

**(2018) 02 GAU CK 0053**  
**In the Gauhati High Court**  
**Case No : 198 of 2012**

ICICI LOMBARD GENERAL INSURANCE CO LTD

APPELLANT

Vs

MAYA RANI DAS and ORS

RESPONDENT

**Date of Decision :** 21-02-2018

**Acts Referred:**

[Motor Vehicles Act, 1988](#), [Section 173](#),  
[Section 173](#) - Appeals

**Citation :** (2018) 02 GAU CK 0053

**Hon'ble Judges :** Kalyan Rai Surana

**Bench :** Single Bench

**Advocate :** R GOSWAMI, B SHARMA

**Final Decision :** Dismissed

## Judgement

1. Heard Mr. R. Goswami learned counsel for the appellant. None appears on call for the respondents although notices on all respondents has,,,,,

been duly served.,,,,,

2. By this appeal under section 173 of the MV Act, the appellant has challenged the judgment and award dated 13.06.2012 passed by the learned",,,,,

Member, Motor Accident Claims Tribunal, Tinsukia in MAC Case No.91/2009, whereby an award of Rs.4,96,000/- was awarded with interest",,,,,

at the rate of 6% per annum from the date of filing of the claim petition i.e. 27.07.2009 till payment.,,,,,

3. As per the claim petition, the deceased, namely, Ajoy Das was working as supervisor in a construction firm, namely, M/s. Paramount Builders",,,,,

and Suppliers, Gar Ali, Jorhat. He was working at the site of Bogibeel Railway Project, Dibrugarh. While working at site a Tipper vehicle bearing",,,,,

registration No.AS-23-G-1106, owned by respondent No.4, namely, M/s. Satyam

Consortium, which was driven by respondent No.5 -" ,,,,,,

Sebastian Tye in a rash and negligent manner, knocked him from the back side, resulting in serious and grievous injuries. He was rushed to the" ,,,,,,

Assam Medical College and Hospital, Dibrugarh where he was declared dead. It was stated that the deceased was earning a monthly salary of" ,,,,,,

Rs.4,500/- and the respondent No.1, being the mother of the deceased and the respondent No.2 and 3 being the sister and minor brother of the" ,,,,,,

deceased, jointly filed a claim petition on the ground that they were dependants on the income of the deceased." ,,,,,,

4. The appellant herein contested the case by filing written statement, denying the claim, and by taking usual pleas, put the respondents/ claimants" ,,,,,,

No. 1, 2 and 3 to strict proof of their claim." ,,,,,,

5. On the basis of pleadings, the learned Tribunal framed the following issues:-" ,,,,,,

1. Whether there is a motor accident on 05.04.2009 at 1:30 p.m. at Bogibil Project Construction site under Barbaruah Police Station involving the" ,,,,,,

offending vehicle AS-23/G-1106 (Tipper) hit the deceased causing his death which was driven in rash and negligent manner or not? ,,,,,,

2. Whether the Opp. Party Insurance Company is liable to pay compensation as claimed, if so to what extent?" ,,,,,,

6. In support of the claim, the respondent/claimant No.1 examined herself as CW-1 and exhibited the following documents - (1) Accident" ,,,,,,

Information report (Ext.1), (2) Certified copy of post mortem report (Ext.2), (3) Certified copy of FIR and Ejahar (Ext.3), (4) Income Certificate" ,,,,,,

of the deceased (Ext.4), (5) School Certificate of the respondent No.2 (Ext.5), (6) School Certificate of respondent No.3 (Ext.6), (7) School" ,,,,,,

Certificate of the deceased (Ext.7), (8) Attested Caste Certificate of the deceased (Ext.8)." ,,,,,,

7. The respondents No.1, 2 and 3 (i.e. claimants) had also examined one Dilip Barua as CW-2, who was an eye witness to the accident." ,,,,,,

8. On the basis of the materials on record, specifically Ext.1, Ext.2 and Ext.3, the learned Tribunal held that the deceased had died in the accident," ,,,,,,

as stated, for which Barboruah P.S. Case No.51/2009 was registered and, as such, issue No.1 was decided in the affirmative and in favor of the" ,,,,,,

respondents No. 1, 2 and 3. In respect of issue No.2 it was held that the

deceased was working as a Supervisor at the work site of M/S" ,,,,,

Paramount Builders and Suppliers since 25.01.2005 and that as per Ext.4, his monthly salary was Rs.4,500/- with free food. As per the" ,,,,,

