

(2000) 06 KAR CK 0050

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1481 of 2000 (MVC)

Union of India and others

APPELLANT

Vs

K.S. Lakshmi Kumar and Others

RESPONDENT

Date of Decision : 21-06-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 110 CC, 171

Citation : (2001) ACJ 134 : (2000) ILR (Kar) 3809 : (2001) 1 KarLJ 91 : (2000) 4 KCCR 2768

Hon'ble Judges : V.G. Sabhahit, J; R.V. Raveendran, J

Bench : Division Bench

Advocate : Sri Ashok Harnahalli, for the Appellant; Kumar and M/s Kumar, for the Respondent

Judgement

Respondents 1 and 2 (hereinafter referred to also as "claimants 1 and 2") are respectively the husband and son of one Rajalakshmi, On 22-5-1997 she was proceeding on a motorcycle bearing registration No. DL-25D-6929 as a pillion rider. Her son (second respondent herein) was the rider of the motorcycle. According to them, when the motorcycle was proceeding near ASC Centre, Lower Agaram Road, Bangalore, a military truck bearing registration No. 91-D-89858X which was proceeding in the same direction, suddenly turned to the left in a rash and negligent manner and hit the motorbike on the right side; and as a consequence, the said Rajalakshmi fell from the motorcycle and the truck ran over her, as a result of which she died at the spot. Feeling aggrieved, her husband and son filed MVC No. 2566 of 1997 claiming a compensation of Rs. 29 lakhs, against the driver (second respondent before the Tribunal and third respondent in this appeal) and the owners (respondents 1, 3 to 5 before the Tribunal and appellants in this appeal) of the Truck. The claimants contended that the accident occurred due to the rash and negligent driving by the driver of the military truck. It was further contended that claimant 1 was retired and claimant 2 was a student and the deceased who was aged 53 years and employed as an officer in Andhra Bank getting a salary of Rs. 16,852.00 per month, was their

source of income.

2. The appellants herein resisted the claim. They contended that there was no negligence on the part of the truck driver. According to them, the motorcycle and the truck were proceeding in the same direction; that the motorcyclist who was proceeding at a high speed tried to overtake the truck on the left side, went over a slushy portion of the road and lost control of the vehicle and the motorcycle skidded as a result of which the said Rajalakshmi fell down from the vehicle which resulted in the accident. Respondents denied that the military truck ran over the deceased. Lastly it was contended that the compensation claimed is excessive.

3. On the pleadings, the Tribunal framed the following issues:

"1. Whether petitioners prove that deceased was died in that accident took place on 22-5-1997 at 8.45 a.m., near ASC Centre, Opp. to Army Institute of Hotel Management, Lower Agaram Road, Bangalore on account of rash and negligent driving on the part of driver of military truck bearing No. 91-D-89858X?

2. Whether the respondents prove that accident took place on account of rash and negligent driving on the part of petitioner 2, motorcycle bearing No. DL-25D-6929?

3. Whether petitioners entitled to compensation? If so, how much and from whom?

4. What order/award?"

4. The husband of the deceased was examined as P.W. 1. Son of the deceased who was also an eye-witness, was examined as P.W. 2. The Doctor who conducted the post-mortem was examined as P.W. 3. The claimants marked Exhibits P. 1 to P. 15. The driver of the military truck was examined as R.W. 1. A person in military service, who was sitting in the cabin of the military truck along with the driver, was examined as R.W. 2.

5. After appreciating the evidence, the Tribunal allowed the claim petition in part by judgment and award dated 11-11-1999. The Tribunal held that the accident occurred due to the rash and negligent driving of the military truck by its driver; and that there was no negligence on the part of the motorcyclist. It held that the said Rajalakshmi died in the motor accident as a result of such negligence and the claimants as her legal heirs were entitled to compensation. The Tribunal awarded a sum of Rs. 15,06,000.00 as compensation with interest at 9% p.a. from the date of petition till the date of realisation.

6. Feeling aggrieved, respondents 1, 3, 4 and 5 in the claim petition have filed this appeal contending as follows:

(a) The finding of the Tribunal regarding negligence is erroneous and the Tribunal ought to have held that the accident occurred due to negligence of the motorcyclist; and that there was no negligence on the part of the driver of the

military truck.

