Karnataka High Court Gulam Khader And Another vs United India Insurance Company . . . on 11 July, 2000 Equivalent citations: 2001 ACJ 163, ILR 2000 KAR 4416, 2001 (1) KarLJ 340 Bench: R Raveendran, V Sabhahit JUDGMENT 1. This is a claimants' appeal arising from the judgment and award dated 23-9-1996 passed in MVC No. 1039 of 1993 by the Motor Accidents Claims Tribunal-IX, Bangalore City. For convenience, the parties will be referred to by their ranks before the Tribunal. 2. The claimants are the parents of one Hazi Mohammed Haneef. He died in a motor accident on 30-3-1993, when tempo bearing No. CAA 6591 (of which the second respondent is the owner and the first respondent is the insurer) dashed against the motorcycle (KA-01-H-7054) which he was riding. Feeling aggrieved, the claimants filed MVC No. 1039 of 1993 claiming compensation of Rs. 15,12,000.00. 3. Petition was resisted by the respondents. On the pleadings, Tribunal framed the following issues: 1. Whether the petitioners prove that the accident which took place on 30-3-1993 at about 11.10 p.m. near Maharani's College Circle, resulting in death of one Hazi Mohammed Haneef, was due to rash and negligent driving of tempo bearing No. CAA No. 6591 by its driver? 2. Whether the petitioners prove that they are entitled to compensation as prayed for? 3. What order? 4. The father (claimant No. 1) was examined as P.W. 1. An eye-witness was examined as P.W. 2. The family auditor was examined as P.W. 3. Documents P. 1 to P. 12 were exhibited on behalf of the claimants. On behalf of the respondents, no evidence was let in. After appreciating the evidence, the Tribunal allowed the claim petition in part by judgment and award dated 23-9-1994. It held that the accident occurred due to the negligent driving of the tempo bearing No. CAA 6591. It also held that the claimants are entitled to compensation of Rs. 1,75,000.00 with interest at 6% p.a. from the date of petition to the date of realisation. The compensation amount awarded is made up of Rs. 1,65,000.00 towards loss of dependency and Rs. 10,000.00 towards loss of estate and funeral expenses. 5. At the time of the accident, the deceased was aged 20 years and was a bachelor. The claimants who are the parents were aged 47 years and 42 years respectively. The deceased was a student studying in I year B.Com. He was the proprietor of a business carried under the name and style of H.S. Traders and he was an income tax assessee. The return filed for the assessment year 1992-93 disclosed that the deceased had an income of Rs. 31,494.00 in his business and had paid a sum of Rs. 1,647.00 as income tax. In view of the said evidence, the Tribunal after deducting the income tax, took the annual income of the deceased as Rs. 30,000.00. As the deceased was a bachelor, 50% was deducted towards his personal and living expenses and the contribution to the family (annual loss of dependency) was determined as Rs. 15,000.00 per annum. The Tribunal applied multiplier of 11, having regard to the age of the parents and arrived at the total loss of dependency at Rs. 1,65,000.00. 6. The appellants have filed this appeal contending that the compensation awarded is inadequate. They have no grievance in regard to the annual income arrived at by the Tribunal as Rs. 30,000.00. Their grievance is in regard to deduction of 50% towards personal and living expenses of the deceased. They contend that only one-third ought to have been deducted towards the personal and living expenses of the deceased and if so, the annual loss of dependency would be Rs. 20,000.00 p.a. instead of Rs. 15,000.00 p.a. They also contend that as the parents were aged 47 and 42 years, the multiplier applied ought to have been 15 instead of 11, having regard to the provisions of the Second Schedule to Motor Vehicles Act, 1988 (which was introduced with effect from 14-11-1994). Appellants therefore contend that the loss of dependency ought to have been Rs. 20,000.00 x 15 = Rs. 3,00,000.00. 7. As this is a claimants' appeal, the finding regarding negligence does not require to be considered. The only question that arises for consideration is whether the compensation awarded is inadequate and requires to be increased? On the contentions raised, two points require to be considered- "(i) What is the deduction to be made towards the personal and living expenses of a deceased bachelor; and whether deduction of 50% as personal and living expenses in this case is correct? (ii) Whether the multiplier to be applied should be chosen with reference to the Table given in Schedule II to the Motor Vehicles Act, 1988 and whether the multiplier of 11 applied in this case is correct?" Re: Point No. (i).- 8. We may conveniently refer to three decisions of this Court relied on by the claimants and the correct legal position before examining the correctness of the deduction made towards living and personal expenses made by the Tribunal with reference to the facts. 8.1 In Lakshman and Another v Suskeel Chanda Choudhary and Another, the deceased was a bachelor aged 19 years. The claimants were his parents and minor sister. The Tribunal had deducted one-third of the assessed income as personal and living expenses of the deceased. The insurer had contended before this Court that in several decisions, this Court had deducted 50% as personal expenses in the case of bachelors and therefore 50% should be deducted towards personal expenses. The said contention was rejected by this Court on the following reasons: "This may be so in respect of bachelors living in cities where there are so many diversions for spending money; but not so in a small backward town where the deceased was living, where the opportunity for spending money would be very much less. Therefore, we consider deduction of one-third towards personal expenses would be appropriate". Thus the reason for deducting only one-third and not 50% were (a) the deceased and the family were residing in a rural area where there were no scope for high personal and living expenses and (b) there were three dependants, that is parents and a minor sister. 