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**(2006) 11 GAU CK 0015**

**In the Gauhati High Court**

**Case No : MAC Appeal No's. 58 and 60 of 2001**

Nani Bala Dey and Others

APPELLANT

Vs

Kanu Das and Others

RESPONDENT

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**Date of Decision : 24-11-2006**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 163A, 163A(1), 166

**Citation : (2008) GLT 149 Supp**

**Hon'ble Judges : R.B. Misra, J**

**Bench : Single Bench**

**Advocate : Somik Deb and A. Nandi, for the Appellant; P. Goutam and Somik Deb, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

R.B. Misra, J.—The above two appeals have been preferred against the judgment and award dated 17.8.2001 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala (hereinafter referred to "Tribunal") in T. Section (MAC) No. 467 of 1997 in respect of death of Kartick Chandra Dey, whereby the Tribunal had awarded a compensation of Rs. 7,75,000/- along with interest payable @ 9% per annum with effect from 17.9.1997, i.e. from the date of filing of the claim petition.

2. Since both the appeals having been preferred against a common order, therefore, these are being disposed of also by a common judgment.

3. It appears that the claim petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to "the M.V. Act") read with Section 163(A)(1) of the M.V. Act as T.S. (MAC) 467 of 1997 was preferred by Smti. Asha Dey in respect of the death of her husband Kartick Chandra Dey, aged about 31 years. The husband of the claimant, who died in a motor accident, occurred on 17.9.1997 at about 10.30 hours in front of Oil & Natural Gas Commission (O.N.G.C.) main Gate was working as a Khalashi in the Fire Station of O.N.G.C., Tripura Project and was

drawing a salary around Rs. 14,900/- per month. Due to rash and negligent driving of the driver of Commander Jeep No. TR-01-3169 an accident occurred on 17.9.1997 and as a result Kartick Chandra Dey sustained severe injuries on his person and had succumbed to his injuries on that day at G B. Hospital. In the claim petition No. T.S. (MAC) 467 of 1997, Smti. Nani Bala Dey, the mother of the deceased was arrayed as opposite party No. 4, who also preferred T.S. (MAC) 432 of 1997 before learned Tribunal which was subsequently withdrawn.

4. The Insurance Company filed written objection denying the claim of the claimants. For adjudication of the matter, the following issues were framed by learned Tribunal:

(i) Whether Kartick Ch. Dey died due to a road traffic accident on 17.9.1997 at about 10.30 a.m. near O.N.G.C. main Gate under Amtali P.S. and whether the alleged accident occurred due to rash and negligent driving of vehicle No. TR-01-3169 (Commander Jeep)?

(ii) Whether any compensation under M.V. Act is admissible for the alleged accident of Kartick Ch. Dey? If so, what should be the quantum of compensation?

(iii) Whether apportionment of compensation will be determined in view of order dated 6.4.2000 passed by the Ld. Civil Judge (Sr. Div.), Court No. 1, Agartala in Misc. (Succession) No. 1 of 1998 and compromise petition filed in this case on 12.5.2000?

(iv) Who is liable to pay the compensation, if awarded, at all?

5. After examining two prosecution witnesses and analyzing the materials on record and after taking into consideration the salary drawn by the deceased at the time of accident, the Tribunal has awarded a compensation of Rs. 7,75,000/-. While calculating the quantum of compensation, the Tribunal has observed as follows:

