

(2006) 05 GAU CK 0010
In the Gauhati High Court
Case No : Writ Petition (C) No. 113 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

Sandhya Rani Debbarma and Others

RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149(2), 168, 173

Citation : (2008) GLT 874 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : A. Lodh, for the Appellant; S. Deb and B. Debnath, for the Respondent

Final Decision : Allowed

Judgement

A.B. Pal, J.—The short question to be considered in this case is whether the quantum of compensation and the principle employed for working out the same can be called into question by the insurer of the vehicle involved in the accident in a proceeding under Article 227 of the Constitution on the face of restrictions embodied in Section 149(2) of the Motor Vehicles Act (for short, "the Act") and the ratio laid down on this issue by the Apex Court and several other High Courts.

2. I have heard Mr. A. Lodh, learned Counsel for the Petitioner-Insurer Company and Mr. S. Deb, learned Sr. counsel assisted by Mr. B. Debnath, learned advocate for the Respondents.

3. On 14.11.03, Ranjit Debbarma, a Jr. Engineer under the Government of Tripura was traveling by a jeep TR-01-3476. The said vehicle met an accident due to head-on collision with a Bus bearing No. TR-01 -1286 on Assam-Agartala road. Ranjit succumbed to the injuries sustained by him. He is survived by wife, two minor daughters, one minor son and father who claimed compensation to the tune of Rs. 33,45,000/-. The learned Tribunal adopted multiplier method of

calculation by choosing 17 as the multiplier after determining the age of the deceased being 31 years 4 months on the date of accident. Though in the claim petition Rs. 10,020/- was shown to be the monthly income of the deceased, the learned Tribunal on the basis of the salary certificate issued on 14.11.05 held that Rs. 13,540.50 p. was the salary of the deceased on 14.11.05 and then proceeded to determine the total amount of compensation. Though Rs. 10,020/- was the gross salary of the deceased on the date of his death, but considering his prospect of advancement in future career, Rs. 13,500/- was taken to be average gross future income of the deceased from which one-third was deducted to determine the average loss of dependency which was wrongly brought down to Rs. 10,000/- (Correct amount is $13,500/3 = 4,500$; Rs. 13,500- Rs. 4,500 = Rs. 9,000/-). Then surprisingly, the Tribunal again proceeded to work out prospect of future advancement and made a guesswork to re-determine the monthly earning of the deceased at the end of his career had he died a natural death. Rs. 20,000/- was then taken to be the probable monthly earning at the end of his career. With that amount, Rs. 20,000/- Rs. 13,500/- was added (though Rs. 10,020/- was the gross income at the time of his death) and the figure arrived at was Rs. 20,000 + Rs. 13,500 = Rs. 33,500/- which was divided by 2 to again advance the average monthly income at Rs. 16,750/-. From that amount, Rs. 1,000/- only (not one-third of Rs. 16,750/-) was deducted towards payment of Income Tax, Professional Tax and personal expenses and thus, the average amount of monthly dependently came to Rs. 15,800/- (the correct figure should be 15,750). The said amount was multiplied by 12 and 17 which shot up the figure to 32,23,200/-. With that amount, Rs. 2,000/- on account of funeral expenses, Rs. 25,000/- on account of loss of consortium and Rs. 2,500/- on account of loss of estate were also awarded to make the final amount at Rs. 32,52,700/-. Aggrieved, the National Insurance Company Ltd. being the insurer approached this Court by means of this writ petition under Article 227 on the ground of wrong application of the multiplier method ignoring the settled legal principle of uniform application of multiplier method and abnormally excessive amount of compensation arrived thereby.

4. Apparently, the aforesaid grounds of challenge which have been adumbrated in the present writ petition being related to quantum of compensation are beyond the scope of Section 149(2) of the Act. Because of the constriction so imposed by that section, the insurer has chosen to invoke the supervisory jurisdiction of this Court, the doors of appellate Court being firmly closed. It is no longer resintegra after a line of decisions on the issue by the Apex Court that the grounds which are not legally available to the insurer for filing an appeal cannot be taken to be the basis for invoking the supervisory jurisdiction of this Court under Article 227. But the finer question of law is where none of the grounds permitted u/s 149(2) of the Act has been taken as ground for the purpose of approaching this Court under Article 227 for setting at right alleged perversity, gross infirmity and infraction of settled legal principles which constitute parameter of the Tribunal, whether plenary powers of a writ Court can be kept at

bay in the name of the restrictions and limitations imposed by Section 149(2) of the Act.

