

(2009) 04 MAD CK 0493

In the Madras High Court

Case No : C.M.A. No. 4145 of 2005 and Cross Objection No. 11 of 2006 and
C.M.P. No. 20229 of 2005

The New India Assurance Co. Ltd. Motor Third Party Cell

APPELLANT

Vs

Er. K. Jothilingam, J. Nitya Janani, D. Balaraman and B.
Kanniammal

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 110(1), 92A, 92E
Motor Vehicles Act, 1988 — Section 140, 141, 142, 143, 144
Penal Code, 1860 (IPC) — Section 279

Citation : (2011) ACJ 333 : (2009) 5 LW 576 : (2009) 6 MLJ 495 : (2011) 2 TAC
565

Hon'ble Judges : T.S. Sivagnanam, J;Prabha Sridevan, J

Bench : Division Bench

Advocate : S. Manohar, for the Appellant; N.M. Muthurajan, for the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan, J.—When the driver is found guilty of negligence and causes his wife's death, can he prosecute a claim for compensation? To what extent is insurance company is liable? These are the questions that arise in this civil miscellaneous appeal.

The deceased Sujatha was travelling in the insured car which was driven by her husband, the first respondent and which belonged to her father-in-law, the 5th respondent herein. The minor daughter, second respondent was also in the car. The deceased was a Doctor in the Primary Health Centre at Narthampoondi. According to the claimant, she was also having private practice. The car was insured by the appellant ? Insurance Company. On 05-04-2002, at about 20:30 hours, the first respondent was driving the car from Chennai to Thiruvannamalai. They had a brief halt at Gingee when they were proceeding along the Gingee-Thiruvannamalai highway there was a road curve when the car turned right the steering wheel of the car got stuck and the car drag towards its right and dashed

against the road side tree in which all the persons in the car sustained injuries and the deceased succumbed to the injuries. A claim was made for compensation of a sum of Rs. 55,00,000/-, which was restricted to a sum of Rs. 10,00,000/-. The Tribunal awarded a sum of Rs. 19,29,736/-. In the counter it was contended that the accident occurred due to the rash and negligent driving by the first respondent and that the claimants are not entitled to compensation in the Motor Vehicles Act but only under the Workmen's Compensation Act. The first respondent was charged u/s 279 IPC and 304(A) and registered as Crime No. 80 of 2002 and the charge sheet was not taken on file by the Judicial Magistrate. The first respondent was working as a Engineer in Jordan and was not a dependent and it was contended that no third party vehicle was involved since their vehicle belonged to the first respondent's father who was the policy holder and it was insured with the appellant. Since the accident occurred due to the negligence of the first claimant/respondent he was not entitled to compensation. Since the negligence is not pleaded the claim application is not maintainable. It was denied that the accident occurred due to the poor maintenance of the car. According to the insurance company, the first respondent ought to have been impleaded as a respondent in the claim application since he was the driver.

2. The learned Counsel for the appellant submitted that according to the claimants there was a mechanical failure but that is not proved. Unless the owner is held to be liable on account of the negligence either on the part of the driver of the vehicle or due to poor maintenance of the car, the insurance company is not liable since the claim for compensation is basically a tortuous claim. The learned Counsel submitted that if there was no negligence on the part of the owner then there is no duty to indemnify for any pecuniary loss sustained by the claimants. The learned Counsel submitted that in any event the first respondent who had been guilty of negligence and who had caused the accident which had resulted in the death of his life cannot benefit by his own mistake. The learned Counsel submitted that the claim was inflated. The learned Counsel submitted that no claim under the Workmen's Compensation Act would arise since the son is not a employee of the father. The learned Counsel submitted that looked from either way the appeal of the insurance company must be allowed.

