(2009) 6 Supreme Court Cases 121

(BEFORE R.V. RAVEENDRAN AND L.S. PANTA, JJ.)

SARLA VERMA (SMT) AND OTHERS . . Appellants;

Versus

DELHI TRANSPORT CORPORATION AND ANOTHER . . Respondents.

Civil Appeal No. 3483 of 2008†, decided on April 15, 2009

A. Motor Vehicles Act, 1988 — Ss. 166 and 168 — Fatal in accident — Objective approach in assessing compensation — "Just compensation" — What is, and basic requirements for arriving at — Requirement of maintaining *uniformity* and *consistency* in determining compensation among decisions of Tribunals/courts — Directions given to Tribunals/courts in respect of procedure/steps to be followed to arrive at said uniformity and consistency

— Held, assessment of compensation, though involves certain hypothetical considerations, should nevertheless be objective — Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions — Hence, expressing grave concern over lack of uniformity and consistency among the decisions of Tribunals, held, when the factors/inputs as well as the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation — To arrive at uniformity and consistency in determination of compensation in cases of death, Tribunals directed to follow the well-settled steps as indicated herein — Tort Law — Obligations Law — Compensation/Damages — Jurisprudence — Conceptual jurisprudence — "Justice" and "Justness" — Origination of — Fatal Accidents Act, 1855, S. 1-A

B. Motor Vehicles Act, 1988 — Ss. 166 and 168 — Fatal accident — Assessment of compensation — Facts required to be established by claimants in relation thereto — Issues to be determined by Tribunal to arrive at loss of dependency — Restated — Evidence Act, 1872 — Ss. 101 to 103 — Fatal Accidents Act, 1855, S. 1-A

C. Motor Vehicles Act, 1988 — Ss. 166 and 168 — Fatal accident — Heads (and amounts under such heads) under which compensation may be granted — Other than the detailed calculation required to calculate the loss of dependancy, held, certain lump sums may be awarded under heads of (i) loss of estate, (ii) loss of consortium, and (iii) funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) — However, further held, no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased — Fatal Accidents Act, 1855 — S. 1-A — Tort Law

† Arising out of SLP (C) No. 8648 of 2007. From the Judgment and Order dated 15-2-2007 of the Hon'ble High Court of Delhi at New Delhi in FAO No. 220 of 1993

Held :

Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Further, the compensation awarded does not become "just compensation" merely because the Tribunal considers it to be just. "Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. (Paras 16 and 17)

Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. Therefore, if different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among the Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system. (Paras 14 and 17)

Kerala SRTC v. *Susamma Thomas*, (1994) 2 SCC 176 : 1994 SCC (Cri) 335; *U.P. SRTC* v. *Trilok Chandra*, (1996) 4 SCC 362, *relied on*

Basically only three facts need to be established by the claimants for assessing compensation in the case of death i.e. (*a*) age of the deceased; (*b*) income of the deceased; and (*c*) the number of dependants. Further, the issues to be determined by the Tribunal to arrive at the loss of dependency are: (*i*) additions/deductions to be made for arriving at the income of the deceased; (*ii*) the deduction to be made towards the personal living expenses of the deceased; and (*iii*) the multiplier to be applied with reference to the age of the deceased. If these determinants are standardised, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay. (Para 18)

Thus, to have the said uniformity and consistency, the Tribunals are directed to determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

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

Step 2 (Ascertaining the multiplier)

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

Step 3 (Actual calculation)

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

Thereafter, a conventional amount in the range of Rs 5000 to Rs 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of Rs 5000 to Rs 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added. (Para 19)

Davies v. *Powell Duffryn Associated Collieries Ltd.*, 1942 AC 601 : (1942) 1 All ER 657 (HL); *Kerala SRTC* v. *Susamma Thomas*, (1994) 2 SCC 176 : 1994 SCC (Cri) 335; *U.P. SRTC* v. *Trilok Chandra*, (1996) 4 SCC 362, *relied on*

Nance v. *British Columbia Electric Railway Co. Ltd.*, 1951 AC 601 : (1951) 2 All ER 448 (PC), *held, disapproved*

