SUPREME COURT OF INDIA

Reshma Kumari

Vs.

Madan Mohan

C.A.No.4646 of 2009

(R.M.Lodha, J.Chelameswar and Madan B.Lokur JJ.)

02.04.2013

JUDGMENT

R.M. LODHA,J.

1. A two-Judge Bench (S.B. Sinha and Cyriac Joseph, JJ.) proceeded to hear these appeals on two common questions, namely, (1) Whether multiplier specified in the Second Schedule appended to the Motor Vehicles Act, 1988 (for short "the 1988 Act") should be scrupulously applied in all cases? and (2) Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospect. In the course of hearing few decisions of this Court, General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors[1]., Sarla Dixit (Smt.) and Anr. v. Balwant Yadav and Ors[2]., U.P. State Road Transport Corporation and Ors. V. Trilok Chandra and Ors.[3], Kaushnuma Begum (Smt.) and Ors. V. New India Assurance Co. Ltd. and Ors.[4], United India Insurance Co. Ltd. Ors. v. Patricia Jean Mahajan Ors.[5], Jyoti Kaul Ors. v. State of M.P. Anr.[6],Abati Bezbaruah v. Dy. Director General, Geological Survey of India Anr.[7], New India Assurance Co. Ltd. v. Shanti Pathak (Smt.) Ors.[8], were cited. The attention of the Bench was also invited to Sections 163A and 166 of the 1988 Act. The Bench was of the opinion that the question, whether the multiplier specified in the Second Schedule should be taken to be guide for calculation of amount of compensation payable in a case falling under Section 166 of the 1988 Act needed to be decided by a larger Bench. The reasons for referring the above issue to the larger Bench indicated in the referral order dated 23.07.2009 read as under:

“39. We have noticed hereinbefore that in Patricia Jean Mahajan5 and Abati Bezbaruah7and 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 Pathak8 this Court advocated application of lesser multiplier, although no legal principle has been laid therein.

40. In Trilok Chandra3 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 nonfatal accident. Consideration for payment of compensation in the case of death in a “no fault liability” case vis-à-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 where for 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 Chandra3, the issue, in our opinion, shall be decided by a Larger Bench. It is directed accordingly."

2. We are concerned with the above reference. Before we refer to the provisions contained in Sections 163A and 166 of the 1988 Act, it is of some relevance to notice the background in which the Parliament considered it necessary to bring in the provisions of no fault liability on the statute. It so happened that in Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.[9] , a three-Judge Bench of this Court while considering the question whether the fact of injury resulting from the accident involving the use of a vehicle on the public road is the basis of a liability and that it is not necessary to prove any negligence on the part of the driver, held that the liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the law of tort and before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent. This Court held that the concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a person died or a party received an injury arising out of the use of a vehicle in a public place cannot justify fastening liability on the owner. This Court noticed a judgment of Madras High Court in M/s Ruby Insurance Co. v. Govindaraj, (A.A.O. Nos. 607 of 1973 and 296 of 1974) decided on December 13, 1976 wherein the necessity of having social insurance to provide cover for the claimants irrespective of proof of negligence to a

limited extent was suggested. This Court said "unless these ideas are accepted by the legislature and embodied in appropriate enactments Courts are bound to administer and give effect to the law as it exists today. We conclude by stating that the view of the learned Judges of the High Court has no support in law and hold that proof of negligence is necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claim case".

3. The Parliament having regard to the above view of this Court and the recommendation of the Law Commission of India, amended the Motor Vehicles Act, 1939 (for short, "1939 Act") and inserted Section 92A therein which provided that in any claim for compensation under sub- section (1) of Section 92-A, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicles concerned or of any other person.

4. In Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and Another[10], a two-Judge Bench held that the compensation awardable under Section 92-A was without proof of any negligence on the part of the owner of the vehicle or any other person which was clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. Certain observations made in Minu B. Mehta9 were held to be obiter in Ramanbhai Prabhatbhai10 .

5. The 1988 Act replaced the 1939 Act. Chapter X of the 1988 Act deals with liability without fault in certain cases. Sub-section (3) of Section 140 provides that in any claim for compensation under sub- section (1) the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. Chapter XI of the 1988 Act deals with insurance of motor vehicles against third party risks. Chapter XII deals with the claims tribunals. Section 166 makes a provision for application for compensation arising out of an accident which after few amendments reads as under:

"Section 166 - Application for compensation

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) by the person who has sustained the injury; or (b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act."

6. By Act 54 of 1994, Section 163A was brought in the 1988 Act w.e.f. 14.11.1994. Section 163A may be reproduced which reads as under:-

"163-A. 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."

