

(2005) 09 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 169 of 2005

Union of India (UOI) and Another

APPELLANT

Vs

Jaishree and Others

RESPONDENT

Date of Decision : 19-09-2005

Acts Referred:

Citation : (2006) ACJ 1291

Hon'ble Judges : N.P. Gupta, J

Bench : Single Bench

Advocate : V.K. Mathur and Pushpendra Singh, for the Appellant; Lalit Kawadia and Sachin Acharya, for the Respondent

Final Decision : Allowed

Judgement

N.P. Gupta, J.—The appeal comes up for admission. However, since the claimants have appeared as caveators and vide order dated 18.3.2005, record of the court below was ordered to be requisitioned, which has already been received, in that view of the matter, at the request of all the learned Counsel for the parties, I have heard the matter finally at this stage itself.

2. Learned Tribunal, by the impugned judgment and award, has accepted the claim petition filed by the respondents-claimants and has passed an award for a sum of Rs. 78,32,000, along with interest at the rate of 9 per cent per annum from the date of claim petition till realisation.

3. The facts of the case are, that the claimants filed a claim petition before the learned Tribunal below, alleging inter alia that on 1.7.2001 the deceased victim, Rohit was coming from Ganganagar to Bikaner, driving Maruti car No. DL9C-C 4966, at about 10.30 in the night, when he reached near Shiv Temple in village Mahajan, the military Tatra truck No. 271 t 88-E-8546 came from opposite direction, being driven rashly and negligently and by coming on the wrong side dashed against Maruti car, dragged it and left the road on the wrong side. In this accident, the deceased Rohit expired at the spot. It is alleged that the deceased

was possessing academic qualification of M.Com, was 25 years and 9 months of age and just three months before the accident he was allotted a petrol pump by Indian Oil Company, in Khara Growth Centre, which was commissioned in the name and style of Dhariwal Petroleum, Khara and was located at the National Highway No. 15. It was then pleaded that within the short span of 3 months itself, the deceased earned a net profit of Rs. 1,78,028 and was expected to grow. Giving the family background, it was pleaded that the grandfather of the deceased was a big businessman, in whose name a showroom is operating in Bikaner, being Dhariwal & Company, having turnover of crores, while father of the deceased has a big showroom in Ganga-nagar, wherein he operates the agencies of big companies like Godrej, Voltas, Salora, etc. and that showroom also has an equal turnover of about one and a half crore. Thus looking to the family background, deceased was expected to rise. It is then pleaded that on account of death of Rohit, the licence of petrol pump has been cancelled. Thus, on these facts, the claim has been lodged for an amount of Rs. 2,19,10,000, giving details, Rs. 2,16,00,000 have been claimed for loss of income, Rs. 1,00,000 for loss of consortium, Rs. 1,00,000 for love and affection and guidance, Rs. 1,00,000 for support to the mother, and Rs. 10,000 for cremation expenditures. The claimants are the widow, minor son aged one and a half years and mother aged 48 years.

4. A reply has been filed on behalf of all the defendants, mainly denying the averments of the claim and pleading an additional plea that on 1.7.2001, Nayak G.S. Gurjar was taking this vehicle Tatra along with trailer towards Suratgarh from Loonkaransar, at which time a Maruti came from the opposite direction, being driven at a fast speed and banged in said Tatra, inasmuch as it dashed at the joint between Tatra and trailer. It is pleaded that Tatra vehicle is 9.8 metres long and on the trailer being attached to it, its length is about 75 ft. The trailer is attached after 9.8 metres length of Tatra. It is also pleaded that the width of the trailer is far more than Tatra. With these facts it is pleaded that the deceased was young man and was driving the car under the influence of age and thus he could not comprehend the protruding position of the trailer and, therefore, in the process of crossing the vehicle, he could cross Tatra, but could not cross the trailer and banged in. On account of this accident the warning lights of the trailer were also smashed. It was then pleaded that by the time Tatra driver could know of the accident it was much too late, thereafter many people collected there and for the purpose of taking out the dead body and the car, Tatra and the trailer were moved forward and backward with the result that the vehicle went ahead to the extent of 12-13 metres. It was pleaded that the defendant was not driving the vehicle negligently and that looking to the size and dimensions of the vehicle, it cannot run at a fast speed.