3. The respondent also had prayed for enhancement by filing a cross objection. The learned Counsel for the respondent submitted that the language of the Section 163-A provides for compensation without proof of negligence and in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., it is held thus:

9. The Law Commission of India in its 119th Report in the Introductory Chapter observed [para 1.6] that previously there was recommendation for inserting provision in the Motor Vehicles Act to extend protection to victims of "hit and run" accidents where the person liable to pay such compensation or his whereabouts cannot be ascertained after reasonable effort by providing that in such an event, the person entitled to such compensation shall be entitled to

receive it from the State. In para 1.7 for introducing provision for no fault liability, the Commission observed as under:

By 1980, a wind was blowing that compensation to the victims of motor accidents should be by way of social security and the liability to pay the same must be "No-fault" liability. The law, as it stands at present, save the provision in Chapter VIIA, inserted by the Motor Vehicles (Amendment) Act, 1982, enables the victim or the dependants of the victim in the event of death to recover compensation on proof of fault of the person liable to pay compensation and which fault caused the harm such as bodily injury or death. In the event of death of a victim of a motor accident and the consequent harm caused to his dependants, the question whether the person responsible for the action causing harm had committed a fault or it was an inevitable accident, is hardly relevant from the point of view of victim or his/her dependants. The expanding notions of social security and social justice envisaged that the liability to pay compensation must be a "No-fault" liability.

Therefore, regardless of who caused the accident, the compensation must be enhanced and there is no question of rejecting the claim on the ground of maintainability.

4. The finding of the Tribunal was that the Motor Vehicles Inspector P.W. 5 was not in a position to find out the root cause for the accident. However, his opinion was that the accident was not due to the mechanical defect of the motor car. In spite of this the Tribunal held that there is no evidence that P.W.1 had driven the car in a rash and negligent manner. There is no finding that the accident was only due to mechanical defect. As regards the maintenance of the car, the Tribunal held that there is no evidence that the car was properly maintained. The Tribunal relied on *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, wherein the front tyre of the jeep burst while in motion and the vehicle became unbalanced and turned turtle, causing death to a person walking on the road and the Supreme Court held that even if there is no negligence on the part of the driver or owner, applying the principle in *Rylands v. Fletcher* 1868 (3) HL 330, compensation should be awarded to the claimants.

5. P.W. 1 who is the husband of the deceased when he was driving the car. He had stated in his chief examination that when he was turning right the steering wheel got locked. In the chief examination there is no evidence regarding negligence. Though in his claim petition he has stated that it was due to poor maintenance by the owner of the car viz., his father. Apart from his statement there is no other evidence. The Motor Vehicle Inspector P.W.5 has stated that the accident did not occur due to mechanical defect.

6. In 2004 ACJ 934 (*Deepal Girishbhai Soni v. United India Insurance Co. Ltd.*), a three Judge Bench was requested to consider whether proceedings u/s 163A of the Motor Vehicles Act would be final proceedings and as a result of it whether all the claimants are debarred from proceeding with their further claim on the basis

of fault liability in terms of Section 166. The Supreme Court held that, the claim for damages on account of negligence on the part of the driver of the motor vehicle was originally governed only by the law of tort. The Indian Motor Vehicles Act, 1914 is the first enactment relating to motor vehicles. Then came Motor Vehicles Act 1939. Under this Act as well as the Fatal Accidents Act, compensation was solely based on the law of tort in the year 1956. Motor Accidents' Claim's Tribunal were established for providing speedy trial. However, proof of negligence was a condition precedent for grant of compensation. In 1980, the Law Commission proposed two new measures, (i) introduction of Section 92-A in the Motor Vehicles Act, 1939 by which the doctrine of liability without fault was to be introduced and, (ii) the imposition of strict liability as regard death or bodily injury caused by the accident of nature specified in Section 110(1) thereof.

