Karnataka High Court V.S. Gowdar vs Oriental Insurance Co. Ltd. on 5 April, 2002 Equivalent citations: I (2004) ACC 69 Author: T S Thakur Bench: T S Thakur, P V Shetty, D S Kumar JUDGMENT Tirath S. Thakur, J. 1. This appeal is before us on a reference made in the following circumstances: In Gulam Khader and Anr. v. United India Insurance Co. Limited and Anr. 2001 (1) Kr. L.J. 340, a Division Bench of this Court held that a higher multiplier would be applicable for determination of loss of dependency in claims arising out of motor accidents that have occurred after the commencement of Motor Vehicles Amendment Act of 1994. For the claims arising out of accidents prior to the said amendment, the multiplier could not go beyond 16 as held by the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and Ors. . Another Division Bench of this Court comprising H.N. Tilhari and K.R. Prasad Rao, JJ., expressed doubts about the correctness of the said view. Their Lordships were of the opinion that there was no real justification for limiting the benefit of the higher multiplier to claims that arise out of accidents that have occurred after the Amending Act of 1994. The present reference to a larger Bench was accordingly necessitated to examine the correctness of the view taken in Gulam Khader's case (supra). 2. In Mrs. Susamma Thomas case (supra), the Supreme Court recognised the multiplier method of determining loss of dependency as the most appropriate method to be applied in claims arising out of motor accidents. That method was declared to be logically sound and legally well-established. The method involves determination of the multiplicand and making a choice of a suitable multiplier to determine the amount of compensation payable to the claimant. The multiplicand is determined by ascertaining the net income of the deceased for his support and the support of his dependants. From that income is deducted the amount which the deceased was accustomed to spending upon himself both for maintenance and pleasure. The remainder is taken as the amount representing what the deceased was accustomed to spending for the dependents. The multiplier on the other hand represents the number of years purchase on which the loss of dependency is capitalised. The Court held that the operative multiplier rarely exceeded 16 as the maximum, which would come down as the age of the deceased or the dependents, whichever is higher goes up. Speaking for the Court, Venkatachalaiah, J. as His Lordship then was observed: It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases. XXX XXX XXX XXX XXX XXX

Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.

3. To the same effect is a Division Bench decision of this Court in H.T.

Bhandary v. Muniyamma , in which also the juristic basis underlying the multiplier method has been indicated and the highest multiplier held to go no higher than 16.

4. The legal position emerging from the above derisions held the field till the Supreme Court in Uttar Pradesh State Road Transport Corporation v. Trilok Chandra and Ors. I (1996) ACC 592 (SC) : I.L.R. 1996 Kar. 2127 (S.C.), considered it necessary to reiterate the principles governing determination of just compensation as the same were not being followed by Tribunals and Courts while dealing with such cases. Relying upon its earlier decisions in Gobald Motor Service Limited and Anr. v. R.M.K. Veluswami and Ors. A.I.R. 1962 S.C., Municipal Corporation of Delhi v. Subhagioanti and Ors. A.I.R. 1996 S.C. 1750, Mrs. Susamma Thomas' case (supra) and English decisions in Davies v. Powell Duffryn Associated Collieries Limited 1942 A.C. 601 and Nance v. British Columbia Electric Railways Co. Limited 1951 A.C. 601, the Court held that the multiplier in motor accident cases could rarely go beyond 16. Having said so, the Court noted the change brought about by the Motor Vehicles Act (Amendment Act 54) of 1994, according to which the multiplier could even go upto 18. The Court however hastened to add that the calculation of compensation and the amount worked out in the schedule introduced by the amendment suffered from several defects. The table in the schedule, observed the Court, was full of mistakes, because of which neither the Tribunals nor the Courts could go by the ready reckoner. The following passages are in this regard apposite:

5. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163-A and 163-B in Chapter XI entitled 'Insurance of Motor Vehicles against Third Party Risks'. 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 payment 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 upto 18 and not 16 as was held in Mrs. Susamma Thomas case (supra).