5. The learned Tribunal, on these pleadings, framed four issues. The first issue is relating to the negligence of Tatra driver, the second issue relates to quantum of compensation. The third issue is relating to the question about the accident having occurred on account of the fast driving of Maruti car and the fourth issue

related to the relief, to which the parties may be entitled to.

6. I find at page A-16 of the record, an application, filed by the respondent Jaishree (widow of the deceased), giving out that whatever amounts to which she may be found entitled may be given to her son Dhruv, who is being looked after by his grandparents.

7. During trial, the claimants examined Jaishree as AW 1. Then they had produced two eyewitnesses, being Rajaram, AW 2 and Kalu Singh, AW 3. The Chartered Accountant, Rajendra Lunia, AW 4, was examined to prove the balance-sheet and turnover record, etc. On the side of the defendants, driver Gajrajsingh appeared as NAW 1, then Ranjit Kumar Das, the Hawaldar employed in Technical Services, was examined as NAW 2 and Lance Nayak Mani P.I. was examined as AW 3, who was the driver of the vehicle going ahead of Tatra and whose duty was to guide Tatra (a sort of escort). The claimants also produced some 13 documents.

8. The learned Tribunal decided issue Nos. 1 and 3 together and found that the accident was an outcome of sole negligent driving of Tatra. Then while deciding issue No. 2, the learned Tribunal assessed the loss of income to be Rs. 78,57,000, then awarding Rs. 10,000 for loss of consortium, etc. and Rs. 5,000 for cremation, passed an award of Rs. 78,82,000 and from out of that deducting Rs. 50,000 paid under no fault liability award, the final award was passed for the balance amount, as mentioned above.

9. Assailing the impugned judgment and award, learned Counsel for appellant contended that the learned Tribunal was in error in holding that the accident was outcome of negligent driving of the military vehicle, rather it is more than clear on record that it was the car driver, who drove the car at a fast speed and unmindful of the trailer, banged in it and died. The other submission made was that compensation awarded is excessive. In this regard, it was submitted that in view of the application of Jaishree, it appears that she is no more in the family and, therefore, the compensation should not have been awarded to that extent. The other submission made was that it is wrong to contend that the petrol pump has been cancelled rather the petrol pump is still functional and is operating in the name of Dhariwal Petroleum itself and thus the claimants have not suffered any loss of income rather they have suffered only loss of supervisory aspect, which would have been put in by the deceased. The other submission made is that since the petrol pump is an uncertain business and in view of the substantial inflow of oil companies and increasing number of petrol pumps by leaps and bounds, income of the deceased could have very well decreased as well. In that view of the matter, learned Tribunal was in error in assessing compensation, as assessed. The other limb of submission was that the learned Tribunal was in error in taking into account the future prospects of increase in the income of the deceased to the extent of 50 per cent and at the same time employing the multiplier of 18, which is applicable only under the Second Schedule framed u/s 163-A. The calculation of amount on the basis of unit system was also assailed

and it was submitted that even if the amount is calculated on any appropriate parameter, it is clear that the compensation assessed is grossly excessive and is required to be substantially reduced.

10. Controverting the submissions, it was contended by the learned Counsel for the claimants that there is no error in the finding of learned Tribunal on the question of negligence. The finding has been arrived at after due appreciation of evidence. Elaborating the arguments it was submitted that a look at the site plan, Exh. 4 and the site inspection note, Exh. 5, together shows that after the accident the delinquent vehicle had travelled a long distance of 60 ft towards the wrong side of the road with no skid marks which might have emerged on the application of brakes, had the brakes been applied. It is also contended that from Exh. 9 it is established that the trailer was not having any side indicator lights. Then relying upon the provisions of Rule 104 of the Central Motor Vehicles Rules, it was contended that this type of vehicle was required to be having white reflectors and the reflecting area of each reflector was required to be not to be less than 28.5 sq cm on either side of the trailer. This coupled with the fact that admittedly the width of the trailer was much more than the width of Tatra and there is nothing to show, that the person coming from the opposite direction could at all sense any hazard available immediately after Tatra in the form of projecting trailer and, therefore, driving such Tatra's vehicle on the road, at that dark hours, without any indication, even by itself does clearly establish that the accident was the outcome of sole negligent driving of the delinquent vehicle. Likewise, it was submitted that as is clear from Exh. 5 that after the impact the delinquent vehicle had travelled a distance of 60 ft and in an attempt to explain this, a plea has been taken to the effect that in the process of taking out the dead body and the car, the vehicle was moved forward and backward and in that process it travelled a distance of 12-13 metres. According to the learned Counsel, it is a different story and this is not borne out from Exhs. 4 and 5, significantly none of the witnesses examined on the side of the defendant have said a word in this regard. Thus, according to the learned Counsel, the finding on the question of negligence does not require any interference.