8.2 In Saraswathi v Purohit Roadlines, the Tribunal had deducted 50% of the income towards personal expenses of the deceased who was a bachelor. This Court held on the facts of the case, that it will be appropriate to treat two-third of the income (instead of 50%) as the contribution to the family. No reasons were given nor any principles or guidelines referred. In the circumstances, that decision has to be considered as one rendered purely with reference to the facts of that case. 8.3 The decision in Lakshman's case, supra, was followed by a learned Single Judge of this Court in Smt. Gullamma and Another v Basheer Sab and Another , by holding that the deduction towards personal expenses should be only one-third. In that case, the deceased was working in a brick industry. That was also a case where the deceased was from a rural area and the claimants were mother and brother of the deceased. 8.4 The only principle or guideline that can be evolved from these decisions is, where the deceased is a bachelor living in a rural area and the dependant member of the family are two or more, then normally the contribution towards family should be treated as two-third and not half. 9. The principles in regard to deduction for personal and living expenses has been laid down in General Manager, KSRTC v Vijayalaxmi, by a Division Bench of this Court as follows: "There is no hard and fast rule about the extent of the deduction to be made towards the personal and living expenses of the deceased. It all depends upon the facts and circumstances of each case. In some English cases 70% of the earnings has been suggested as the value of dependency. But it all depends on the extent of income, the size and standards of living of the family and habits of the deceased. If the deceased was devoted to the family and had no expensive habits and lead a spartan life, deduction on this score, would, relatively be less. If on the contrary the deceased was a Bohemian and a spendthrift and had many favourite follies, the deduction towards expenses of living and for his pleasures should be accommodated by appropriate deductions. That depends on the evidence on record as to the life style and personal habits of the deceased. No hard and fast rule, applicable to all cases, could be made as to what amount, or what percentage of income, should be deducted for such living and personal expenses". (emphasis supplied) 10. In practice, all claimants have a tendency to state that the deceased was very frugal and did not have any expensive habits and was spending most of the income on the family. In quite a few cases it may be so. But, in many cases it may not be so. We are however yet to come across a case where the claimants admitted that the deceased was a spendthrift leading a bohemian life. It is also very difficult, if not impossible for the respondents in a claim petition to collect and produce evidence to show that the deceased was spending a considerable part of the income on himself and was contributing only a small part of the income to his family. Therefore, it becomes necessary to evolve some kind of guideline or rule of thumb, to determine the extent 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 he was a married, and one-half (50%) of the income, if he was a bachelor. This practice was evolved out of experience, logic and convenience. The method of determining compensation, always involved "some guess-work and some hypothetical consideration" as observed by the Supreme Court in the case of R.D. Hattangadi v M/s. Pest Control (India) Private Limited. 11. But, such percentage of deductions were not inflexible and offered merely a guideline. In fact Courts evolved further guidelines in this behalf. In Uttar Pradesh State Road Transport Corporation v Trilok Chandra, the Supreme Court held that if the number of dependant members in the family of the deceased were large, in the absence of specific evidence in regard to contribution to the family, the Court should adopt the unit method for arriving at the contribution of the deceased to his family. By this method, two units should be allotted to each adult and one unit should be allotted to each minor, and total number of units are determined. Then the income should be divided by the total number of units. The quotient should be multiplied by two to arrive at the living expenses of the deceased. To illustrate, if the family of the deceased consisted of himself, his wife, mother and four children, units allottable to the three adults will be 6 (3 x 2) and the units allottable to the four minors will be 4 (4 x 1) and thus, total units will be 10 and the living expenses of the deceased will be taken as 2/10th of the income. 12. Insofar as bachelors are concerned, normally, 50% is deducted as personal and living expenses because it is considered that a bachelor will be more carefree as he has not yet acquired a wife and children and therefore, tend to spend more on himself. There is also the possibility of the bachelor getting married in a short time, in which event also the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father will have his own income and will not be considered as a dependant and only the mother alone will be considered as a dependant. Similarly subject to evidence to the contrary, brothers and sisters are not considered as dependants, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, the family is taken as consisting of only two members, that is the bachelor and the mother, who is considered as the only dependant, and 50% is treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor was large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, the contribution to the family will be taken either as two-third, or calculated by adopting unit method. 