7. Along with Section 163A Second Schedule was inserted in the 1988 Act. Sub-section (3) of Section 163A empowers the central government to amend the Second Schedule from time to time keeping in view the cost of living.

8. Consequent upon the insertion of Section 163A in the 1988 Act, certain amendments were brought in the 1988 Act. Sub-section (5) which was inserted in Section 140 reads as follows: "Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A."

9. Section 163B was also brought in the 1988 Act along with Section 163A. Section 163B reads as follows:

"163B. Option to file claim in certain cases. – Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not under both."

10. The 1988 Act gives choice to the claimants to seek compensation on structured formula basis as provided in Section 163A or make an application for compensation arising out of an accident of the nature specified in sub-section (1) of

Section 165 under Section 166. The claimants have to elect one of the two remedies provided in Section 163A and Section 166. The remedy provided in Section 163A is not a remedy in addition to the remedy provided in Section 166 but it provides for an alternative course to Section 166. By incorporating Section 163A in the 1988 Act, the Parliament has provided the remedy for payment of compensation notwithstanding anything contained in the 1988 Act or in any other law for the time being in force or instrument having the force of law, that the owner of a motor vehicle or authorised insurer shall be liable to pay compensation on structured formula basis as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of motor vehicle. The peculiar feature of Section 163A is that for a claim made thereunder, the claimants are not 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 or owners of the vehicle concerned. The scheme of Section 163A is a departure from the general principle of law of tort that the liability of the owner of the vehicle to compensate the victim or his heirs in a motor accident arises only on the proof of negligence on the part of the driver. Section 163A has done away with the requirement of the proof of negligence on the part of the driver of the vehicle where the victim of an accident or his dependants elect to apply for compensation under Section 163A. When an application for compensation is made under Section 163A the compensation is paid as indicated in the Second Schedule. The table in the Second Schedule has been found by this Court to be defective to which we shall refer at a little later stage.

11. On the other hand, by making an application for compensation arising out of an accident under Section 166 it is necessary for a claimant to prove negligence on the part of the driver or owner of the vehicle. The burden is on the claimant to establish the negligence on the part of the driver or owner of the vehicle and on proof thereof, the claimant is entitled to compensation. We are confronted with the question, whether while considering an application for compensation made under Section 166, the multiplier specified in the Second Schedule can be taken to be guide for determination of amount of the compensation.

12. In Susamma Thomas1, this Court noticed the two decisions of House of Lords, (1) Davies Anr. v. Powell Duffryn Associated Collieries Ltd.[11] and (2) Nance v. British Columbia Electric Railway Co. Ltd.[12] wherein two different methods – lump sum method and multiplier method - were adopted for determination and for calculation of compensation in fatal accident actions. This Court has preferred the multiplier method adopted in Davies case11. While holding so, this Court also referred to another decision of House of Lords in Mallett v. Mc Monagle[13]. It

has been laid down in Susamma Thomas1 that multiplier method was logically sound and legally well established. The multiplier represented the number of year's purchase on which the loss of dependency is capitalized. 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, the Court said that 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. In Susamma Thomas1 this Court noticed that English Courts have rarely applied operative multiplier exceeding 16.

13. The award of compensation in a motor accident case based on the multiplier method is an established norm in India now. A three- Judge Bench in Trilok Chandra3 reiterated what was stated in Susamma Thomas1 as regards determination of compensation in accident cases on the basis of multiplier method. In Trilok Chandra3, the Court considered Section 163A and the Second Schedule which was not under consideration in Susamma Thomas1 as Section 163A was not on the statute when the judgment in Susamma Thomas1 was delivered. It was observed that by incorporation of Sections 163A and 163B in the 1988 Act the situation had undergone a change. Under the Second Schedule, the maximum multiplier could be upto 18 and not 16 as was held in Susamma Thomas1. In Trilok Chandra3, the maximum multiplier was fixed at 18 but the Court did find several defects in the calculation of compensation and the amount worked out in the Second Schedule. Importantly this Court stated in Trilok Chandra3 that Tribunals and the Courts cannot go by the ready reckoner; the Schedule can only be used as a guide. This is what this Court said in paras 17 and 18 of the Report:

"17. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163-A and 163-B in Chapter XI entitled "Insurance of Motor Vehicles against Third Party Risks". Section 165-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 [(1994) 2 SCC 176].