11. Regarding quantum it is submitted that there is no material placed on record, on the side of the appellants, to show that the pump has not been cancelled or that it is continuing with or for the benefit of the claimants. Regarding income it was submitted that Exh. 13 establishes the huge turnover with increasing growth, while Exh. 12 shows the net profit earned during the short period of time, for which income tax has already been paid. Looking to the young age of the deceased and the family background, it cannot be said that the figure arrived at by the learned Tribunal under the head of loss of income is in any manner excessive, requiring interference by this Court in appeal. Regarding remarriage, it was submitted that there is no plea nor any material on record to show that Jaishree has ever contracted any remarriage. Certain judgments were cited by both learned Counsel in support of their submissions.

12. I have considered the submissions and have gone through the record.

13. Taking up the question of negligence, covered by issue Nos. 1 and 3, it is not in dispute that the accident occurred. It is also not in dispute that the car had hit at the junction point between Tatra and the trailer. It is also not in dispute that the width of the trailer is far more than the width of Tatra which was carrying it. With this admitted positions, I have considered the material on record.

14. On the side of the claimants they have examined two eyewitnesses being AW 2 and AW 3 as AW 1 is not an eyewitness, while AW 4 does also not claim to know anything regarding the accident. So far AW 2 is concerned, he has deposed that he had seen the accident comprising Maruti car coming from Ganganagar side and military Tatra coming from Bikaner side. The car being on the left side of the road and the military Tatra having come at its right hand side and the accident occurred. Thereafter, Tatra travelled about 50-60 metres. Thereafter the police came on the spot and the dead body and car were taken out. In cross-examination he has deposed that he had come to the hotel of Manohar Lal for effecting recovery of the amounts and he was talking, at that time he heard the noise of impact of the accident and saw the car entangled in between Tatra and trailer. He has deposed that he did not see the speed of the car earlier. However, he claims to have seen the headlights of Tatra. He has deposed that this type of vehicle has a length of around 75-80 ft. This witness has deposed that at the time of accident the trailer was carrying a tank while Maruti car was entangled at the place where the trailer is attached to Tatra. He has categorically deposed, that he did not see the car dashing against the truck rather it banged in the trailer on the right hand side. He has maintained that the trailer had dragged the car for quite some distance and had left the road some 85 ft back. In my view this witness cannot be said to be eyewitness of the accident. Even according to him, as admitted in cross-examination, he had not seen the accident happening. That apart, he has deposed that trailer was carrying the tank while according to Exh. 7, the trailer is carrying the JCB machine. The JCB machine and tank are not so similar things, which one may get confused about.

15. Coming to Kalu Singh, AW 3, he has deposed that at about 10.30 in the night accident occurred between the military Tatra vehicle and Maruti car. The car was coming from Ganganagar side while military Tatra was coming from Bikaner side. The car was moving on the left side of the road, Tatra went on the wrong side after accident and at the time of accident also it was on the wrong side. He has deposed that they reached at the site on hearing the noise and found Maruti to have gone inside (below Tatra), The car was carrying one passenger only and on taking a personal search, his driving licence was found, which disclosed his identity to be Rohit Dhariwal. In the cross-examination he has deposed that at the time of accident he was taking tea at the Shiv Dhaba and did not see the speed of the car and happening of accident. He deposed that at the time of accident it was dark and there was no light. He has deposed that lights were there only in Shiv Temple at the distance of 20-25 paces from the spot. He

claims himself to be a driver by profession and has deposed that Tatra cannot run at a speed of more than 30-40 kmph. He has also deposed that the width of the trailer is larger than that of Tatra and that the accident occurred by the car banging against the trailer portion of Tatra. He has deposed that headlights of Tatra were on, there was no light on the trailer and that yellow and red lights on Tatra were also not on. Thus, this AW 3 also appears to have seen the things after accident had already occurred.