D. **Motor Vehicles Act, 1988 — Ss. 166 and 168 — Selection of relevant multiplier — Appropriate table for — Inconsistency among decisions of Tribunals/courts — Need to avoid — As some tribunals/courts following multiplier given/actually adopted in MV Act Sch. II and certain following different multipliers indicated in different decisions of Supreme Court, held, such kind of inconsistency is to be avoided — Cases falling under S. 166 are governed by *Davies method* i.e. method enunciated in *Davies case*, 1942 AC 601 — Multiplier to be used in such cases should be as mentioned in Column (4) of the table given herein (in Para 40), prepared by applying *Susamma Thomas case*, (1994) 2 SCC 176 (which preferred *Davies method*), *Trilok Chandra case*, (1996) 4 SCC 362 and *Charlie case*, (2005) 10 SCC 720 — Thus, the operative multiplier is 18 for the age groups of 15 to 20 and 21 to 25 years; and 17, 16, 15, 14 and 13 for the age groups of 26 to 30, 31 to 35, 36 to 40, 41 to 45 and 46 to 50 years respectively; and 11, 9, 7, and 5 for the age groups of 51 to 55, 56 to 60, 61 to 65 and 66 to 70 years respectively (Paras 40 to 42 and 49)**

Davies v. *Powell Duffryn Associated Collieries Ltd.*, 1942 AC 601 : (1942) 1 All ER 657 (HL); *Kerala SRTC* v. *Susamma Thomas*, (1994) 2 SCC 176 : 1994 SCC (Cri) 335; *U.P. SRTC* v. *Trilok Chandra*, (1996) 4 SCC 362; *New India Assurance Co. Ltd.* v. *Charlie*, (2005) 10 SCC 720 : 2005 SCC (Cri) 1657, *relied on*

T.N. State Transport Corpn. Ltd. v. *S. Rajapriya*, (2005) 6 SCC 236 : 2005 SCC (Cri) 1436; *U.P. SRTC* v. *Krishna Bala*, (2006) 6 SCC 249 : (2006) 3 SCC (Cri) 90, *referred to*

E. **Motor Vehicles Act, 1988 — Ss. 166 and 168 — Death in accident — Compensation — Determination of income of deceased — Power to make additions to actual income existing at the time of death having regard to future prospects of deceased — Pay revisions occurring during pendency of claim proceedings or appeals therefrom, if can be taken into account — Detailed principles, and rule of thumb laid down — Tort Law — Fatal Accidents Act, 1855 — S. 1-A — Loss of a chance**

Held :

Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. But having regard to evidence as to future prospects, in *Susamma Thomas case*, (1994) 2 SCC 176, the Court

increased the income by nearly 100%, in *Sarla Dixit case*, (1996) 3 SCC 179 the income was increased only by 50% and in *Abati Bezbaruah case*, (2003) 2 SCC 148 the income was increased by a mere 7%. (Paras 20 to 24)

In view of the imponderables and uncertainties, it is favoured to adopt as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances. (Para 24)

Kerala SRTC v. *Susamma Thomas*, (1994) 2 SCC 176 : 1994 SCC (Cri) 335; *Sarla Dixit* v. *Balwant Yadav*, (1996) 3 SCC 179; *Abati Bezbaruah* v. *Geological Survey of India*, (2003) 2 SCC 148 : 2003 SCC (Cri) 746, *considered*

In the present case, the conclusion of the High Court as to the monthly income of the deceased is in conformity with the legal principle that about 50% can be added to the actual salary, by taking note of the future prospects. (Para 43)

Further, the assumption of the appellant claimants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-1989 itself and if the appeal had been decided by the High Court in the year 1989-1990, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales. (Paras 45 and 46)

If the contention urged by the claimants is accepted, it would lead to the following situation: the claimants could only rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. Hence, the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation, is rejected. (Para 47)

F. **Motor Vehicles Act, 1988 — Ss. 166 and 168 — Death in accident — Compensation — Consideration of income of deceased — Deductions to be made from income of deceased towards his personal and living expenses for said assessment — Mode of determination of — General principles as to — Application of standardised deductions — Need to lead evidence to show**

actual expenses of deceased — Detailed principles laid down — Tort Law — Compensation/Damages — Fatal Accidents Act, 1855, S. 1-A

G. **Motor Vehicles Act, 1988 — Ss. 166 and 163-A — Compensation under S. 166 — Deductions to be made from income of deceased towards his personal and living expenses — One-third deduction as envisaged in S. 163-A — Applicability of — Held, the said percentage of deduction is not an inflexible rule and offers merely a guideline**

Held :

In order to arrive at the contribution to the dependants, the personal and living expenses of the deceased should be deducted from his income. But no evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. The claimants will obviously tend to claim that the deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. On the other hand, it will be difficult for the respondents in claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardise the deductions to be made under the head of personal and living expenses of the deceased. This lead to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction got statutory recognition under the Second Schedule to the MV Act, 1988, in respect of claims under Section 163-A of the said Act. But, such percentage of deduction is not an inflexible rule and offers merely a guideline. (Paras 25 and 26)

Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra case*, (1996) 4 SCC 362, the general practice is to apply standardised deductions. Having considered several subsequent decisions of the Supreme Court, it is opined that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six. (Para 30)

But where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father. (Para 31)

Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the

income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. (Para 32)

Kerala SRTC v. *Susamma Thomas*, (1994) 2 SCC 176 : 1994 SCC (Cri) 335; *U.P. SRTC* v. *Trilok Chandra*, (1996) 4 SCC 362; *Fakeerappa* v. *Karnataka Cement Pipe Factory*, (2004) 2 SCC 473 : 2004 SCC (Cri) 577, *considered*

In the present case (where the deceased was survived by a widow, three minor children, parents and grandfather, who later died), as an earning member, the deceased would have spent more on himself than the other members of the family apart from the fact that he would have incurred expenditure on travelling/transportation and other needs. Therefore, interest of justice would be met if one-fifth is deducted as the personal and living expenses of the deceased. (Para 49)

H. **Motor Vehicles Act, 1988 — Ss. 163-A and 166 — Motor accident claim — Principles governing determination of liability and quantum of compensation under Ss. 163-A and 166 respectively — Distinction between**

The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of the MV Act, 1988 and claims under Section 166 of the said Act. Section 163-A and Schedule II to the 1988 Act in terms do not apply to determination of compensation in applications under Section 166. (Para 37)

Oriental Insurance Co. Ltd. v. *Meena Variyal*, (2007) 5 SCC 428 : (2007) 2 SCC (Cri) 527, *relied on*

I. **Motor Vehicles Act, 1988 — S. 163-A r/w Sch. II — Method for determination of compensation as provided for under Sch. II — Various discrepancies/errors in multiplier scale and other incongruities occurring in Sch. II — Pointed out by Supreme Court (Paras 34 to 36)**

J. **Motor Vehicles Act, 1988 — Ss. 166 and 168 — Death of a government servant, aged 38 years, in a motor accident — Determination of compensation — Application of relevant principles, as stated in present case — Enhancement of compensation awarded by High Court — Deceased, whose salary at the time of his death was Rs 4000 p.m., was survived by a widow, three minor children, parents and grandfather, who later died — Taking note of future prospects of said deceased, his monthly income for purpose of assessment of compensation determined as Rs 6006 by adding about 50% of his salary to actual salary income — Deducting 1/5th of the monthly income towards personal and living expenses of deceased, contribution to family (dependants) determined as Rs 57,658 p.a. — Having regard to age of deceased, applying the multiplier of 15, loss of dependency worked out as Rs 57,658 x 15 i.e. Rs 8,64,870 — In addition thereto, claimants also entitled to Rs 5000 under the head of "loss of estate" and Rs 5000 towards funeral expenses — Further, widow to get Rs 10,000 as loss of consortium — Thus, total compensation determined as Rs 8,84,870 — After deducting Rs 7,19,624 awarded by High Court, held, the enhanced compensation would be Rs 1,65,246 — Appellant claimants entitled to said enhanced sum in addition to what was already awarded, with interest @ 6% p.a. from the date of petition till the date of realisation — Civil Procedure Code, 1908 — S. 34 — Interest Act, 1978, Ss. 3 and 4 (Paras 43 and 49 to 51)**

W-D/41072/CR

Advocates who appeared in this case :
Ashok K. Mahajan, Advocate, for the Appellants;
Dr. Monika Gusain, Advocate, for the Respondents.

