
(2015) 03 DEL CK 0305
In the Delhi High Court
Case No : Mac. App. 655/2014

Shriram General Insurance Co. Ltd. APPELLANT
Vs
Maneesha Karnatak and Others RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, 166, 168, 2 (c)

Citation : (2015) 03 DEL CK 0305

Hon'ble Judges : G.P. Mittal, J.

Bench : Single Bench

Advocate : K.L. Nandwani, Sameer Nandwani and Manish Kaushik, for the Appellant; Harsh Vardhan, Advocates for the Respondent

Judgement

G.P. Mittal, J.—The appeal is directed against the judgment dated 20.05.2014 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs. 29,70,000/- was awarded in favour of Respondents No. 1 and 2 for the death of Saurabh Karnatak, a bachelor who suffered fatal injuries in a motor vehicular accident which occurred on 28.07.2012.

2. The following contentions are raised by the learned counsel for the Appellant Shriram General Insurance Company Limited:-

(i) The Claims Tribunal found contributory negligence on the part of the driver of the Alto car; in spite of this, the entire liability was fastened on the owner and insurer of the other vehicle i.e. the truck bearing registration no. HR-38J-7610;

(ii) There was no evidence with regard to deceased's future prospects; in spite of this, addition of 50% was made towards the same which was not permissible. Reliance is placed upon Reshma Kumari and Others Vs. Madan Mohan and Another, ; and

(iii) The appropriate multiplier is always as per the age of the deceased or the Claimant whichever is higher. In the instant case, the multiplier ought to have been adopted as per the age of the Claimants. The Claims Tribunal erred in

adopting the multiplier as per the age of the deceased.

3. On the other hand, learned counsel for Respondents No. 1 and 2 supports the impugned judgment. He states that the compensation awarded is just and reasonable. It is urged that it was not a case of contributory negligence but rather of composite negligence on the part of the driver of the Alto car bearing registration no. UP-16-AH-4879 and the truck bearing registration no. HR-38J-7610. He states that in case of composite negligence, the victim can recover the compensation from either or any of the tortfeasors.

NEGLIGENCE

4. The Claims Tribunal found negligence on part of the drivers of both the vehicles which is not challenged by the Appellant. The victim was a third party travelling in the Alto car. In *Bherlal v. Kamal Singh*, (2005) 2 TN MAC 39 (Mad), it was held by the Madras High Court that in case of composite negligence, a third party travelling in one of the vehicles will not be guilty of contributory negligence.

5. Further, in *T.O. Anthony Vs. Karvarnan and Others*, , it was held that where a person is injured on account of negligence on the part of two or more wrongdoers, each wrongdoer will be jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of the wrongdoers. In para 6, the Supreme Court held as under:-

"6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrongdoer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence." 6. Thus, the Claims Tribunal's finding making the insurer of truck bearing registration no. HR-38J-7610 liable to pay the entire compensation cannot be faulted.

COMPENSATION

7. Deceased Saurabh Karnatak had obtained a degree in Bachelor of Science

(Hospitality and Hotel Administration) from Indira Gandhi National Open University. He thereafter joined Barclays Services Pvt. Ltd. In pursuance of the appointment letter dated 08.02.2010, he was given a salary of Rs. 17,500/- per month or Rs. 2,10,000/- per annum which included certain allowances like HRA, special allowance, voice allowance, medical allowance, provident fund and performance incentives. National Insurance Company Ltd. Vs. Indira Srivastava and Others, , held that all the allowances beneficial to the family have to be taken into consideration for computation of income of the deceased. The reasoning in taking the entire income of the deceased which was for the benefit of his family to compute the loss of dependency, to my mind, cannot be faulted.