5. It is the submission of learned Counsel for the Respondents that in view of the ratio laid down by the Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, which came to be the latest law on the issue, it is not open to the Insurer to approach the supervisory jurisdiction of the High Court under Article 227 of the Constitution to put under challenge the amount of compensation or the principles employed for determining the same. Learned Counsel for the Petitioner, however, controverted this submission by advancing an argument that the supervisory powers under Article 227 being plenary powers of the Court it would be an absurd proposition to say that even in the case of gross perversity and shocking illegality the Court would be powerless to interfere to ensure that justice prevails.

6. Before advertng to the above rival contentions on the question whether a writ petition by the insurer is at all maintainable in the above premises, it may be convenient for this Court to notice the settled legal principles ordained to be followed by all the Tribunals and the Courts in determining the just and reasonable amount of compensation in a case such as this. After the Motor Vehicles Act was amended in 1994, the most important decision of the Supreme Court in the field was rendered in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, It has been observed there that the most common practice or method of assessing the loss suffered is to work out the loss of a year and then to capitalize the amount by a suitable multiplier. As the Tribunals and High Courts adopted divergent methods to determine the multiplier and multiplicand and Supreme Court proceeded to lay down the correct principles to be uniformly adopted by all the Courts and Tribunals. The decision in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, came to be discussed in formulating a uniform principle appearing in Para 12 which is quoted 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 SRTC v. Susamma Thomas*. In that case this Court culled out the basic 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: (SCCp.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 con-sumed-up over the period for

which the dependency is expected to last.

(emphasis supplied)

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 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.

Deriving assistance from two more decisions in Davies and Nance, the uniform method evolved in Para 15 reads as under:

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 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: male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs. 3500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make $2 + 2 = 4$ units and each minor one unit i.e. 3 units in all, totaling 7 units. Thus the share per unit works out to $\text{Rs. } 3500/7 = 500$ 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 expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs. 250. Thus the amount spent on the deceased X works out to Rs. 1250 per month leaving a balance of Rs. 3500-1250 = Rs. 2250 per month. This amount can be taken as the monthly loss to X's dependants. The annual dependency comes to Rs. 2250? 12 = Rs. 27,000. This annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependants. Take the appropriate multiplier to be 15. The compensation comes to Rs. 27,000?15 = Rs. 4,05,000. To this may be added a conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs. 3000 but now having regard to the fall in the value of the rupee, it can be raised to a figure of not more than Rs. 10,000/-. Thus the total comes to Rs. 4,05,000 + 10,000 = 4,15,000.

7. It would appear from above decision that multiplier method has been held to be the most acceptable and sound method which no Court or Tribunal can overrule or ignore as that would amount to defying the ratio laid down by the Apex Court. The parameters of a Court or Tribunal are undoubtedly determined by law and decisions of the Supreme Court which cannot be allowed to be infringed. The multiplier method which the Tribunal in the present case has applied, but wrongly, involves ascertaining of the multiplier and multiplicand correctly. A wrong multiplicand or a multiplier may result in abnormally high or low amount or years of dependency. The multiplier method firmly and inevitably involves deduction of two units on account of personal expenses of the deceased or one-third of his income on that count. If these principles of (i) correct ascertainment of multiplier and multiplicand and (ii) deduction of two units or one-third of gross income are not followed strictly but are replaced by subjective elements to assess an abnormal amount, low or high, it cannot be said that the multiplier method has been correctly understood and applied by the Tribunal constituting thereby infraction of the ratio laid down by the Apex Court.

8. In Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , the Apex Court reiterated the principles of the multiplier method one of the essential elements of which is to deduct from the net income of the deceased such part of his income as the deceased was accustomed to spend upon himself for self-maintenance and pleasure. The relevant observations made in paras 8 to 10 reads as follows:

8. 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.