Chronological list of cases cited ***on page(s)***

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3. (2005) 10 SCC 720 : 2005 SCC (Cri) 1657, *New India Assurance Co. Ltd.* v. *Charlie* 138*e-f*, 138*g*, 139*d*, 140*a-b*, 140*b-c*, 140*d-e*
4. (2005) 6 SCC 236 : 2005 SCC (Cri) 1436, *T.N. State Transport Corpn. Ltd.* v. *S. Rajapriya* 138*f-g*
5. (2004) 2 SCC 473 : 2004 SCC (Cri) 577, *Fakeerappa* v. *Karnataka Cement Pipe Factory* 135*e-f*
6. (2003) 2 SCC 148 : 2003 SCC (Cri) 746, *Abati Bezbaruah* v. *Geological Survey of India* 134*a*, 134*b*
7. (1996) 4 SCC 362, *U.P. SRTC* v. *Trilok Chandra* 130*g-h*, 131*d*, 131*e-f*, 135*a-b*, 135*c*, 136*a*, 138*a*, 138*b*, 138*g*, 139*d*, 139*e*, 140*a*, 140*b-c*, 140*d-e*
8. (1996) 3 SCC 179, *Sarla Dixit* v. *Balwant Yadav* 133*g*, 134*b*
9. (1994) 2 SCC 176 : 1994 SCC (Cri) 335, *Kerala SRTC* v. *Susamma Thomas* 129*f*, 129*f-g*, 130*g-h*, 131*b-c*, 132*c*, 133*e*, 133*g*, 134*a-b*, 135*a*, 136*f*, 138*a-b*, 138*d*, 138*g*, 139*f-g*, 140*a*, 140*b-c*, 140*d-e*
10. 1951 AC 601 : (1951) 2 All ER 448 (PC), *Nance* v. *British Columbia Electric Railway Co. Ltd.* 129*e-f*, 129*f-g*, 130*h*, 131*c*
11. 1942 AC 601 : (1942) 1 All ER 657 (HL), *Davies* v. *Powell Duffryn Associated Collieries Ltd.* 129*e-f*, 129*f-g*, 130*g-h*, 131*b*, 131*c*, 140*c-d*

The Order of the Court was delivered by

R.V. RAVEENDRAN, J.— The claimants in a motor accident claim have filed this appeal by special leave seeking increase in compensation. One Rajinder Prakash died on account of the injuries sustained in a motor accident which occurred on 18-4-1988 involving a bus bearing No. DLP 829 belonging to Delhi Transport Corporation. At the time of the accident and untimely death, the deceased was aged 38 years and was working as a Scientist in the Indian Council of Agricultural Research (ICAR) on a monthly salary of Rs 3402 and other benefits.

2. Rajinder Prakash's widow, three minor children, parents and grandfather (who is no more) filed a claim for Rs 16 lakhs before the Motor Accidents Claims Tribunal, New Delhi. An officer of ICAR, examined as PW 4, gave evidence that the age of retirement in the service of ICAR was 60 years and the salary received by the deceased at the time of his death was Rs 4004 per month. The Tribunal by its judgment and award dated 6-8-1993 allowed the claim in part.

3. The Tribunal calculated the compensation by taking the monthly salary of the deceased as Rs 3402. It deducted one-third towards the personal and living expenses of the deceased, and arrived at the contribution to the family as Rs 2250 per month (or Rs 27,000 per annum). In view of the evidence that the age of retirement was 60 years, it held that the period of service lost on account of the untimely death was 22 years. Therefore it applied the multiplier of 22 and arrived at the loss of dependency to the family as

Rs 5,94,000. It awarded the said amount with interest at the rate of 9% per annum from the date of petition till the date of realisation. After deducting Rs 15,000 paid as interim compensation, it apportioned the balance compensation among the claimants, that is, Rs 3,00,000 to the widow, Rs 75,000 to each of the two daughters, Rs 50,000 to the son, Rs 19,000 to the grandfather and Rs 30,000 to each of the parents. Dissatisfied with the quantum of compensation, the appellants filed an appeal.

4. The Delhi High Court by its judgment dated 15-2-2007 allowed the said appeal in part. The High Court was of the view that though in the claim petition the pay was mentioned as Rs 3402 plus other benefits, the pay should be taken as Rs 4004 per month as per the evidence of PW 4. Having regard to the fact that the deceased had 22 years of service left at the time of death and would have earned annual increments and pay revisions during that period, it held that the salary would have at least doubled (Rs 8008 per month) by the time he retired. It therefore determined the income of the deceased as Rs 6006 per month, being the average of Rs 4004 (salary which he was getting at the time of death) and Rs 8008 (salary which he would have received at the time of retirement).

5. Having regard to the large number of members in the family, the High Court was of the view that only one-fourth should be deducted towards personal and living expenses of the deceased, instead of the standard one-third deduction. After such deduction, it arrived at the contribution to the family as Rs 4504 per month or Rs 54,048 per annum. Having regard to the age of the deceased, the High Court chose the multiplier of 13. Thus it arrived at the loss of dependency as Rs 7,02,624. By adding Rs 15,000 towards loss of consortium and Rs 2000 as funeral expenses, the total compensation was determined as Rs 7,19,624. Thus it disposed of the appeal by increasing the compensation by Rs 1,25,624 with interest at the rate of 6% per annum from the date of the claim petition. Not being satisfied with the said increase, the appellants have filed this appeal.