(b) The compensation awarded is excessive. The Tribunal has committed errors in arriving at the loss of dependency (monthly contribution to the family) and the selection of multiplier to arrive at the total loss of dependency.

(c) The Tribunal ought to have awarded interest at 6% per annum on the amount awarded as compensation instead of 9% per annum.

Re: Point (a):

7. Apart from the oral evidence of P.Ws. 2 and 3, claimants relied on Ex. P. 4 (Post-mortem Report), Ex. P. 5 (M.V. Report), Ex. P. 6 (Spot sketch), and Ex. P. 7 (Spot mahazar). The evidence of P.W. 2 is that when he was proceeding on his motorcycle with his mother as pillion rider, on the left side of the road in a slow and careful manner, the military truck overtook him and while so overtaking, it suddenly swerved to the left and hit against the rear side of his motorcycle; and on account of the impact, he fell on the left side of the road and his mother fell to the right side and the left front wheel of the military truck ran over his mother; and that she was taken to HOSMAT Hospital where she was declared dead on arrival. In his cross-examination, P.W. 2 stated that the military truck wanted to overtake him and swerved to the left to accommodate the oncoming vehicles. He denied that he was proceeding at high speed, or that he tried to overtake the truck from the left or that the motorcycle skidded on account of any slush. The Doctor who conducted post-mortem (P.W. 3) has confirmed that there were tyre marks on the stomach of the deceased measuring 8 cms in width and 16 cms in length. The spot sketch and spot mahazar support the said evidence on P.W. 2.

8. On the other hand, driver of the military truck (R.W. 1) stated that he was driving on the left side of the road at 10 KM per hour, that there was a BTS Bus ahead of him; that the military truck did not overtake the motorcyclist; that the motorcyclist never came into contact with the military truck; that when the military truck was proceeding, someone asked him to stop the vehicle; that he did not know how the accident happened; that accident took place as P.W. 2 (the motorcyclist) slipped on the left rear side of the truck. The driver did not mention about the existence of any slush on the left side or about the motorcyclist skidding on account of slush. In his cross-examination, he admitted that no motorcycle overtook his truck either from right or from the left; that there was a gap of 2 feet between his vehicle and left side (edge) of the road; that no vehicle hit his vehicle; and that he did not see anyone falling down at the time of stopping the vehicle.

9. R.W. 2 stated that he was sitting by the side of the driver in the Military Vehicle. While they were proceeding in front of the Institute of Hotel Management, he asked the driver to stop the truck as he heard public shouting to stop the vehicle; that he got down and saw a person standing by the side of motorcycle and Military Vehicle did not come in contact with any portion of said

motorcycle.

10. The evidence of R.W. 1 and R.W. 2 does not find support from the spot sketch and spot mahazar. Nor does the evidence of R.Ws. 1 and 2 explain the tyre marks on the stomach of the deceased which showed that wheel of the truck had passed on the body of the deceased. Having regard to the oral and documentary evidence, the Tribunal was justified in accepting the version of P.W. 2 and holding that the accident occurred due to the negligent driving of the truck by its driver and that there was no negligence on the part of the motorcyclist.

Re: Point (b):

11. The husband of the deceased who is a retired officer, aged 64 years at the time of the death of his wife, gave evidence as P.W. 1. The son gave evidence as P.W. 2. The evidence discloses that the deceased was aged 53 years and she was working as MM-2 Officer in Andhra Bank and getting a salary of Rs. 16,852.00 per month. It is also in evidence that the son was aged 21 years and was a student of M.E. Course.

12. The Tribunal took the income of the deceased as Rs. 16,852.00 per month or Rs. 2,02,224.00 per annum. It deducted one-third of the income towards personal and living expenses of the deceased and arrived at the annual loss of dependency as Rs. 1,34,816.00. Having regard to the age of the deceased (53 years), the Tribunal adopted the multiplier of 11 and arrived at the total loss of dependency as Rs. 14,82,976.00 (rounded off to Rs. 14,83,000/-). To this, it added a sum of Rs. 5,000.00 for pain and suffering undergone by the claimants, Rs. 5,000.00 as loss of consortium, Rs. 10,000.00 as loss of estate and Rs. 3,000.00 for funeral expenses. Thus, the Tribunal awarded in all, Rs. 15,06,000.00 with interest at 9% p.a. from the date of petition till the date of realisation.