On behalf of the claimant-Petitioners one Salary Certificate has been filed. It reveals that the gross salary of deceased Kartick Ch. Dey, Khalashi, Grade-III w.e.f. 1.1.97 was Rs. 14,900.20 paise. Out of the said amount there was O.T.A. Rs. 2860/- (one time measure), QTLY incentive-Rs. 1086/- one time measure), washing allowance Rs. 62.50 paise, conveyance-Rs. 580/- productivity allowance-Rs. 300/-. Besides that it can safely be said that said deceased had to pay income tax and other taxes. Further he had some personal expenditure. Since the deceased was service holder of the O.N.G.C. after his death his family would have received some financial aid/benefit. Considering such circumstances net loss of income to the family is assessed at Rs. 4000/- per month. Considering the age at the time of death of deceased Kartick Ch. Dey multiplier 16 is taken. Thus total loss of income comes to Rs. 4000 x 12 x 16 = Rs. 7,68,000/-, along with this amount Rs. 2000/- is payable as funeral charges. Further consortium of Rs. 5000/- is added. Thus total compensation comes to Rs. 7,75,000/-. Along with this amount interest is payable at the rate of 9% p.a. w,e.f. 17.9.1997 the date

of filing the claim petition.

6. Being aggrieved by the judgment and award dated 17.8.2001, the mother of deceased, Smti. Nani Bala Dey and the widow of the deceased, Smti. Asha Dey along with legal heirs have preferred MAC. App. No. 58 of 2001 and MAC App. No. 60 of 2001 respectively for enhancement of the compensation.

7. According to Mr. Somik Deb, learned Counsel for the Appellant, Smti. Nani Bala Dey, while awarding compensation, learned Tribunal though has acknowledged the monthly salary of the deceased as Rs. 14,900.20, in the month of August, 1997, however, while assessing the compensation deducted (i) Rs. 2,860/- (one time measure), (ii) quality incentive Rs 1,086/-, (iii) washing allowance-Rs. 62.50, (iv) conveyance-Rs. 580/-, (v) productivity allowance-Rs. 300/- from the gross salary payable to the deceased, just prior to his death. Learned Tribunal further indicated about income tax and other tax liabilities of the deceased and without any basis thereof, took into consideration that the claimants would have received financial aid/benefit from the employer-"ONGC. Learned Tribunal has applied 16 only as the multiplier without recording any finding to that effect and has assessed Rs. 4,000/- as the monthly net loss of income due to the deceased towards his family.

8. According to the Appellant, learned Tribunal while adjudicating the compensation has committed the following illegalities:

- (a) Wrong multiplicand (Rs. 4,000/-) was adopted,
- (b) Wrong multiplier (16) was applied,
- (c) Deductions on account of purported financial benefits derived by the claimants and also deductions made otherwise, and
- (d) Grant of paltry sum of Rs. 5,000/- as consortium and non-grant of any amount on account of loss of love and affection, mental pain, stress, strain, agony etc.

9. While taking Rs. 4,000/- as the monthly contribution of the deceased, learned Tribunal did not assign any reason therefor, whereas, the salary certificate duly proved into evidence, reveals that the deceased had received a salary of Rs. 14,900.20 in the month of August, 1997 as per the revision of pay, effected from 1.1.1997 and being an employee of "ONGC, was in the stable income group, having bright future prospects. In that view of the matter, learned Tribunal ought to have taken into consideration, his future prospects of life, while determining the multiplicand. In this context Mr. Somik Deb, learned Counsel for the Appellant referred following decisions:

- (i) In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Ors. paragraph 19 while determining the compensation, though the deceased was drawing a gross income of Rs. 1,032/-, his monthly income was taken as Rs. 2,000/- and for loss of dependency the

income was taken to be Rs. 1,400/- on account of the fact that he was in the stable income group,

(ii) In *Smt. Sarla Dixit and another Vs. Balwant Yadav and others*, referring its earlier decision in *Susamma Thomas (supra)*, the monthly contribution of the deceased was doubled by Hon"ble Supreme Court to Rs. 3,000/- from Rs. 1,500/- (gross monthly salary) on account of the fact that the deceased belonged to the stable income group.

(iii) In *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, the decision of *Susamma Thomas (supra)* was reiterated For convenience paragraphs 12 and 15 are reproduced as below:

12. For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of *G.M., Kerala S.R.T.C. v. Susamma Thomas*. In that case this Court culled out the basis principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed: (SCC p. 183, Para 13)

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

The principle was explained and illustrated by a mathematical example: (SCC pp. 185-86, Para 17)

The multiplier represents the number of years" purchase on which the loss of dependency is capitalized. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs. 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalize the loss of the annual dependency at 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.