6. The appellants contend that the High Court erred in holding that there was no evidence in regard to future prospects; and that though there is no error in the method adopted for calculations, the High Court ought to have taken a higher amount as the income of the deceased. They submit that two applications were filed before the High Court on 2-6-2000 and 5-5-2005 bringing to the notice of the High Court that having regard to the pay revisions, the pay of the deceased would have been Rs 20,890 per month as on 31-12-1999 and Rs 32,678 as on 1-10-2005, had he been alive. To establish the revisions in pay scales and consequential refixation, the appellants produced letters of confirmation dated 7-12-1998 and 28-10-2005 issued by the employer (ICAR). Their grievance is that the High Court did not take note of those indisputable documents to calculate the income and the loss of dependency.

7. The appellants contend that the monthly income of the deceased should be taken as Rs 18,341 being the average of Rs 32,678 (income shown as on 1-10-2005) and Rs 4004 (income at the time of death). They submit that only one-eighth should have been deducted towards personal and living

expenses of the deceased. They point out that even if only one-fourth (Rs 4585) was deducted therefrom towards personal and living expenses of the deceased, the contribution to the family would have been Rs 13,756 per month or Rs 1,65,072 per annum.

8. The appellants submit that having regard to the Second Schedule to the Motor Vehicles Act, 1988 ("the Act", for short), the appropriate multiplier for a person dying at the age of 38 years would be 16 and therefore the total loss of dependency would be Rs 26,41,152. They also contend that Rs 1,00,000 should be added towards pain and suffering undergone by the claimants. They therefore submit that Rs 27,47,152 should be determined as the compensation payable to them.

9. The contentions urged by the parties give rise to the following questions:

(*i*) Whether the future prospects can be taken into account for determining the income of the deceased? If so, whether pay revisions that occurred during the pendency of the claim proceedings or appeals therefrom should be taken into account?

(*ii*) Whether the deduction towards personal and living expenses of the deceased should be less than one-fourth (1/4th) as contended by the appellants, or should be one-third (1/3rd) as contended by the respondents?

(*iii*) Whether the High Court erred in taking the multiplier as 13?

(*iv*) What should be the compensation?

The general principles

10. Before considering the questions arising for decision, it would be appropriate to recall the relevant principles relating to assessment of compensation in cases of death. Earlier, there used to be considerable variation and inconsistency in the decisions of courts and tribunals on account of some adopting the *Nance method*[1] enunciated in *Nance* v. *British Columbia Electric Railway Co. Ltd.*[1] and some adopting the *Davies method*[2] enunciated in *Davies* v. *Powell Duffryn Associated Collieries Ltd.*[2]

11. The difference between the two methods was considered and explained by this Court in *Kerala SRTC* v. *Susamma Thomas*[3]. After exhaustive consideration, this Court preferred the *Davies method*[2] to the *Nance method*[1].

12. We extract below the principles laid down in *Susamma Thomas*[3]: (SCC p. 177*e*)

"In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death."

"*9.* The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take

1 *Nance* v. *British Columbia Electric Railway Co. Ltd.*, 1951 AC 601 : (1951) 2 All ER 448 (PC)
2 *Davies* v. *Powell Duffryn Associated Collieries Ltd.*, 1942 AC 601 : (1942) 1 All ER 657 (HL)
3 (1994) 2 SCC 176 : 1994 SCC (Cri) 335

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.

10. 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."

(SCC pp. 182-83, paras 9-10)

"*13.* The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising 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." (SCC p. 183, para 13)

"*16.* It is necessary to reiterate that the multiplier method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years—virtually adopting a multiplier of 45—and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible."

13. In *U.P. SRTC* v. *Trilok Chandra*[4] this Court, while reiterating the preference to *Davies method*[2] followed in *Susamma Thomas*[3], stated thus: (*Trilok Chandra case*[4], SCC p. 370, para 16)

"*16.* In the method adopted by Viscount Simon in *Nance*[1] also, first the annual dependency is worked out and then multiplied by the estimated useful life of the deceased. This is generally determined on the

4 (1996) 4 SCC 362

basis of longevity. But then, proper discounting on various factors having a bearing on the uncertainties of life, such as, premature death of the deceased or the dependant, remarriage, accelerated payment and increased earning by wise and prudent investments, etc., would become necessary. It was generally felt that discounting on various imponderables made assessment of compensation rather complicated and cumbersome and very often as a rough and ready measure, one-third to one-half of the dependency was reduced, depending on the life span taken. That is the reason why courts in India as well as England preferred the *Davies*[2] formula as being simple and more realistic. However, as observed earlier and as pointed out in *Susamma Thomas case*[3], usually English courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when tribunals/courts began to use a hybrid method of using *Nance method*[1] without making deduction for imponderables."