FUTURE PROSPECTS

8. As far as grant of future prospects is concerned, the deceased joined on the salary of Rs. 17,500/- per month in the year 2010. His salary remained the same even after two years when this accident took place. There is no evidence whatsoever produced by Respondents No. 1 and 2 to show that the deceased had bright future prospects. In the absence of any increment for two years and in the absence of any evidence that the deceased had bright future prospects, addition towards future prospects was not permissible. The law laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, was affirmed by a three Judge Bench decision of the Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, . The question was gone into at great length by this Court in HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors., MAC. APP. 189/2014 decided on 12.01.2015, wherein it was held that in the absence of any evidence with regard to bright future prospects, addition towards future prospects is not permissible.

9. In view of this, addition of 50% towards future prospects was not permissible.

MULTIPLIER

10. Coming to the question of multiplier to be selected, the question of selection of multiplier was dealt with at great length by me in Vijay Laxmi and Another Vs. Binod Kumar Yadav and Others, . In that case, the learned counsel for the Appellant had relied on the following judgments (i) Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, ; (ii) Mohd. Ameeruddin and Another Vs. United India Insurance Co. Ltd. and Another, ; (iii) P.S. Somanathan and Others Vs. District Insurance Officer and Another, ; (iv) Bilkish Vs. United India Insurance Co. Ltd. and Another, ; (v) National Insurance Company Ltd. Vs. Azad Singh and Others, ; (vi) Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, and (vii) Divisional Manager, New India Assurance Co. Ltd. v. T. Chelladurai and Ors., 2010 ACJ 382 (SC).

11. I had discussed the law laid down in the earlier stated judgments and had further referred to the judgments in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and

Others, ; Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, and New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, to hold that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher.

12. The learned counsel for Respondents No. 1 and 2 has submitted that in view of the three Judge Bench decision in Reshma Kumari and Others Vs. Madan Mohan and Another, and a later judgment of the Supreme Court in M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another, , the judgment in Vijay Laxmi (supra) of this Court needs to be revisited and the multiplier has to be as per the age of the deceased and age of the Claimant is not at all relevant for selection of the multiplier.

13. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should be a pittance. In other words, it should not be meager nor should be a windfall. In this connection, a reference may be made to the report of the Supreme Court in State of Haryana and Another Vs. Jasbir Kaur and Others, , which dealt with the grant of compensation in case of injury which principles equally apply in case of award of compensation in fatal accident cases. In Para 7, the Supreme Court held as under:

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just." 14. Initially, the trend of the Courts was to ascertain the life expectancy, deduct the age of the deceased and to

award the compensation on the basis of the residual life span. The Courts started deducting certain sums out of the sum as arrived above on account of lump sum payment.

15. However, in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, , an attempt was made for the first time to award just and reasonable compensation on the basis of the multiplier method. The Supreme Court referred to the report in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, and observed that actual pecuniary loss can be ascertained only by balancing, on one hand, the loss to the Claimant of the future pecuniary benefits and on the other hand, any pecuniary advantage which from whatever sources comes to them by reason of death. Paras 8 and 9 of the report in *Susamma Thomas (Mrs.)* (supra) are extracted hereunder:-

"8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant. Thus "except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages." (Per Lord Macmillan in *Davies v. Powell* [(1942) AC 601, 617 : (1942) 1 All ER 657 (HL)].) Lord Wright in the same case said, "The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death". These words of Lord Wright were adopted as the principle applicable also under the Indian Act in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

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 altogether."

16. The Supreme Court referred to *Davies v. Powell*, (1942) AC 601 and *Nance v. British Columbia Electric Railway Company Limited*, (1951) AC 601 and in Paras

13 and 14 of the report in *Susamma Thomas (Mrs.) (supra)*, the Supreme Court observed as under:-

"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.

14. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in *Mallett v. McMonagle*, (1970) AC 166 : (1969) 2 All ER 178 (HL)] where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

"The starting point in any estimate of the amount of the "dependency" is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But ... there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4½ per cent the present value of an annuity for 20 years of which the first ten years are at ? 100 per annum and the second ten years at ? 200 per annum, is about 12 years" purchase of the arithmetical average annuity of ? 150 per annum, whereas if the first ten years are at ? 200 per annum and the second ten years at ? 100 per annum the present value is about 14 years" purchase of the arithmetical mean of ? 150 per annum. If therefore the chances of variations in the "dependency" are to be reflected in the multiplicand of which the years" purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the "dependency" used for the purpose of assessing the damages." 17. The purpose of adopting the multiplier as per the age of the deceased or as per the age of the Claimant whichever is higher was that if the

Claimant is of much higher age, particularly in case of death of a bachelor where the mother or for that matter the parents may be double the age of the deceased, the dependency is to come to an end in a much lesser period as against the dependency of a widow or minor children of a deceased. In any case, the deceased was not to support more than his own life span and thus, by providing the dependency to the Claimants, it was held that the dependency has to be as per the age of the deceased or the Claimant whichever is higher.

18. The law laid down in *Susamma Thomas (Mrs.) (supra)* with regard to adoption of multiplier method and selection of multiplier according to the age of the deceased or the Claimant whichever is higher was affirmed by a three Judge Bench decision in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, . The three Judge Bench laid down that the multiplier cannot in all cases be solely dependant on the age of the deceased and the age of the parents would also be relevant in case of death of a bachelor in the choice of multiplier. In para 18 of the report of the Supreme Court in *Trilok Chandra (supra)*, it was observed as under:-

"18..... 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....." 19. There was some confusion as to the selection of the multiplier because of the multiplier table as given in the Second Schedule of the Act under Section 163-A which was inserted w.e.f. 14.11.1994. Some of the cases had adopted the multiplier as given in the Second Schedule. Although, the three Judge Bench in *Trilok Chandra (supra)* had noticed some clerical mistakes in the multiplier table as given in the Second Schedule, it stated that the said table can be taken as a guide. Noticing the wide variations in the selection of multiplier, a two Judge Bench of the Supreme Court in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, noted the multiplier as adopted in *New India Assurance Co. Ltd. Vs. Charlie and Another*, and in the Second Schedule and in Para 40 of the report, it compared the same in a tabulated form which is extracted hereunder:-

20. The Supreme Court with a view to having a uniform multiplier held that the multiplier as given in Column (4) of the above table should be usually followed. In Paras 41 and 42 of the report in *Sarla Verma (Smt.)*, the Supreme Court observed:-

"41. Tribunals/ courts adopt and apply different operative multipliers. Some follow the multiplier with reference to *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, [set out in Column (2) of the table above]; some follow the multiplier with reference to *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, , [set out in Column (3) of the table above]; some follow the multiplier with reference to *New India Assurance Co. Ltd. Vs. Charlie and Another*, [set out in Column (4) of the table above]; many follow the multiplier given in the

second column of the table in the Second Schedule of the MV Act [extracted in Column (5) of the table above]; and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation [set out in Column (6) of the table above]. For example if the deceased is aged 38 years, the multiplier would be 12 as per General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , 14 as per U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , 15 as per New India Assurance Co. Ltd. Vs. Charlie and Another, , or 16 as per the multiplier given in Column (2) of the Second Schedule to the MV Act or 15 as per the multiplier actually adopted in the Second Schedule to the MV Act. Some tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163-A of the MV Act. In cases falling under Section 166 of the MV Act, Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and New India Assurance Co. Ltd. Vs. Charlie and Another, , 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."

21. It may be noted that the Supreme Court had gone into the history of adoption of multiplier method and referred to Nance v. British Columbia Electric Railway Company Limited, (1951) AC 601 and Davies v. Powell, (1942) AC 601.

22. Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, related to the death of a Scientist who died leaving behind his widow, three minor children, parents and grandfather. Thus, the Supreme Court while laying down that the multiplier has to be adopted as per Column 4 of the table as per the age of the deceased, was generally referring to the award of compensation in cases of death of a person who had a family consisting of widow, children and parents. Of course, general principles with regard to award of compensation in case of death of a bachelor were also laid down by the Supreme Court in Sarla Verma (Smt.), but it was not specifically laid down that even in the case of death of a bachelor, the age of the Claimants who may be aged parents will be totally irrelevant.

23. However, in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , the Supreme Court stated that the selection of the multiplier has

to be as per the age of the deceased and not on the basis of the age of the dependants. It was a case which related to the death of a bachelor.

24. On account of divergence of opinion in the earlier cases, a reference to a larger Bench was made by a two Judge Bench in Reshma Kumari and Others Vs. Madan Mohan and Another, . The question of award of compensation in relation to multiplier and future prospects was gone into at great length by a three Judge Bench of the Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, . The two referred questions by Reshma Kumari and Others Vs. Madan Mohan and Another, were:-

"1.1. Whether the 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

1.2. Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospects""

25. While answering the points, in Para 43, the Supreme Court observed as under:-

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

43.1. 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.

43.2. In cases where the age of the deceased is up to 15 years.

43.3. 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.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, for determination of compensation in cases of death....."

26. In Reshma Kumari and Others Vs. Madan Mohan and Another, , these were general observations that the steps and guidelines stated in para 19 of Sarla Verma (Smt.) have to be followed. In Sarla Verma (Smt.), it was laid down that having regard to the age of the deceased and period of active career, the active multiplier should be selected and the multiplier should be chosen from the table with reference to the age of the deceased. As I have observed above, it was not the intention in Sarla Verma (Smt.) to apply the multiplier of 18 in case of death of a bachelor aged 25 years where the dependants may only be the aged parents. Thus, in Reshma Kumari also, it was not laid down that the multiplier has to be according to the age of the deceased even when the deceased is a bachelor having dependency of the parents only.

27. Of course, in M. Mansoor and Another Vs. United India Insurance Co. Ltd.

Another, , the two Judge Bench observed that the multiplier has to be as per the age of the deceased and even in case of death of a bachelor aged 24 years, the multiplier will be 18.

28. However, there is a three Judge Bench decision of the Supreme Court in New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, wherein a bachelor aged 25 years lost his life in a motor vehicular accident which occurred on 11.11.2002. The Claims Tribunal adopted a multiplier of 17, as per the age of the deceased (25 years). On appeal filed by the New India Assurance Company Limited before the High Court, it was contented that the multiplier has to be as per the age of the Claimants (in that case) and not as per the age of the deceased. The Division Bench of High Court of Uttarakhand declined to accept the contention and dismissed the appeal. In the SLP filed by the Insurance Company, the multiplier of 17 was reduced to "5" on the age of the mother of the deceased being 65 years.

29. Also, in the latest judgment of the Supreme Court in Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma, , a two Judge Bench of the Supreme Court dealt with the questions of multiplier and the appropriate multiplier in case of death of a bachelor in the said case was taken as 13, keeping in mind the age of the parents of the deceased. Para 11 of the report is extracted hereunder:-

"11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs 25,000 p.m. i.e. Rs 3,00,000 p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , we arrive at a total loss of dependency at Rs 26,00,000 [(Rs 3,00,000 minus 1/3 x Rs 3,00,000) x 13]....." 30. Thus, right from the two Judge Bench decision in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , which for the first time held that the multiplier method is the best way of awarding just compensation, which was approved in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , wherein it was held that the multiplier has to be as per the age of the deceased or the Claimant whichever is higher, which is reiterated in New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, by applying the multiplier as per the age of the mother of the deceased (bachelor), the consensus of the larger Bench decisions seems to be that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher. The judgment in Vijay Laxmi and Another Vs. Binod Kumar Yadav and Others, has thus, correctly interpreted the law. Three

Judge Bench decision in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, shall be taken as a binding precedent in the matter of selection of multiplier as per the age of the deceased or the Claimants.