6. x x x What we propose to emphasize is that the multiplier cannot exceed 18 years purchase factor. This is the improvement over the earlier posi-

tion that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34 thereby showing lack of awareness of the background of the multiplier system in Davies case (supra). (Emphasis supplied)

7. In Gulam Khader's case, supra, the claim for compensation arose out of an accident that took place before the 1994 amendment in the Motor Vehicles Act. One of the questions that arose for consideration was whether the multiplier to be applied should be chosen by reference to the Table given in Schedule II to the Act introduced by the aforementioned amendment. Answering the question in the affirmative, the Court observed:

8. The position, therefore, is that in regard to the accidents which took place before 14th November, 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 14th November, 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 14th November, 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 Mrs. Susamma Thoma case (supra), and in cases of accidents on and after 14th November, 1994, the selection of multiplier will be governed by the enhanced operative multiplier as per the decision in Trilok Chandra's case (supra). (Emphasis supplied)

9. The Court then drew up in a tabular form the appropriate multiplier for different age groups as under: _____
Age of the Multiplier to be applied _____
deceased In regard to accidents In regard to accidents prior to 14-11-1994
on or after 14-11-1994 _____

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7. Was the Division Bench right in holding that the higher multiplier given in the second column of the table drawn by it will be applicable only to accidents that occur after 14th November, 1994 is by far the only question that arises for our consideration. In order to answer that question, it is necessary to first examine the legislative history of the provisions contained in Sections 163-A and 163-B of the Motor Vehicles Act, 1988, by which the multiplier applicable for determination of loss of dependency has been raised from 16 in Susamma Thomas' case (supra) to 18 as allowed by Second Schedule to the Motor Vehicles Act, 1988.
8. The provisions of Sections 163-A and 163-B providing for a structured formula for payment of compensation on a no fault basis are a modification of the common law principle that compensation can be claimed

and awarded only on proof of fault. No fault liability existed before the amendment only to the extent provided for in Section 140 of the Act. The amendment incorporating Sections 163-A and 163-B was an extension of the philosophy underlying Section 140 of the Act, and was based on the recommendations made by the Law Commission of India and the Review Committee set up by the Government of India to review the provisions of the Act. The dominant feature of the recommendations made by the Commission and the Review Committee was that since determination of claims remain pending before the Tribunals for a long time, it was necessary to introduce a system of structured compensation for the benefit of the claimants, vehicle owners as also the Insurance Companies. The affected party under the said scheme would then have the option of accepting the lumpsum compensation notified in the scheme of structured compensation or pursuing his claim on proof of fault under Section 166 of the Motor Vehicles Act, 1988.

9. In Oriental Insurance Co. Limited v. Hansrajbhai V. Kodala and Ors. the question that arose for consideration was whether compensation payable under Section 163-A of the Motor Vehicles Act, 1988, as per the structured formula is in addition to or substitution of compensation on the principle of fault liability. The Supreme Court held that the provisions under Section 163-A did not provide for payment of compensation on a no fault basis in addition to that payable on proof of fault. The Court summarised the following reasons for that conclusion:

(1) There is no specific provision in the Act to the effect that such compensation is in addition to the compensation payable under the Act. Wherever the Legislature wanted to provide additional compensation, it has done so (Sections 140 and 141).

(2) In case where compensation is paid on no fault liability under Sections 140 and 161 in case of "hit-and-run motor accidents", the Legislature has provided adjustment or refund of the said compensation in case where compensation is determined and payable under the award on the basis of fault liability under Section 168 of the Act. There is no such procedure for refund or adjustment of compensation paid where the compensation is paid under Section 163-A.

(3) The words "under any other law for the time being in force" would certainly have different meaning from the words "under this Act" or "under any other provision of this Act".

(4) In view of the non obstante clause "notwithstanding anything contained in this Act" the provisions of Section 163-A would exclude determination of compensation on the principle of fault liability.

(5) The procedure of giving compensation under Section 163A is inconsistent with the procedure prescribed for awarding compensation on fault liability. Under Section 163A compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability the claimant is required to prove wrongful act, neglect or default of the owner of the

vehicle or the vehicle concerned.

(6) Award of compensation under Section 163-A is on a predetermined formula for payment of compensation to road accident victims and that formula itself is based on criteria similar to determining the compensation under Section 168. The object was to avoid delay in determination of compensation".

