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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th May, 2015

+ **MAC.APP. 419/2013**

SMT. VEDWATI Appellant

Through: Mr. O.P. Mannie, Adv.

versus

SH. SHETAN SINGH & ORS. Respondents

Through: Mr. Rajat Brar, Adv.

+ **MAC.APP. 213/2015**

BAJAJ ALLIANZ GENERAL INSURNACE CO. LTD. Appellant

Through: Mr. Rajat Brar, Adv.

versus

VEDWATI & ORS. Respondents

Through: Mr. O.P. Mannie, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. These two appeals arise out of the judgment dated 22.08.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹ 3,33,400/- was awarded for the death of Manoj, a bachelor, who suffered fatal injuries in a motor vehicular accident which occurred on 18.10.2009.

2. For the sake of convenience, the Appellant in MAC APP. 419/2013, who is the mother of the deceased, shall be referred to as the Claimant and the Appellant in MAC APP. 213/2015 shall be referred to as the Insurance Company.
3. The petition for grant of compensation for the death of Manoj was filed by the Claimant under Section 166 of the Motor Vehicles Act, 1988 (the Act). On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the container bearing registration no. RJ-09GA-1613 by its driver Shetan Singh (Respondent no.1).
4. It was the case of the Claimant that the deceased was in private service and was earning ₹ 6,000/- per month. In the absence of any proof of the deceased's employment, the Claims Tribunal took the minimum wages of an unskilled worker *i.e.* ₹4,000/- per month, added 30% towards future prospects, deducted ½ towards personal and living expenses and applied the multiplier of 7 (as per the age of the mother of the deceased) to compute the loss of dependency as ₹ 2,18,400/-.
5. In addition, the Claims Tribunal awarded a sum of ₹ 1,00,000/- towards loss of love and affection, ₹ 10,000/- towards loss to estate

and ₹ 5,000/- towards funeral expenses to compute the overall compensation of ₹ 3,33,400/-.

6. It is urged by the learned counsel for the Claimant that as per the law laid down in *Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and approved in *Reshma Kumari v. Madan Mohan & Anr.*, (2009) 13 SCC 422, the multiplier has to be as per the age of the deceased. It is thus, stated that the multiplier ought to have been 17 instead of 7 as adopted by the Claims Tribunal.
7. On the other hand, the learned counsel for the Insurance Company has referred to the judgments in (i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*, (1994) 2 SCC 176; (ii) *U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC 362; (iii) *New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1; (iv) *New India Assurance Company Ltd. v. Kalpana (Smt.) & Ors.*, (2007) 3 SCC 538; (v) *Ramesh Singh & Anr. v. Satbir Singh & Anr.*, (2008) 2 SCC 667; (vi) *Shakti Devi v. New India Insurance Company Limited & Anr.*, (2010) 14 SCC 575 and (vii) *Oriental Insurance Company Ltd. v. Kaila Devi & Ors.*, MAC APP.280/2014 decided on 18.03.2015 to urge that the

multiplier has to be as per the age of the deceased or the Claimant whichever is higher.

8. It is urged by the learned counsel for the Insurance Company that if the age of the dependants, *i.e.*, the parents or the mother in case of a bachelor is high, the dependency would come to an end earlier and therefore, higher multiplier as per the age of the deceased would not be permissible.
9. The issue was examined by this Court earlier in *Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors.*, ILR (2012) 6 Del 447. Since there were some more judgments passed by the Apex Court in the meanwhile and the issue was being re-agitated by the parties, it was re-examined by this Court in greater length in *Shriram General Insurance Co. Ltd. v. Maneesha Karnatak and Ors.*, MAC APP 655 of 2014 decided on 20.03.2015 wherein in Paras 10 to 34, it was held as under:

“10.the question of selection of multiplier was dealt with at great length by me in Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors., ILR (2012) 6 Del 447. In that case, the learned counsel for the Appellant had relied on the following judgments (i) Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009 (6) SCC 121; (ii) Mohd. Ameeruddin v. United India Insurance Co. Ltd., 2010 (12) SCALE 155; (iii) P.S. Somanathan v. District Insurance Officer, I (2011) ACC 659 (SC); (iv) Bilkish v. United India Insurance Co. Ltd. & Anr., 2008 (4) SCALE

25; (v) *National Insurance Co. Ltd. v. Azad Singh & Ors.*, 2010 ACJ 2384 (SC); (vi) *Oriental Insurance Co. Ltd. v. Deo Patodi & Ors.*, 2009 ACJ 2359 (SC) and (vii) *Divisional Manager, New India Assurance Co. Ltd. v. T. Chelladurai & Ors.*, 2010 ACJ 382 (SC).