"*15. … Under the formula advocated by Lord Wright in Davies*[2]*, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier.*" (*Trilok Chandra case*[4], SCC pp. 369-70, para 15) (emphasis supplied)

14. The lack of uniformity and consistency in awarding compensation has been a matter of grave concern. Every district has one or more Motor Accidents Claims Tribunal(s). If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among the Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system.

15. We may refer to the following observations in *Trilok Chandra*[4]: (SCC p. 369, para 15)

"*15.* We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the awards made by tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused."

16. Compensation awarded does not become "just compensation" merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say the deceased aged 40 years having annual income of Rs 45,000 leaving his surviving wife and child), one Tribunal awards Rs 10,00,000 another awards Rs 5,00,000, and yet another awards Rs 1,00,000, all believing that the amount is just, it cannot be said that what is awarded in the first case and the last case is just compensation. "Just

compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.

17. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. In *Susamma Thomas*[3], this Court stated: (SCC p. 185, para 16)

> "*16.* … The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation."

18. Basically only three facts need to be established by the claimants for assessing compensation in the case of death:

(*a*) age of the deceased;

(*b*) income of the deceased; and

(*c*) the number of dependants.

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

(*i*) additions/deductions to be made for arriving at the income;

(*ii*) the deduction to be made towards the personal living expenses of the deceased; and

(*iii*) the multiplier to be applied with reference to the age of the deceased.

If these determinants are standardised, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

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

Step 2 (Ascertaining the multiplier)

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

Step 3 (Actual calculation)

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

Thereafter, a conventional amount in the range of Rs 5000 to Rs 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

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

Question (i) — Addition to income for future prospects

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

21. In *Susamma Thomas*[3] this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs 1032 per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs 2000 as gross income before deducting the personal living expenses.

22. The decision in *Susamma Thomas*[3] was followed in *Sarla Dixit* v. *Balwant Yadav*[5] where the deceased was getting a gross salary of Rs 1543 per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs 3000. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs 2200 per month.

5 (1996) 3 SCC 179

23. In *Abati Bezbaruah* v. *Geological Survey of India*[6], as against the actual salary income of Rs 42,000 per annum (Rs 3500 per month) at the time of the accident, this Court assumed the income as Rs 45,000 per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

24. In *Susamma Thomas*[3] this Court increased the income by nearly 100%, in *Sarla Dixit*[5] the income was increased only by 50% and in *Abati Bezbaruah*[6] the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Re Question (ii) — Deduction for personal and living expenses

25. We have already noticed that the personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the dependants. No evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. The claimants will obviously tend to claim that the deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. In some cases, it may be so. No claimant would admit that the deceased was a spendthrift, even if he was one.

26. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardise the deductions to be made under the head of personal and living expenses of the deceased. This lead to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction got statutory recognition under the Second Schedule to the Act, in respect of claims under Section 163-A of the Motor Vehicles Act,

6 (2003) 2 SCC 148 : 2003 SCC (Cri) 746

1988 ("the MV Act", for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline.

27. In *Susamma Thomas*[3] it was observed that *in the absence of evidence*, it is not unusual to deduct one-third of the gross income towards the personal living expenses of the deceased and treat the balance as the amount likely to have been spent on the members of the family/dependants.

28. In *U.P. SRTC* v. *Trilok Chandra*[4] this Court held that if the number of dependants in the family of the deceased was large, in the absence of specific evidence in regard to contribution to the family, the court may adopt the unit method for arriving at the contribution of the deceased to his family. By this method, two units are allotted to each adult and one unit is allotted to each minor, and total number of units are determined. Then the income is divided by the total number of units. The quotient is multiplied by two to arrive at the personal living expenses of the deceased. This Court gave the following illustration: (*Trilok Chandra case*[4], SCC p. 370, para 15)

> "*15.* … *X*, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs 3500. First, deduct the amount spent on *X* every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus *X* and his wife make 2 + 2 = 4 units and each minor one unit i.e. 3 units in all, totalling 7 units. Thus the share per unit works out to Rs 3500 ÷ 7 = Rs 500 per month. It can thus be assumed that Rs 1000 was spent on *X*. Since he was a working member some provision for his transport and out-of-pocket expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs 250. Thus the amount spent on the deceased *X* works out to Rs 1250 per month leaving a balance of Rs 3500 − 1250 = Rs 2250 per month. This amount can be taken as the monthly loss to *X's* dependants."