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. Besides, the selection of multiplier cannot in all cases be solely dependant on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. 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. We thought it necessary to state the correct legal position as courts and tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies case". (Emphasis supplied by us)

14. A three-Judge Bench in Supe Dei (Smt) and others v. National Insurance Company Limited andanother[14] [Civil Appeal No. 2753 of 2002; decided on April 16, 2002] considered the question, whether Second Schedule to the 1988 Act can be made applicable in deciding the application for compensation made under Section 166 or not? This Court held that the Second Schedule under Section 163A of the 1988 Act which gives the amount of compensation to be determined for the purpose of claim under that Section can be taken as a guideline while determining the compensation under Section 166 of the 1988 Act. The Second Schedule in terms does not apply to a claim made under Section 166 of the 1988 Act.

15. In Patricia Jean Mahajan5, this Court had an occasion to consider Sections 163A and 166 of the 1988 Act. With regard to Section 163A, the Court stated, "the noticeable features of this provision are that it provides for compensation in the case of death or permanent disablement due to accident arising out of use of motor vehicle. The amount of compensation would be as indicated in the Second Schedule. The claimant is not required to plead or establish that the death or permanent disablement was due to any wrongful act or negligence or default of the owner of the vehicle or any other person."

16. Then the Court referred to Sections 165 and 166 of the 1988 Act and observed that a claim under Section 166 did not provide for the amount of compensation according to the Second Schedule; rather Section 168 makes it clear that it is for the tribunal to arrive at an amount of compensation which it may consider to be just in the facts and circumstances of the case. However, the Court did observe that structured formula as provided under Second Schedule would be a safe guide to calculate the compensation while dealing with a claim made under Section 166.

17. In Patricia Jean Mahajan5, in light of the facts which were obtaining in that case, this Court held in paragraphs 19 and 20 of the Report (pgs. 294 and 295) as under:

"19. In the present case we find that the parents of the deceased were 69/73 years. Two daughters were aged 17 and 19 years. The main question, which strikes us in this case is that in the given circumstances the amount of multiplicand also assumes relevance. The total amount of dependency as found by the learned Single Judge and also rightly upheld by the Division Bench comes to 2,26,297 dollars. Applying multiplier of 10, the amount with interest and the conversion rate of Rs 47, comes to Rs 10.38 crores and with multiplier of 13 at the conversion rate of Rs 30 the amount comes to Rs 16.12 crores with interest. These amounts are huge indeed. Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much undercompensated as well, in the background of the country where most of the dependent beneficiaries reside. Two of the dependants, namely, parents aged 69/73 years live in India, but four of them are in the United States. Shri Soli J. Sorabjee submitted that the amount of multiplicand shall surely be relevant and in

case it is a high amount, a lower multiplier can appropriately be applied. We find force in this submission. Considering all the facts and factors as indicated above, to us it appears that application of multiplier of 7 is definitely on the lower side. Some deviation in the figure of multiplier would not mean that there may be a wide difference between the multiplier applied and the scheduled multiplier which in this case is 13. The difference between 7 and 13 is too wide. As observed earlier, looking to the high amount of multiplicand and the ages of the dependants and the fact that the parents are residing in India, in our view application of multiplier of 10 would be reasonable and would provide a fair compensation i.e. a purchase factor of 10 years. We accordingly hold that multiplier of 10 as applied by the learned Single Judge should be restored instead of multiplier of 13 as applied by the Division Bench. We find no force in the submission made on behalf of the claimants that in no circumstances the amount of multiplicand would be a relevant consideration for application of appropriate multiplier. We have already given our reasons in the discussion held above.

20. The court cannot be totally oblivious to the realities. The Second Schedule while prescribing the multiplier, had maximum income of Rs 40,000 p.a. in mind, but it is considered to be a safe guide for applying the prescribed multiplier in cases of higher income also but in cases where the gap in income is so wide as in the present case income is 2,26,297 dollars, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible. Therefore, a deviation from applying the multiplier as provided in the Second Schedule may have to be made in this case. Apart from factors indicated earlier the amount of multiplicand also becomes a factor to be taken into account which in this case comes to 2,26,297 dollars, that is to say an amount of around Rs 68 lakhs per annum by converting it at the rate of Rs 30. By Indian standards it is certainly a high amount. Therefore, for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand. A deviation would be reasonably permissible in the figure of multiplier even according to the observations made in the case of Susamma Thomas1 where a specific example was given about a person dying at the age of 45 leaving no heirs being a bachelor except his parents."

18. The noticeable observations in Patricia Jean Mahajan5 are that, (i) for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand and (2) a deviation would be reasonably permissible in the figure of multiplier in appropriate cases.