11. I had discussed the law laid down in the earlier stated judgments and had further referred to the judgments in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*, (1994) 2 SCC 176; *U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC 362; *Fakeerappa v. Karanataka Cement Pipe Factory*, (2004) 2 SCC 473 and *New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1 to hold that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher.

12. The learned counsel for Respondents No. 1 and 2 has submitted that in view of the three Judge Bench decision in *Reshma Kumari v. Madan Mohan & Anr.*, (2009) 13 SCC 422 and a later judgment of the Supreme Court in *M. Mansoor & Anr. v. United India Insurance Company Limited & Anr.*, (2013) 15 SCC 603, the judgment in *Vijay Laxmi (supra)* of this Court needs to be revisited and the multiplier has to be as per the age of the deceased and age of the Claimant is not at all relevant for selection of the multiplier.

13. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should be a pittance. In other words, it should not be meager nor should be a windfall. In this connection, a reference may be made to the report of the Supreme Court in *State of Haryana v. Jasbir Kaur*, (2003) 7 SCC 484, which dealt with the grant of compensation in case of injury which principles equally

apply in case of award of compensation in fatal accident cases. In Para 7, the Supreme Court held as under:

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

14. *Initially, the trend of the Courts was to ascertain the life expectancy, deduct the age of the deceased and to award the compensation on the basis of the residual life*

span. The Courts started deducting certain sums out of the sum as arrived above on account of lump sum payment.

15. *However, in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors., (1994) 2 SCC 176, an attempt was made for the first time to award just and reasonable compensation on the basis of the multiplier method. The Supreme Court referred to the report in Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors., AIR 1962 SC 1 and observed that actual pecuniary loss can be ascertained only by balancing, on one hand, the loss to the Claimant of the future pecuniary benefits and on the other hand, any pecuniary advantage which from whatever sources comes to them by reason of death. Paras 8 and 9 of the report in Susamma Thomas (Mrs.) (supra) are extracted hereunder:-*

“8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant. Thus “except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages.” (Per Lord Macmillan in Davies v. Powell [(1942) AC 601, 617 : (1942) 1 All ER 657 (HL)].) Lord Wright in the same case said, “The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death”. These words of Lord Wright were adopted as the principle applicable also under the Indian Act in Gobald Motor Service Ltd. v. R.M.K. Veluswami [AIR 1962 SC 1 : (1962) 1 SCR 929 : 1962 MLJ (Cri) 120] where the Supreme Court stated that the general principle is that the actual pecuniary loss

can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

9. *The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.”*

16. *The Supreme Court referred to Davies v. Powell, (1942) AC 601 and Nance v. British Columbia Electric Railway Company Limited, (1951) AC 601 and in Paras 13 and 14 of the report in Susamma Thomas (Mrs.) (supra), the Supreme Court observed as under:-*

“13. *The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.*

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

“The starting point in any estimate of the amount of the ‘dependency’ is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But ... there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4½ per cent the present value of an annuity for 20 years of which the first ten years are at £ 100 per annum and the second ten years at £ 200 per annum, is about 12 years’ purchase of the arithmetical average annuity of £ 150 per annum, whereas if the first ten years are at £ 200 per annum and the second ten years at £ 100 per annum the present value is about 14 years’ purchase of the arithmetical mean of £ 150 per annum. If

therefore the chances of variations in the 'dependency' are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the 'dependency' used for the purpose of assessing the damages. ””

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

18. The law laid down in Susamma Thomas (Mrs.) (supra) with regard to adoption of multiplier method and selection of multiplier according to the age of the deceased or the Claimant whichever is higher was affirmed by a three Judge Bench decision in U.P. SRTC v. Trilok Chandra, (1996) 4 SCC 362. The three Judge Bench laid down that the multiplier cannot in all cases be solely dependant on the age of the deceased and the age of the parents would also be relevant in case of death of a bachelor in the choice of multiplier. In para 18 of the report of the Supreme Court in Trilok Chandra (supra), it was observed as under:-

