of the report in Vimal Kanwar (supra) which was also extracted in the impugned judgment.
18. This question was dealt with at great length by me in National Insurance Co. Ltd. R.K. Jain & Ors., MAC APP.346/2010, decided on 02.07.2012. I had referred

to the judgments in *Helen C. Rebello (Mrs.) & Ors. v. Maharashtra State Road Transport Corporation and Anr.*, (1999) 1 SCC 90 and *United India Insurance Co. Ltd. & Ors. v. Patricia Jean Mahajan & Ors.*, (2002) 6 SCC 281 and the principles to grant compensation against a tortfeasor as laid down in *State of Haryana v. Jasbir Kaur*, (2003) 7 SCC 484 19. In *Helen C. Rebello (Mrs.)*, (supra), the Supreme Court drew distinction between receipt of moneys under accident insurance and life insurance policies. It was held that in case of accident policies, the full value is deductible on the ground that there was no surety or even a reasonable probability that the insured would ever suffer an accident.

20. Similarly, in *Patricia Jean Mahajan & Ors.* (supra), while referring to *Helen C. Rebello (Mrs.)*, the Supreme Court held that if the receipts by the Claimants as sum correlate with the accidental death, the sum shall be liable to be deducted. Paras 13 to 16 of the report in *National Insurance Co. Ltd. R.K. Jain & Ors.*, MAC APP.346/2010, decided on 02.07.2012 are extracted hereunder: 13. Section 168 of the Act enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should be a pittance. In *State of Haryana v. Jasbir Kaur*, (2003) 7 SCC 484 the Supreme Court held as under:

7 . It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense damages which in turn appears to it to be just and reasonable. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be just and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be just compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features,

if any. Every method or mode adopted for assessing compensation has to be considered in the background of just compensation which is the pivotal consideration. Though by use of the expression which appears to it to be just a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression just denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.

14. In *Helen C. Rebello* (supra), the question before the Supreme Court was whether the amount received under Life Insurance Policy was liable to be deducted on the principle of balancing the loss and gain. The Supreme Court referred to the Law of Torts by Fleming and differentiated between the amount received under the Life Insurance Policy and an accident insurance policy. Amount received under Life Insurance Policy is payable to legal representatives or to the policy holder if he survives the term of the policy irrespective of the death or even because of death. It was, thus held that the payment received under the Life Insurance Policy was not deductible whereas the payment received under the personal accident insurance was deductible. The reason was that in case of payment received under the accident insurance policy, the amount was receivable only on account of death in an accident and not otherwise, whereas in case of Life Insurance Policy, the amount was receivable irrespective of the death. Thus, the fact that the payment was made under independent contract of insurance was not of much import. Moreover, the use of the word just in Section 168 of the Act, confers wider discretion to the Claims Tribunal. The Claims Tribunal, therefore, has to see that the compensation awarded is neither niggardly nor a source of profit. Paras 26, 27 and 28 of the report in *Helen C. Rebello (Mrs.) & Ors. v. Maharashtra State Road Transport Corporation and Anr.*, (1999)1 SCC90 is extracted hereunder:

26. This Court, in this case did observe, though did not decide, to which we refer that the use of the words, which appears to it to be just under Section 110-B gives wider power to the Tribunal in the matter of determination of compensation under the 1939 Act. There is another case of this Court in which there is a passing reference to the deduction out of the compensation payable under the Motor

Vehicles Act. In *N. Sivammal v. Managing Director, Pandian Roadways Corpn.* this Court held that the deduction of Rs 10,000 receivable as monetary benefit to the widow of the pension amount, was not justified. So, though deduction of the widow's pension was not accepted but for this, no principle was discussed therein. However, having given our full consideration, we find there is a deliberate change in the language in the later Act, revealing the intent of the legislature, viz., to confer wider discretion on the Tribunal which is not to be found in the earlier Act. Thus, any decision based on the principle applicable to the earlier Act, would not be applicable while adjudicating the compensation payable to the claimant in the later Act.

27. Fleming, in his classic work on the Law of Torts, has summed up the law on the subject in these words. This is also referred to in *Sushila Devi v. Ibrahim*:

The pecuniary loss of such dependant can only be ascertained by balancing, on the one hand, the loss to him of future pecuniary benefit, and, on the other, any pecuniary advantage which, from whatever source, comes to him by reason of the death. ... There is a vital distinction between the receipt of moneys under accident insurance and life assurance policies. In the case of accident policies, the full value is deductible on the ground that there was no certainty, or even a reasonable probability, that the insured would ever suffer an accident. But since man is certain to die, it would not be justifiable to set off the whole proceeds from a life assurance policy, since it is legitimate to assume that the widow would have received some benefit, if her husband had pre-deceased her during the currency of the policy or if the policy had matured during their joint lives. The exact extent of permissible reduction, however, is still a matter of uncertainty....

