SUPREME COURT OF INDIA

Reshma Kumari

Vs.

Madan Mohan

(S.B. Sinha and Cyriac Joseph JJ.)

23.07.2009

JUDGMENT

S.B. SINHA, J.

1. Application of the principles for grant of compensation under the Motor Vehicles Act, 1939 (for short `the 1939 Act') and the Motor Vehicles Act, 1988 (for short `the 1988 Act') is the question involved herein. Before, embarking on the said question we may notice the fact of the matters involved in each case.

Civil Appeal arising out of SLP (C) NO.8205/2007

2. Madan Mohan Singh Saini met with an accident on 3rd September, 1987, when the scooter on which he was riding, collided with a Maruti van, driven by respondent No.1. Respondent No.2 is the insurer. He was admitted to Ram Manohar Lohia Hospital where he succumbed to his injuries on 8th September, 2006.

Appellants herein who are, wife, children and mother of the deceased filed a claim petition before the Motor Accident Claims Tribunal, New Delhi, under Sections 110-A and 92-A of the Act. By an award dated 13th July, 1992 the Tribunal awarded a sum of Rs.3,36,000/- by way of compensation with 12% interest from the date of filing of the claim petition.

3. Aggrieved by and dissatisfied with the said amount, appellants filed an appeal being FAO before the High Court of Delhi. A learned Single Judge of the High Court by reason of the impugned judgment and order dated 8th February, 2007 enhanced the compensation by Rs.17,000/-. The appellants still dissatisfied have filed the present appeal by obtaining special leave.

Civil Appeal arising out of SLP (C) No.21649 of 2006.

4. Jagmohan Singh, (deceased), husband of appellant No.1; father of appellant Nos. 2 and 3 and son of appellant Nos. 4 and 5, died in an accident with a D.T.C. bus. The appellants filed a claim petition before the Additional District Judge/Motor Vehicle Accident Tribunal, Ghaziabad claiming a sum of Rs.27,50,000/- by way of compensation. By its order dated 21st May, 1996 a sum of Rs.2,88,000/- with 12% interest thereon from the date of filing of the claim petition, was awarded.

5. Feeling dissatisfied, the appellants filed an FAO before the Allahabad High Court. A Division Bench of the said Court by its judgment and order dated 26th May, 2006 enhanced the amount of compensation to Rs. 4,08,000/-.

Aggrieved by and dissatisfied with the said judgment, the appellants have preferred this appeal by special leave. Civil Appeal arising out of SLP (C) No.6791 of 2007.

6. Sergeant Dalbir Singh died in a road accident on 17th September, 1997 with a truck which was driven by respondent No.1. Respondent Nos. 2 and 3 are the owner and insurance company respectively. The appellants, who are the legal heirs, i.e. wife, children and mother of the deceased, filed a claim petition before the Motor Accident Claims Tribunal, Faridabad under Sections 166 and 140 of the 1988 Act for grant of compensation of Rs.15,00,000/-. The Motor Accident Claims Tribunal by its award dated 26th June, 2000 awarded a sum of Rs.2,49,600/-with 12% interest on the said amount by way of compensation.

7. Feeling dissatisfied, appellants filed an FAO before the High Court of Punjab and Haryana at Chandigarh and by the impugned judgment and order, a learned Single Judge of the High Court partly allowed the appeal and enhanced the amount compensation by Rs.1,20,600/- besides interest @ 6% per annum on the enhanced compensation.

8. The common questions which arise for our consideration in these appeals are :-

1) Whether the multiplier specified in the Second Schedule appended to the Act should be scrupulously applied in all the cases?

2) Whether for determination of the multiplicand, the Act provides for any criterion, particularly as regards determination of future prospects? Before we, however, advert to the said questions we may notice that Section 163-A of the Act was inserted on or about 14th November, 1994.