“18..... Besides, the selection of multiplier cannot in all cases be solely dependant on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier..... ”

19. *There was some confusion as to the selection of the multiplier because of the multiplier table as given in the Second Schedule of the Act under Section 163-A which was inserted w.e.f. 14.11.1994. Some of the cases had adopted the multiplier as given in the Second Schedule. Although, the three Judge Bench in Trilok Chandra (supra) had noticed some clerical mistakes in the multiplier table as given in the Second Schedule, it stated that the said table can be taken as a guide. Noticing the wide variations in the selection of multiplier, a two Judge Bench of the Supreme Court in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 noted the multiplier as adopted in Susamma Thomas, Trilok Chandra and New India Assurance Company Limited v. Charlie & Anr. (2005) 10 SCC 720 and in the Second Schedule and in Para 40 of the report, it compared the same in a tabulated form which is extracted hereunder:-*

<i>Age of the deceased</i>	<i>Multiplier scale as envisaged in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335]</i>	<i>Multiplier scale as adopted by Trilok Chandra [(1996) 4 SCC 362]</i>	<i>Multiplier scale in Trilok Chandra as clarified in Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]</i>	<i>Multiplier specified in Second Column in the Table in Second Schedule to the MV Act</i>	<i>Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)</i>
(1)	(2)	(3)	(4)	(5)	(6)
Up to 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. *The Supreme Court with a view to having a uniform multiplier held that the multiplier as given in Column (4) of the above table should be usually followed. In Paras 41 and 42 of the report in Sarla Verma (Smt.), the Supreme Court observed:-*

“41. Tribunals/ courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] [set out in Column (2) of the table above]; some follow the multiplier with reference to Trilok Chandra [(1996) 4 SCC 362] , [set out in Column (3) of the table above]; some follow the multiplier with reference to Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] [set out in Column (4) of the table above]; many follow the multiplier given in the second column of the table in the Second Schedule of the MV Act [extracted in Column (5) of the table above]; and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation [set out in Column (6) of the table above]. For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335], 14 as per Trilok Chandra [(1996) 4 SCC 362], 15 as per Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657], or 16 as per the multiplier given in Column (2) of the Second Schedule to the MV Act or 15 as per the multiplier actually adopted in the Second Schedule to the MV Act. Some tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163-A of the MV Act. In cases falling under Section 166 of the MV Act, Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335], Trilok Chandra [(1996) 4 SCC 362]

and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

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

22. *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 related to the death of a Scientist who died leaving behind his widow, three minor children, parents and grandfather. Thus, the Supreme Court while laying down that the multiplier has to be adopted as per Column 4 of the table as per the age of the deceased, was generally referring to the award of compensation in cases of death of a person who had a family consisting of widow, children and parents. Of course, general principles with regard to award of compensation in case of death of a bachelor were also laid down by the Supreme Court in Sarla Verma (Smt.), but it was not specifically laid down that even in the case of death of a bachelor, the age of the Claimants who may be aged parents will be totally irrelevant.*

23. *However, in Amrit Bhanu Shali v. National Insurance Company Limited, (2012) 11 SCC 738, the Supreme Court stated that the selection of the multiplier has to be as per the age of the deceased and not on the basis of the age of the dependants. It was a case which related to the death of a bachelor.*

24. *On account of divergence of opinion in the earlier cases, a reference to a larger Bench was made by a two Judge Bench in Reshma Kumari v. Madan Mohan & Anr., (2009) 13 SCC 422. The question of award of compensation in relation to multiplier and future prospects was gone into at great length by a three Judge Bench of the Supreme Court in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. The two referred questions by Reshma Kumari v. Madan Mohan & Anr., (2009) 13 SCC 422 were:-*

“1.1. Whether the multiplier specified in the Second Schedule appended to the Motor Vehicles Act, 1988 (for short “the 1988 Act”) should be scrupulously applied in all cases” and

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

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

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

43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above.

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

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma v. DTC, (2009) 6 SCC 121 for determination of compensation in cases of death.....”

