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SUPREME COURT OF INDIA

Before: R V Raveendran & Lokeshwar Singh Panta, JJ.

Civil Appeal No. 3483 of 2008 Decided on: 15.04.2009

(Arising out of SLP [C] No.8648 of 2007)

Smt. Sarla Verma & Ors. Appellants

Versus

Delhi Transport Corporation & Anr. Respondents

A. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Compensation in Motor vehicle accident case – Permanent job -- Future prospects – As a rule of thumb,

-- an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years [where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']

-- Addition should be only 30% if the age of the deceased was 40 to 50 years.

-- There should be no addition, where the age of deceased is more than 50 years.

Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted.

(Para 11)

B. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Compensation in Motor vehicle accident case – Self-employed – Fixed salary – Future prospects -- Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death -- A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

(Para 11)

C. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Compensation in Motor vehicle accident case – Married deceased -- Deduction for personal and living expenses – Where the deceased was

married, the deduction towards personal and living expenses of the deceased, should be

- **-- one-third (1/3rd) where the number of dependent family members is 2 to 3,**
- **-- one-fourth (1/4th) where the number of dependant family members is 4 to 6, and**
- **-- one-fifth (1/5th) where the number of dependant family members exceed six.**

(Para 14)

D. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Compensation in Motor vehicle accident case – Bachelor deceased -- Deduction for personal and living expenses – Even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family -- However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

(Para 15)

E. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Compensation in Motor vehicle accident case -- Multiplier – Held, multiplier to be used should be:

- **-- 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.**

(Para 21)

F. Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Compensation in Motor vehicle accident case – Computation of income – Revision in pay -- Contention that revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation is rejected.

(Para 24)

Cases referred:

1. Nance v. British Columbia Electric Rly. Co. Ltd. [1951 AC 601].
2. Davies v. Powell Duffryn Associated Collieries Ltd., [1942 AC 601].
3. General Manager, Kerala State Road Transport Corporation v. Susamma Thomas [1994 (2) SCC 176].
4. UP State Road Transport Corporation vs. Trilok Chandra [1996 (4) SCC 362].
5. Sarla Dixit v. Balwant Yadav [1996 (3) SCC 179].
6. Abati Bezbaruah v. Dy. Director General, Geological Survey of India [2003 (3) SCC 148].
7. UPSRTC v. Trilok Chandra [1996 (4) SCC 362].
8. Fakeerappa vs Karnataka Cement Pipe Factory – 2004 (2) SCC 473.
9. Oriental Insurance Co. Ltd. vs. Meena Variyal – 2007 (5) SCC 428).
10. New India Assurance Co. Ltd. vs. Charlie [2005 (10) SCC 720].
11. TN State Road Transport Corporation Ltd. vs. Rajapriya [2005 (6) SCC 236].
12. UP State Road Transport Corporation vs. Krishna Bala [2006 (6) SCC 249].

ORDER

R.V. RAVEENDRAN, J. –

The claimants in a motor accident claim have filed this appeal by special leave seeking increase in compensation.

2. One Rajinder Prakash died on account of injuries sustained in a motor accident which occurred on 18.4.1988 involving a bus bearing No.DLP 829 belonging to the Delhi Transport Corporation. At the time of the accident and untimely death, the deceased was aged 38 years, and was working as a Scientist in the Indian Council of Agricultural Research (ICAR) on a monthly salary of Rs.3402/- and other benefits. His widow, three minor children, parents and grandfather (who is no more) filed a claim for Rs.16 lakhs before the Motor Accidents Claims Tribunal, New Delhi. An officer of ICAR, examined as PW-4, gave evidence that the age of retirement in the service of ICAR was 60 years and the salary received by the deceased at the time of his death was Rs.4004/- per month.

3. The Tribunal by its judgment and award dated 6.8.1993 allowed the claim in part. The Tribunal calculated the compensation by taking the monthly salary of the deceased as Rs.3402. It deducted one-third towards the personal and living expenses of the deceased, and arrived at the contribution to the family as Rs.2250 per month (or Rs.27,000/- per annum). In view of the evidence that the age of retirement was 60 years, it held that the period of service lost on account of the untimely death was 22 years. Therefore it applied the multiplier of 22 and arrived at the loss of dependency to the family as Rs.5,94,000/-. It awarded the said amount with interest at the rate of 9% per annum from the date of petition till the date of realization. After deducting Rs.15000/- paid as interim compensation, it apportioned the balance compensation among the claimants, that is, Rs.3,00,000/- to the widow, Rs.75000/- to each of the two daughters, Rs.50000/- to the son, Rs.19000/- to the grandfather and Rs.30000/- to each of the parents.