13. Learned Counsel for the appellants pointed out that the said calculation of loss of dependency suffers from several errors. According to him, the Tribunal could not have taken the entire salary as the income. He contended that Income Tax, and professional tax ought to have been deducted from the gross salary before arriving at the monthly income of the deceased. He next contended that the multiplier ought to have been selected not with reference to the age of the deceased, but with reference to the age of the husband who claimed to be a dependent and if so done, the appropriate multiplier would have been 9 and not 11. It is lastly contended that as the deceased would have retired from service on 12-4-2004 and as the accident occurred on 22-5-1997, the multiplicand (the yearly loss of dependency) could not be based on the salary of the deceased for the entire multiplier period of 9. According to appellants the net salary (minus personal and living expenses) ought to have been the basis for calculating the multiplicand for period of 7 years and for the remaining two years, the pension which the deceased would have received (minus personal and living expenses) ought to have been the basis. There is considerable force in the contentions of

the appellants.

14. It is not in dispute that Rs. 16,852.00 was the gross salary of the deceased. On that basis, gross salary per annum would have been Rs. 2,02,224.00. The deceased would have paid Income Tax with reference to the said income. She should have also paid professional tax. Necessarily therefore, such taxes ought to have been deducted before arriving at the income of the deceased. Ex. P-1 which is the salary certificate issued by the employer which shows that for April 1997, the gross salary of the deceased was Rs. 16,852/- and the deductions included Rs. 105/- towards profession tax and Rs. 1,000/- towards Income Tax. Ex. P-2 is the certificate issued by the employer showing that for the period 1-4-1996 to 31-3-1997, the Income Tax paid on the salary of deceased was Rs. 22,665/-. In the circumstances, it will be appropriate to deduct Rs. 1,852/- per month (approximately 11% of the income) towards Income Tax and profession tax, having regard to the monthly salary. Thus, the income of the deceased could be taken as Rs. 15,000/- per month or Rs. 1,80,000/- per annum. If one-third is deducted towards personal and living expenses of the deceased, the balance of Rs. 1,20,000.00 will be the contribution of the deceased to the family. Thus, the annual loss of dependency to the family at the time of death was Rs. 1,20,000/-.

15. The principles relating to calculation of loss of dependency are laid down in the decisions of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, and *Uttar Pradesh State Road Transport Corporation v Trilokchandra*. The multiplier will have to be selected with reference to the age of the deceased, or the age of the dependents whichever is higher. If the multiplier has to be selected with reference to the age of the deceased (53 years) the multiplier is 11 as selected by the Tribunal. But, that was permissible only if the deceased was older than his/her spouse. In cases where deceased is the wife and the dependent is the husband who is aged more than the deceased, or a major son who is not likely to be dependent for many years, the appropriate multiplier will have to be selected with reference to the age of the husband. In this case, admittedly, the husband was aged 65 years at the time of the death. Thus, appropriate multiplier will be 9 and not 11. It is no doubt true that if the deceased had left behind any minor children who would have been dependent for more than 11 years, it might have been possible to apply the multiplier of 11. But, as the son himself was aged 21 years at the time of the death of the mother, it is not probable to hold that he would have been dependent on her for a period of 11 years. Hence, the multiplier will have to be necessarily with reference to the age of the husband who is aged 65 years. Hence, we adopt the multiplier of 9 instead of 11.