7. In 1977 ACJ 118 (Minu B. Mehta v. Balkrishna Ramchandra Nayan and Anr.) the Supreme Court observed that the law as it stands requires that the claimants should prove that the driver of the vehicle was guilty of rash and negligent driving. Thereafter, the Law Commission suggested a scheme for victims of "hit and run accident" to claim compensation. When the present Act came into force Section 92(A) and 92(E) of the 1939 Act were replaced by Sections 140 to 144 and on account of the representations received from various quarters and on the recommendations of the Review Committee as well as the Transport Development Council the act was amended and a new pre-determined formula in the form of Section 163(A) was laid down for payment of compensation to road accident victims on the basis of age and income on a no fault basis. Section 141 provides that the right to claim compensation u/s 140 in respect of death or permanent disablement of any person shall be in addition to any other right Section 163A was inserted by Act 54 of 1994 and the new predetermined structured formula for payment of compensation was inserted. Section 163-A reads as follows:

163-A. Special provisions as to payment of compensation on structured formula basis. - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

8. In 2004 ACJ 934 (Deepal Girishbhai Soni v. United India Insurance Co. Ltd.), the Scheme of Section 163A is explained.

39. Section 163-A was introduced in the Act by way of a social security scheme. It is a code by itself. It appears from the Objects and Reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act several representations and suggestions were made from the State Governments, transport operators and members of the public in relation to certain provisions

thereof. Taking note of the observations made by the various courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee in its report made the following recommendations:

The 1988 Act provides for enhanced compensation for hit-and-run cases as well as for no-fault-liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11,214 claims pending before the Motor Accidents Claims Tribunals, as on 31-3-1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle-owner as well as the insurance company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels.

The General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on ?fault liability? in respect of third-party liability under Chapter XI of the M.V. Act, 1988. They have suggested that the claimants should first file their claims with Motor Accidents Claims Tribunals and then the insurers may be allowed six months? time to confirm their prima facie liability subject to the defences available under the Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time.

40. The recommendations of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views pursuant where to several sections were amended. Section 163-A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the Central Government from time to time.

41. Section 140 of the Act dealt with interim compensation but by inserting Section 163-A, Parliament intended to provide for the making of an award consisting of a predetermined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The Amendment was, thus, a deviation from the common law liability under the law of torts and was also in derogation of the provisions of the Fatal Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought

to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victim in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants u/s 166 of the Act.

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

53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*,).

9. The Supreme Court held in *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, , that the benefit can be availed of by the claimant by restricting his claim on the annual income upto Rs. 40,000/-. But the Later Bench did not agree with the findings in *Kodala (supra)*, that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000 shall be treated as a cap. They held that section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs. 40,000 can take the benefit thereof. All the other claims are required to be determined in terms of Chapter XII of the Act. In the present case, therefore, S.103A cannot be invoked since admittedly the claimant's income exceeds the Rs. 40,000/- limit.

10. In the present case, there is no evidence that the steering wheel got stuck except for the statement of P.W.1, who himself was the driver. There is no proof that the vehicle was not maintained properly, since the owner of the vehicle was none other than the father of P.W.1, who conveniently remained ex parte. If there is no evidence to show that the deceased was maintaining the vehicle properly, the logical conclusion is not to hold that the vehicle was not being maintained properly when the evidence is not to the effect. The lack of evidence with regard to one does not automatically mean proof of the other. Therefore, we will have to hold that there is no evidence regarding the maintenance of the vehicle whether properly or otherwise.

11. Next we come to the question of the negligence. The vehicle was going from

Gingee to Thiruvannamalai. The vehicle turned right and hit the tree. It is an admitted case that there was no other vehicular traffic on the road. It is no doubt true that on a highway, drivers may drive faster than normal and the absence of vehicular traffic might encourage the drivers to accelerate the vehicle more. But in this case, the road was turning right and therefore, the driver is expected to slow down when there is a curve on the road. Had he slowed down even if the steering wheel had stuck he could have applied the brakes and brought the vehicle to a halt. But the very fact that he went and dashed against the tree shows that he was driving at a speed where he was neither able to control the vehicle nor bring it to a halt. It is only then that the car would have gone off the road to hit the tree on the road side.