19. In Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda[15], the question that arose for consideration before a three-Judge Bench was, whether a proceeding under Section 163A of the 1988 Act was a final proceeding and the claimant, who has been granted compensation under Section 163A, was debarred from proceeding with any further claims on the basis of the fault liability in terms of Section

166. This Court considered the statutory provisions contained in the 1988 Act, including Sections 163A and 166. With regard to Section 163A, the Court stated as follows:

"42. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs 40,000 having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. . . . This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

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46. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured- formula basis. Sub-section (1) of Section 163-A contains non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is 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. …….. .

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51. The scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set- off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs 40,000 or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

52. It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163-A of the Act, as the case may be, but the same was inserted ex abundanti cautela so as to remove any misconception in the minds of the parties to the lis having regard to the fact that both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims both under Section 163-A and Section 166 does not arise. If the submission of the learned counsel is accepted the same would lead to an incongruity.

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20. A two-Judge Bench in Abati Bezbaruah7 with reference to the structured formula set out in the Second Schedule in 1988 Act observed as follows:-

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.

21. In Shanti Pathak8 a three-Judge Bench of this Court in a very brief order applied multiplier of 8 for a claim of compensation in respect of the deceased who was 25 years at the time of his death.

22. In Oriental Insurance Company Ltd. v. Jashuben and Ors.[16], two- Judge Bench of this Court applied the multiplier of 13 in a case where the age of the deceased was 35 years at the time of accident.

23. In Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr.[17] , this Court had an occasion to consider the peculiarities of Section 163A of the 1988 Act vis-à-vis Section 166. The Court reiterated what was stated in earlier decisions that the principles relating to determination of liability and quantum of compensation were different for claims made under Section 163A and claims made under Section 166. It was stated that Section 163A and the Second Schedule in terms did not apply to determination of compensation in applications under Section 166. While stating that Section 163A contains a special provision, this Court said:

"34. . . . . Section 163-A 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 3000 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 up to 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 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where the 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 × AI × 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 tortuous liability are excluded when the claim is under Section 163-A of the MV Act."

24. This Court, however, noticed discrepancies/errors in the multiplier scale given in the Second Schedule table and also observed that application of table may result in incongruities. Paras 35 and 36 (pp. 137) of the Report are as follows:

"35. 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 and 5 instead of 20, 19, 18, 17, 16, 15, 14, 12, 10, 8, 6 and 5.

36. 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 12,000. This leads to an anomalous position in regard to applications under Section 163-A of the 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."

25. While referring to the decisions of this Court in New India Assurance Company Ltd. v. Charlie and Anr[18]., T.N. State Road Transport Corporation v. S. Rajapriya and Ors.[19] and U.P. State Road Transport Corporation v. Krishna Bala and Ors.[20] , this Court in Sarla Verma17 in paragraph 39 (pg. 138) of the Report observed as follows:

"39. In New India Assurance Co. Ltd. v. Charlie 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 T.N. State Transport Corpn. Ltd. v. S. Rajapriya and U.P. SRTCv. Krishna Bala."

26. In Sarla Verma17, this Court undertook the exercise of comparing the multiplier indicated in Susamma Thomas1, Trilok Chandra3 and Charlie18, for claims under Section 166 of the 1988 Act with the multiplier mentioned in the Second Schedule for claims under Section 163A (with appropriate deceleration after 50 years) as follows: |Age of |Multiplie|Multipl|Multiplier|Multiplier |Multiplier | |Deceased |r Scale |ier |Scale in |Specified |actually | | |as |Scale |Trilok |in Second |used in | | |envisaged|as |Chandra3 |Column in |Second | | |in |adopted|as |the Table |Schedule to| | |Susamma |by |clarified |in Second |the MV Act | | |Thomas1 |Trilok |in |Schedule to|(as seen | | | |Chandra|Charlie18 |the MV Act |from the | | | |3 | | |quantum of | | | | | |compensatio| | | | | |n) | |(1) |(2) |(3) |(4) |(5) |(6) | |Upto 15 |- |- |- |15 |20 | |years | | | | | |15 to 20 |16 |18 |18 |16 |19 | |years | | | | | |21 to 25 |15 |17 |18 |17 |18 | |years | | | | | |26 to 30 |14 |16 |17 |18 |17 | |years | | | | | |31 to 35 |13 |15 |16 |17 |16 | |years | | | | | |36 to 40 |12 |14 |15 |16 |15 | |years | | | | | |41 to 45 |11 |13 |14 |15 |14 | |years | | | | | |46 to 50 |10 |12 |13 |13 |12 | |years | | | | | |

|51 to 55 |9 |11 |11 |11 |10 | |years | | | | | |56 to 60 |8 |10 |09 |8 |8 | |years | | | | | |61 to 65 |6 |08 |07 |5 |6 | |years | | | | | |Above 65 |5 |05 |05 |5 |5 | |years | | | | |

27. In paragraph 42 (pg. 140) of the Report, this Court in Sarla Verma17 laid down that the multiplier shall be used in a given case in the following manner:

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, 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."