4. Dissatisfied with the quantum of compensation, the appellants filed an appeal. The Delhi High Court by its judgment dated 15.2.2007 allowed the said appeal in part. The High Court was of the view that though in the claim petition the pay was mentioned as Rs.3,402 plus other benefits, the pay should be taken as Rs.4,004/- per month as per the evidence of PW-4. Having regard to the fact that the deceased had 22 years of service left at the time of death and would have earned annual increments and pay revisions during that period, it held that the salary would have at least doubled (Rs.8008/- per month) by the time he retired. It therefore determined the income of the deceased as Rs.6006/- per month, being the average of Rs.4,004/- (salary which he was getting at the time of death) and Rs.8,008/- (salary which he would have received at the time of retirement). Having regard to the large number of members in the family, the High Court was of the view that only one fourth should be deducted towards personal and living expenses of the deceased, instead of the standard one-third deduction. After such deduction, it arrived at the contribution to the family as Rs.4,504/- per month or Rs.54,048/- per annum. Having regard to the age of the deceased, the High Court chose the multiplier of 13. Thus it arrived at the loss of dependency as Rs.702,624/-. By adding Rs.15,000/- towards loss of consortium and Rs.2,000/- as funeral expenses, the total compensation was determined as Rs.7,19,624/-. Thus it disposed of the appeal by increasing the compensation by Rs.1,25,624/- with interest at the rate of 6% P.A. from the date of claim petition.

5. Not being satisfied with the said increase, the appellants have filed this appeal. They contend that the High Court erred in holding that there was no evidence in regard to future prospects; and that though there is no error in the method adopted for calculations, the High Court ought to have taken a higher amount as the income of the deceased. They submit that two applications were filed before the High Court on 2.6.2000 and 5.5.2005 bringing to the notice of the High Court that having regard to the pay revisions, the pay of the deceased would have been Rs.20,890/- per month as on 31.12.1999 and Rs.32,678/- as on 1.10.2005, had he been alive. To establish the revisions in pay scales and consequential re-fixation, the appellants produced letters of confirmation dated 7.12.1998 and 28.10.2005 issued by the employer (ICAR). Their grievance is that the High Court did not take note of those indisputable documents to calculate the income and the loss of dependency. They contend that the monthly income of the deceased should be taken as Rs.18341/- being the average of Rs.32,678/- (income shown as on 1.10.2005) and Rs.4,004/- (income at the time of death). They submit that only one-eighth should have been deducted towards personal and living expenses of the deceased. They point out that even if only one fourth (Rs.4585/-) was deducted therefrom towards personal and living expenses of the deceased, the contribution to the family would have been Rs.13,756/- per month or Rs.1,65,072/- per annum. They submit that having regard to the Second Schedule to the Motor Vehicles Act, 1988 ('Act' for short), the appropriate multiplier for a person dying at the age of 38 years would be 16 and therefore the total loss of dependency would be Rs.26,41,152/-. They also contend that Rs.1,00,000/- should be added towards pain and suffering undergone by the claimants. They therefore submit that Rs.27,47,152/- should be determined as the compensation payable to them.

6. The contentions urged by the parties give rise to the following questions:

(i) Whether the future prospects can be taken into account for determining the income of the deceased ? If so, whether pay revisions that occurred during the pendency of the claim proceedings or appeals therefrom should be taken into account ?

(ii) Whether the deduction towards personal and living expenses of the deceased should be less than one-fourth (1/4th) as contended by the appellants, or should be one-third (1/3rd) as contended by the respondents ?

(iii) Whether the High Court erred in taking the multiplier as 13 ?

(iv) What should be the compensation ?

<u>The general principles</u>

7. Before considering the questions arising for decision, it would be appropriate to recall the relevant principles relating to assessment of compensation in cases of death. Earlier, there used to be considerable variation and inconsistency in the decisions of courts Tribunals on account of some adopting the *Nance* method enunciated in ***Nance v. British Columbia Electric Rly. Co. Ltd*. [1951 AC 601]** and some adopting the *Davies* method enunciated in ***Davies v. Powell Duffryn Associated Collieries Ltd*., [1942 AC 601].** The difference between the two methods was considered and explained by this Court in ***General Manager, Kerala State Road Transport Corporation v. Susamma Thomas* [1994 (2) SCC 176].** After exhaustive consideration, this Court preferred the ***Davies*** method to ***Nance*** method. We extract below the principles laid down in ***Susamma Thomas***:

> "In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death. 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."