9. Even prior to the enactment of the said provision, this Court in General Manager, Kerala State Road Transport Corporation, Trivandrumv. Susamma Thomas and others, [(1994) 2 SCC 176] following the decisions of the English Courts applied structured formula for determination of the amount of compensation. The principle with regard to the determination of the amount of compensation on the basis of the structured formula in Susamma Thomas (supra) was considered having regard to the decision of Diplock, J in his speech in Mallett's case [(1970) AC 166 : (1969) 2 All ER 178 178]. We would refer to Mallett (supra) a little later but we may at this stage notice that the principle laid down therein has been stated to be logically sound and legally well established.

10. So far as the question of loss of future earnings on the basis of average life expectancy is concerned, this Court, having regard to the phraseology used in Section 110-B of the Motor Vehicles

Act, 1939 envisaging payment of just compensation to the victims and/or the successors of the deceased, stated that any application of a rigid formula may not be applied.

In Susamma Thomas (supra) it was observed that the multiplier method is the appropriate one which should ordinarily be not departed from save in rare and extraordinary circumstances and very exceptional cases.

The rationale for applying the said principle was laid down stating :-

17. The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. 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 works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs. 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 lump sum 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 dependants, whichever is higher) goes up,

11. It is, however, of some significance to notice that at the relevant point of time the rate of bank interest was about 12% per annum to which reference has also been made by the High Court at some length.

12. In Susamma Thomas (supra) apart from applying the structured formula with regard to the determination of the amount of compensation as regards the future prospect, it was opined :-

19. In the present case the deceased was 39 years of age. His income was Rs 1032 per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs 1032 per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs 2000 as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalize with the appropriate multiplier. In the present case we can take about Rs 1400 per month or Rs 17,000 per year as the loss of dependency and if capitalized on a multiplier of 12, which is appropriate to the age of the deceased, the

compensation would work out to (Rs 17,000 x 12 = Rs 2,04,000) to which is added the usual award for loss of consortium and loss of the estate each in the conventional sum of Rs 15,000.

13. Parliament thereafter inserted Section 163A and the Second Schedule in the Act. One of the features thereof which we may immediately notice is that it provides for claim of compensation in a case involving no fault, stating :-

163A. Special provisions as to payment of compensation on structured formula basis

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-For the purposes of this sub- section, permanent disability shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub- section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

14. After the aforementioned provision was brought in the Statute Book, this Court had the occasion to consider the applicability of the structured formula once again in U.P. State Road Transport Corporation. v. Trilok Chandra, [(1996) 4 SCC 362]. Ahmadi, C.J. noticed certain discrepancies therein and inter alia pointed out :-,

18. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in Item 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs 3000. The total should be 3000x15=45,000 but the same is worked out at Rs . 60,000. Similarly, in the second item the multiplier is 16 and the annual income is Rs 9000; the total should have been Rs. 1,44,000 but is shown to be Rs.1,71,000. To put it briefly, the table abounds in such mistakes. Neither the tribunals nor the courts can go by the ready reckoner. It can only be used as a guide.

15. However, it is pertinent to notice that the Bench categorically laid down that those mistakes are limited to actual calculations only and not in respect of other items. It was emphasized that the multiplier cannot exceed 18 years' purchase factor. It noticed that the same was an improvement over the earlier position that ordinarily it should not exceed 16.

This Court stated the law thus :-

15. 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 realised 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. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. 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 dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier. Let us illustrate: 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 an adult and one unit for a minor. Thus X and his wife make 2+2=4 units and each minor one unit i.e. 3 units in all, totalling 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 leaving a balance of Rs 3500-1250=Rs 2250 per month. This amount can be taken as the monthly loss to X's dependants. The annual dependency comes to Rs 2250x12=Rs 27,000. This annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependants. Take the appropriate multiplier to be 15. The compensation comes to Rs 27,000x15=Rs 4,05,000. To this may be added a conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs 3000 but now having regard to the fall in the value of the rupee, it can be raised to a figure of not more than Rs10,000. Thus the total comes to Rs 4,05,000+10,000= Rs 4,15,000.

16. We may place on record that despite the recommendations made by this Court in Trilok Chandra (supra) the Parliament did not amend the Second Schedule.

17. We must also place on record that according to Mr. Atul Nanda, learned counsel appearing on behalf of the Insurance Company, the Second Schedule does not contain any such mistake. Be that as it may this Court even in subsequent decisions reiterated the said principle in a large number of cases. We would, however, notice only a few of them.