29. In *Fakeerappa* v. *Karnataka Cement Pipe Factory*[7] while considering the appropriateness of 50% deduction towards personal and living expenses of the deceased made by the High Court, this Court observed: (SCC p. 475, para 7)

> "*7.* What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction."

In view of the special features of the case, this Court however restricted the deduction towards personal and living expenses to one-third of the income.

7 (2004) 2 SCC 473 : 2004 SCC (Cri) 577

30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra*[4], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

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

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

Re Question (iii) — Selection of multiplier

33. In *Susamma Thomas*[3] this Court stated the principle relating to multiplier thus: (SCC pp. 185-86, para 17)

> "*17.* 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. If a sum of Rs 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs 10,000 would be 20. Then the multiplier i.e. the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate 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 dependants, whichever is higher) goes up."

34. The Motor Vehicles Act, 1988 was amended by Act 54 of 1994, inter alia, inserting Section 163-A and the Second Schedule with effect from 14-11-1994. Section 163-A of the MV Act contains a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs 3000 to Rs 40,000. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs 40,000. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes up to 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under Section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where the compensation is not specified with reference to the annual income of the deceased, or is more than Rs 40,000, by applying the formula: (2/3 x AI x M), that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under Section 163-A of the MV Act.

35. There are however discrepancies/errors in the multiplier scale given in the Second Schedule table. It prescribes a lesser compensation for cases where a higher multiplier of 18 is applicable and a larger compensation with reference to cases where a lesser multiplier of 15, 16, or 17 is applicable. From the quantum of compensation specified in the table, it is possible to infer that a clerical error has crept in the Schedule and the "multiplier" figures got wrongly typed as 15, 16, 17, 18, 17, 16, 15, 13, 11, 8, 5 and 5 instead of 20, 19, 18, 17, 16, 15, 14, 12, 10, 8, 6 and 5.

36. Another noticeable incongruity is, having prescribed the notional minimum income of non-earning persons as Rs 15,000 per annum, the table prescribes the compensation payable even in cases where the annual income ranges between Rs 3000 and Rs 12,000. This leads to an anomalous position in regard to applications under Section 163-A of the MV Act, as the compensation will be higher in cases where the deceased was idle and not having any income, than in cases where the deceased was honestly earning an income ranging between Rs 3000 and Rs 12,000 per annum. Be that as it may.

37. The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of the MV Act and claims under Section 166 of the MV Act. (See *Oriental Insurance*

Co. Ltd. v. *Meena Variyal*[8].) Section 163-A and the Second Schedule in terms do not apply to determination of compensation in applications under Section 166. In *Trilok Chandra*[4] this Court, after reiterating the principles stated in *Susamma Thomas*[3], however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in *Susamma Thomas*[3]), even in cases under Section 166 of the MV Act, by borrowing the principle underlying Section 163-A and the Second Schedule.

38. This Court observed in *Trilok Chandra*[4]: (SCC p. 371, paras 17-18)

> "*17.* … Section 163-A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in *Susamma Thomas case*[3].
>
> *18.* … Besides, the selection of multiplier cannot in all cases be solely dependent 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. … What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16."

39. In *New India Assurance Co. Ltd.* v. *Charlie*[9] this Court noticed that in respect of claims under Section 166 of the MV Act, the highest multiplier applicable was 18 and that the said multiplier should be applied to the age group of 21 to 25 years (commencement of normal productive years) and the lowest multiplier would be in respect of persons in the age group of 60 to 70 years (normal retiring age). This was reiterated in *T.N. State Transport Corpn. Ltd.* v. *S. Rajapriya*[10] and *U.P. SRTC* v. *Krishna Bala*[11].

40. The multipliers indicated in *Susamma Thomas*[3], *Trilok Chandra*[4] and *Charlie*[9] (for claims under Section 166 of the MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under Section 163-A of the MV Act (with appropriate deceleration after 50 years):

8 (2007) 5 SCC 428 : (2007) 2 SCC (Cri) 527
9 (2005) 10 SCC 720 : 2005 SCC (Cri) 1657
10 (2005) 6 SCC 236 : 2005 SCC (Cri) 1436
11 (2006) 6 SCC 249 : (2006) 3 SCC (Cri) 90

Age of the deceased	*Multiplier scale as envisaged in Susamma Thomas*[3]	*Multiplier scale adopted by Trilok Chandra*[4]	***Multiplier scale in Trilok Chandra*[4] *as clarified in Charlie*[9]**	*Multiplier specified in Second Column in the Table in Second Schedule to the MV Act*	*Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)*
(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

41. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to *Susamma Thomas*[3] [set out in Column (2) of the table above]; some follow the multiplier with reference to *Trilok Chandra*[4], [set out in Column (3) of the table above]; some follow the multiplier with reference to *Charlie*[9] [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*[3], 14 as per *Trilok Chandra*[4], 15 as per *Charlie*[9], 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*[2] 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*[3], *Trilok Chandra*[4] and *Charlie*[9]), 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.