16. Coming to the evidence led on the side of the defendant, the driver of Tatra, as noticed above has appeared as NAW 1 and has deposed that on 1.7.2001 he was driving Tatra from Lunkaransar to Surat-garh which was having attached trailer, wherein a tank was loaded. Then he has deposed that Maruti car came from the opposite direction and hit against the trailer and tank. He deposes to have brought the vehicle at a halt by applying brakes and tried to take out the car. He has also deposed that ahead of that Tatra, a pilot car was also moving. In cross-examination he has deposed that police had come on the site, the car was lying under the trailer behind Tatra and the police took it out with the help of a tractor. He denied the suggestion of Tatra having gone on the right hand side of the road at the time of accident or that the accident occurred on account of Tatra having gone on the right hand side of the road, rather he has deposed that the vehicle was in the mid of the road. Then the Hawaldar of Tatra Company, NAW 2, has deposed that the width of the trailer is more than three metres, which is more than that of Tatra and that the length of Tatra-trailer is about 26-27 metres. He has also deposed that on the front side and on the rear side of the trailer, indicators are there on both left and right sides and that the driver sitting in Tatra can see the rear view from the rear view mirror. In cross-examination he has deposed that in Tatra-trailer there are eight lights and two special lights which are known as warning lights and there is indicator also on the front and rear side, such special light is not fitted in the trailer. He has also deposed that in mid of the trailer also lights are there but then he has deposed ignorance as to whether at the time of accident all these lights were working or not, as he was not there on the spot. Then so far NAW 3 is concerned, he is the driver of pilot car, who was moving 250 metres ahead of Tatra and has deposed that they carry with them a red colour flag, whereby they warn the oncoming traffic and has deposed that he came on the spot after accident and that during this distance of 250 metres there was no other vehicle. This is the whole evidence led on the side of the defendants,

17. A bare reading of this evidence shows that the road is a national highway road, while according to the NAW 2, the total width of the trailer is something more than 3 metres. According to the driver, NAW 1, the vehicle was moving in the mid of the road, while according to the site plan, it was on the right hand side of the road. The driver has deposed that he applied brakes to halt the vehicle but on the spot no skid marks or other marks of application of brakes are found. Significantly even NAW 3 does not depose to have seen Maruti car coming from opposite direction or to have warned it nor has he deposed anything about

the location of the vehicle on the road.

18. In the background of the above evidence, now I proceed to consider the things as appearing from Exhs. 4 and 5 coupled with Exhs. 7, 8 and 9. From Exh. 4, the site plan, it is clear that the road in question is a national highway, the width thereof has not come on record. The width of trailer has been shown to be bit more than 3 metres, that the accident occurred at point-X on the road, shown by figure-1 and from that point the delinquent vehicle travelled up to point-A, which is towards the north-east from point-X. The military vehicle is travelling from south to north. Point-X is much substantially on eastern portion of the road, which can very well be said to be a wrong side of the road, not only that as appears from Exh. 5, that the delinquent vehicle has travelled a distance of as long as 60 ft towards further east and over all this distance debris of glass and iron pieces are lying. Then a look at Exh. 9 shows that the trailer was not having any side indicator light and was having scratch marks on the right front side. Likewise, the right side rear mudguard of Tatra was also having a dent.

19. In my view, these circumstances coupled with the evidence of the appellants, if properly appreciated, clearly establish that the delinquent vehicle was being driven during night hours, on the mid of the national highway and had gone on the wrong side and along with this, there was no indication of the presence of the trailer behind Tatra which trailer, admittedly was having width more than that of Tatra or to indicate that any larger vehicle having more width than that of Tatra is coming, so as to enable the driver of the car to leave more space than what was left for passage of Tatra. In that view of the matter the obvious and inevitable conclusion is that the accident is attributable solely to negligence of the driver of Tatra and thus the findings of the Tribunal on issue Nos. 1 and 3 are affirmed.