Matriculation Certificate (Ext.7), issued by Board of Secondary Education Assam, his age was below 25 years at the time of his death. Accepting" ,,,,,

the income of the deceased to be Rs.4,500/-, being a bachelor 50% of this income was deducted towards personal expenses and by applying the" ,,,,,

multiplier of 18, the compensation was calculated as follows:-" ,,,,,

a.Loss of dependency:  $\text{Rs.4,500} \times 12 \times 18 \times 50\% = \text{Rs.4,86,000/-}$ " ,,,,,

b.Funeral Expenses: Rs 5,000/-" ,,,,,

Rs.5,000/-" ,,,,,

c.Loss of Consortium: ,,,,,

\_\_\_\_\_ ,,,,,

Rs.4,96,000/-" ,,,,,

d.Total: ,,,,,

\_\_\_\_\_ ,,,,,

(Rupees Four lakh ninety six thousand only). ,,,,,

9. The learned counsel for the appellant has submitted that the appeal has being filed because in the present case in hand the deceased was a ,,,,,

bachelor and the age of his mother (claimant No.1) was 46 years, as such, the learned Tribunal had committed grave error by applying the" ,,,,,

multiplier of 18 which should have been 13, on the basis of the age of the mother. In this regard the learned counsel for the appellant has relied in" ,,,,,

the cases of (i) General Manager Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others AIR 1994 SC" ,,,,,

1631: (1994) 2 SCC 176, (ii) U.P. State Road Transport Corporation and others Vs. Trilok Chandra and others, (1996) 4 SCC 362 ." ,,,,,

10. In this regard, it is submitted that the case of Trilok Chandra (supra) was decided by the Full Bench of the Hon"ble Apex Court (3 Judge" ,,,,,

Bench) and therefore, it is submitted that the ratio laid down in the case of Sarla Verma Smt. and other Vs. Delhi Transport Corporation and other" ,,,,,

(2009) 6 SCC 121 (by the Division Bench of 2 Judges), wherein it was held that the appropriate multiplier should be selected having regard to the" ,,,,,

age of the deceased, cannot be said to be a binding precedent and therefore, the ratio laid down in the case of Trilok Chandra (supra) was" ,,,,,,

required to be followed in the present case so as to apply the multiplier commensurate to the age of the respondent No.1 i.e. the mother of the ,,,,,,

deceased whereby the appropriate multiplier would be 13 instead of 18. ,,,,,,

11. In this regard, this Court deems it fit to refer to paragraphs 7 to 15 of the case of P.S. Somanathan & Ors. Vs. District Insurance Officer &" ,,,,,,

Anr., (2011) 3 SCC 566 . The said relevant paragraphs are quoted below:" ,,,,,,

7. On the question of fixing the quantum of compensation in motor accident claim cases, this Court has laid down several guidelines." ,,,,,,

In the case of Concord of India Insurance Co. Ltd. Vs. Nirmala Devi (1979) 4 SCC 365, Krishna Iyer, J, speaking for a Bench of" ,,,,,,

this Court, observed that the determination of compensation must be liberal, not niggardly since the law values life and limb in a free" ,,,,,,

country in generous scales. ,,,,,,

8. In the case of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and Ors." ,,,,,,

(1994) 2 SCC 176, this Court held that: (SCC pp. 182-183, paras 9-11)" ,,,,,,

9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of" ,,,,,,

things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the" ,,,,,,

amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed" ,,,,,,

to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live" ,,,,,,

up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better" ,,,,,,

employment or income or might have lost his employment or income together. ,,,,,,

10. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of" ,,,,,,

himself and his dependants, and to deduct there from such part of his income as the deceased was accustomed to spend" ,,,,,,

upon himself, as regards both self- maintenance and pleasure, and to ascertain what part of his net income the deceased" ,,,,,,

was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure,,,,,

representing the proper number of year's purchase.,,,,,

11. Much of the calculation necessarily remains in the realm of hypothesis ""and in that region arithmetic is a good servant",,,,,

but a bad master"" since there are so often many imponderables. In every case ""it is the overall picture that matters"" and",,,,,

the court must try to assess as best as it can the loss suffered."",,,,,

9. The Bench also observed that the proper method of computation is the multiplier-method, which was an accepted method of",,,,,

arriving at ""just"" compensation. Any departure, save in exceptional and extraordinary cases, would introduce inconsistency of",,,,,

principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Further, the Bench held that the",,,,,

multiplier was 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 was higher. The principles laid down in *Susamma* (supra) were upheld in the case of *U.P. State Road*,,,,,