9. 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 therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of years purchase.

10. 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.

(emphasis supplied)

In the case on hand, the average monthly gross income after double advancement was assessed at Rs. 16,750/- from which only Rs. 1,000/- was deducted for taxes, self-maintenance and pleasure of the deceased which in my view is a gross perversity because of its fanciful subjectivity, irrationality in total disregard of the ratio noticed above. It amounts to stepping out of its parameter by the Tribunal.

9. Coming to the question of maintainability, *Sadhana Lodh* (supra) came to be the foundation to throw the challenge that it is not open to the insurer to take up the issues like quantum and method of compensation in a writ proceeding. Before discussing the law on the subject the Supreme Court summed up the question which was considered as under:

Learned Counsel appearing for the Appellant urged that in view of the fact that u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") a remedy by way of appeal to the High Court is available to the insurer against an award given by the Tribunal and therefore, the filing of a petition under Article 227 of the constitution was misconceived and deserved dismissal and the High Court ought not to have entertained and decided the writ petition on merits. We find merit in the submission. *National Insurance Co. Ltd. Vs. Soma Devi and Others*,

10. In view of the legal position that the extent of right of appeal available to an insurer u/s 173 of the Act and the corresponding limitation upon the insurer not being able to extend that right or enlarge its scope in view of the restriction and specified defences as available u/s 149(2) of the Act, the Apex Court observed in Para 6 of the judgment which is reproduced below:

The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged

by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by tire Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided u/s 149(2) of the Act. See National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Even where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court u/s 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court u/s 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of an illustration, where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision u/s 115, Civil Procedure Code, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court u/s 115, Civil Procedure Code, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 226 of the Constitution. National Insurance Co. Ltd. Vs. Soma Devi and Others,

11. The above proposition of law has set at rest any controversy about maintainability of a petition u/s 226/227 of the Constitution relating to quantum of compensation. But that has not taken away the plenary powers of the writ Court to interfere with an award which is a complete perversity or a nullity for infraction of the settled legal principle to be employed in determining the just amount of compensation as contemplated by Section 168 of the Act. In National Insurance Co. Ltd. Vs. Soma Devi and Others, a full Bench of High Court of Himachal Pradesh elaborately discussed several decisions of the Apex Court on the issue and made the following observation in Para 12 which reads thus:

12. The aforesaid proposition of law thus sets at rest any controversy, or doubt about the maintainability of any such petition under Articles 226 or 227 of the Constitution and, therefore, the Division Bench Judgment of this Court in United India Insurance Co. Ltd. Vs. Sumitra Devi and Others, taking a view contrary to the aforesaid view of the Apex Court, is hereby overruled. The overruling of the judgment in Sumitra Devi, or for that matter reliance placed by us (in doing so) upon the ratio in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, does not and cannot mean that, apart from an award based on any question relating to the quantum of compensation not being liable to be

challenged by an insurer in a petition filed under Articles 226/227 of the Constitution of India, the doors of this Court are always completely shut to a person, including an insurer, in invoking this Court's extraordinary jurisdiction under Articles 226/227 of the Constitution where such a person, including an insurer satisfies this Court that the award is a complete perversity, or a nullity in the eyes of law, or that either the Tribunal has had no jurisdiction in passing the award, or the award has been passed on grounds and for reason which, on the touchstone of any constitutional or legal provision or even a provision in common law, cannot stand judicial scrutiny. For instance, where an insurer approaches this Court by filing a petition under Articles 226/227 of Constitution of India assailing an award of the Tribunal on the ground that, contrary to all principles as are found in the law of Torts or those relating to fixing tortious liability, the claimant had no cause to prefer any claim at all, or that there was no wrong done by any one, not the least by the insurer Respondent, as far as the alleged causing of the alleged injuries or for that matter even the factum of the accident was concerned. For instance, in a case like C.W.P. No. 679 of 2001 (which is one of the cases referred to this Full Bench for consideration) where a truck driver while driving a truck died because of a mishap not attributed to any one else, and despite admitted case of the legal heirs of the deceased truck driver that this accident did not occur on account of any rashness or negligence of anyone (because no other vehicle or no other person was involved in the causing of this mishap), the claim petition was nonetheless filed by the legal heirs of the deceased truck driver against the insurer Respondent (and the insurer of the truck alone was made the sole Respondent in the claim petition), and despite the insurer Respondent raising the objection as to the maintainability of the claim petition and the Tribunal having actually framed an issue to that effect, an award was nonetheless passed against the insurer.