12. According to P.W.1, the husband of the deceased who has now been transposed as the respondent in the Original Petition, by our order in C.M.P. No. 349 of 2009, the steering wheel got stuck as he was making a turn and however much he tried he could not straighten the car and it was because of this the accident occurred. According to him, it was purely the lack of maintenance by the owner who is his father that had resulted in the accident. When an allegation is made that the accident resulted on account of the mechanical break down then unless the owner proves that accident was due to latent defect then the burden of proving that the accident was due to a mechanical defect is on the owners and it is their duty to show that they have taken all responsible care and despite that care the defect remained hidden. (vide 1977 ACJ 118 (Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.)). In that case in the written statement it was pleaded that the axle break ring of the lorry came up and the defect could develop in a running vehicle and it had developed in spite of the precautions taken to keep the lorry in a road worthy condition.

13. In *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, it was held that the claimants had to establish negligence of the driver before the Insurance Company could be asked to indemnify the insured.

14. In 2004 ACJ 934 (*Deepal Girishbhai Soni and Ors. v. United India Insurance Co. Ltd.*) the Supreme Court held that Section 163-A read with Second Schedule being a social security provision provides the distinct scheme for those victims of accident whose income was Rs. 40,000/- per annum and all the other claims are required to be determined in terms of Chapter XII of the Act. This was cited to support the appellant's case that when the claimants are unable to prove negligence then unless the income of the deceased is less than Rs. 40,000/-, they cannot get compensation.

15. In 1977 ACJ 118 (*Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.*) the car had gone to the right extreme of the road and dashed against the tree with violent force. The occupants of the car died. The respondents did not make any attempt to show that the accident occurred because of the driver and the driver was negligent. In that case, the car was driven by the Manager of the Company.

16. In 1974 ACJ 296 (Shyam Sunder v. The State of Rajasthan) a truck not road worthy caught fire while running on the road. The doctrine of *res ipsa loquitur* was applied because the cause of the accident is primarily within the knowledge of the defendant and in that case, it was held that the mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim *res ipsa loquitur* applies.

17. In 1987 ACJ 561 (Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai) the question was whether a brother of a person who is killed in a motor vehicle accident can claim compensation in a proceeding instituted before a Motor Accidents Claims Tribunal established under the provisions of the Motor Vehicles Act, 1939 since in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family.

18. In the present case, the rough sketch shows that there was a curve on the road at the point of occurrence and it is at that juncture, allegedly the steering wheel got stuck. P.W.3 the Motor Vehicle Inspector had deposed that the steering wheel was in good condition. Of course, P.W.5 stated that the steering wheel was jammed. Therefore, we have only the evidence of P.W.1 regarding the fact that the steering wheel got stuck.

19. In the counter filed by the insurance company, at paragraph No. 6, it is stated that the accident had been caused due to the solely rash and negligent driving of the first claimant. Indeed, we find from the materials on record that had P.W.1, the husband of the deceased been driving carefully, the accident would not have occurred. It is obvious that he had taken the turn at a high speed and it is thus that the accident had taken place. We have already discussed this in Paragraph No. 11 above.

20. In Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343, the tree was on the right side of the road. The vehicle ought to have proceeded on the left hand side of the road. The tree against which the car dashed was uprooted about 9 to 10 inches from the ground and the Tribunal had held that the dashing of the car against the tree was so violent that it could have only been due to the rash and negligent driving of the driver.

21. In this case also, we find that the car turning to the right, got on to the mud track and then proceeded to hit against the tree, which had resulted in the death of the wife of P.W.1. It is evident that the accident would not have occurred, but for the rash and negligent driving of P.W.1. In the award of the Tribunal, the learned Judge refers to the fact that as per Ex.P.20, the total breadth of the tar road is about 22 feet. There is a right turn. There was admittedly no other vehicular traffic. The Motor Vehicle Inspector deposed that it was not due to the

mechanical defect of the motor car. Then there were damages to the front wind screen glass, grill bumper, radiator, fan leaf and water pump, engine, front mudguard, front side doors, steering. The vehicle was in such a condition that the entire brake system and the entire steering system were completely damaged. When the extent of damage is so much and the topo sketch speaks of the accident and the evidence of the expert is that the car had no mechanical defect, the Tribunal erred in its conclusion that there is no evidence that P.W.1 drove the car in a rash and negligent manner, and that there is acceptable evidence that the accident occurred only due to the mechanical defect. 1977 ACJ 343 (cited supra) applies without any doubt.