10. In Guruanna Vadi and Anr. v. The General Manager, Karnataka State Road Transport Corporation and Anr. II (2002) ACC 350 (DB) : 2001 (5) Kar. L.J. 322, a Full Bench of this Court was examining whether Section 163-A of the Motor Vehicles Act, 1988, was procedural in nature so as to be applicable even to claims arising out of accidents which had taken place prior to its introduction and whether the compensation payable under the said provision could be treated as an interim payment entitling the claimants to pursue a separate claim on proof of fault under Section 166 of the Motor Vehicles Act, 1988. Answering the questions in the negative, the Court held that Section 163-A of the Motor Vehicles Act, 1988, confers substantive rights on the claimants which rights were not available qua claims that arise out of accidents which have taken place prior to the introduction of the said provision. It was also held that the compensation payable under Section 163-A is final and that any person benefiting from the structured formula under Section 163-A could not fall back upon Section 166 to claim further compensation on proof of fault.
11. Time now to examine the application of the higher multiplier provided for the Second Schedule to the Motor Vehicles Act, 1988, to the claims based on fault liability under Section 166 of the Motor Vehicles Act, 1988.
12. The Division Bench in Gulam Khader's case (supra), relied upon the observations made by the Supreme Court in Trilok Chandra's case (supra), and modified the multiplier applicable to different age groups as deducible from the decision of this Court in H.T. Bhandary's case (supra) and that of the Supreme Court in the case of Mrs. Susamma Thomas (stipra). The result of that exercise was not assailed by any one of the parties before us. Indeed the decision in Gulam Khader's case (supra) has held the field ever since the same was handed down with neither the insurance companies nor the owners of any motor vehicle assailing the correctness of the view taken therein. Mr. Ramesh, Counsel appearing for the Insurance Company also did not find fault with the correctness of the view that after the introduction of Section 163-A providing for a maximum multiplier of 18 in case of no fault liability, a similar multiplier could be applied to claims based on proof of fault. What was argued by him was that while the legislative provision providing for a more liberal multiplier could be taken as a guideline for making a corresponding change in the multiplier applicable to cases based on proof of fault in regard to accidents that had occurred after the introduction of the amended provisions, the same could not be done in regard to claims arising out of accidents that had taken place before the incorporation of the structured formula in the Motor Vehicles Act,

1988. That is because application of a higher multiplier even in regard to cases arising out of accidents earlier to the amendment would according to learned Counsel tantamount to giving retrospective effect to the provisions that introduced structured formula which was neither permissible nor otherwise justified. Since the scheme of the provisions that introduced the structured formula for payment of compensation was itself prospective in nature, there was, according to learned Counsel, no room for borrowing the said scheme either wholly or in part for application to fault claims in regard to accidents before the amendment. The observations made by the Supreme Court in Trilok Chandra's case (supra), also did not according to Mr. Ramesh justify the extension of the higher multiplier claimed before the amendment especially when the Supreme Court had simply noticed a change in the legal position which change was in itself prospective in nature.

13. In Trilok Chandra's case (supra), the claim arose out of an accident that had taken place in the year 1977. For determining the loss of dependency, the Tribunal had used a multiplier of 24 which was raised to 34 by the High Court. The Supreme Court did not find favour with that multiplier having regard to the legal position stated by it in Mrs. Susamma Thomas' case (supra) and other decisions. While reiterating that multiplier method is the best and that 16 was the maximum permissible in law, the Court also noticed the change that had been brought about by incorporation of Sections 163-A and 163-B in the Motor Vehicles Act, 1988. The observations made by the Court clearly emphasise that the multiplier could not go beyond 18 years' purchase factor. It is true that the Supreme Court while referring to the change in the law introduced by the amendment of the year 1994 did not in so many words treat the amendment to be applicable even in cases where compensation was claimed on proof of fault, yet the fact that the Court had by reason of the amendment taken the upper limit of the multiplier to be 18 cannot be disputed. The Court had not in that case interfered with the award of compensation even when the multiplier used was found to be much beyond 18 on the ground that the multiplicand was relatively low with the result that if the multiplicand was raised and the multiplier brought down, the net result would continue to be the same. It would not indeed be unreasonable to infer from the observations made by the Court that if it were to re-do the calculation, it would have used a multiplier of 18 and an appropriate multiplicand no matter the end result may have been the same as was arrived at by the High Court. This implies that even when the higher multiplier introduced by the amendment is applicable to claims based on no fault liability under Section 163-A, the Court had adopted the same as a safe guideline for use even in claims under Sections 166 and 168 of the Act.