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 realized that the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realized that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. 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. 3,500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where on 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  $\text{Rs. } 3500/7 = \text{Rs. } 500$  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  $\text{Rs. } 3500 - 1250 = 2250$  per month. This amount can be taken as the monthly loss to X's dependants. The annual dependency comes to  $\text{Rs. } 2250 \times 12 = \text{Rs. } 27,000$ . 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  $\text{Rs. } 27,000 \times 15 = \text{Rs. } 4,05,000$ . 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. 3,000 but now having regard to the fall in the value of the rupee, it can be raised to a figure of not more than Rs. 10,000. Thus the total comes to  $\text{Rs. } 4,05,000 + 10,000 = \text{Rs. } 4,15,000$ .

(iv) In *Shanti Bai and Others Vs. Charan Singh and Others*, and in *Grifan Vs. Sarbjeet Singh and Others*, the future economic prospects of the deceased were taken into consideration, while determining the quantum of compensation.

(v) In *Jyoti Kaul and Others Vs. State of M.P. and Another*, paragraph 5, it was held that not only the existing salary that the deceased was drawing, but also the additional sum payable to the deceased depending upon the nature of job in

which he was working, should also be taken into consideration, while working out the compensation. For reference relevant extract paragraph 5 is reproduced as below:

5. \*\*\*\*\* We find that there are different judgments by this Court giving different multipliers. This would depend on the facts and circumstances of each case. The multiplier system is sound in computing compensation is now well settled but what multiplier should be applied would depend on various circumstances. The age of the deceased, the age of the dependants, not only existing salary when he had, if any additional sum payable to the deceased depending upon the nature of job in which he was working, his chances of promotion, the life expectancy etc. Hence the multiplier is bound to change to some degree.

(vi) In U.P. State Road Transport Corporation Vs. Krishna Bala and Others, the earlier decision of the Supreme Court in Susamma Thomas (supra) and Trilok Chandra (supra) were considered and approved and it was observed in paragraph 13 as below:

13. In Susamma Thomas case, it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out. As the interest rate in on the decline, the multiplier has to consequentially be raised. Therefore, instead of 16 the multiplier of 18 as was adopted in Trilok Chandra Case appears to be appropriate. In fact in Trilok Chandra case after reference to the Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide, but cannot be said to be an invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independency earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age. see. New India Assurance Co. Ltd. Vs. Charlie and Another,

(vii) It has been submitted on behalf of the Appellant that from a conspectus of the judicial pronouncements indicated above, it is. clear that while determining the compensation payable to the family members of the decease, belonging to a stable income group having bright future and economic prospects, enhancements of the gross salary of the deceased by a substantial margin, have been made and in all these decisions, while determining the compensation, only the gross salary (and not the net salary) of the deceased have been taken into consideration.

10. According to the learned Counsel for the Appellant, the wife-claimant in her claim application asserted that the deceased was aged about 31 years (date of birth of deceased was 8:8.1966) which she reiterated in her evidence also. Therefore, the correct multiplier was to be applied in such a situation is 17 (and not 16). In a large number of decisions, it has been laid down that for deciding multiplier, the life expectancy is the prime-governing factor. In this context, the

following decisions have been referred:

(a) In *S. Chandra and Others Vs. Pallavan Transport Corporation*, the multiplier of 20 was selected after taking into consideration of the life expectancy in India in the year 1979.

(b) In *Urmilla Pandey and others Vs. Khalil Ahmad and others*, and in I (1993) ACC 345 (SC) the life expectancy in India was taken to be the governing factor for determining the multiplier.

(c) In *Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another*, the multiplier was determined, after taking into account the normal longevity of the Indians to be 70 years.

(d) In *A. Kumar Vs. Union of India and Others* the multiplier of 20 adopted by the Tribunal in case of the deceased who was aged about 24 years, was restored, after setting aside the judgment of the High Court.