In Kaushnuma Begum v. New India Assurance Co. Ltd., [(2001) 2 SCC 9] this Court observed:-

22. The appellants claimed a sum of Rs 2,36,000. But PW 1 widow of the deceased said that her husband's income was Rs 1500 per month. PW 4 brother of the deceased also supported the same version. No contra-evidence has been adduced in regard to that aspect. It is, therefore, reasonable to believe that the monthly income of the deceased was Rs. 1500. In calculating the amount of compensation in this case we lean ourselves to adopt the structured formula provided in the Second Schedule to the MV Act. Though it was formulated for the purpose of Section 163-A of the MV Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as the present case is concerned.

In United India Insurance Co. Ltd. v. Patricia Jean Mahajan,

[(2002) 6 SCC 281] this Court held :-

21. The purpose to compensate the dependants of the victims is that they may not be suddenly deprived of the source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be a just and fair compensation. But in cases where the amount of compensation may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. In such cases, the amount of multiplicand becomes relevant. The intention is not to overcompensate.

22. We therefore, hold that ordinarily while awarding compensation, the provisions contained in the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as the one in hand, which may fall in the category having special features or facts calling for deviation from the multiplier usually applicable.

It is evident from the above that this Court in the said decision had taken a departure from the Second Schedule.

In Jyoti Kaul v. State of M.P., [(2002) 6 SCC 306] multiplier of was adopted, stating :-

The aforesaid decision makes it clear that the principle of multiplier would depend on the facts and circumstances of each case. Looking to the facts of this case we find that the Tribunal has given good reasons for applying the multiplier of

15. This was in addition of taking into consideration that the predecessors of the deceased all lived for more than 80 years. The High Court reduced the multiplier from 15 to 10 without taking into consideration circumstances considered by the Tribunal and thus committed the error. We, accordingly, set aside the findings of the High Court only to the extent of the application of multiplier and uphold other findings including reduction of interest. The present appeal, accordingly, succeeds in part. The computation of compensation now shall be made on the basis of multiplier of 15. The difference of enhanced amount which has yet not been paid by the respondent State shall be paid to the claimants within a period of three months from today.

18. The said decisions have not yet been overruled. We may, however, immediately notice that recently this Court had advocated application of a lower multiplier in cases involving Section 166 of the Act, but no legal principles have been laid down therein. In New India Assurance Co. Ltd. v. Shanti Pathak, (2007) 10 SCC 1, this Court held :-

6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted with. The monthly contribution was fixed at Rs 3500. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of 5 considering the fact that the mother of the deceased was about 65 years at the time of the accident and age of the father was more than 65 years. Taking into account the monthly

contribution at Rs 3500 as held by the Tribunal and the High Court, the entitlement of the claim would be Rs 2,10,000. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.

8. In the instant case the age of the deceased was 52 years as per the post-mortem report, and the multiplier thus has to be 8 instead of 13 as adopted by the Tribunal and upheld by the High Court. The rate of interest awarded does not need any interference. The monthly income has to be taken as Rs 11,684 and one-third has to be deducted therefrom for personal expenses. Thus, the annual loss of income comes to Rs 93,939. The same is rounded to Rs. 93,000. The entitlement for loss of income comes to Rs 7,44,000. The other amounts awarded by the Tribunal totalling Rs 29,500 remain unaltered. Thus, the claimant is entitled to Rs 7,73,500 along with interest at the rate fixed by the Tribunal. The payment already made shall be adjusted.

19. Learned counsel for the appellants contended that later decisions should not be followed keeping in view the binding precedents of this Court in the earlier cases. It was urged that the prospective loss of future earnings by way of career advancement as also revision in the scale of pay must be taken into consideration for the purpose of determination of the multiplicand while applying the structured formula contained in the Second Schedule appended to the Act.

20. The compensation which is required to be determined must be just.

While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of only son to a mother, she can never be compensated in monetary terms.

21. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.