20. Before concluding this part of the judgment, I feel moved to notice the hard realities of life that are being faced and are coming before the court, day in and day out, viz., that the graph of road accidents is increasing leaps and bounds leaving the victims and the dependants of the victims either high and dry or to hanker after the long-drawn litigations. Obviously, this plight of the situation invokes sympathy of the courts including Hon'ble Supreme Court, but then the unscrupulous persons, ready to encash this sympathy are also not rare. During my tenure as a Judge, I came across number of cases where sometimes natural death or sometimes death resulting from physical beating given on account of personal animosity, etc., were cooked up into the stories of road accident and claim petitions were lodged. It is a different story that somehow some traces of the guilt could come to the notice of the Tribunal and the claims were dismissed and against them the appeals were also dismissed by me. Likewise, I also remember of a case where for amputation of a leg the victim had received compensation by filing a claim petition at one place and after receiving few lakhs on that count, dared to file another claim for the same accident and injury at another distant place and it was only per chance that on account of yet third

criminal litigation arising out of some misappropriation of the compensation amount, earlier awarded by some middle man, that fact came to notice about the second claim having been filed for the same accident and as intelligent the litigant was, he chose to get the claim dismissed in default. Ought we know that after change of the officer and lawyer, invoking sympathies for the victim, claimant may get the claim restored and may even get it decreed. Likewise, cases are also not rare where the investigating agency either does not collect necessary data or does not provide it to the court or does not provide it to the litigant to be provided to the court. Likewise, cases are also not rare where the material evidence available in the investigation file is concealed by the claimants from the court, obviously because it might not be suitable to them and in such circumstances, the learned Motor Accidents Claims Tribunal is left helpless and practically on all occasions it is guided by the sympathies for the victims. Then I have also come across cases where domestic falls or injuries have been complained as "hit and run cases" and therein merely by lodging F.I.R., they have been able to pocket the compensation. This has yet another aspect, i.e., "hit and run" pool amounts suffers loss and there may be cases where even in genuine cases of road accidents the victims and/or their dependants have to rest contented with the nominal amount payable as a "hit and run" case. These are some of the incidents which move me to make the observations here.

21. The thing required to be observed is that now the science has developed a lot, electronic devices have provided unimaginable assistance in all fields of life. Electromagnetic systems and devices are there and with the outbursting progress of information technology it is high time that the legal system and the litigation, at least in the field of motor accidents, continues or is left or compelled to work in the "bullock cart age" working systems only.

22. It strikes to my mind that now with the motor vehicles with improved technology as are crowded on the roads and with the prices touching sky high, the Motor Vehicles Act requires suitable amendments providing for installation of some electronic image and data recording device, with a data recorder on some appropriate place on the front side which device may start functioning as soon as the engine is started and the vehicle is put into gear and it may view the things moving around the vehicle for some distance on either side, another such device for viewing the things moving behind and equally distant on the either side and such device should be able to record the data of limited period of time, may be 15 minutes or half an hour and may go on deleting the past data and at the same time as soon as any accident takes place and that accident is recorded by the device, automatically coming to a stop with saving those data and which data need not be deleted. Thereafter, even if the vehicle is in a position to move ahead, the device should be able to further record the data, without deleting the last data, God forbid, if again any accident takes place and so on. Such data, or list of data, should be capable of being located and/or traced, as soon as the vehicle having such data happens to cross such traffic points or toll plazas and it may be ascertained as to whether any police report about recorded accident has

come to be registered by any police station or not and those data should be so stored as to be available for M.A.C.T. concerned, before whom the claim may happen to be lodged. Such data are required to be preserved for long in view of the latest provisions in Motor Vehicles Act regarding limitation. Likewise, this installation is required to be made one of the necessary preconditions for registration of all types of motor vehicles and equally a precondition for providing its fitness and requiring renewal of fitness at requisite and regular intervals and the said device to be checked at such frequency of intervals as may be required, to ensure continued functioning of the device. Likewise to ensure the fool proof working of the device, it should have such a system that unless the device is ready to record the data the engine of the vehicle does not start or if is required to be started, in any case, the gear system whether it be manual or automatic, does not allow the vehicle to move. The readiness of the device includes requisite power supply its view being free from any type of obstructions, its subsisting capacity to store data or further data or the like.

23. I feel that installation of such device is not likely to escalate the prices of the vehicles to any significant extent, but then, at the same time it will provide fool proof material to the Motor Accidents Claims Tribunal not only enabling it to decide the question of negligence or contributory negligence, but will also prevent effectively any spurious or simulated claims and avoid false and imaginative defences as well. This, in my feeling, is now the requirement of justice qua the victims and dependants of the victims of road accidents, so also qua the owners, drivers and insurers.