16. Where the multiplier applicable is higher than the number of years of service which the deceased had before superannuation, the contribution to the family (or loss of dependency) cannot obviously be calculated with the reference to the salary income, for the entire period of multiplier. Let us illustrate. If a person aged 56 years (whose age of superannuation is 60 years) dies in an accident,

leaving behind him his surviving wife and two children, how should the total loss of dependency be calculated? Let us assume that his salary was Rs. 6,000.00 and after retirement, his pension would be Rs. 3,000.00. Under the Davies method accepted and adopted by the Supreme Court, the applicable multiplier will be "9". But, deceased would have got salary income for only 4 years and then he would get only pension. If the deduction towards personal and living expenses of the deceased is one-third, the contribution to the family during the period of service (4 years period) would have been Rs. 4,000/- (that is Rs. 6000-2000). But, obviously the contribution to the family would not have been Rs. 4,000/- after his retirement, that is from the 5th year onwards. When the pension is Rs. 3,000/- per month, after deducting one-third as personal and living expenses, the contribution to the family will only to be Rs. 2,000/- per month. Therefore, the loss of dependency cannot be taken as Rs. 4,000/- per month for the entire period of 9 years representing the multiplier. It has to be taken as Rs. 4,000/- per month for the first four years (when he would have been in service) and Rs. 2,000/- per month for the remaining five years (when he would have received pension). The method adopted in the above illustration will have to be applied in this case.

17. In this case the deceased was aged 53 years at the time of death and she would have attained the age of superannuation in about 7 years. The multiplier period is 9 years. After 7 years, the income would not have been Rs. 16,852.00 per month, but only roughly 50% of it as pension, and consequently the loss of dependency would have been 50% of Rs. 1,20,000.00 per annum. Thus, loss of dependency will have to be calculated with reference to the salary income for a period of 7 years and pension income for the remaining period of 2 years, as the multiplier period is "9 years". The loss of dependency would therefore be Rs. 1,20,000.00 x 7 plus Rs. 60,000.00 x 2 i.e., Rs. 9,60,000.00.

18. The Tribunal has awarded a sum of Rs. 5,000.00 for the shock and agony suffered by the claimants. Award of any compensation under this head is not permissible. The award of Rs. 5,000.00 under the said head is therefore rejected.

19. The awarding of Rs. 5,000.00 for loss of consortium, Rs. 10,000.00 for loss of estate and Rs. 3,000.00 for funeral expenses appear to be reasonable and do not call for interference. The award under conventional heads will therefore be Rs. 18,000/-. Thus, the total amount to which the claimants will be entitled to as compensation is Rs. 9,78,000.00.

Re: Point (c) - Interest:

20. Learned Counsel for the appellants contended that the award of interest at 9% p.a. is excessive. He relied on the decision of the Supreme Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , Tasnimtaj and Others Vs. Managing Director, KSRTC and Another, and Karnataka State Road Transport Corporation Vs. R. Sethuram and Another, and the decisions of this Court in Managing Director, Karnataka Power Corporation Ltd. Vs. Geetha and

Others, , Smt. P. Ramadevi Vs. Sri C.B. Saikrishna and others, and Puttanna and Another Vs. Lakshmana and Others, , to contend that in the absence of special circumstances, the interest should not be awarded in excess of 6% per annum. In Puttanna's case, supra, a Division Bench of this Court, after referring to the other decisions mentioned above, held as follows:

"It may be noticed that no judgment of the Supreme Court declaring as of law within the meaning of Article 141 of the Constitution has been brought to our notice which has held that the Claims Tribunal should always award interest at the rate of 12% p.a. on the entire amount of compensation, which comprises of both pecuniary and non-pecuniary damages. On the other hand, the two Division Bench judgments of this Court in the cases of Geetha and Ramadevi, supra, still hold good, according to which, awarding of composite rate of interest at the rate of 6% p.a. on the amount awarded should be found reasonable unless the special facts and circumstances of the case warrants granting of any other rate may be higher or lower. It has been held that any deviation for granting interest at the rate different than 6% p.a. should be supported by appropriate reasons to be spelled out by the Tribunal in its judgment.

It has further to be held that while determining the rate of interest and the period for which the same is sought to be granted, the Tribunal should give due consideration to the fact as to whether the claim proceedings have been sought to be lingered either by the claimant or the owner or his insurer, so that it may act as deterrent against the earring party and compensatory for the other".

In Ramadevi's case, supra, another Division Bench of this Court held that the compensation is an amount paid in advance for any loss of life or loss of dependency or loss of earnings, and not a debt and therefore interest should be awarded only at 6% per annum.