> "The matter of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of year's purchase."

"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."

"It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 year of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years – virtually adopting a multiplier of 45 – and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible."

In ***UP State Road Transport Corporation vs. Trilok Chandra*** **[1996 (4) SCC 362],** this Court, while reiterating the preference to *Davies* method followed in *Susamma Thomas*, stated thus :

"In the method adopted by Viscount Simon in the case of *Nance* also, first the annual dependency is worked out and then multiplied by the estimated useful life of the deceased. This is generally determined on the basis of longevity. But then, proper discounting on various factors having a bearing on the uncertainties of life, such as, premature death of the deceased or the dependent, remarriage, accelerated payment and increased earning by wise and prudent investments, etc., would become necessary. It was generally felt that discounting on various imponderables made assessment of compensation rather complicated and cumbersome and very often as a rough and ready measure, one-third to one-half of the dependency was reduced, depending on the life-span taken. That is the reason why courts in India as well as England preferred the *Davies'* formula as being simple and more realistic. However, as observed earlier and as pointed out in *Susamma Thomas'* case, usually English courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when Tribunals/Courts began to use a hybrid method of using *Nance's* method without making deduction for imponderables……..**Under the formula advocated by Lord Wright in *Davies*, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier."**

[emphasis supplied]

8. The lack of uniformity and consistency in awarding compensation has been a matter of grave concern. Every district has one or more Motor Accident Claims Tribunal/s. If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system. We may refer to the following observations in ***Trilok Chandra*** :

> "We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the awards made by Tribunals and Courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realized that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused."

Compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say deceased aged 40 years having annual income of 45,000/- leaving him surviving wife and child), one Tribunal awards Rs.10,00,000/- another awards Rs.5,00,000/-, and yet another awards Rs.1,00,000/-, all believing that the amount is just, it cannot be said that what is awarded in the first case and last case, is just compensation. Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. In ***Susamma Thomas***, this Court stated :

> "So the proper method of computation is the multiplier method. Any departure, except in exceptional and extra-ordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation."

9. Basically only three facts need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family.

Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs.10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added.

Question (i) - addition to income for future prospects

10. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In ***Susamma Thomas****,* this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs.1032/- per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs.2000/- as gross income before deducting the personal living expenses. The decision in

Susamma Thomas was followed in ***Sarla Dixit v. Balwant Yadav*** **[1996 (3) SCC 179],** where the deceased was getting a gross salary of Rs.1543/- per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs.3000/-. This court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs.2200/- per month. In ***Abati Bezbaruah v. Dy. Director General, Geological Survey of India*** **[2003 (3) SCC 148],** as against the actual salary income of Rs.42,000/- per annum, (Rs.3500/- per month) at the time of accident, this court assumed the income as Rs.45,000/- per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

11. In ***Susamma Thomas***, this Court increased the income by nearly 100%, in ***Sarla Dixit***, the income was increased only by 50% and in ***Abati Bezbaruah*** the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Re : Question (ii) - deduction for personal and living expenses

12. We have already noticed that the personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the dependents. No evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. Claimants will obviously tend to claim that the deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. In some cases, it may be so. No claimant would admit that the deceased was a spendthrift, even if he was one. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardize the deductions to be made under the head of personal and living expenses of the deceased. This lead to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was a married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction, got statutory recognition under Second Schedule to the Act, in respect of claims under Section 163A of the Motor Vehicles Act, 1988 ('MV Act' for short).

13. But, such percentage of deduction is not an inflexible rule and offers merely a guideline. In ***Susamma Thomas***, it was observed that *in the absence of evidence*, it is not unusual to deduct one-third of the gross income towards the personal living expenses of the deceased and treat the balance as the amount likely to have been spent on the members of the family/dependants. In ***UPSRTC* v. *Trilok Chandra* [1996 (4) SCC 362],** this Court held that if the number of dependents in the family of the deceased was large, in the absence of specific evidence in regard to contribution to the family, the Court may adopt the unit method for arriving at the contribution of the deceased to his family. By this method, two units is allotted to each adult and one unit is allotted to each minor, and total number of units are determined. Then the income is divided by the total number of units. The quotient is multiplied by two to arrive at the personal living expenses of the deceased. This Court gave the following illustration:

> "X, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs. 3500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for and adult and one unit for a minor. Thus X and his wire make 2+2=4 units and each minor one unit i.e. 3 units in all, totaling 7 units. Thus the share per unit works out to Rs. 3500/7=Rs. 500 per month. It can thus be assumed that Rs. 1000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs. 250. Thus the amount spent on the deceased X works out to Rs. 1250 per month per month leaving a balance of Rs. 3500-1250=Rs.2250 per month. This amount can be taken as the monthly loss of X's dependents."