24. I am conscious with the fact that I have no jurisdiction to direct the legislature or Parliament to legislate on this subject, but then, the court cannot shut its eyes from inviting attention of the concerned if during the course of functioning as a Judge, such things come to notice or occur which can very substantially advance the cause of justice, reduce litigation, reduce expenditure and expedite the relief to the really suffering victims and/or their dependants.

25. Coming to the question of quantum, deciding issue No. 2, the learned Tribunal relying on Exh. 10, the letter received from I.O.C., Exh. 11, the registration certificate of Dhariwal Petroleum, the audit report and monthly summary of stock being Exhs. 12 and 13, respectively and the statement of AW 4, Rajendra Punia, coupled with the fact that there is no rebuttal, found that during this period of four months, i.e., 1.4.2001 to 31.7.2001, the income of the deceased was assessed at Rs. 1,94,170 and accordingly, assessed the annual income at Rs. 5,82,000. Likewise, considering the judgments of this Court, other High Courts and that of Apex Court; being of this Court in Gopal Kanwar and Others Vs. Darbara Singh and Others, ; Chaji and Others Vs. Girraj Singh and Others, ; Oriental Insurance Co. Ltd. Vs. Sunita Gupta and Others, State of Rajasthan v. Papu Devi 2004 RAR (Raj) 294. Then judgments of the Hon"ble Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and New India Assurance Co.

Ltd. Vs. Kiran Singh and Others, and then National Insurance Co. Ltd. Vs. Ravi Kant and Others, and United India Insurance Co. Ltd. Vs. Mrs. Patricia Jean Mahajan and others, , proceeded to add 50 per cent of the income on account of future prospects and thus assessed the income of the deceased at Rs. 8,73,000 per year, out of which deduction was made for income tax and the net income was found to be Rs. 6,11,100. Then adopting the unit system as considered in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , deducted a sum of Rs. 1,74,600, by way of personal expenditure and assessed the dependency at Rs. 4,36,500 per year. Then finding the age to be 25 years and six and quarter month, in view of the Second Schedule, employed the multiplier of 18 and assessed the compensation at Rs. 78,57,000. Then awarded the other amounts for the loss of consortium, etc. and has passed the award, as noticed above.

26. Taking up the judgments relied on by the learned trial court in Gopal Kanwar and Others Vs. Darbara Singh and Others, , the deceased was aged 25 years and was earning Rs. 1,800 per month. Dependency was assessed by the trial court at Rs. 800 per month and employing the multiplier of 22, award of Rs. 2,21,000 was passed. In appeal against that award, single Bench of this Court referring to U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , held that multiplier should be 17 instead of 22. Then taking into account the future prospects, the income was taken to be Rs. 3,600 per month and deducting 1/3rd for personal expenditure, the dependency was assessed at Rs. 2,400 and the compensation was awarded accordingly. Though not specifically stated in the judgment, but it appears that the learned single Judge applied the judgment of the Hon'ble Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . In Chaji and Others Vs. Girraj Singh and Others, , the deceased was aged 35 years and was earning Rs. 80 per day, applying multiplier of 16, compensation was awarded and the same learned single Judge relying upon the judgment in Susamma Thomas' case added 50 per cent in income by way of future prospects and making deduction of personal expenditure to the extent of 1/3rd maintaining the multiplier of 16, assessed the compensation. In Oriental Insurance Co. Ltd. Vs. Sunita Gupta and Others, , the deceased was 36 years of age and was working as a Manager in J.K. Cement. According to his salary slip, he was drawing Rs. 23,969 per month. The learned Tribunal applying the multiplier of 14, awarded compensation which was upheld. In this case no addition was made for future prospects. Then in Papu Devi's case 2004 RAR (Raj) 294 , the deceased was 26 years of age and was earning Rs. 42,934 per year and this Court by adding 50 per cent of the last drawn salary and after making 1/3rd deduction for personal expenditure, assessed the compensation by employing the multiplier of 17. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , which is the judgment by two Judges of Hon'ble Supreme Court, after referring to various previous judgments, including that of Supreme Court in Gobald Motor Service