21. On the other hand, learned Counsel for the claimants contended that the Supreme Court and this Court in several cases have awarded, and even now awarding, interest at the rate of 9% per annum and 12% per annum. He relied on the decision in Dr K.R. Tandon (Mrs) Vs. Om Prakash and Another, , wherein the Supreme Court had increased the interest awarded in a motor accident claim to 12% per annum on the ground that inflation had galloped in the past two decades and the value of rupee has eroded. He also relied on several other decisions of the Supreme Court in Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, , Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others, , Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, and Shanti Bai and Others Vs. Charan Singh and Others, , wherein the Supreme Court has awarded interest at 12% per annum. He contended that award of interest being a matter of judicial discretion u/s 171 of the Motor Vehicles Act, 1988, this Court should not interfere with the discretion exercised by the Tribunal, in awarding interest at 9% per annum. He also contended that objection to the claim for interest made in the claim petition, not having been raised in the statement of objections filed before the Tribunal

and the ground regarding interest not having been specifically raised in the appeal memo, the appellants should not be permitted to raise this ground during arguments.

22. We will first deal with the contention that the appellant cannot challenge the rate of interest in the absence of a specific ground in the memorandum of appeal. It is not well-settled that award of interest from the date of claim petition being one of judicial discretion, no specific pleading in that behalf is necessary -- Ramesh Chandra Vs. Randhir Singh and Others, . Further, an appellant can urge any ground based on a question of law, not set out in the memorandum of appeal, with the leave of the Court. When the objection relating to rate of interest was raised by the learned Counsel for appellant, on 19-6-2000, we permitted him to do so and adjourned the matter to today to enable the learned Counsel to address their detailed submissions on the question of interest. At all events, having regard to the provisions of Order XLI, Rule 2 of the Civil Procedure Code, the Appellate Court is not bound to confine itself to the ground of objection set forth in the memorandum of appeal, in deciding the appeal. Hence, the correctness of the rate of interest is a matter that can be examined in this appeal.

23. Section 171 of the Motor Vehicles Act, 1988 ("MV Act" for short) provides for award of interest on the amount of compensation, but only from the date of claim petition. The said section is extracted below:

"171. Award of interest where any claim is allowed.--Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

The above provision does not specify the rate of interest. The rate of interest and the date from which the interest should be awarded, is left to the judicial discretion of the Tribunal.

24. We may also refer to the provisions of the Interest Act, 1978 [Section 3 read with Section 2(b) of the Act], which provide for award of interest from the date of demand (that is the date on which the claimant puts the person who is liable to pay damages on notice, that interest will be claimed) to date of institution of the proceedings for recovery of damages. Under the Interest Act, the rate of interest that can be awarded shall not exceed the maximum rate of interest payable by Banks on deposits, as per directions issued by Reserve Bank of India under the Banking Regulation Act, 1949. One of the contentions urged is that these provisions show that interest can be more than 6% per annum. But, Interest Act applies only to interest payable for the period prior to the institution of the claim proceedings and not to the period commencing from the date of institution of claim. Section 171 of Motor Vehicles Act specifically bars award of any interest prior to the date of making the claim petition. Hence, obviously

neither the Interest Act nor the principles underlying the Interest Act, 1978 is of any assistance in deciding any matter relating to award of interest in claim petitions under the Motor Vehicles Act.

24-A. The rate of interest would necessarily depend upon the interpretation of Section 171 and other provisions of the Motor Vehicles Act, 1988. None of the decisions of the Supreme Court cited at the Bar by either side, judicially interpret Section 171, nor state the principles relating to award of interest. They are, therefore, to be taken as decisions depending on the facts of the respective cases. However, we have the benefit of a decision of a Division Bench of this Court, in Geetha's case, *supra*, which exhaustively considers the object, intent and purport of the corresponding Section 110-CC of the Motor Vehicles Act, 1939. There is no difference between the wording in Section 110-CC of the old Act and Section 171 of the Motor Vehicles Act, 1988. We extract below the relevant portions of the said decision rendered by M.N. Venkatachalaiah, J. (as he then was) speaking for the Division Bench:

"Some Tribunals carry the impression that they are bound to award 12 per cent and that the 12 per cent is the rule and anything less is the exception. The impression is not justified".