22. As regards future prospects for determination of compensation, some precedents may also be noticed by us.

In Sarla Dixit v. Balwant Yadav, [(1996) 3 SCC 179], this Court has held :-

7. So far as the adoption of the proper multiplier is concerned, it was observed that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. Applying these principles to the facts of the case before this

Court in the aforesaid case it was observed that the deceased in that case was of 39 years of age. His income was Rs 1032 per month. He was more or less on a stable job and considering the prospects of advancement in future career the proper higher estimate of monthly income of Rs 2000 as gross income to be taken as average gross future income of the deceased and deducting at least 1/3rd therefrom by way of personal living expenses, had he survived the loss of dependency, could be capitalised by adopting the multiplicand of Rs 1400 per month or Rs 17,000 per year and that figure could be capitalised by adopting multiplier of 12 which was appropriate to the age of deceased being 39 and to that amount was added the conventional figure of Rs 15,000 by way of loss of consortium and loss of estate. Adopting the same scientific yardstick as laid down in the aforesaid judgment, the computation of compensation in the present case can almost be subjected to a well-settled mathematical formula. Deceased in the present case, as seen above, was earning gross salary of Rs 1543 per month. Rounding it up to figure of Rs 1500 and keeping in view all the future prospects which the deceased had in stable military service in the light of his brilliant academic record and performance in the military service spread over 7 years, and also keeping in view the other imponderables like accidental death while discharging military duties and the hazards of military service, it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death, i.e., up to Rs 3000 per month had he survived in life and had successfully completed his future military career till the time of superannuation. The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely, Rs 1500 per month to the maximum which he would have otherwise got had he not died a premature death, i.e., Rs 3000 per month and dividing that figure by two. Thus the average gross monthly income spread over his entire future career, had it been available, would work out to Rs 4500 divided by 2, i.e., Rs 2250. Rs 2200 per month would have been the gross monthly average income available to the family of the deceased had he survived as a breadwinner. From that gross monthly income at least 1/3rd will have to be deducted by way of his personal expenses and other liabilities like payment of income tax etc. That would roughly work out to Rs 730 per month but even taking a higher figure of Rs 750 per month and deducting the same by way of average personal expenses of the deceased from the average gross earning of Rs 2200 per month balance of Rs 1450 which can be rounded up to Rs 1500 per month would have been the average amount available to the family of the deceased, i.e., his dependants, namely, appellants herein. It is this figure which would be the datum figure per month which on annual basis would work out to Rs 18,000. Rs 18,000 therefore would be the proper multiplicand which would be available for capitalisation for computing the future economic loss suffered by the appellants on account of untimely death of the breadwinner. As the age of the deceased was 27 years and a few months, at the time of his death the proper multiplier in the light of the aforesaid decision of this Court in G.M., Kerala SRTC2 would be 15. Rs 18,000 multiplied by 15 will work out to Rs 2,70,000. To this figure will have to be added the conventional figure of Rs 15,000 by way of loss of estate and consortium etc. That will lead to a total figure of Rs 2,85,000. This is the amount which the appellants would be entitled to get by way of compensation from Respondents 1 and 2 subject to our decision on Point No. 2.

In Abati Bezbaruah v. Dy. Director General, Geological Survey of India, [(2003) 3 SCC 148] it was observed :-

11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula,

however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.

23. Learned Single Judge of the Delhi High Court in the appeal filed against the Award which is subject matter of SLP (C) No. 8205 of 2007 opined that one of the two methods adopted to determine the amount of compensation in fatal accident actions is the multiplier method adopted in Davies v. Powell Duffregn Associaed Colliers Ltd. [1942 AC 601]. According to learned Judge it takes care of future prospects. A statement has been appended, which we intend to reproduce hereinafter for consideration as to whether the assumption made by him that the Second Schedule takes care of inflation of interest, loss of future prospects, is correct. The statement reads, thus:-

S.No. Year Money in Interest (12% Loss of dependency Excess of Capital for 87-95, (Assuming 10% interest over Account 10% for 95- increase every eyar) dependency 02, 8% for 02-12)