Ltd. v. R.M.K. Veluswami 1958 65 ACJ 179 (SC) and other judgments, it was considered that having regard to the prospects of advancement of the deceased in future career of the deceased, with more or less stable jobs, the gross income was estimated at Rs. 2,000 per month for a person who was receiving a sum of Rs. 1,032 per month and after making deduction of personal expenditure, a multiplier of 12 was employed. In that case the deceased was aged 39 years. In New India Assurance Co. Ltd. Vs. Kiran Singh and Others, , Hon''ble Apex Court was concerned with the case of Assistant Engineer aged 27 years, who was drawing a sum of Rs. 2,384.50 per month. The accident being relating to the period under the old Act, the Tribunal had awarded a compensation of Rs. 6,25,000, which was upheld. This again is a judgment of two Hon''ble Judges. Then in National Insurance Co. Ltd. Vs. Ravi Kant and Others, , this Court in a case of deceased being 25 years of age and getting a monthly income of Rs. 67,000, applied multiplier of 17 and considering the future prospects, assessed the income at Rs. 1,00,000, after making deduction for personal expenditure, upheld the award of Rs. 48,31,812. In United India Insurance Co. Ltd. Vs. Mrs. Patricia Jean Mahajan and others, , learned Tribunal had applied the multiplier of 7 in a case where the deceased was found to be having carry home salary of \$ 3,09,204 per annum from out of which dependency was assessed at \$ 1,03,068.

27. Thus, a review of these judgments relied upon by the learned court below shows that all these judgments proceeded substantially on the philosophy of the judgment of Hon''ble Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . While in my humble view the things have undergone a material change thereafter, inasmuch as in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , which is a judgment by a Bench of three Hon''ble Judges, wherein the judgment in Susamma Thomas'' case was also considered and practically all the previous judgments referred in the case of Susamma Thomas were also considered and then it was held that the situation has undergone a change. With the enactment of the Motor Vehicles Act, 1988, as amended by the Amendment Act 54 of 1994, inter alia, considering that the method of working out "just compensation" was reiterated noticing from the awards made by Tribunals and the courts that the spirit 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. Hon''ble Apex Court has held that it must be realised that the Tribunal/court has to determine a fair amount of compensation, awardable to the victim of a road accident which must be proportionate to the injury caused. Then referring to the two English judgments, the formula of amount of compensation was laid down, according to which, from out of the monthly income, deduction for personal expenditure is to be made and after arriving at that figure, a formula of unit system was taken into account. Then after making the deduction for personal expenditure, appropriate multiplier was required to be employed and it

was held that the maximum multiplier should not exceed 18. Significantly, the theory of increasing income by twice the amount or by 50 per cent more of the sum already being earned by the deceased at the time of death was given complete go by. Then for selection of multiplier it was observed that the multiplier can be selected from the Second Schedule, depending upon the age.

28. Even at the cost of repetition, it may be observed that U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , is a judgment by a larger Bench of Apex Court and has to be followed as compared to the other judgments rendered by comparatively smaller Benches of Hon"ble Supreme Court,

29. Then recently in State of Haryana and Another Vs. Jasbir Kaur and Others, , again it was reiterated that in determining the amount of compensation it is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has also been stressed that the 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. It was noticed that 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 the precise mathematical calculations; rather it has to depend upon the particular facts and circumstances and attending peculiar or special features, if any. It was also held that a wide discretion is vested on 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. With laying down this background it was found that there is no material on the basis of which the trial court should arrive at a figure of Rs. 4,500 per month as the income, rather gauging the relevant aspects, Apex Court fixed the income at Rs. 3,000 per month, deducting 1/3rd for personal expenditure and employing multiplier of 18, awarded compensation. The deceased in that case was 25 years of age and was agriculturist, alleged to be earning Rs. 10,000 per month. In this case again the practice of adding the amount on the ground of future prospects was given a go by. Reliance in this case was placed on the judgment of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, .

30. Then I may refer to yet another recent judgment of Hon"ble Apex Court, relied upon by the learned Counsel for the appellant, though for different purpose, being in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, . In this case the deceased was 38 years of age and was earning a sum of Rs. 4,684 per month. In this case again the previous judgments of Hon"ble Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, ; General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; Gobald Motor Service"s case 1958-65 ACJ 179 (SC) and various other judgments were reconsidered, and then it was held in paras 9 and 10 as under:

(9) The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.

(10) Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters" and the court must try to assess as best as it can the loss suffered.