"In some pronouncements of the High Courts and of the Supreme Court, interest at 12% per annum has come to be awarded. The pronouncements of the Supreme Court in *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, and in *Chameli Wati's case, supra*, are decisions on the facts of the cases. They are not declaration of the law under Article 141 of the Constitution, in the point".

In *LIC of India v Raj Kumari Mittal*, Allahabad High Court said:

". . . .We are of the opinion that u/s 110-CC of the Motor Vehicles Act, interest may be normally awarded at 6% per annum. Where the Tribunal finds that the contesting opposite party has been guilty of dilatory tactics in the disposal of the petition, a higher rate of interest may be considered. We find no merit in the contention of Mr. S.K. Vidyarthi, that the Tribunal should have awarded interest at the rate of 12% per annum. The claimants are entitled to interest on the amount of compensation at the rate of 6% per annum from the date of petition till the date of final payment.

This, if we may say so with respect, represents the proper view. There cannot be any general rule valid for all cases. The only general rule, perhaps, is that there is and ought to be no such general rule. In the present case, the Tribunal has given no reasons at all as to why it considered award of interest of 12% justified.

In an award of interest on damages in fatal accident actions and the rate of it, there is discretion, indeed in appropriate cases a duty, to differentiate between one component of the damages and another having regard to the nature of the heads of damages between different kinds of losses, that ensue from a fatal

accident. There are economic losses and non-economic losses. Both cannot be placed on the same footing for the award and the rate of interest. But having regard to the general discretion u/s 110-CC of the "Act", it is not strictly necessary to award different rates of interest on the different heads of damages and a rate can yet be tailored which, as a composite rate, may take into account the different considerations that guide the award of interest on the different components on the Award.

What emerges from a conspirator of the authorities is that: The determination of the rate of interest is guided, not by a single criterion, but by a combination of factors. The purpose in Section 110-CC fixing the date of the petition as the earlier part from which interest could be reckoned is to see that a claimant does not stand to gain by his own delay in bringing the action. When a composite rate is applied, it is important to make a mental note of what items of the award go to the "interest pool" and what items do not go to interest pool. While special damages sums actually spent or lost, up to the date of trial such as medical charges, loss of earnings, and out of pocket expenses, etc., qualify for interest, however, the Award for loss of future earnings or the loss of dependency cannot be said to be money kept out of the claimants because they pertain to a loss of the future income and are in fact paid in advance. This would mean that any composite rate of interest must take into account the size of the awards in the "interest pool" and of those in the "non-interest" pool. The provisions for erosion of value of the money could only be, so far as special damages are concerned, for the period between the incurring of the special damages and their realization; and in the case of loss of future pecuniary benefits from the date of the award till date of realization. But, as stated earlier, a composite rate can be evolved and applied keeping these distinctions in mind.

It is erroneous to predicate that there is anything in the law or the binding precedents that wherever interest is awarded, its rate should not be less than 12%. Both the award and the rate of interest are in the discretion of the Tribunal to be exercised judicially and judiciously, not arbitrarily or capriciously; but in accordance with sound principles.

Generally speaking, a composite rate of 6% should be considered satisfactory without any specific itemization because the component of compensation in the "interest pool" is comparatively smaller and the sizable component is the amount awarded for the loss of future dependency. We, however, hasten to add that the Tribunal have an undoubted discretion to award higher rates of interest, if in their opinion, the circumstances of the particular case justify such higher rates".

We are in respectful agreement with the said view, reiterated in the cases relied on by the appellant, that, in respect of fatal accident claims, normally the interest should be 6% p.a.

25. The compensation awarded in a motor accident claim consist of two components -- (i) general or non-pecuniary damages and (ii) special or

pecuniary damages.

In cases of fatal accident, general damages consists of damages for loss of dependency, loss of estate and loss of consortium. In cases of personal injuries, general damages consists of damages for loss of future earning capacity and/or loss of amenities and damages for the injury, pain and suffering.