26. In *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65, these were general observations that the steps and guidelines stated in para 19 of *Sarla Verma (Smt.)* have to be followed. In *Sarla Verma (Smt.)*, it was laid down that having regard to the age of the deceased and period of active career, the active multiplier should be selected and the multiplier should be chosen from the table with reference to the age of the deceased. As I have observed above, it was not the intention in *Sarla Verma (Smt.)* to apply the multiplier of 18 in case of death of a bachelor aged 25 years where the dependants may only be the aged parents. Thus, in *Reshma Kumari* also, it was not laid down that the multiplier has to be according to the age of the deceased even when the deceased is a bachelor having dependency of the parents only.

27. Of course, in *M. Mansoor & Anr. v. United India Insurance Company Limited & Anr.*, (2013) 15 SCC 603, the two Judge Bench observed that the multiplier has to be as per the age of the deceased and even in case of death of a bachelor aged 24 years, the multiplier will be 18.

28. However, there is a three Judge Bench decision of the Supreme Court in *New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1 wherein a bachelor aged 25 years lost his life in a motor vehicular accident which occurred on 11.11.2002. The Claims Tribunal adopted a multiplier of 17, as per the age of the deceased (25 years). On appeal filed by the New India Assurance Company Limited before the High Court, it was contented that the multiplier has to be as per the age of the Claimants (in that case) and not as per the age of the deceased. The Division Bench of High Court of Uttarakhand declined to accept the contention and dismissed the appeal. In the SLP filed by the Insurance Company, the multiplier of 17 was reduced to '5' on the age of the mother of the deceased being 65 years.

29. Also, in the latest judgment of the Supreme Court in *Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma & Anr.*, (2015)2 SCC 180, a two Judge Bench of the Supreme Court dealt with the questions of multiplier and the appropriate multiplier in case of death of a bachelor in the said case was taken as 13, keeping in mind the age of the parents of the deceased. Para 11 of the report is extracted hereunder:-

“11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs 25,000 p.m. i.e. Rs 3,00,000 p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per *Oriental Insurance Co. Ltd. v. Deo Patodi* [(2009) 13 SCC 123 : (2009) 5 SCC (Civ) 29 : (2010) 1 SCC (Cri) 963] and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in *Sarla Verma case* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], we arrive at a total loss of dependency at Rs 26,00,000 [(Rs 3,00,000 minus $\frac{1}{3} \times \text{Rs } 3,00,000$) $\times 13$]......”

30. Thus, right from the two Judge Bench decision in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*, (1994) 2 SCC 176, which for the first time held that the multiplier method is the best way of awarding just compensation, which was approved in *U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC 362, wherein it was held that the multiplier has to be as per the age of the deceased or the Claimant whichever is higher, which is reiterated in *New India Assurance Company Limited v. Shanti Pathak (Smt.)*

& Ors., (2007) 10 SCC 1 by applying the multiplier as per the age of the mother of the deceased (bachelor), the consensus of the larger Bench decisions seems to be that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher. The judgment in Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors., ILR (2012) 6 DEL 447 has thus, correctly interpreted the law. Three Judge Bench decision in U.P. SRTC v. Trilok Chandara, (1996) 4 SCC 362 shall be taken as a binding precedent in the matter of selection of multiplier as per the age of the deceased or the Claimants.

31. Moreover, even if there is divergence of opinion in subsequent two Judge Bench decisions or three Judge Bench decisions (although there is no divergence by three Judge Bench decisions), the law laid down by three Judge Bench in Trilok Chandra (supra) shall be taken as a binding precedent. In this connection, a reference may be made to Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 673, wherein, in para 12, the Supreme Court observed as under:-

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

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

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of

coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Raghbir Singh [(1989) 2 SCC 754] and Hansoli Devi [(2002) 7 SCC 273].”

32. Similarly, in *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi*, (2011) 2 SCC 94, in para 27, the Supreme Court observed as under:-

“27. However, even assuming that the decision in WP No. 35561 of 1998 did not operate as res judicata, we are constrained to observe that even if the learned Judges who decided WP No. 304 of 2001 did not agree with the view taken by a coordinate Bench of equal strength in the earlier WP No. 35561 of 1998 regarding the interpretation of Section 2 (c) of the Act and its application to the petition schedule property, judicial discipline and practice required them to refer the issue to a larger Bench. The learned Judges were not right in overruling the statement of the law

by a coordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well-accepted and desirable practice is that the later Bench would refer the case to a larger Bench.”