In ***Fakeerappa vs Karnataka Cement Pipe Factory* – 2004 (2) SCC 473,** while considering the appropriateness of 50% deduction towards personal and living expenses of the deceased made by the High Court, this Court observed:

> "What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction."

In view of the special features of the case, this Court however restricted the deduction towards personal and living expenses to one-third of the income.

14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in ***Trilok Chandra****,* the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

Re :Question (iii) - selection of multiplier

16. In ***Susamma Thomas***, this Court stated the principle relating to multiplier thus:

> "The multiplier represents the number of years' purchase on which the loss of dependency is capitalized. Take for instance a case where annual loss of dependency is Rs.10,000. If a sum of Rs.1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually, the multiplier in this case work out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalize the loss of the annual dependency at Rupees 10,000 would be 20. Then the multiplier, i.e. the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lumpsum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc., Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up."

17. The Motor Vehicle Act, 1988 was amended by Act 54 of 1994, inter alia inserting Section 163A and the Second Schedule with effect from 14.11.1994. Section 163A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a Table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3,000/- to Rs.40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs.40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes upto 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under section 163A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000/-, by applying the formula : (2/3 x AI x M), that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under section 163A of MV Act. There are however discrepancies/errors in the multiplier scale given in the Second Schedule Table. It prescribes a lesser compensation for cases where a higher multiplier of 18 is applicable and a larger compensation with reference to cases where a lesser multiplier of 15, 16, or 17 is applicable. From the quantum of compensation specified in the table, it is possible to infer that a clerical error has crept in the Schedule and the 'multiplier' figures got wrongly typed as 15, 16, 17, 18, 17, 16, 15, 13, 11, 8, 5 & 5 instead of 20, 19, 18, 17, 16, 15, 14, 12, 10, 8, 6 and 5. Another noticeable incongruity is, having prescribed the notional minimum income of non-earning persons as Rs.15,000/- per annum, the table prescribes the compensation payable even in cases where the annual income ranges between Rs.3000/- and Rs.12000/-. This leads to an anomalous position in regard to applications under Section 163A of MV Act, as the compensation will be higher in cases where the deceased was idle and not having any income, than in cases where the deceased was honestly earning an income ranging between Rs.3000/- and Rs.12,000/- per annum. Be that as it may.

18. The principles relating to determination of liability and quantum of compensation are different for claims made under section 163A of MV Act and claims under section 166 of MV Act. (See : ***Oriental Insurance Co. Ltd. vs. Meena Variyal* – 2007 (5) SCC 428**). Section 163A and Second Schedule in terms do not apply to determination of compensation in applications under Section 166. In ***Trilok Chandra**,* this Court, after reiterating the principles stated in ***Susamma Thomas**,* however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in ***Susamma Thomas****)*, even in cases under section 166 of MV Act, by borrowing the principle underlying section 163A and the Second Schedule*.* This Court observed:

> "Section 163-A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in *Susamma Thomas* case….. Besides, the selection of multiplier cannot in all cases be solely

dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier……What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16…"

19. In ***New India Assurance Co. Ltd. vs. Charlie*** **[2005 (10) SCC 720],** this Court noticed that in respect of claims under section 166 of the MV Act, the highest multiplier applicable was 18 and that the said multiplier should be applied to the age group of 21 to 25 years (commencement of normal productive years) and the lowest multiplier would be in respect of persons in the age group of 60 to 70 years (normal retiring age). This was reiterated in ***TN State Road Transport Corporation Ltd. vs. Rajapriya*** **[2005 (6) SCC 236]** and ***UP State Road Transport Corporation vs. Krishna Bala*** **[2006 (6) SCC 249].** The multipliers indicated in *Susamma Thomas, Trilok Chandra* and *Charlie* (for claims under section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under section 163A of MV Act (with appropriate deceleration after 50 years) :