Special damages consists of damages awarded to reimburse the actual medical treatment and incidental expenses as also the loss of income during period of treatment, in the cases of personal injuries. There is hardly any special damages in compensation awarded in cases of death, except what is awarded for transportation of dead body and funeral expenses.

Thus in cases of fatal accidents, the entire compensation (except for negligible part relating to compensation awarded for transportation of the body and funeral expenses) comprises of general damages. On the other hand in cases of personal injuries, the compensation awarded is normally a fair mix of general damages and special damages.

26. We get a clear indication as to what should be the rate of interest on general damages, from the decisions of the Supreme Court in *Susamma Thomas* and *Trilokchandra's* cases, *supra*. These two decisions have adopted the *Davies Method* [evolved in *Davies v Powell*] in calculating general damages, that is pecuniary loss suffered on account of the death, by the dependent members of the family of the deceased. This involves determining the total loss of dependency by multiplying the annual contribution to the family by the deceased which is the annual loss of dependency, (considered as the multiplicand) by an appropriate figure representing the proper number of years' purchase (that is 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 *Susamma Thomas* case, *supra*, the Supreme Court assumed the rate of interest at 5% per annum, in arriving at the multiplier needed to capitalize the loss of annual dependency. It therefore fixed the multiplier (that is the number of years' purchase) as 20 to yield the annual dependency perpetually and made allowances to scale down the multiplier by taking into account the uncertainties of the future and prospect of immediate lump sum payment and arrived at the operative multiplier as 16. The relevant portion of the decision is extracted below:

"The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000.00. If a sum of Rs. 1,00,000.00 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 need to capitalise the loss of the annual dependency at Rs. 10,000.00 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 dependents, whichever is higher) goes up".

This principle was reiterated in the case of *Trilokchandra*, *supra*, the only modification being the increase of the operative multiplier to 18, which would mean that the rate of interest assumed will be 4.5% per annum. Thus, loss of dependency (in the case of death) or loss of future earning capacity (in the case of injuries) which form the major part of general damages awarded in a motor accident case is calculated by multiplier method by assuming a yield by way of interest on investment at 4.5% to 5% per annum. If the rate of interest is taken at 9% to 12% per annum, then the operative (maximum) multiplier would hardly be 8 or 9 instead of 16 or 18. As loss of dependency is calculated by keeping the operative (maximum) multiplier as 16 or 18, necessarily the interest awarded thereon from the date of claim petition to date of payment should not exceed 4.5% to 5% per annum.

27. There are some other components in general damages like loss of consortium and loss of estate in the case of fatal accidents and damages for pain, suffering and injury and damages for loss of amenities in personal injury cases. Having regard to the non-pecuniary nature of these damages, interest at 6% per annum is reasonable on such amounts.

28. On the other hand, special damages is pecuniary damages awarded by way of reimbursement of what has been spent by the claimant, or of the earnings that is actually lost during the period of treatment. Many a time, the claimant would have borrowed the amounts required for treatment. The same applies to amount spent for repairing damage to any vehicle. Hence, the interest on pecuniary damages should be near to what the claimant would have earned from it, if he had saved it or near to what he would have paid if he had borrowed it. The interest on special damages should normally be around 12% per annum and should be awarded from the date of claim petition and not any later date.

29. In cases of fatal accidents, the compensation awarded consists mainly of damages for loss of dependency (interest at 5% p.a.), apart from some conventional amounts for loss of estate and loss of consortium (interest at 6% p.a.) and a small amount as special damages for funeral expenses and transportation of body (interest at 12% p.a.). Taking note of the several components, the interest awarded should be 6% p.a. on the total compensation.

30. In cases of personal injuries, the compensation awarded is a fair mix of general damages and special damages. The general damages are only for injury,

pain, suffering and for loss of future earnings or loss of amenities. These being either non-pecuniary loss or loss of future income paid in advance, interest thereon should be 5 to 6% p.a. The special damages are for medical and other expenses actually incurred by an injured and loss of earning during the period of treatment. These being reimbursement of sums actually spent or already lost by the claimant, in respect of such damages, interest should be at the rate of 12% per annum. As compensation awarded for personal injuries is a composite one, comprising both general and special damages, by adopting the process of averaging, interest at per annum on the entire amount from the date of claim petition will be appropriate in cases of personal injuries.