Question (iv) — Computation of compensation

43. In this case as noticed above the salary of the deceased at the time of death was Rs 4004. By applying the principles enunciated by this Court to the evidence, the High Court concluded that the salary would have at least doubled (Rs 8008) by the time of his retirement and consequently, determined the monthly income as an average of Rs 4004 and Rs 8008 that is Rs 6006 per month or Rs 72,072 per annum. We find that the said conclusion is in conformity with the legal principle that about 50% can be added to the actual salary, by taking note of the future prospects.

44. Learned counsel for the appellants contended that when actual figures as to what would be the income in future, are available it is not proper to take a nominal hypothetical increase of only 50% for calculating the income. He submitted that though the deceased was receiving Rs 4004 per month at the time of death, as per the certificates issued by the employer (produced before the High Court), on the basis of pay revisions and increases, his salary would have been Rs 32,678 in the year 2005 and there is no reason why the said

amount should not be considered as the income at the time of retirement. It was contended that the income which is to form the basis for calculation should not therefore be the average of Rs 4004 and Rs 8008, but the average of Rs 4004 and Rs 32,678.

45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of the accident.

46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-1989 itself and if the appeal had been decided by the High Court in the year 1989-1990, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales.

47. If the contention urged by the claimants is accepted, it would lead to the following situation: the claimants could only rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation.

48. The appellants next contended that having regard to the fact that the family of the deceased consisted of 8 members including himself and as the entire family was dependent on him, the deduction on account of personal and living expenses of the deceased should be neither the standard one-third, nor one-fourth as assessed by the High Court, but one-eighth. We agree with the contention that the deduction on account of personal living expenses cannot be at a fixed one-third in all cases (unless the calculation is under Section 163-A read with the Second Schedule to the MV Act). The percentage of deduction on account of personal and living expenses can certainly vary with reference to the number of dependant members in the family. But as noticed earlier, the personal living expenses of the deceased need not exactly correspond to the number of dependants.

49. As an earning member, the deceased would have spent more on himself than the other members of the family apart from the fact that he would have incurred expenditure on travelling/transportation and other needs. Therefore we are of the view that interest of justice would be met if one-fifth is deducted as the personal and living expenses of the deceased. After such deduction, the contribution to the family (dependants) is determined as Rs 57,658 per annum. The multiplier will be 15 having regard to the age of the deceased at the time of death (38 years). Therefore the total loss of dependency would be Rs 57,658 x 15 = Rs 8,64,870.

50. In addition, the claimants will be entitled to a sum of Rs 5000 under the head of "loss of estate" and Rs 5000 towards funeral expenses. The widow will be entitled to Rs 10,000 as loss of consortium. Thus, the total compensation will be Rs 8,84,870. After deducting Rs 7,19,624 awarded by the High Court, the enhancement would be Rs 1,65,246.

51. We allow the appeal in part accordingly. The appellants will be entitled to the said sum of Rs 1,65,246 in addition to what is already awarded, with interest at the rate of 6% per annum from the date of petition till the date of realisation. The increase in compensation awarded by us shall be taken by the widow exclusively. Parties to bear respective costs.

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(BEFORE K.G. BALAKRISHNAN, C.J. AND DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.)

IAs No. 1967 in No. 1785 in Writ Petition (C) No. 4677 of 1985, IAs Nos. 1785, 2152, 1962, 2143, 2186, 2168 and 2385 in No. 1785

M.C. MEHTA . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

With

IAs No. 1465 and Nos. 2426-27 in WP (C) No. 202 of 1995

T.N. GODAVARMAN THIRUMULPAD . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

IAs No. 1967 in No. 1785 in Writ Petition (C) No. 4677 of 1985, IAs Nos. 1785, 2152, 1962, 2143, 2186, 2168 and 2385 in IA No. 1785 with 1465 and 2426-27 in WP (C) No. 202 of 1995, decided on May 8, 2009

A. **Environment Protection and Pollution Control — Mining — Suspension of mining activities in Aravalli hill range by Supreme Court — Mining operations carried out without obtaining requisite clearance resulting in land and environmental degradation coupled with the absence of remedial measures including rehabilitation plan — Authorities even then**