*Transport Corporation and Ors. v. Trilok Chandra*, (1996) 4 SCC 362.",,,,,

10. In the case of *T.N. STC Ltd. Vs. S. Rajapriya & Ors.* (2005) 6 SCC 236, this Court observed that the choice of the multiplier",,,,,

was to be determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what the",,,,,

capital sum, if invested at a rate of interest appropriate to a stable economy, would yield by way of annual interest. In ascertaining",,,,,

this, regard was also to be had to the fact that ultimately the capital sum would also be consumed-up over the period for which the",,,,,

dependency was expected to last.,,,,,

11. In *United India Insurance Co. Ltd. v. Bindu* (2009) 3 SCC 705, this Court again reiterated that the choice of the multiplier was",,,,,

to be determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation of a capital sum.,,,,,

which, if invested at a rate of interest appropriate to a stable economy, would yield by way of annual interest.",,,,,

12. In *Supe Dei Vs. National Insurance Co. Ltd.*, (2009) 4 SCC 513, the Court

observed that while considering the question of just",,,,,,

compensation payable in a case all relevant factors including appropriate multiplier had to be considered, and that the Second",,,,,,

Schedule under Section 163-A to the Motor Vehicles Act, 1988, which gave amount of compensation to be determined for purpose",,,,,,

of claim under the section, could be taken as a guideline while determining the compensation under Section 166 of the Act.",,,,,

13. In *Sarla Verma Vs. DTC*, (2009) 6 SCC 121, this Court formulated the principles very lucidly and which are quoted below:",,,,,

(SCC pp. 132-33, paras 18 & 19)",,,,,

18. Basically only three facts need to be established by the claimants for assessing compensation in the case of death:",,,,,

(a) age of the deceased;,,,,,

(b) income of the deceased; and the,,,,,

(c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are:,,,,,

(i) additions/deductions to be made for arriving at the income;,,,,,

(ii) the deduction to be made towards the personal living expenses of the deceased; and,,,,,

(iii) the multiplier to be applied with reference of the age of the deceased.,,,,,,

If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need",,,,,,

for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.,,,,,,

19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following",,,,,,

well- settled steps:,,,,,

Step 1 (Ascertaining the multiplicand),,,,,,

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in,,,,,

regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The,,,,,

balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.",,,,,

Step 2 (Ascertaining the multiplier),,,,,

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This",,,,,

does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to,,,,,

several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by",,,,,

this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.,,,,,

Step 3 (Actual calculation),,,,,

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the `loss of dependency" to,,,,,

the family."",,,,,

14. Further, this Court considered the principles laid down in *Susamma*, (1994) 2 SCC 176, *Trilok Chandra*, (1996) 4 SCC 362",,,,,

and *New India Assurance Co. Ltd. v. Charlie*, (2005) 10 SCC 720 and gave the following table for multiplier:",,,,,

,,,,,

Age of the

deceased", "Multiplier

scale as

envisaged

in

*Susamma*

*Thomas*", "Multiplier

scale as

adopted by

*Trilok*

*Chandra*", "Multiplier

scale in

*Trilok*

*Chandra* as

clarified in  
Charlie", "Multiplier  
specified in  
second  
column in  
the Table in  
Second  
Schedule to  
the MV Act", "Multiplier  
actually used in  
Second  
Schedule to the  
MV Act (as seen  
from the  
quantum of  
compensation)  
(1),(2),(3),(4),(5),(6)  
Upto 15  
years", -, -, -, 15, 20  
15 to 20  
years", 16, 18, 18, 16, 19  
21 to 25  
years", 15, 17, 18, 17, 17  
26 to 30  
years", 14, 16, 17, 18, 17  
31 to 35  
years", 13, 15, 16, 17, 16  
36 to 40  
years", 12, 14, 15, 16, 15  
41 to 45



years",11,13,14,14,14

46 to 50

years",10,12,13,13,12

51 to 55

years",9,11,11,11,10

56 to 60

years",8,10,9,8,8

61 to 65

years",6,8,7,5,6

Above 65

years",5,5,5,5,5

16. The LCR be returned forthwith.,,,,,,

17. As the respondents No. 1, 2 and 3 (i.e. claimants) remained unrepresented, the Registry may send a copy of this order to the respondents No.".,,,,,,

1, 2 and 3 for their information.".,,,,,,