13. Thus, the following broad criteria can be spelt oat, while determining the deduction on account of the personal and living expenses of a bachelor: "(a) 50% may be deducted where the claimant is the mother. (b) Where the claimants are parents and siblings, but the evidence shows that father/siblings are not dependant on the deceased, then again, deduction will be 50%. (c) Where the family of deceased consisted of dependant parents/siblings, depending on the number and the position of the family, deduction can he one-third or by adopting units method, whichever is appropriate. If the brothers/sisters are on the threshold of reaching adulthood, their dependency will be only for a few years. Therefore, deduction of one-third would be appropriate. But, where the brothers/sisters are very young and the parent's are not earning, then the unit method may be applied. (d) Where the claimants are the father, brothers or sisters who are not economically dependant on the deceased, the question of awarding any amount under the head of loss of dependency will not arise. However, in such a case award under the head of 'loss of estate' will not be conventional nominal amount, but a larger amount". These are only broad indicative guidelines. A Tribunal or Court will have to ultimately decide the matter with reference to the evidence. Paradoxically, even where the general rule is that there should be no general rules, still there is a tendency to evolve general rules, where there are no general rules. We have done so be that as it may. 14. In this case, the claimants are the parents. The father is a businessman and an income tax assessee. There is no pleading or specific evidence about the extent of contribution by the deceased to the family. On the other hand, the father has stated that the son was assisting him in his business. The father has not stated in his evidence that he or his wife (mother of the deceased) were dependant on the deceased. The Chartered Accountant (P.W. 3) of the father of the deceased and the deceased has stated that after the death of Mohamed Haneef, the business of the deceased was given to his brother and the brother started carrying on the said business. In the absence of any evidence that the father or brothers were dependant, and in view of the specific evidence that the father is a merchant and an income tax assessee having independent income, at best, only the mother could be taken as dependant. Therefore there is no error in the Tribunal adopting the normal practice of deducting 50% of the income of the deceased bachelor towards his personal and living expenses. Re: Point No. (ii).- 15. The next question that arises for consideration is whether the multiplier applied by the Tribunal is correct or requires to be changed. 16. In H.T. Bandar v Moneyman, a Division Bench of this Court considered the matter exhaustively. It held: “Then there is the estimate of, and deduction for, the personal and living expenses of the deceased, the balance so arrived at is the datum figure. This is called the multiplicand. This is turned into a lump sum on a certain number of years’ purchase and represents the amount of pecuniary advantage which it is reasonably probable that the dependants would have received if the deceased had remained alive. There are a number of imponderables, of varying degrees, in this exercise. The assessment of damages has, it is true, become an artificial and conjectural exercise. But, that is inevitable in the very nature of the task. . . . xxx xxx xxx This takes us to the more important question as to the real purposes that the right choice of the multiplier is expected to serve in this exercise of arriving at a”just" compensation. As we have pointed out earlier, unlike the compensation in land acquisition cases, the capitalisation is not in perpetuity though however the purpose of a multiplier is essentially to arrive at as to what amount, with a prudent investment policy, would produce the value of the annual dependency for the future period over which the dependency was expected to last. xxx xxx xxx . . . .. However, it appears to us that all these factors should, cumulatively, be reckoned and suitable reduction of the basic multiplier from ‘20’ is to be made. The multiplier so reduced is the operative multiplier. If such a ‘multiplier’ is employed, then there would be no need to further scale down the amount of compensation so arrived, as, indeed, all the relevant factors would have been put into the scales in the process of the choice of this operative multiplier itself. xxx xxx xxx All these factors, cumulatively, may be taken to bring down the multiplier by 20% which would perhaps be a just measure of deduction for all the contingencies and considerations relevant to the matter in an average case. This brings down the basic multiplier to the operative multiplier of 16. This multiplier of 16 would be the highest applicable If the deceased person was, say between 18 and 22 years this multiplier 16 would appropriate. It will naturally come down according as the age of the deceased at the time of death increases. As a rough and ready estimate it may broadly be estimate that the multiplier goes down by one count for the increase of the age of the deceased by every five years. The generalisations are merely broad guidelines and are abstractions from generality of cases“. 17. In General Manager, Kerala State Road Transport Corporation, Trivandrum v Mrs. Susamma Thomas and Others, Supreme