22. The other point that was raised by the insurance company is whether it was not against public policy for the tortfeasor to make the claim and whether when it was the husband of the deceased who by his rash and negligent driving had caused the accident, he can claim compensation. We agree that the husband of the deceased being the tortfeasor cannot reward himself. But the other claimants are undoubtedly entitled to be compensated. The claim for compensation was made not only by the husband of the deceased, but also by the child as well as parents of the deceased. Perhaps, the claim ought to have been made by the minor child represented by her grand parents showing her father as the respondent ? 1. But as it happened, the husband of the deceased was the first claimant. Now in the appeal stage, a petition has been filed for transposing the first claimant as respondent 3 which we have ordered today. We did so because as far as the minor daughter and parents of the deceased, they are entitled to make a claim. The death occurred on account of the rash and negligent driving of the husband and the child, a third party who lost her mother on account of the rash and negligent driving of her father cannot be denied her compensation. The objection had been rectified at the appeal stage by the petition seeking transposition of the first claimant as the first respondent.

23. Now we come to the question of quantum. We now extract the following paragraphs from the judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, which enlightens us in this regard.

8. The lack of uniformity and consistency in awarding compensation has been a matter of grave concern. Every district has one or more Motor Accident Claims Tribunal/s. If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system. We may refer to the following observations in Trilok Chandra:

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.

Compensation awarded does not become "just compensation" merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say deceased aged 40 years having annual income of 45,000/- leaving him surviving wife and child), one Tribunal awards Rs. 10,00,000/- another awards Rs. 5,00,000/-, and yet another awards Rs. 1,00,000/-, all believing that the amount is just, it cannot be said that what is awarded in the first case and last case, is just compensation. Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. In *Susamma Thomas*, this Court stated:

So the proper method of computation is the multiplier method. Any departure, except in exceptional and extra-ordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation.

9. Basically only three facts need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

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

Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs. 10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

Question (i) - addition to income for future prospects

10. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.

11. In *Susamma Thomas*, this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a

different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Re: Question (ii) - deduction for personal and living expenses

12. We have already noticed that the personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the dependents. No evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. Claimants will obviously tend to claim that the deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. In some cases, it may be so. No claimant would admit that the deceased was a spendthrift, even if he was one. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardize the deductions to be made under the head of personal and living expenses of the deceased. This led to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was a married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction, got statutory recognition under Second Schedule to the Act, in respect of claims u/s 163A of the Motor Vehicles Act, 1988 ('MV Act' for short).

13. But, such percentage of deduction is not an inflexible rule and offers merely a guideline.

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case

where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

Re : Question (iii) - selection of multiplier

16. In *Susamma Thomas*, this Court stated the principle relating to multiplier thus:

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 work 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 Rupees 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 lumpsum 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 dependents, whichever is higher) goes up.

17. The Motor Vehicle Act, 1988 was amended by Act 54 of 1994, inter alia inserting Section 163A and the Second Schedule with effect from 14.11.1994. Section 163A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a Table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs. 3,000/- to Rs. 40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs. 40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes upto 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is u/s 163A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs. 40,000/-, by applying the formula : $(\frac{2}{3} \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is u/s 163A of MV Act. There are however discrepancies/errors in the multiplier scale given in the Second Schedule Table.. The multipliers indicated in *Susamma Thomas*(1994 (2) SCC 176), *Trilok Chandra*(1996 (4) SCC 362) and *Charlie*(2005

(10) SCC 720)(for claims u/s 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims u/s 163A of MV Act (with appropriate deceleration after 50 years):