(emphasis supplied)

12. Thus, *Sadhana Lodh* (supra) cannot and has not shut all doors to a person including an insurer who has always the liberty to invoke supervisory powers of this Court under Article 227 of the Constitution to step in where an award is gross perversity, nullity, without jurisdiction being infraction of the settled, time honoured legal principle. The said High Court made reference to the judgment of the Apex Court in *United India Insurance Co. Ltd v. Rejendra Singh* reported in 2000 ACJ 1032 (SC), laying down the principles to be adopted in dealing such a situation particularly regarding the supervisory powers of the High Court which is profitably quoted below:

For a High Court in India to say that it has no power even to consider the contention that the awards secured are the by-products of stark fraud played on a Tribunal, the plenary power conferred on the High Court by the Constitution may become a mirage and people's faith in the efficacy of the High Courts would corrode. We would have appreciated if the Tribunal or at least the High Court had considered the pleas and found them unsustainable on merits, if they are

meritless. But when the Courts pre-empted the insurance company by slamming the doors against it, this Court has to step in and salvage the situation.

Thus, the Tribunal refused to open the door to the Appellant company and the High Court declined to exercise its writ jurisdiction which is almost plenary for which no statutory constrictions could possibly be imposed. If a party complaining of fraud having been practiced on him as well as on the Court by another party resulting in a decree, cannot avail himself of the remedy of review or even the writ jurisdiction of the High Court, what else is the alternative remedy for him? Is he to surrender to the product of the fraud and thereby become a conduit to enrich the imposter unjustly? The learned Single Judge who indicated some other alternative remedy did not unfortunately spell out what is the other remedy which the Appellant insurance company could pursue with.

13. It is, thus, clear that where on the face of it, an award is a perversity due to gross non-observance of the settled legal principle in determining the just amount of compensation, it can be said that the Tribunal has not acted within its parameters calling for interference by the High Court in exercise of its plenary supervisory powers.

14. Mr. Deb has brought to my notice two decisions of this Court rendered on the basis of *Sadhana Lodh* (supra) by a Division Bench in W.A. No. 33 of 2003 disposed of on 07.10.2004 and in a bunch of three cases in W.P. (C) No. 199/03, W.P. (C) No. 444/2000 and W.P. (C) No. 561/2000. In both the judgments the challenge in pith and substance by the insurer was against the amount of compensation. The Division Bench in the above noted case held that something more than mere error in calculation of compensation is necessary in view of the decision of *Sadhana Lodh* (supra). Thus, the appeal as well as writ petitions were dismissed the quantum of compensation being only the target of attack.

15. The legal principles on the method of calculation as well as the restrictions from the insurer to challenge an award having been set out above it may now be seen whether the method of calculation employed by the learned Tribunal in the case on hand can be said to be in violation of the settled principles noticed above. Para 11 of the impugned judgment contains the method of calculation and the amount arrived at which for convenience is quoted below:

11. Now coming to the next question as to the quantum of compensation, we may take the help of the second Schedule of the M.V. Act. In doing so we are to fix the exact age of the victim. The P.M. examination report as noted above shows that he was at the age of 33. The Tripura Board of Secondary Education Admit Card in original shows that his date of birth is 03.07.1972. It is needless to say that the age noted in the P.M. examination report is not based on any document but a rough assessment of the physician. The Admit Card is strong base of ascertaining the age. So this Court likes to emphasize the age on the basis of the said Admit Card. On calculation his age as on 14.11.2003 comes to 31 years 4 months. So, the multiplier shall be 17. A copy of A.G.'s calculation on

the pay structure of the deceased has been filed by the claimant's side being latest position of his income, but the A.G's report though shows a pay structure was only the information on the basis of which the department has issued the salary certificate afresh bearing No. 7303 dated 14.11.05 which shows the total gross income of the deceased per month to Rs. 13,540.50p.. So, the calculation comes to Rs. 13,540.50, say $13,500 \times 12 \times 17 = \text{Rs. } 27,54,000/-$.