(emphasis supplied) 28. Fleming has also expressed that the deduction or setoff of the life insurance could not be justifiable. When he uses the words not be justifiable he refers to one's conscience, fairness and contrary to what is just. In this context, the use of the word just, which was neither in the English 1846 Act nor in the Indian 1855 Act, now brought in under the 1939 Act, gains importance. This shows that the word just was deliberately brought in Section 110-B of the 1939 Act to enlarge the consideration in computing the compensation which, of

course, would include the question of deductibility, if any. This leads us to an irresistible conclusion that the principle of computation of the compensation both under the English Fatal Accidents Act, 1846 and under the Indian Fatal Accidents Act, 1855 by the earlier decisions, were restrictive in nature in the absence of any guiding words therein, hence the courts applied the general principle at the common law of loss and gain but that would not apply to the considerations under Section 110-B of the 1939 Act which enlarges the discretion to deliver better justice to the claimant, in computing the compensation, to see what is just. Thus, we find that all the decisions of the High Courts, which based their interpretation on the principles of these two Acts, viz., the English 1846 Act and the Indian 1855 Act to hold that deductions were valid cannot be upheld. As we have observed above, the decisions even with reference to the decision of this Court in Gobald Motor Service where the question was neither raised nor adjudicated and that case also, being under the 1855 Act, cannot be pressed into service. Thus, these courts by giving a restrictive interpretation in computation of compensation based on the limitation of the language of the Fatal Accidents Act, fell into an error, as it did not take into account the change of language in the 1939 Act and did not consider the widening of the discretion of the Tribunal under Section 110-B. The word just, as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having the force of law..

15. Similarly, in Patricia Jean Mahajan(supra), the Supreme Court while not deducting the sum received on account of family pension and social security had in its mind that these payments had no co-relation between the compensation payable on account of accidental death and the amount received on account family pension and social security scheme. The Supreme Court emphasized that principle of balancing between losses and gains must have some co-relation with the accidental death by reason of which alone the Claimant had received the amounts. Paras 34 to 36 of the report are extracted hereunder:

34. Shri P.P. Rao, learned counsel appearing for the claimants submitted that the scope of the provisions relating to award of compensation under the Motor Vehicles Act is wider as compared to the provisions of the Fatal Accidents Acts. It is further indicated that Gobald case is a case under the Fatal Accidents Acts. For the above contention he has relied upon the observation made in Rebello case. It has also been submitted that only such benefits, which accrued to the claimants by reason of death, occurred due to an accident and not otherwise, can be deducted. Apart from drawing a distinction between the scope of provisions of the two Acts, namely, the Motor Vehicles Act and the Fatal Accidents Act, this Court in Helen Rebello case accepted the argument that the amount of insurance policies would be payable to the insured, the death may be accidental or otherwise, and even where the death may not occur the amount will be payable on its maturity. The insured chooses to have insurance policy and he keeps on paying the premium for the same, during all the time till maturity or his death. It has been held that such a pecuniary benefit by reason of death would not be such as may be deductible from the amount of compensation. 35. It may be useful to quote para 33 of the decision which reads as under:

33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the pecuniary advantage, liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.

The Court has observed in the last part of para 34:

How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract.

Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual. Principle of loss and gain has to be on the same line within the same sphere, of course, subject to the contract to the contrary or any provisions of law. The Court has further referred to receipts of provident fund which is a deferred payment out of contribution made by an employee during the tenure of his service. Such an amount is payable irrespective of accidental death of the employee. The same is the position relating to family pension. There is no correlation between the compensation payable on account of accidental death and the amounts receivable irrespective of such accidental death, which otherwise in the normal course one would be entitled to receive. This Court for taking the above view has also referred to certain English decisions as discussed in para 18 of the judgment. 36. We are in full agreement with the observations made in the case of Helen Rebello that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. (emphasis supplied). According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts

with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition receipts from whatever source is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.

16. Thus, on the basis of the ratio in Helen C. Rebello (supra) and Patricia Jean Mahajan (supra), it can be safely concluded that only those amounts which are payable to the Claimant/Claimants by reason of death or injury in an accident are only liable to be deducted.

21. The admitted position is that the sum of `10 lacs was paid to the heirs of deceased Dinesh Kumar on account of accidental death. This amount was otherwise not payable to the legal heirs of the deceased. Hence, the same is liable to be deducted from the compensation payable.

22. The net compensation payable after deducting `10 lacs will come to `16,75,664/-.

23. By an order dated 29.07.2013, the execution of the award was stayed on deposit of the award amount in this Court and 70% of the amount was ordered to be released.

24. The excess amount of `1,98,736/- along with proportionate interest and the interest earned during the pendency of the appeal, if any, shall be refunded to the

Appellant Insurance Company.

25. Both the appeals are disposed of in above terms.

26. Pending applications stand disposed of.

27. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company. (G.P. MITTAL) JUDGE MARCH27 2015 vk

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