Age of the Multiplier Multiplier Multiplier Multiplier Multiplier deceased scale as scale as scale in Trilok specified in actually used envisaged in adopted Chandra as second column in in Second Susamma byTrilok clarified in the Table in II Schedule to Thomas Chandra Charlie Schedule to MV MV Act (as Act seen from the quantum of compensation) (1) (2) (3) (4) (5) (6) Upto 15 yrs - - 15 20 15 to 20 yrs. 16 18 18 16 19 21 to 25 yrs. 15 17 18 17 18 26 to 30 yrs. 14 16 17 18 17 31 to 35 yrs. 13 15 16 17 16 36 to 40 yrs. 12 14 15 16 15 41 to 45 yrs. 11 13 14 15 14 46 to 50 yrs. 10 12 13 13 12 51 to 55 yrs. 9 11 11 11 10 56 to 60 yrs. 8 10 09 8 8 61 to 65 yrs. 6 08 07 5 6 Above 65 yrs. 5 05 05 5 5 20. Tribunals/courts adopt and apply different operative multipliers.

23(a).The deceased was 28 years. Her age of retirement is 58 years. She had obtained MBBS degree and also a diploma in Gynaecology and was in Government employment as a Medical Officer Primary Health Centre, Mangalam, Tiruvannamalai District. Her monthly salary was Rs. 13,225/- as seen from Ex-P10. After compulsory deductions like tax etc., her net salary was Rs. 10,225/-. As rightly submitted by the learned Counsel for the appellant, the deceased was very young and had a long career. Therefore, we have to quantify the pecuniary loss by taking into account the possible increase in income.

24. Therefore, we multiply the present income by Z, by two, add that to the present income at both the figures and divide that by two which gives us Rs. 15337.5 which we round off to Rs. 15,338/-. Then, we calculate the annual income. We deduct one third to arrive at a sum of Rs. 1,22,704/- (184056x2/3). As per the II Schedule, the multiplier is 18. The Tribunal had adopted 11 as a multiplier. Since we have taken her possible increase in income, we reduce the multiplier and we adopt 15 as the multiplier. The product is a sum of Rs. 18,40,560/-. The Tribunal had without any evidence made a conjecture of what she would have been earning in private practice. There is no evidence regarding that. Therefore, we do not confirm the findings of the Tribunal in this regard. Rs. 7500/- was awarded towards funeral expenses. Rs. 20,000/- to the child towards loss of love and affection and Rs. 10,000/- each to the parents. This is confirmed. In toto, a sum of Rs. 18,88,060/- is awarded as compensation. The Tribunal had awarded 15% to the first petitioner and the remaining 65% to the daughter and 15% to the mother of the deceased and 5% to the father of the deceased.

25.The first respondent ? husband, Engineer Jothi Lingam will not receive any amount from the award amount. So his 15% will be added to minor's share. So the compensation amount will be awarded in the following ratio:

5% to the father of the deceased; 15% to the mother of the deceased and the remaining 80% will go to the minor.

The minor's share will be invested in any Nationalised Bank under Fixed Deposit Reinvestment Scheme. The first respondent will not be entitled to withdraw any interest. We find from the award that he is a very affluent person, the daughter shall be taken care of by him and it is not necessary to withdraw this amount for her expenditure.

26. The Appellant had deposited only 50% of the award as a condition for grant of stay. The first claimant, the husband, who is now transposed as respondent, had withdrawn 50% of what he was awarded i.e., 15% of the awarded amount. He is the tort-feasor and he ought not to have taken the money. Therefore, in accordance with law of equity he has to refund the amount to the appellant. Instead the appellant shall deposit the balance amount less what was withdrawn by the first respondent. To explain, the appellant is bound to deposit a sum of Rs. 18,88,060/-. But since they have already deposited 50% of the original award, it has to deposit the remaining 50% of the award amount deducting the amount withdrawn by the first respondent. It has to be noted that the amount which has been withdrawn by the first respondent must be insisted by the Tribunal to be deposited by him in the name of his daughter.

27. In the result, the appeal is allowed and the cross objections are dismissed. However, there will be no order as to costs. The connected C.M.P.No. 20229 of 2005 is closed.