(e) In *Jyoti Kaul and Others Vs. State of M.P. and Another*, after recording that the deceased was aged 50 years, Hon"ble Supreme Court upheld the application of multiplier of 15 in reference to the decision in *Susamma Thomas (supra)*. For convenience paragraph 3 of *Jyoti Kaul (supra)* is reproduced as below:

3. The Tribunal records that on the date of death, the said Araar Kishan Kaul was of 50 years and was in good health. Referring to his family history on longevity it further records, father expired at the age of 75 years, who also died in a road accident and his grandfather died at the age of 88 years. The mother of the deceased was still alive at the time of his death and her age then was 82 years. In view of the background the Tribunal records, had he not died he would lived up to the age of 75 years. Taking into consideration his chances of promotion, his increments and what he would have received after retirement the computation was done; on these facts coupled with the decision in (*Kusum Late Trivedi v. State of M.P. (1992) ACC 686 (MP)*), the Tribunal applied the multiplier of 15.

(f) In *Chinnama George and Others Vs. N.K. Raju and Another*, the multiplier of 20 applied by the Tribunal, was restored.

(g) In (2005) 11 SCC 387 *Chellammal and Ors. v. Kailasam and Anr.* paragraphs 2 and 3, the multiplier was applied, taking a queue from the prescriptions embodied under the second schedule of the Motor Vehicles, 1988. For convenience relevant extract paragraph 3 is reproduced as below:

3. \*\*\*\*\* As the age of the deceased at the time of his death was 41 years, according to the Second Schedule appended to the Motor Vehicles Act, 1988, the multiplier that could have been applied was 15 and not 12. Accordingly, we direct that the claimant shall be entitled to compensation viz.  $39,300 \times 15 = 5,89,500$  and that apart she will be entitled to a sum of Rs. 20,000 towards loss of companionship. The total compensation on account of death of the father of the deceased (sic deceased father) is thus fixed at Rs. 6,09,500 upon which interest

will be paid at the rate of 12 percent per annum from the date of the Petitioner till realization.

(h) In (2005) 12 SCC 190 Kanhaiyalal Kataria and Ors. v. Mukul Chaturvedi and Ors. paragraphs 2 and 3, after recording the age of the deceased to be 32 years, modified the award of the Tribunal by applying the multiplier of 17 as prescribed under the second schedule of the Motor Vehicles Act, 1988. According to learned Counsel for the Appellants the aforesaid decision squarely covers the case in hand. For convenience paragraphs 2 and 3 are reproduced as below:

2. The deceased was 32 years of age. He was a bachelor and was doing ice cream business. An award in the sum of Rs. 2,50,000 (Rupees two lakhs and fifty thousand) has been passed taking the multiplier of 16. Our attention has been drawn to the Second Schedule of the Motor Vehicles Act, 1988 in which we find that for age between 30 to 35 years multiplier of 17 has been indicated.

3. Learned Counsel for the claimants made submissions seeking enhancement of compensation on the ground that the income of the deceased has not been properly estimated. We are not going into any other aspect except the question of proper multiplier for computation of compensation. In our opinion, by taking the multiplier of 17, the amount of compensation deserves to be increased. The compensation amount may be suitably recomputed by the Tribunal by applying the multiplier of 17 and interest at the rate of 12 percent per annum on the increased amount be also granted.

(i) In *Supe Dei and Ors. v. National Insurance Company Ltd. and Ors.*, Supreme Court Accident and Insurance Claims Cases (1950-2005) in paragraph 8, the multiplier was adopted in strict conformity with the prescriptions embodied under the second schedule of the Motor Vehicles Act, 1988. For convenience paragraph 8 is quoted as below:

8. While considering the question of just compensation payable in a case all relevant factors including the appropriate multiplier are to be kept in mind. The position is well settled that the Second Schedule u/s 163-A to the Act which gives the amount of compensation to be determined for the purpose of claim under the Section can be taken as a guideline while determining the compensation u/s 166 of the Act. In that view of the matter, there is no reason why multiplier of 17 should not be taken as the appropriate multiplier in this case.