33. *Also, in Union of India and Ors. v. S.K. Kapoor, (2011) 4 SCC 589, while holding that the decision of the Co-ordinate Bench is binding on the subsequent Bench of equal strength, it was held that the Bench of Co-ordinate strength can only make a reference to a larger Bench. In para 9 of the report, the Supreme Court held as under:-*

“9. It may be noted that the decision in S.N. Narula case [(2011) 4 SCC 591] was prior to the decision in T.V. Patel case [(2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98]. It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in S.N. Narula case [(2011) 4 SCC 591] was not noticed in T.V. Patel case [(2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] , the latter decision is a judgment per incuriam. The decision in S.N. Narula case [(2011) 4 SCC 591] was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.”

34. *Thus, in view of this, the three Judge Bench decision in Trilok Chandra (supra), later reiterated in the three Judge Bench decision of New India Assurance Co. Ltd. v. Shanti Pathak (supra) shall be taken as a binding precedent. The multiplier will be as per the age of the deceased or the Claimant whichever is higher.”*

10. Thus, in case of death of a bachelor, usually the multiplier shall be adopted on the basis of the age of the mother. In the instant case, the age of the mother was 63 years; the appropriate multiplier therefore, will be 7.
11. At the same time, another important question which falls for consideration in the instant appeal is whether the compensation awarded to the Claimant can be less than the one permissible under Section 163-A of the Act. Admittedly, the victim or the legal representatives of the deceased are entitled to compensation under Section 163-A of the Act without proving any negligence on the part of the driver of the vehicle involved in the accident. Of course, this was a petition under Section 166 of the Act. It is well settled by a catena of judgments that Section 166 of the Act envisages payment of compensation which is just and reasonable.
12. In this connection, a reference may be made to the report of the Supreme Court in *State of Haryana v. Jasbir Kaur*, (2003) 7 SCC 484, wherein while highlighting the payment of just compensation, the Supreme Court held as under:-

“7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense ‘damages’

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

13. Thus, in my view, the compensation payable to a victim of a motor vehicular accident or to the legal representatives of the deceased suffering fatal injuries under Section 166 of the Act cannot be less than one payable under Section 163-A of the Act.

14. The minimum wages of an unskilled worker on the date of the accident were ₹ 3953/- per month. Thus, in the instant case, the loss of dependency in a petition under Section 166 of the Act will come to ₹ 1,66,026 ($3953 \times 12 \times \frac{1}{2} \times 7$). On addition of ₹ 1,00,000 towards loss of love and affection, ₹ 25,000 towards funeral expenses and ₹ 10,000 towards loss to estate, the overall compensation would come to ₹3,01,026.
15. On the other hand, taking the income of the deceased as ₹ 40,000/- per annum which is the maximum in a petition under Section 163-A of the Act, the loss of dependency on a multiplier of 18 (the deceased being 26 years of age on the date of the accident) will come to ₹ 4,80,000/- ($40,000/- \times \frac{2}{3} \times 18$). In addition, in a petition under Section 163-A of the Act, the Claimant is entitled to a sum of ₹ 2,000/- towards funeral expenses and ₹ 2,500/- towards loss to estate as per the Second Schedule attached to Section 163-A of the Act. The overall compensation hence, will come to ₹ 4,84,500/-.
16. Since this compensation is payable without proving negligence, compensation payable under Section 166 of the Act cannot be less than the compensation of ₹ 4,84,500/-.
17. The compensation is accordingly enhanced from ₹3,33,400/- to

₹4,84,500/-.

18. The enhanced compensation of ₹1,51,100/- shall carry interest @ 7.5% per annum from the date of filing of the Claim Petition till its payment.
19. Respondent Insurance Company is directed to deposit the enhanced compensation along with interest within six weeks in the UCO Bank Delhi High Court Branch, New Delhi.
20. It may be noted that the Insurance Company proved breach of the terms and conditions of the insurance policy and was granted recovery rights to recover the compensation paid from the insured. The said finding has not been challenged by the insured Shetan Singh (Respondent no.2 in MAC APP.213/2015). The insured preferred not to contest the appeal despite service.
21. It is therefore, directed that the Insurance Company shall be entitled to recover the compensation amount paid by it in execution of this very judgment without having recourse to independent civil proceedings from Respondent no.2.
22. Both the appeals are disposed of in above terms.

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

(G.P. MITTAL)
JUDGE

MAY 06, 2015
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