28. The above exercise was undertaken in Sarla Verma17 to ensure uniformity and consistency in the selection of multiplier while awarding compensation in motor accident claims made under Section 166.

29. Section 168 of the 1988 Act provides the guideline that the amount of compensation shall be awarded by the claims tribunal which appears to it to be just. The expression, 'just' means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously 'just compensation' does not mean 'perfect' or 'absolute' compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case.

30. Almost a century back in Taff Vale Railway Co. v. Jenkins[21], the House of Lords laid down the test that award of damages in fatal accident action is compensation for the reasonable expectation of pecuniary benefit by the deceased's family. The purpose of award of compensation is to put the dependants of the deceased, who had been bread-winner of the family, in the same position financially as if he had lived his natural span of life; it is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures here and there as many imponderable factors and unpredictable contingencies have to be taken into consideration.

31. This Court in C.K. Subramania Iyer and Ors. v. T.Kunhikuttan Nair and Ors.[22], reiterated the legal philosophy highlighted in Taff Vale Railway 21 for award of compensation in claim cases and said that there is no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations. Obviously, award of damages in each case would depend on the particular facts and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor.

32. In Susamma Thomas1, this Court – though with reference to Section 110B of the Motor Vehicles Act, 1939 – stated that the multiplier method was the accepted norm of ensuring the just compensation which will make for uniformity and certainty of the awards. We are of the opinion that this statement in Susamma Thomas1 is equally applicable to the fatal accident claims made under Section 166 of the 1988 Act. In our view, the determination of compensation based on multiplier method is the best available means and the most satisfactory method and must be followed invariably by the tribunals and courts.

33. We have already noticed the table prepared in Sarla Verma17 for the selection of multiplier. The table has been prepared in Sarla Verma17 having regard to the three decisions of this Court, namely, Susamma Thomas1, Trilok Chandra3 and Charlie18 for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in Column (4) of the table must be used having regard to the age of the deceased. Perhaps the biggest advantage by employing the table prepared in Sarla Verma17 is that the uniformity and consistency in selection of the multiplier can be achieved. The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a 'multiplier' to arrive at the loss of dependency. In Sarla Verma17, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma17 that claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the

age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma17.

34. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in Sarla Verma17 is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the table in Sarla Verma17 for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in Sarla Verma17 is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma17 should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma17 should be followed.

35. With regard to the addition to income for future prospects, in Sarla Verma17, this Court has noted earlier decisions in Susamma Thomas1, Sarla Dixit2 and Abati Bezbaruah7 and in paragraph 24 of the Report held as under:

"24.……In view of the 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 the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or

different methods of calculation 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."

36. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.

37. As regards deduction for personal and living expenses, in Sarla Verma17, this Court considered Susamma Thomas1, Trilok Chandra3 and Fakeerappa[23] and finally in paras 30, 31 and 32 of the Report held as under:

"30…….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 dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. 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 dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as

dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. 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 the family of the bachelor is large and dependent 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."

38. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

39. In our view, the standards fixed by this Court in Sarla Verma17 on the aspect of deduction for personal living expenses in paragraphs 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding para is made out.

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

(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma17 read with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma17 should be followed. (iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma17 for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in Sarla Verma17. (vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma17 subject to the observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration.

41. The reference is answered accordingly. Civil appeals shall now be posted for hearing and disposal before the regular Bench.

[1] 1994 (2) SCC 176
[2] 1996 (3) SCC 179
[3] 1996 (4) SCC 362
[4] 2001 (2) SCC 9
[5] 2002 (6) SCC 281
[6] 2002 (6) SCC 306
[7] 2003 (3) SCC 148
[8] 2007 (10) SCC 1
[9] 1977 (2) SCC 441
[10] 1987 (3) SCC 234
[11] 1942 (1) All ER 657
[12] 1951 (2) All ER 448
[13] 1969 (2) All ER 178
[14] (2009) 4 SCC 513
[15] (2004) 5 SCC 385
[16] 2008 (4) SCC 162
[17] 2009 (6) SCC 121
[18] 2005 (10) SCC 720
[19] 2005(6) SCC 236
[20] 2006 (6) SCC 249
[21] (1913) AC 1
[22] 1970 (2) SCR 688

[23] Fakeerappa and Anr. v. Karnataka Cement Pipe Factory and Others; [(2004) 2 SCC 473]