Court reiterated the said principles thus:"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 work 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 lumpsum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up". Thus, the operative multiplier that was being applied was 16. 18. The Motor Vehicles Act, 1988 was amended by Act 54 of 1994, inter alia inserting Section 163A and Second Schedule. The amendment came into effect on 14-11-1994. The Second Schedule contemplated the use of an operative multiplier of 18 instead of 16. 19. The question of multiplier to be applied, again came up for consideration of the Supreme Court in UPSRTC's case, supra. The Supreme Court referred and reiterated the principles stated in a Mrs. Susamma Thomas case, supra and proceeded to observe thus:"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. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in Davies, 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". The Supreme Court then referred to the change brought in by Amendment Act 54 of 1994 and noted that under Second Schedule, the maximum multiplier can be upto 18 and not 16 as was held in Susamma Thomas case, supra. It also pointed out certain defects in the Second Schedule and held that Courts cannot go by the said table contained in Second Schedule and it may only be used as a guide. The Supreme Court further held:"..... 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. But these mistakes are limited to actual calculations only and not in respect of other items. 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. .. .". 20. The position therefore is that in regard to the accidents which took place before 14-11-1994 (introduction of Second Schedule by amendment of Motor Vehicles Act), the operative multiplier will be 16 and in regard to accidents which occurred after 14-11-1994, the operative multiplier will be 18. This Court in several decisions has stated and reiterated that selection of multiplier in the cases of accidents prior to 14-11-1994 will have to be determined with reference to the principles laid down by this Court in H.T. Bhandary's case, supra, and the decision of the Supreme Court in Susamma Thomas case, supra and in cases of accidents on and after 14-11-1994, the selection of multiplier will be governed by the enhanced operative multiplier as per the decision in Trilok Chandra's case, supra. 21. For convenience the multiplier to be applied are given below: Multiplier to be applied Age of the deceased In regard to accidents prior to 14-11-1994 In regard to accidents on or after 14-11-1994 18-22 years 23-27 years 28-32 years 33-37 years 38-42 years 43-47 years 48-52 years 53-57 years 58-62 years 63-67 years 68-72 years 73-77 years But, the selection of multiplier cannot always depend on the age of the deceased. Where the dependants are the widow and children who are younger than the deceased, the multiplier is decided with reference to the age of the deceased. But, where the dependants are parents, then the age of the younger of the parents will determine the multiplier. Where the dependants are the widower (husband) and adult children, the multiplier is decided with reference to the age of the husband, who is normally older than the deceased wife. Where the dependants however young minor children, or husband and minor children, then, the age of the deceased will be basis. In H.T. Bhandary's case, supra, this Court held:"One other factor which requires to be kept in mind while on the topic of the multiplier, is that the circumstances of the dependants themselves, would operate as limiting factors. Even in a case where the deceased was 20 years of age, his life expectancy would be irrelevant for the purpose of estimating the period over which dependency would be expected to last if the dependants, say the parents, are themselves above the age of 60. The multiplier would then be appropriate to the age of the dependants and not of the deceased. So are the facts of the state of health of the deceased person and of the dependants themselves which are again limiting factors. . . ". This position is reiterated by the Supreme Court in Trilok Chandra's case, supra. 22. In this case the claimants are parents. The age of the younger of the two parents will have to be taken into account for determining the multiplier. The accident occurred prior to 14-11-1994. As the mother was aged 42 years, applicable multiplier would be 12 to the said decision. Conclusion: 23. The last question that arises for consideration is whether the total amount awarded requires interference having regard to the fact that the correct multiplier is 12 (and not 11 applied by the Tribunal). The deceased was aged 19 years and was a student of B.Com. It is evident that the business under the name and style of H.S. Traders from which he was getting an income of Rs. 30,000/- was not obviously managed by him but managed by someone else for him i.e., either the father or the brother or a paid employee. P.W. 3 who is the Auditor for the family has stated that after the death of the deceased, his brother is carrying on the business of H.S. Traders as proprietor. They would indicate that the ‘earning" of the deceased, nor the ’contribution’ is lost to the family. The learned Counsel for respondents submitted that on the facts the Tribunal ought not to have determined the income of the deceased as Rs. 30,000/-, but taken the conventional notional figure of Rs. 15,000/-per annum as the income. However, it is not necessary to examine this aspect in greater detail as this is claimants’ appeal. Suffice it to say that the compensation awarded is more than just and adequate and we find no reason to increase the loss of dependency that has been determined as Rs. 1,65,000/-. 24. The award at Rs. 10,000/- under the head of ‘loss of expectation of life of funeral expenses’ is not open to question as normally Rs. 5,000/- is awarded towards loss to the estate and Rs. 3,000/- to Rs. 5,000/- towards funeral expenses. 25. As we do not find any inadequacy in the compensation awarded, no ground is made out to interfere with the award of the Tribunal. The appeal is therefore rejected. Parties to bear their respective costs.