11. In respect of deductions on account of the financial benefits derived, according to the Appellant the wife-claimant has clearly deposed before learned Tribunal that she did not receive any financial benefit from the "ONGC" authorities or any other authority in reference to the death of her husband. In respect of non-deduction from the salary following decisions have been referred.

a) In (1998) 2 GLR 316 *Charu Barman and Ors. v. Satya Narayan Jiwanram and Ors.* after considering the decisions in (i) *Geethakumari and Others Vs. Rubber Board and Others*, (ii) *Saminder Kaur v. Union of India* 1987 ACJ 7 and (iii) *A.P.*



Dorairaj v. State of Madras 1974 ACJ 174 this Court has held that learned Tribunal was not justified in allowing the deduction from the salary which the claimant wife could have received or could receive on account of employment given to her on compassionate ground.

(b) In Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, . it was observed while computing the compensation for death in motor accident cases the life insurance amount, if any, received by heir on account of the victim's death could not be deductible. Common law principle of adjusting the pecuniary advantages coming from whatever source by reason of death was held to be interpreted in such cases as referring to pecuniary advantages coming on amount of accidental death and not other forms of death. Hence, provident fund, family pension, cash balance, shares, fixed deposits etc. cannot be termed as "pecuniary advantages" for the purpose of Motor Vehicles Act. The legislative intent and beneficial character of the legislation is to be taken into account for interpreting the provisions of Motor Vehicles Act.

(c) In United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., the earlier decision in Helen C. Rebello (Mrs.)(supra) was considered and affirmed and it was observed by Hon''ble Supreme Court that while awarding compensation under Motor Vehicles Act, the object is to save the dependents from being deprived of the source of their maintenance and, as far as possible, to provide them with the means as were available to them in pre-accident period. It has clearly been reiterated the earlier view of the Supreme Court that the amount received by the dependents on account of insurance policy of the deceased and amounts received by them under social security system have no correlation with the accidental death and are not to be deductible. Subsequently the Supreme Court has observed in Patricia Jean Mahajan v. United India Insurance Co. Ltd. (2001) 94 DLT 355 as below:

Therefore it is held 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 present one, which may fall in the category having special features or facts calling for deviation from the multiplier usually applicable.

(ii) The principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. In the absence of such correlation the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as the allowances paid to the children and the widow of the deceased under the social security system are concerned, let a notice of motion issue calling upon the Respondents to show

cause as to why a rule shall not be issued as prayed for; and/or as to why such further order or other orders shall not be passed as to this Court may seem fit and proper. Correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. Therefore, it is not possible to allow any deduction as pressed by the Insurance Company on account of receipts of insurance policy and social security benefits received by the claimants.

(d) In this context paragraph 97 of volume 34 of Halsbury's Laws of England, Fourth Edition was referred as below:

In assessing damages in respect of a person's death in an action under the Fatal Accidents Act, 1976, no account is to be taken of any insurance money, benefit, pension or gratuity which has been or will or may be paid as a result of the death.

(e) It would also be relevant to make reference to the case reported as (1960) 1 All 169 *Schneider v. Elsovitch*. Same v. Same at page 176, whereunder it was observed that the amount payable on account of insurance, cannot be deducted from the sum payable under the Fatal Accident Act. The relevant portion is extracted herein below:

It was submitted that from the sum of ₹7200 there must be deducted ₹ 549 since after the deceased's death his father took the business over, paying nothing for it but discharging all the debts and the debts exceeded the only due by ₹ 549, a sum which, it was argued, the Plaintiff would have had to pay if the business had not been taken over. His Lordship did not think that argument was a valid one. If one disregarded the various factors which had to be disregarded in assessing an award under the Fatal Accidents Acts, 1846 to 1959, such as insurance, the estate was a bankrupt estate although it was not bankrupt when these factors were taken into consideration.