31. Moreover, even if there is divergence of opinion in subsequent two Judge Bench decisions or three Judge Bench decisions (although there is no divergence by three Judge Bench decisions), the law laid down by three Judge Bench in Trilok Chandra (supra) shall be taken as a binding precedent. In this connection, a reference may be made to Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, , wherein, in para 12, the Supreme Court observed as under:-

"12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., and Hansoli Devi [(2002) 7 SCC 273]."

32. Similarly, in Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi, , the Supreme Court observed as under:-

"27. However, even assuming that the decision in WP No. 35561 of 1998 did not operate as *res judicata*, we are constrained to observe that even if the learned Judges who decided WP No. 304 of 2001 did not agree with the view taken by a coordinate Bench of equal strength in the earlier WP No. 35561 of 1998 regarding the interpretation of Section 2 (c) of the Act and its application to the petition schedule property, judicial discipline and practice required them to refer the issue to a larger Bench. The learned Judges were not right in overruling the statement of the law by a coordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well-accepted and desirable practice is that the later Bench would refer the case to a larger Bench." 33. Also, in *Union of India (UOI) and Others Vs. S.K. Kapoor*, , while holding that the decision of the Co-ordinate Bench is binding on the subsequent Bench of equal strength, it was held that the Bench of Co-ordinate strength can only make a reference to a larger Bench. In para 9 of the report, the Supreme Court held as under:-

"9. It may be noted that the decision in *S.N. Narula Vs. Union of India (UOI) and Others*, was prior to the decision in *Union of India (UOI) and Another Vs. T.V. Patel*, . It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in *S.N. Narula Vs. Union of India (UOI) and Others*, was not noticed in *Union of India (UOI) and Another Vs. T.V. Patel*, , the latter decision is a judgment *per incuriam*. The decision in *S.N. Narula Vs. Union of India (UOI) and Others*, was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court." 34. Thus, in view of this, the three Judge Bench decision in *Trilok Chandra (supra)*, later reiterated in the three Judge Bench decision of *New India Assurance Co. Ltd. v. Shanti Pathak (supra)* shall be taken as a binding precedent. The multiplier will be as per the age of the deceased or the Claimant whichever is higher.

35. In the instant case, the dependants are the mother of the deceased and the younger sibling, sister of the deceased. Respondent No. 2, although major was still dependant upon the deceased till she settled in life. In fact, the deceased was himself just 23 years old at the time of his death. In view of this, the deduction towards personal and living expenses ought to have been 1/3 as against 1/2 taken by the Claims Tribunal. But at the same time, the multiplier will be as per the age of the mother of the deceased as the sister was to settle in a couple of years.

36. Learned counsel for Respondents No. 1 and 2 has produced High School Certificate of Munni Kandpal, which states the date of birth of Respondent No. 1 as 10.06.1960. The age of the mother of the deceased, therefore, comes to

about 52 years at the time of the death. This is also corroborated from the ration card which has been placed on record.

37. In the monthly salary of Rs. 17,500/-, there was payment of Rs. 2,000/- towards HRA. HRA being tax free, there was no liability of income tax.

38. The loss of dependency will therefore, come to Rs. 15,40,000/- (Rs. 17,500/- x 12 x 2/3 x 11).

39. In addition, Respondents No. 1 and 2 are entitled to a sum of Rs. 1,00,000/- towards loss of love and affection, Rs. 25,000/- towards funeral expenses and Rs. 10,000/- towards loss to estate in view of the three Judge Bench decision of the Supreme Court in Rajesh and Others Vs. Rajbir Singh and Others, .

40. The overall compensation thus, comes to Rs. 16,75,000/-.

41. The excess compensation of Rs. 12,95,000/- along with interest shall be refunded to the Appellant Insurance Company.

42. Statutory amount, if any, deposited shall also be refunded to the Appellant Insurance Company.

43. Pending applications, if any, also stand disposed of.