Age of the deceased (1)	Multiplier scale as envisaged in *Susamma Thomas* (2)	Multiplier scale as adopted by Trilok Chandra (3)	**Multiplier scale in Trilok Chandra as clarified in Charlie (4)**	Multiplier specified in second column in the Table in II Schedule to MV Act (5)	Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation) (6)
Upto 15 yrs	-	-		15	20
15 to 20 yrs.	16	18	**18**	16	19
21 to 25 yrs.	15	17	**18**	17	18
26 to 30 yrs.	14	16	**17**	18	17
31 to 35 yrs.	13	15	**16**	17	16
36 to 40 yrs.	12	14	**15**	16	15
41 to 45 yrs.	11	13	**14**	15	14
46 to 50 yrs.	10	12	**13**	13	12
51 to 55 yrs.	9	11	**11**	11	10
56 to 60 yrs.	8	10	**09**	8	8
61 to 65 yrs.	6	08	**07**	5	6
Above 65 yrs.	5	05	**05**	5	5

20. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to *Susamma Thomas* (set out in column 2 of the table above); some follow the multiplier with reference to *Trilok Chandra*, (set out in column 3 of the table above); some follow the multiplier with reference to *Charlie* (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of 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*, 14 as per *Trilok Chandra*, 15 as per *Charlie*, 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 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 163A of MV Act. In cases falling under section 166 of the MV Act, *Davies* method is applicable.

21. 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*, *Trilok Chandra* and *Charlie*), 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.

Question (iv) - Computation of compensation

22. In this case as noticed above the salary of the deceased at the time of death was Rs.4,004. By applying the principles enunciated by this Court to the evidence, the High Court concluded that the salary would have at least doubled (Rs.8008/-) by the time of his retirement and consequently, determined the monthly income as an average of Rs.4004/- and Rs.8008/- that is Rs.6006/- per month or Rs.72072/- per annum. We find that the said conclusion is in conformity with the legal principle that about 50% can be added to the actual salary, by taking note of future prospects.

23. Learned counsel for the appellants contended that when actual figures as to what would be the income in future, are available it is not proper to take a nominal hypothetical increase of only 50% for calculating the income. He submitted that though the deceased was receiving Rs.4004/- per month at the time of death, as per the certificates issued by the employer (produced before High Court), on the basis of pay revisions and increases, his salary would have been Rs.32,678/- in the year 2005 and there is no reason why the said amount should not be considered as the income at the time of retirement. It was contended that the income which is to form the basis for calculation should not therefore be the average of Rs.4004/- and Rs.8008/-, but the average of Rs.4004/- and Rs.32,678/-.

24. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.

In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales. If the contention urged by the claimants is accepted, it would lead to the following situation: The claimants only could rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation.

25. The appellants next contended that having regard to the fact that the family of deceased consisted of 8 members including himself and as the entire family was dependent on him, the deduction on account of personal and living expenses of the deceased should be neither the standard one-third, nor one-fourth as assessed by the High Court, but one-eighth. We agree with the contention that the deduction on account of personal living expenses cannot be at a fixed one-third in all cases (unless the calculation is under section 163A read with Second Schedule to the MV Act). The percentage of deduction on account personal and living expenses can certainly vary with reference to the number of dependant members in the family. But as noticed earlier, the personal living expenses of the deceased need not exactly correspond to the number of dependants. As an earning member, the deceased would have spent more on himself than the other members of the family apart from the fact that he would have incurred expenditure on travelling/transportation and other needs. Therefore we are of the view that interest of justice would be met if one-fifth is deducted as the personal and living expenses of the deceased. After such deduction, the contribution to the family (dependants) is determined as Rs.57,658/- per annum. The multiplier will be 15 having regard to the age of the deceased at the time of death (38 years). Therefore the total loss of dependency would be Rs.57,658 x 15 = Rs.8,64,870/-.

26. In addition, the claimants will be entitled to a sum of Rs.5,000/- under the head of ‘loss of estate’ and Rs.5000/- towards funeral expenses. The widow will be entitled to Rs.10,000/- as loss of consortium. Thus, the total compensation will be Rs.8,84,870/-. After deducting Rs.7,19,624/- awarded by the High Court, the enhancement would be Rs.1,65,246/-.

27. We allow the appeal in part accordingly. The appellants will be entitled to the said sum of Rs.165,246/- in addition to what is already awarded, with interest at the rate of 6% per annum from the date of petition till the date of realization. The increase in compensation awarded by us shall be taken by the widow exclusively.

Parties to bear respective costs.

Appeal allowed.

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