It is to be kept in mind that the deceased lost his life at the early part of his service career and that he was more or less in a stable job and considering the prospect of advancement in future career, more particularly where the deceased being scheduled tribe was supposed to get promotion out of turn in future career, the proper higher estimate of monthly income of Rs. 13,540.50- say Rs. 13,500/- as gross income to be taken an average gross future income of the deceased and deducting at least one-third therefrom by way of personal living expenses had he survived, the loss of dependency could be capitalized by adopting the multiplicand of Rs. 9,734/- say Rs. 10,000/- per month i.e. Rs. 1,20,000/-(Rs. 10,000 $\times$ 12) per year. This figure could be capitalized by adopting the multiplier of 17. If his gross monthly income would have shot upto to at least double than what he was earning at the time of his death upto Rs. 10,000 $\times$ 2 = Rs. 20,000/- per month had he survived in life and had successfully completed his future career till the time of superannuation the average gross future monthly income could have arrived at by adding the actual gross income at the time of death i.e. Rs. 12,500/- per month to the maximum which he would have otherwise got had he not died a premature death i.e. Rs. 20,000/- per month and dividing that figure by 2. Thus, average gross monthly income spread over his entire future career, had it been available would work out to Rs. 20,000/- + Rs. 13,500 divided by 2 = Rs. 16,750/-. This is the average amount of income available to the family of the deceased had he survived as a breadwinner. From that gross monthly income at least an amount will have to be deducted by way of his personal expenses and other liabilities like payment of professional tax/Income tax etc, if any, that would roughly work out to Rs. 1000/- per month. Deducting the same from his average gross earning of Rs. 16,750/- minus Rs. 1,000/- = Rs. 15,750/- can be rounded upto Rs. 15,800/- would have been his average amount available to the family of the deceased and thereby after multiplied by 17, the quantum of compensation comes to Rs. 15,800 $\times$ 12 $\times$ 17 = Rs. 32,23,200/-. Besides this the claimant No. 1 shall be entitled to funeral expenses of Rs. 2000/-, loss of conventional consortium of Rs. 25,000/- and loss of estate of Rs. 2,500/- making the total amount of compensation of Rs. 32,52,700/-.

(emphasis supplied)

16. It would appear from above methodology applied by the learned Tribunal that firstly the average gross future monthly income was determined at Rs. 13,500/-, though at the time of death on 14.11.03 the deceased had his monthly salary only Rs. 10,020/-. Then, deducting one-third therefrom, the multiplicand came down to Rs. 10,000/- per month and Rs. 1,20,000/- per year. If this amount is