1, 1987- 88 3,36,000 40,320 1344 x 12 - 16128 24,192

2. 1988 - 89 3,60,192 43,223 1478 x 12 = 17736 25,487

3. 1989 - 90 3,85,679 46,281 1625 x 122 = 19500 26,781

4. 1990 - 91 4,12,461 49,495 1787 x 12 = 21444 28,051

5. 1991 - 92 4,69, 793 52,861 1965 x 12 = 25932 29,281

6. 1992 - 93 4,69,793 56,375 2161 x 12 = 25932 30,443

7. 1993 - 94 5,00,236 60,028 2376 x 12 = 28512 31,516

8. 1994 - 95 5,31,753 63,810 2613 x 12 = 31356 32,454

9. 1995 - 96 5,64,207 56,421 2874 x 12 = 34,488 21,933

10. 1996 - 97 5,86,140 58,614 3161 x 12 = 37931 20,682

11. 1997 - 98 6,06,822 60,682 3476 x 12 = 41712 18,970

12. 1998 - 99 6,25,792 62,579 3823 x 12 = 45,876 16,703

13. 1999 - 00 6,42,495 64,250 4205 x 12 = 50460 13,790

14. 2000 - 01 6,56,285 65,628 4625 x 12 = 55500 10,128

15. 2001 - 02 6,66,413 66,641 5087 x 12 = 61044 5,597

16. 2002 - 03 6,72,010 55,761 5595 x 12 = 67140 13,379

17. 2003 - 04 6,58,631 52,960 6154 x 12 - 73848 21,558

18. 2004 - 05 6,37,474 50,998 6769 x 12 = 81228 30,230

19. 2005 - 06 6,07,224 48,579 7445 x 12 = 89340 40,881

20. 2006 - 07 5,66,363 45,309 8189 x 12 = 98268 52,959

21. 2007 - 08 5,12,404 41,072 9007 x 12 = 108084 67,012

22. 2008 - 09 4,46,393 35,711 9907 x 12 = 118884 83,173

22. 2009 - 10 3,63,220 29,058 10897 x 12= 130764 1,01,706

24. 2010 - 11 1,61,514 20,291 11986 x 12=143832 1,22,911

25. 2011 - 12 1,38,603 11,088 13184x12=158208 1,47,120

24. An attempt has been made by the learned Judge to show that till the 15th year, there will be an excess of interest over dependency. The excess interest can be capitalized for the next year and after 15 years, the capital is eroded and stands completely eroded in the 25th year.

25. Mr. Nanda, learned counsel appearing for the insurance company, however, submits that not only earning growth but also inflation and uncertainty of life are taken care of by applying the structured formula. In support of the aforementioned proposition reliance has been placed upon the decision of Bhagwandas v. Mohd. Arif, AIR 1988 A.P. 99 wherein the learned Judge opined :-

10. In the entire gamut of the law of tort damages, this is the most difficult problem. However, over the years, the Courts have, with the aid of modern techniques in the field of Demography, Statistics and the Mathematical Theory of Probability and Actuaries, developed systems which are today very near perfect.

As regards application of actuary's-multiplier, the learned Judge stated :-

18A. What is the basis for the actuary's multiplier, what are the factors it takes into account, is the next question. In the judgment in A.P.S.R.T.C. v. Shafiya Khatoon (AIR 1985 Andh Pra 83) the mathematical and actuarial background was, perhaps for the first time, explained at considerable length. The net future losses from date of trial for the remaining expected period of life (in accident cases) and the net future losses from date of death of the person (in fatal cases) have to be estimated. This involves two exercises :

(I) Firstly, the mortality rates for the future years have to be ascertained year by year to off-set the future uncertainties of life. The annual loss for each future year is to be multiplied by the chance of living up to the end of the year. If the chance of an injured person living from 20 to 21st year is 0.99 (from mortality tables), and the actual loss is Rs. 12,000/-, the real loss is Rs. 12,000/-x 0.99. For the next year, if the probability of living up to 22nd year is (say) 0.90, the real loss would be Rs. 12,000 x 0.90. Like this, the real losses for all the future years, say up to 58 or 60 years (in the case of those in service) or up to 70 years or so (in the case of non-salarised persons) have to be computed, the future annual probabilities of living decreasing. The sum total is not, therefore, the gross sum arrived at by adding the Rs. 12000/- for all the future years, but a gross sum arrived at by

multiplying each future Rs. 12,000/- by the probability of the victim living in each of the future years as taken from the mortality rates published by the Government.