14. In S. Kaushnuma Begum and Ors. v. The New India Assurance Co. Limited and Ors. , also the accident giving rise to the claim had taken place before the 1994 amendment to the Act. While calculating the amount of compensation payable to the claimants, the Court adopted the structured

formula provided in the Second Schedule to the Act even when it was strictly speaking applicable only to no fault claims made under Section 163-A of the Motor Vehicles Act, 1988. The Court observed: Though it was formulated for the purpose of Section 163-A of the Motor Vehicles Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as the present case is concerned. The age of the deceased at the time of accident was said to be 35 years plus. But when that is taken along with the annual income of Rs. 18,000/- figure indicated in the structured formula is Rs. 2,70,000/-. When 1/3rd thereof is deducted, the balance would be Rs. 1,80,000/-. We, therefore, deem it just and proper to fix the said amount as total compensation payable to the appellants as on the date of their claim.

15. It is therefore obvious that not only in the case of Trilok Chand (supra), but even in the latter case of Kaushnuma Begum (supra), the higher multiplier made permissible under Section 163-A was taken as a safe guideline for purposes of dealing with claims based on fault liability under Sections 166 and 168 of the Motor Vehicles Act, 1988, even when such claims arose out of accidents that had taken place before the 1994 amendment.
16. The decisions of the Supreme Court apart, the multiplier method is applicable to fault and no fault claims alike. The attempt of the Tribunal in both the kinds of claims is to determine an amount of compensation which is just and fair. In doing so, if the legislative change brought about by the amendment permits the use of a multiplier upto 18, there is no reason why the same cannot be applied while calculating compensation payable on proof of fault. Proof of fault does not in any way weaken the legal or moral basis on which a claim for compensation is made so as to call for application of a lower multiplier than what is applicable to no fault cases. The multiplier in the case of fault liability is but one of the parameters that goes into the determination of a just compensation. That parameter can, therefore, be adopted not only for fault cases arising after the amendment but even to claims that are based on accidents prior thereto. By borrowing the guidelines available from the Second Schedule insofar as the maximum admissible multiplier is concerned for application to claims arising before the amendment, neither the provisions of Section 163-A nor the schedule attached thereto is made retrospective. The substantive provision contained under Sections 163-A and 163-B read with the Second Schedule to the Act continue to be applicable only to claims that arise after the said structured formula was introduced in November 1994. For claims, earlier to the amendment it is only upon proof of fault that compensation may be awarded, but while determining any such compensation, it will not be unfair or unreasonable to adopt the guideline which flows from the legislative measures adopted by the Parliament. We must hasten to add that even in fault cases, the requirement to establish the fault of the driver or the owner of the vehicle stands diluted if not entirely obliterated by the decision of the Supreme Court in Section Kaushmtnia Begum's case (supra). The Court has in the said decision extended the

principle of strict liability propounded in Rylands v. Fletcher 1861 73 All. E.R. 1. The Court observed: Like any other common law principle which is acceptable to our jurisprudence, the rule in Rylands case (supra), can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the rule in claims for compensation made in respect of motor accidents. We are, therefore, of the opinion that even apart from Section 140 of the Motor Vehicles Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

17. In the light of the above, the only difference between a claim under Section 163-A based on no fault and that based on proof of fault under Sections 166 and 168 of the Motor Vehicles Act, 1988, is that while in the former, a victim or his legal heirs are not required to prove the fault of the driver of the vehicle, in the latter case, proof of one of the exceptions to the doctrine of strict liability as enunciated in the English decision mentioned above, may entitle the insurance company or the owner to avoid liability. Suffice it to say, that even on a purely theoretical plane, the difference between claims based on no fault liability and that based on proof of fault is slowly eroding. We, therefore, see no reason why the multiplier prescribed by the Parliament for determination of compensation in no fault cases should not be applicable even to cases based on proof of fault. We also see no reason why the benefit of a beneficial piece of legislation introduced by the Parliament in the form of Sections 163-A and 163-B of the Motor Vehicles Act, 1988, read with the Schedule should be restricted only to claims that arise out of accidents after the amendment especially when what is being borrowed from out of the said legislation is only a norm for determination of just compensation which is common to both fault and no fault cases. To sum up:

18. The view taken by the Division Bench that the higher multiplier evolved by it on the basis of the decisions of the Supreme Court in Mrs, Susamma Thomas' case (supra), and Trilok Chandra's case (supra), and that of this Court in H.T. Bhandary's case (supra), should apply only to the claims arising out of accidents after the 1994 amendment and not those that arose earlier does not appear to be sound. The table of higher multiplier evolved by the Division Bench in Gidam Khader's case (supra), would, therefore, be available even to cases that arose out of accidents which had taken place before November 1994.

19. The reference is answered accordingly with the direction that the appeal shall now come up before the appropriate Bench for final hearing and disposal.