12. According to the Appellant in respect of granting of paltry sum as consortium and non-grant of any amount on account of loss of love and affection, mental pain, stress, strain, agony etc.: learned Tribunal granted a paltry sum of Rs. 5,000/- as consortium. Further, learned Tribunal did not grant any amount on account of loss of estate, love and affection, mental pain, stress, strain, agony etc. On these two counts, the claimants were entitled to Rs. 30,000/- in total.

a) In reference to this context *Susamma Thomas* (supra) paragraph 19 has been referred wherein above proposition has been dealt with. For convenience relevant extract of paragraph 19 is reproduced as below:

\*\*\*\* 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. 1,400 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. 17,000x12 = Rs. 2,03,000) 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. On behalf of the Respondent-Insurance Company, Mr. P. Gautam, learned Counsel has placed reliance on the following decisions of the Supreme Court. In the Division Bench of Hon''ble Supreme Court:

(a) In 2006 AIR SCW 1116 Bijoy Kumar Dugar v. Bidyadhar Dutta and Ors. while, considering the earlier cases of Supreme Court in Susamma Thomas (supra) and Sarla Dixit (supra), it has been observed that in respect of calculating the compensation in Motor Accidents Act, the earning of the deceased at the time of death is to be taken as the relevant factor and for the future earnings cannot be considered unless all relevant facts are proved by reliable and cogent evidence and in the relevant case the unmarried deceased aged about 24 years was shown to have earning of Rs. 4,000/- per month and since no evidence was produced as to future prospects of income and the claimant's father and mother aging between 45-50 years, in such circumstances, taking annual dependency at Rs. 28,800/- and awarding compensation by applying multiplier of 12 was treated to be just and proper.

(b) In Asha and Others Vs. United India Insurance Co. Ltd. and Another, the Supreme Court has held that net salary of the deceased after making deductions has to be taken into consideration while computing loss of dependency of the claimants and it has also been held that dependents would be receiving the net amount less 1/3 rd for personal expenses of the deceased.

(c) In Ashwani Kumar Mishra Vs. P. Muniam Babu and Others, the Supreme Court while considering its earlier decision in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, as below:

9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecunniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of

expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

It was further held that whenever a trial court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. However, all such elements are required to be viewed with objective standards. While assessing damage, the court cannot base its opinion merely on speculation or fancy though conjectures to some extent are inevitable.

14. In view of the above reference, learned Counsel for the insurance company has started that the deductions were correctly made by learned Tribunal and after deducting one time measure, washing allowance, conveyance allowance payable to the deceased, the net amount towards the salary and after deducting the tax etc. payable from it, the amount of Rs. 4,000/- as a loss of income per month was the correct amount multiplicand used for calculating the compensation.

15. I have heard learned Counsel for the parties, perused the documents and I have also gone through the judgments referred to by the parties. Undisputedly, the deceased was drawing salary Rs. 14,900/- per month for which a certificate regarding details of salary drawn was placed before learned Tribunal for consideration, wherein, out of total amount of Rs. 14,900/- an amount of Rs. 1086 was shown to be quality incentive to be given to the deceased as one time measure. Apart from others, Rs. 2860/- was also shown to be O.T.A. as one time measure. Therefore, these amounts cannot be a part of the net salary. In the salary certificate, basic pay was shown as Rs. 6,100 and other allowances were also shown including D.A., DSCA, RLA, N.E.A. etc. It has been specifically indicated in the deposition of Smti. Asha Dey that she did not receive any financial help from "ONGC authorities or any other authorities i.e., she has also not received any amount towards the insurance policy. There is no evidence that any amount as income tax was being deducted from his salary. Therefore, in view of decisions referred above, it is clear that any deduction in the name of income tax or insurance policy on the assumption alone cannot be believed for finalizing net payable salary to the deceased. The washing allowance of Rs. 62.50P, conveyance allowance of Rs. 580.00P and productivity allowance of Rs. 300.00P are also not to be treated as part of net salary as such are to be deducted from the gross salary for the purpose of calculating the net loss of dependency. Therefore, the salary of the deceased at the time of death was to be calculated only by deducting (Rs. 2,860 + 1,086 + 62.50 + 580 + 300) - Rs. 4888.50P from the total salary of Rs. 14,900/-. Undisputedly also the deceased at the time of his death was 31 years and, therefore, the correct multiplier was to be made applicable as 17. Since the life expectancy and future prospect were not specifically argued before learned Tribunal and neither any cogent material nor evidence was produced before learned Tribunal or before this Court also to