(II) The next exercise consists of taking each of the figures for the future years i.e., Rs. 12,000 x 0.99., Rs. 12,000 x 0.90; and so on and converting them to their present value or discounting them for accelerated payment. The simple, mathematical formula were for purpose is the reverse of the compound interest formula. (See Munkman 1985, page 57) Po= Pn / (1+r)n /100 where Pn is the future annual figures, r is the rate of interest n is the number of years (between the date of trial and date relating to the year for which the income is being converted into present value; in fatal accident cases it will be the date of death and the relevant future year whose income is being converted). Like that, the income for each future year, is reduced to present value. Then these sums for each of the future years are added up.

26. Decisions of English, Australian, Canada, U.S.A., Switzerland as also the Netherland Courts were liberally applied. The learned Judge applied Mallet case (supra) in the Indian context and the decisions of the different High Courts where principles were either applied taking into consideration the rate of interest, inflation etc There has been no decision rendered either by the High Court or this Court as to what is the real rate of interest which would be appropriate in India and what multiplier should be applied in this country.

27. We may at this juncture refer back to Mallet case (supra). We may at once notice the formula applied therein which is to the following effect :-

S.No. Year Capital Formula

1. 1st year 0 150 x 12 = 1800

2. 2nd year 1800 1800x1.045-100= 1781

3. 3rd year 1781 1761.14

4. 4th year 1761.14 1740.39

5. 5th year 1740.39 1718.71

6. 6th year 1718.71 1596.05

7. 7th year 1596.05 1672.37

8. 8th year 1672.37 1647.62

9. 9th year 1647.62 1621.76

10. 10th year 1621.76 1594.74

11. 11th year 1594.74 1800x1.045- 200=1566.51

12. 12th year 1466.51 1382.50

13. 13th year 1332.50 1192.46

14. 14th year 1192.46 1046.13

15. 15th year 1046.46 893.20

16. 16th year 893.20 733.40

17. 17 year 733.40 566.40

18. 18th year 566.40 391.89

19. 19th year 391.89 209.52

20. 20th year 209.52 18.95

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, quite apart from inflation with which I have already dealt, 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 1/2 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 *178 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.

28. We may also notice a later decision of House of Lords in Wells v. Wells [[1998] 3 W.L.R. 329]. It was a case where the plaintiff had sustained serious injuries classified as injuries of maximum severities. The question before the House was whether a lump-sum award could be made which takes into account all of the elements of future loss as well as the loss for the past. It was opined that index linked government securities should be accepted as the best guide to calculate the appropriate discount rate. Lord Hope of Craighead supplemented the reasonings of Denning, L.J., stating :-

Some of the assumptions which have to be made in the assessment of future loss are made at the stage of arriving at the multiplicand for each head of the claim. The selection of the right multiplier requires that further assumptions be made, so that the calculation can be related to the period of the annual loss or expense which is to be compensated for. The general point of principle which is raised in all three cases relates to the final stage in the selection of the multiplier. This is the choice of the interest rate, which represents the discount for the payment now of a lump sum to compensate for loss to be sustained over a period of years in the future.

The measure of the discount is the rate of return which can reasonably be expected on that sum if invested in such a way as to enable the plaintiff to meet the whole amount of the loss during the entire period which has been assumed for it by the expenditure of income together with capital. It was suggested for the defendants in the course of the argument that the plaintiff was under a duty to minimise the loss to be borne by the defendants by investing the lump sum prudently, that is to say with a view to obtaining a reasonable return for it. The duty to invest prudently was an important part of the reasoning which was designed to show that this meant a duty to invest in equities, and that the discount rate to be applied was that appropriate to the return to be expected on equities. But I do not think that the duty to minimise loss has anything to do with the selection of the appropriate discount rate. The stage at which the duty to minimise loss is to be applied is at the earlier stage when the court has to identify the amount of the annual sum to be compensated for and the period over which it is to be compensated. That exercise is over and done with when the time comes to select and apply the discount rate.