capitalized by the multiplier 17, the value of dependency including future advancement comes to Rs. 20,40,000/-. This amount if kept in a fixed deposit account and the rate of interest is taken to be only 6 percent per annum, the annual interest of Rs. 1,00,000/- would be Rs. 6,000/- or Rs. 5,00/- per month. Thus, Rs. 20,40,000/- would fetch more than Rs. 10,000/- per month which is equal to the monthly dependency worked out by the learned Tribunal. This could have been the end of the methodology. But the Tribunal proceeded further for a second round assessment and guessed that the income would have been double the amount he was getting at the time of his death i.e. Rs. 20,000/- per month had the deceased survived and successfully completed his future career. With this prospective amount of Rs. 20,000/- he added another prospective amount of Rs. 13,500/-(enhanced future gross monthly income) making it Rs. 33,500/-. Dividing this amount by 2, the Tribunal arrived at Rs. 16,750/- which has been held to be the average amount of monthly income throughout the period commencing from the date of death when monthly salary of the deceased was only Rs. 10,020/- and monthly dependency by deducting one-third therefrom was less than Rs. 7,000/-. The Tribunal has not recorded anything to justify this methodology of second round assessment after the first round, advancing the gross monthly income from Rs. 10,020/- to Rs. 13,500/- as the gross monthly future income. Again, no clarification is available why this enhanced amount of Rs. 13,500/- was taken as the base amount for adding it with Rs. 20,000/- for working out second time the average future monthly income by dividing the added value with 2 to arrive a Rs. 16,750/-. Such method of stepping up prospective income and value of dependency in more than one round is unknown to any norms and contrary to any principle hitherto firmly established. From the gross average monthly income of Rs. 16,750/-, the learned Tribunal deducted only Rs. 1,000/- towards taxes and personal expenses though the same should have been at least one-third of Rs. 16,750/- i.e. Rs. 5,600/-. Such deduction of one-third or two units of the income on account of personal expenses of the deceased has become the settled principles of law as noticed above in *Trilokchand* (supra) and *Sushma Thomas* (supra). If this one-third amount is deducted, the monthly dependency comes down to Rs. 11,150/- (Rs. 16,750 - Rs. 5,600/-). Multiplying the same by 12 and 17, the total amount comes to Rs. 22,74,600/-. But ignoring the principles of deduction on personal account as laid down in *Trilokchand* (supra), the learned Tribunal has awarded a grossly absurd amount of Rs. 32,52,700/-. The learned Tribunal has not taken into consideration the other firmly settled principle that while determining the just amount of compensation it has to be kept in view that the amount receivable from investment of the compensation money as well as the amount of compensation should be consumed fully during the period of dependency.

17. In view of the fact that the deceased had a suitable job under the Government, it is not inappropriate to take into consideration the prospects of the future in estimating the gross average income as has been done by the learned Tribunal at Rs. 20,000/- per month at the end of his career. The amount

of salary was, however, only Rs. 10,020/- on 14.11.2003 when the accident had occurred. In order to work out the monthly average, the sum of Rs. 20,000/- + Rs. 10,000/- + Rs. 30,000/- is to be divided by two to get the figure Rs. 15,000/-. Deducting one-third therefrom on account of personal expenses the monthly dependency comes to Rs. 15,000 - 5,000 = 10,000/- and annual dependency to Rs. 10,000/- $\times$ 12 = Rs. 1,20,000/-. Multiplier being 17 the total dependency should be 1,20,000/- $\times$ 17 = 20,40,000/- exactly the same figure the Tribunal worked out in the first round of assessment as noticed above. It would thus appear that by not deducting one-third from the income towards personal living expenses, the learned Tribunal exceeded its parameters delineated by the ratio in Sushma Thomas (supra) and Trilokchand (supra). In Para 19 of Sushma Thomas (supra), the Apex Court held that though personal expenses depends on the style of living which may be Spartan or bohemian, it is not unusual to deduct one-third of the gross income towards personal living expenses. But, instead of deducting Rs. 5,000/- being one-third of the gross average income per month, the Tribunal deducted only Rs. 1,000/- without assigning any reason therefor. Thus, both in making the assessment of loss of income and deducting on account of personal expenses the learned Tribunal has reduced into shreds the well settled principles of assessment seen above which undoubtedly amounts to gross perversity and violation of its parameters. In a case, such as this the High Court, in exercise of its supervisory jurisdiction has to step in to correct the wrong and absurdity which exercise in my opinion has not been prohibited by Sadhana Lodh (supra).

18. The upshot of the above discussion is that the learned Tribunal has in the case on hand committed serious infraction of the settled principles of multiplier method of making assessment of dependency as firmly laid down by the Apex Court. By deducting only Rs. 1,000/- instead of one-third of the gross average income and by second round of double enhancement on account of future prospects, the Tribunal apparently stepped out of its parameters.

19. For the reasons and discussions aforementioned, this writ petition has merit and the same is allowed modifying the award to Rs. 20,40,000/- (rupees twenty lakhs forty thousand) only. As this amount would fetch perpetually more than Rs. 10,000/- per month by way of interest @ 6% per annum without consuming the principal sum during the period of dependency, no further award on any other count is called for. As regards the liability to pay, extent of share, investment and interest as ordered by the learned Tribunal the same shall be proportionate to the modified amount awarded hereby. No. cost.