that effect. The future earnings cannot be considered unless all the relevant points and factors are argued and proved for and on behalf of the claimants on reliable and cogent evidences and materials. Therefore, future earning and 1 hire income of deceased in the present case could also not been taken into consideration.

16. In totality of the facts and circumstances, the amount payable to the claimant-wife, children and the mother of the deceased are to be indicated by deducting Rs. 4888/- from the total salary of Rs. 14,900/- an amount of Rs. 10,012/- is available and after calculating 1/3rd of Rs. 10,012/- i.e. Rs. 3,337/- to be taken as an amount spent on deceased per month leaving a balance of Rs.  $10,012 - 3,337 = \text{Rs. } 6,675/-$  per month, to be taken as monthly loss to the dependents of the deceased. Thus, the annual dependency comes to Rs.  $6,675 \times 12 = \text{Rs. } 80,100/-$ . 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 dependents. Taking the age of 31 years at the time of death it is necessary to take a correct multiplier of 17 as provided in the Schedule of "M.V. Act". Thus, the compensation comes to Rs.  $6,675 \times 12 \times 17 = 13,61,700/-$ . To this an amount of Rs. 15,000/- is to be added as conventional amount keeping in view the facts and circumstances of the case. Thus, the total amount of compensation comes to Rs.  $13,61,700 + 15,000 = \text{Rs. } 13,76,700/-$  which shall carry interest at the rate of 7% per annum with effect from 17.09.1997.

17. The above amount along with interest has to be paid to the wife Smti. Asha Dey, the children of Late Kartick Chandra Dey, namely, Sri Biswajit Dey, Sri Abhijit Dey and Sri Prasenjit Dey as well as Smti. Nani Bala Dey, the mother of the deceased. Smti Nani Bala Dey will get 40% of the total amount, i.e. Rs. 5,50,680/- along with proportionate interest and the remaining 60% i.e. Rs. 8,26,020/- along with proportionate interest shall be paid to the wife and children of the deceased. Out of 60% of the awarded sum along with proportionate interest, the three children i.e. Sri Biswajit Dey, Sri Abhijit Dey and Sri Prasenjit Dey shall get their shares Rs. 2,06,505/- each and the balance amount with interest shall be paid to their mother claimant, Smt. Asha Dey. Out of each shares of children the remaining additional amount over and above Rs. 1,50,000/- as bifurcated for children in terms of the judgment and award dated 17.08.2001 of learned Tribunal (the amount already supposed to be deposited with UCO Bank, Gauhati High Court Extension counter as per direction of the learned Tribunal) shall be payable to the children through account payee Cheques. Out of 40% of the awarded sum i.e. Rs. 5,50,680/- along with interest, 50% of the said amount shall be kept in a fixed deposit in the name of Smt. Nani Bala Dey in the aforesaid Bank in such a manner that she may get quarterly or half yearly interest therefrom and the balance amount shall be paid to her with the permission of learned Tribunal. The amount deposited in the Bank shall not be withdrawn without the permission of learned Tribunal. The United Insurance Company shall deposit the above awarded amount after deducting the amount already deposited before learned Tribunal. The above amount shall have

to be deposited by the concerned Insurance Company within three months from the date of this order else interest at the rate of 11% shall have to be paid.

18. In view of the above observations and directions, these two MAC Appeals are allowed. No order as to costs.