It was furthermore observed :-

There is much to be said for the view that a better return can be obtained by the ordinary investor who invests his money in equities. But the rises and falls in the market value of equities are unpredictable both as to their timing and as to their amount. Further problems are presented by the cost of investment advice and by the possible impact of capital gains tax if reliance has to be placed on the capital gains which can be achieved to deal with inflation and to supplement the income return by way of dividend. Moreover the plaintiff who is receiving the amount of his future loss in the form of a lump sum is not an ordinary investor. The amount awarded under each head of his claim is calculated on the assumption that this part of his loss will have to be met entirely out of the relevant portion of the lump sum.

29. The Parliament enacted the Actuaries Act, 2006. However, its activities are little known. We do not know whether any Actuarial Society has come into effect. It is also not clear what sort of service is being rendered by it. Not much assistance, therefore, can be derived from referring to the said Act to which our attention has been drawn by Mr. Nanda.

30. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitution in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong.

[See Livingstone v. Rawyards Coal Co. [(1880) 5 AC 25].

31. The accident may result in death ; it may result in injuries which may be of different counts. When a death occurs the benefit accruing to the dependent must be taken into account ; the balance

of loss and gain to him must be ascertained ; the position of each dependent in each case may have to be considered separately [See Davis v. Powell Duffrya Associated Collieries Ltd. [1942) AC 601].. The said principle has been applied by this Court in Gobald Motor Service Ltd., Allahabad v. R.M.K. Veluswami, [AIR 1962 SC 1] as also in Susamma Thomas (supra)

32. The heads of pecuniary loss are basically two. One, loss of earnings upto the date of trial and the other, loss of future earnings. Principally we are concerned with the second issue herein. For calculating future earning, the following factors are taken into consideration:-

(i) interest method ;

(ii) lump sum method ; and

(iii) multiplier method.

Whereas in the first and third method, interest method for all intent and purport has not been applied in India. Multiplier method was applied as a mode of estimating the present value as a loss of benefit to the dependent in Davis (supra) wherein it was observed:

In the case of the appellant, Mrs. Williams, I think the judge has awarded a wholly inadequate sum. There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt. It seems as if the award of 250l. was based on something like three- and-a-half years' purchase of the basic figure. This appears to me to be out of all proportion and much too low. I should, after allowing for all reasonably probable chances of the diminution of the loss, accept the figure taken by Luxmoore L.J. of 750l. as being not unfair, and I should increase the damages recoverable by the appellant, Mrs. Williams, accordingly. In that respect I should allow her appeal.

The said principle was reiterated in Nance v. British Columbia

Electric Railway Co, Ltd. { 1951 AC 601 } wherein it was observed :-

The claim to damages in the present case falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could reasonably have looked forward, what sums during that period would be probably have applied out of his income to the maintenance of his wife and family? (Under this head in the present case the wife or widow need alone be considered, since his children and step-children were all adults and self supporting, and at the time of his death he contributed nothing material to their maintenance.) Secondly, in addition to any sum arrived at under the first head, the case has been argued on the assumption, common to both parties, that according to the law of British Columbia it would be proper to award a sum representing such portion of any additional savings which he would

or might have accumulated during the period for which, but for his accident, he would have lived, as on his death at the end of this period would probably have accrued to his wife and family by devolution either on his intestacy or under his will, if he made a will.

33. An element of sentiment of the deceased was also introduced while determining compensation payable to the dependent. One of the factors which had been taken into consideration in Davis (supra) was that the widow might be again married and ceases to be dependent; in India, we cannot proceed on such presumption.

34. In the Indian context several other factors should be taken into consideration including education of the dependents and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely - the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in Oriental Insurance Company Ltd. v. Jashuben and others,_[(2008) 4 SCC 162] held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

35. One of the incidental issues which has also to be taken into consideration is inflation.

36. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard and fast rule, however, can be laid down therefor.