31. The Tribunal is required to exercise judicial discretion, in awarding interest. The Tribunal has no unbridled power to award interest. There is also a need to have some uniformity in awarding interest. We find that in similar cases, different Tribunals award different rates of interest. In fact, we have found that some Tribunals have been awarding different rates of interest, even though facts are similar. Consistency, uniformity and non-arbitrariness are the hallmarks of all judicial decisions. Exercise of judicial discretion is no exception. If several Tribunals are functioning in the same place and if each Tribunal should award different rate of interest, in similar or identical matters, it will lead to discontent among the claimants. Many a time, interest forms a big chunk of the amount received by the claimants, in pursuance of awards. If a claim petition was pending before the Tribunal and High Court for about eight years and the rate of interest is 12% per annum, the interest itself will be equal to the compensation amount. Even if the period of pendency of a claim petition before a Tribunal and an appeal therefrom to the High Court, is four to five years, the difference in the amount payable to a claimant, depending on the rate of interest (say 6% and 12% p.a.) will be as much as 25% to 30% of the compensation amount. Therefore there should be proper application of mind while awarding interest.

32. To ensure exercise of judicial discretion in regard to interest in a fair, reasonable and judicious manner, it is necessary for Tribunal to keep in view the following broad guidelines:

(a) Interest can be awarded only from the date of claim and not from the date of accident [Section 171 of Motor Vehicles Act, 1988 and the decision of the Supreme Court in *United India Insurance Co. Ltd. Vs. Narendra Pandurang Kadam and Others*,].

(b) Interest should not be awarded on the amount awarded to meet expenditure in future [e.g., compensation awarded for the future surgery or future medical expenses] [vide decision in *R.D. Hattangadi's case*, supra].

(c) Where compensation awarded consists of only general or non-pecuniary damages, or where the general or non-pecuniary damages constitute the bulk, as in cases of claims relating to death, the rate of interest should normally be 6% p.a.

(d) Where the compensation awarded is a fair mix of general damages and special damages [as in the case of any personal injuries resulting in permanent disability, leading to loss of earning capacity], the interest should normally be 9% per annum.

(e) Where compensation awarded consists only of special or pecuniary damages or where special or pecuniary damages constitute the bulk of the award (as in cases of damage to vehicles or in cases of personal injury where there is no loss of future earning capacity), interest may be awarded at 12% per annum.

(f) The interest to be awarded may be suitably increased if the claim proceedings were unduly protracted at the instance of owner/insurer [respondent in the claim petition], keeping in view a ceiling of 12% p.a. as interest.

(g) The rate of interest may be decreased suitably, where the claim proceedings were unduly delayed by the claimants.

33. In the absence of reasons, interest awarded should be 6% p.a. in fatal accident cases and 9% p.a. in personal injury cases. Any increase beyond those rates should be supported by reasons. The guidelines stated above are neither general rules for all cases, nor inflexible. The Tribunal may, for reasons to be specified, refuse to award interest or award interest at a rate higher than what is normally granted in the interest of justice.

34. In this case, the claim petition was filed on 8-9-1997. It was disposed of on 11-11-1999. There is no delay on either side. The case relates to death and almost the entire amount awarded is in the nature of general damages. The Tribunal has not specified any reason for awarding the higher rate of 9%. In the circumstances, we hold that claimants are entitled to interest on the award amount only at 6% per annum from the date of claim petitions.

35. Hence, we allow this appeal in part as follows:

(i) The compensation awarded is reduced from Rs. 15,06,000.00 to Rs. 9,78,000.00.

(ii) The rate of interest is reduced from 9% to 6% per annum.

(iii) The award of the Tribunal remains unaltered in other aspects. If the respondent 1 or 2 require any funds for further education of second respondent or for any specific purpose, it is open for them to make necessary application in that behalf to the Tribunal, for modification of the direction relating to deposit.

(iv) Parties to bear their respective costs in this appeal.