Then in para 12 onwards, the criteria for selection of multiplier was discussed and laid down and relying upon U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , it was held that the multiplier of 12 would be appropriate. It is significant to note that in that case the learned Tribunal has employed a multiplier of 16, which was affirmed by the High Court and Hon'ble Apex Court by interfering with the multiplier reduced the award. Obviously, in this case again, the theory of increasing the amount of income on the ground of future prospects was given a go bye after consciously considering the judgment in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .

31. I may then refer to a recent judgment of Hon'ble Supreme Court in Smt. Supe Dei and Others Vs. National Insurance Co. Ltd. and Another, , wherein it has been held that the Second Schedule in terms does not apply in cases u/s 166, but it serves as a guideline for the purpose of determination of compensation. Then in Manju Devi v. Musafir Paswan 2005 ACJ 99 (SC), again referring to U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , it was held by Supreme Court that there should be no departure from the multiplier method on the ground that payment being made is just compensation. It was held that the multiplier method is an admitted method ensuring payment of just compensation as it is the method which brings uniformity and certainty to awards made all over the country. In this case the multiplier of 15 was held to be required to be applied as the deceased was a non-earning person.

32. Thus in my view it can very safely be said that now it is a settled legal position, settled by Hon'ble Supreme Court that while applying the multiplier, seeking guidance from the Second Schedule, the income of the deceased as he was earning at the time of death alone has to be taken into account. Obviously, therefore, it cannot be enhanced on consideration of future prospects of increase. Thus the judgments taking contrary view, as relied upon by the learned trial court, in my view, in view of the subsequent judgments of Apex Court including the larger Bench judgment in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , need not be dilated upon by me.

33. If the calculation of payable compensation is made on these parameters, it transpires that the income of the deceased was shown to be a sum of Rs. 1,94,000 after commissioning the petrol pump till death being April, May and June, as the deceased died on 1.7.2001 itself. But then the learned Tribunal has wrongly considered it to be the income of 4 months apart from the fact that this is shown to be the gross income. Be that as it may, if the net income as shown in Exh. 12 is taken to be the income for 3 months, it can very safely be said that the income of the deceased was, as claimed by the claimants, being Rs. 60,000 per month, i.e., Rs. 7,20,000 per annum. From out of this amount, an amount of Rs. 2,40,000 is to be deducted, which he would have been required to be paid, by way of income tax. Then remains a sum of Rs. 4,80,000 from out of this, deduction for the personal expenditure of the deceased to the extent of Vsrd is to be made, which comes to Rs. 1,60,000 per year. Thus, dependency of the claimants comes to Rs. 3,20,000 per year. Multiplying this amount by the multiplier of 18, as employed by the learned Claims Tribunal also, the payable compensation comes to Rs. 57,60,000. Thus, the amount of compensation awarded by the learned Tribunal under this head being Rs. 78,57,000 is required to be reduced to Rs. 57,60,000. The other amounts awarded under different heads of course do not require any interference.

34. Thus, the finding of the learned Tribunal on issue No. 2 is required to be and is modified in the above manner.

35. Before parting with the case I also feel like ordering at the request of learned Counsel for the respondent No. 1 that since she has already given in writing that the entire amount payable to her may be paid to the minor son Dhruv, who was one and half years of age at the time of accident and is being looked after by grandparents, who are said to be quite affluent, I think it appropriate to direct that the amount directed by the learned Tribunal to be put in fixed deposit in the name of the minor is required to be maintained as such with all restrictions and stipulations, but then the payability of quarterly interest on that amount is required to be reduced to 50 per cent and it is further required to be directed that the balance amount of 50 per cent of interest, as may be accruing, be also continued to be reinvested in the fixed deposits, to mature along with the corpus amount of compensation,

36. The appeal is accordingly allowed in part. While maintaining the finding on issue Nos. 1 and 3, the finding of issue No. 2 is modified in the manner that the amount of compensation assessed at Rs. 78,57,000 is reduced to Rs. 57,60,000 and the other amounts awarded and stipulations and conditions imposed thereon are maintained with the further modification that the quarterly interest accruing on the fixed deposit of the minor shall be withdrawable to the extent of 50 per cent only and the remaining 50 per cent shall be continued to be reinvested by way of fixed deposit, to mature along with the original corpus amount and that deposit shall also carry the same restrictions and conditions as are applicable to the fixed deposit with respect to the compensation amount payable to the minor

as imposed by the learned Tribunal. The parties shall bear their own costs.