37. A large number of English decisions have been placed before us by Mr. Nanda to contend that inflation may not be taken into consideration at all. While the reasonings adopted by the English courts and its decisions may not be of much dispute, we cannot blindly follow the same ignoring ground realities.

38. We have noticed the precedents operating in the field as also the rival contentions raised before us by the learned counsel for the parties with a view to show that law is required to be laid down in clearer terms. The Second Schedule refers to Section 163-A of the 1988 Act, which, as noticed hereinbefore, provides for quantum of compensation to a third party in case of fatal accident or injuries suffered. It provides for a table. It specifies the amount required to be paid to the legal heirs/representatives of the deceased in the case of fatal accident and the claimants in the case of injuries suffered by them depending upon his age and annual income as specified therein. The question which arises for consideration is as to whether the multiplier specified in the second schedule should be taken to be a guide for calculation of amount of compensation payable in a case falling under Section 166 of the 1988 Act?

39. We have noticed hereinbefore that in Patricia Jean Mahajan (supra) and Abati Bezbaruah and the other cases following them multiplier specified in the Second Schedule has been taken to be guiding factor for calculation of the amount of compensation even in a case under Section 166 of the Act. However, in Shanti Pathak (supra) this Court advocated application of lesser multiplier, although no legal principle has been laid therein.

40. In Trilok Chandra (supra) this Court has pointed out certain purported calculation mistakes in the Second Schedule. It, however, appears to us that there is no mistake therein. Amount of compensation specified in the Second Schedule only is required to be paid even if a higher or lower amount can be said to be the quantum of compensation upon applying the multiplier system.

41. Section 163-A of the 1988 Act does not speak of application of any multiplier. Even the Second Schedule, so far as the same applies to fatal accident, does not say so. The multiplier, in terms of the Second Schedule, is required to be applied in a case of disability in non fatal accident. Consideration for payment of compensation in the case of death in a `no fault liability' case vis-`-vis the amount of compensation payable in a case of permanent total disability and permanent partial disability in terms of the Second Schedule is to be applied by different norms. Whereas in the case of fatal accident the amount specified in the Second Schedule depending upon the age and income of the deceased is required to be paid wherefor the multiplier is not to be applied at all but in a case involving permanent total disability or permanent partial disability the amount of compensation payable is required to be arrived at by multiplying the annual loss of income by the multiplier applicable to the age of the injured as on the date of determining the compensation and in the case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) of the Second Schedule.

42. The Parliament in its wisdom thought to provide for a higher amount of compensation in case of permanent total disablement and proportionate amount of compensation in case of permanent partial disablement depending upon the percentage of disability.

43. Thus, prima facie, it appears that the multiplier mentioned in the Second Schedule, although in a given case, may be taken to be a guide but the same is not decisive. To our mind, although a probable amount of compensation as specified in the Second Schedule in the event the age of victim is 17 or 20 years and his annual income is Rs.40,000/-, his heirs/ legal representatives is to receive a sum of Rs.7,60,000/-, however, if an application for grant of compensation is filed in terms of Section 166 of the 1988 Act that much amount may not be paid, although in the former case the amount of compensation is to be determined on the basis of `no fault liability' and in the later on `fault liability' In the aforementioned situation the Courts, we opine, are required to lay down certain principles. 44. We are not unmindful of the Statement of Objects and Reasons to Act 54 of 1994 for introducing Section 163-A so as to provide for a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational. That may be so, but it defies logic as to why in a similar situation, the injured claimant or his heirs/legal representatives, in the case of death, on proof of negligence on the part of the driver of a motor vehicle would get a lesser amount than the one specified in the Second Schedule. The Courts, in our opinion, should also bear that factor in mind.

45. Having regard to divergence of opinion and this aspect of the matter having not been considered in the earlier decisions, particularly in the absence of any clarification from the Parliament despite the recommendations made by this Court in Trilok Chandra (supra), the issue, in our opinion, shall be decided by a Larger Bench. It is directed accordingly.

46. The Registry is directed to place the matter before the Hon'ble Chief Justice of India for appropriate orders for constituting a Larger Bench.