Delhi High Court Rattan Lal Mehta vs Rajinder Kapoor on 19 January, 1996 Equivalent citations: 1996 ACJ 372, 1996 IAD Delhi 552, 1996 (36) DRJ 374 Author: M J Rao Bench: M Rao, A D Singh JUDGMENT M. Jagannadha Rao, J. (1) In this Appeal, we are considering certain fundamental theories concerning non-pecuniary damages and certain principles concerning the basis and applicability of the statutory multiplier Table introduced by Parliament by Act 54/94. This is a Letters Patent appeal against the judgment of the learned Single Judge in Fao No. 162 of 1983 dated 19.1.1989. The appeal is by the victim of the accident which occured on 28.3.1978 consequent to which the right eye of the appellant had to be removed. The appellant had to remain in the All India Institute of Medical Sciences upto 10.5.1978. In the Motor Accidents Claims Tribunal the appellant filed Suit No. 47 of 1978 on 8.11.1978 claiming a compensation of Rs. 3 lakhs. The Tribunal awarded a sum of Rs. 66,200.00 with costs against both the 1st respondent (Mr. Rajinder Kapoor) and the 2nd respondent (The National Insurance Co. Ltd. with interest at 9% from date of filing of the petition till realisation. The Tribunal gave a finding that 1st respondent was rash and negligent in driving his car Dha 8673 and in hitting the appellant's car Dlf 3229 resulting in appellant's car getting smashed and appellant receiving serious injuries, losing his right eye and suffering permanent facial disfigurement. Appellant was in Hospital from 28.3.78 to 10.5.78. Appellant was 51 years at that time and was working, at that time, as a Commercial Assistant in the Swiss Embassy and getting Rs. 3.000.00 p.m. Due to the loss of one eye he has not been able to drive his car himself, and had to employ a driver. (2) The Tribunal referred to the plea of the Insurance Company that the appellant had written on 16.9.78 to the Company that he was willing to accept Rs. 25,000.00 and was therefore barred from claiming more. The appellant contended that he did so in the hope that the matter need not go to Court and the amount would be paid very soon but the Insurance Co. dragged on the matter and hence the present petition had to be filed in Tribunal on 8.11.78. The Tribunal noticed that in the letter the appellant asked for payment at an early date and having regard to the fact that the accident occured on 28.3.78 and there being no response in writing from the Insurance Company as to whether they were prepared to accept this offer, the appellant was not barred from claiming whatever was legally due to him in a Court of Law. The Insurance Company did not examine any person to say that they had - as pleaded by them asked the appellant (i.e. orally) to file a petition before the Tribunal so that a compromise decree could be passed. None was examined for the Company to prove any such compromise. Therefore, there was no proof of alleged offer by the respondent nr of its acceptance by the appellant not of any oral understanding that a compromise decree could be passed. That Finding against the Insurance Company has become final. (3) The Tribunal then went into the question of.compensation payable and awarded Rs. 15,000.00 as general damages on account of pain and suffering. Towards special damages, Rs. 6.000.00 for medical expenses for removal of the eye etc. and estimated taxi expenditure as Rs. 625.00 p.m. for 25 days and deducted the earlier expenditure of Rs. 450.00 p.m. and estimated the increase in expenditure at Rs. 175.00 pm for reaching his office and coming back. Appellant

was to retire after 65 years of age and at the rate of Rs.,2100.00 per annum for 10 years towards capitalisation - (and not for 14 years because appellant might resume driving or accept cheaper means of travel) and awarded Rs. 21,000.00 on this count. Appellant was hospitalised from 28.3.78 to 10.5.78 for 2 months and 12 days and towards loss of leave, Rs. 4,200.00 was awarded. The Tribunal awarded a further sum of Rs. 20,000.00 towards loss of amenities and future enjoyment of life. In all Rs. 66,200.00 was awarded with interest at 9% from date of petition to date of realisation. (4) The appellant appealed to this Court in Fao 162/1983 and the same was dismissed by a short judgment. The learned Judge said that on account of loss of one eye, "there is no disability created for the appellant" and the general damages of Rs. 15,000.00 were sufficient "considering the total amount of Rs. 66,200.00 awarded by the Tribunal and that too in lump sum". The Insurance Company had not filed any appeal. (5) Aggrieved by the fact that the compensation was not enhanced by the learned Single Judge, this Letters Patent Appeal has been preferred. In the grounds of appeal, it has been contended that the learned Judge ought to have awarded at least Rs. 50,000.00 towards general damages for pain and suffering. It has also been contended that the appellant has to depend on public conveyance such as scooter-taxi and has to spend R-s. 1050.00 p.m. extra or alternatively employ a driver which would have cost Rs. 600.00 p.m. at that time (and Rs. 1000.00 p.m. in 1989) and hence keeping in view the above, a sum of Rs. 2 lakhs ought to have been allowed on that account instead of merely Rs. 21,000.00 . The appellant would then get additional Rs. 2,35,000.00 on the above counts. It is also contended that for medical expenses and for special diet, enhancement of Rs. 700.00 and 15,000.00 ought to have been granted. Towards loss of earning capacity in future loss of amenities and enjoyment of future life, a further sum of Rs. 80,000.00 is claimed. Interest is claimed at 12%. Finally, Rs. 3 lakhs with interest at 12% is claimed. (6) NON-PECUNIARY damages: Certain fundamental theories: Evaluation of general damages or non-pecuniary damages for pain, suffering,loss of amenities, disfigurement and loss of expectation of life has been the subject of fundamental jurisprudential thought in various superior Courts in other countries and before deciding what is to be the proper approach in our country, it is necessary to refer to the different schools of thought. Such considerations might indeed help in avoiding ad hoc or haphazard assessments in individual cases. An idea of a proper range of damages for different types of injuries is also a necessity. We shall, therefore, refer to these aspects initially. (7) Full compensation vs. fair or moderate compensation: Basically, there is the theory of "full" compensation. The injured person must be compensated in damages for the loss he suffers on account of the injury. Lord Blackburn stated this in 1880 in Living stone vs. Rewords Coal Co. (1880) 5A.C.25 (H.L.) that "you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he had not sustained the wrong for which he is now getting compensation or reparation. This theory of full compensation by the House of Lords ran a little inconsistent with the theory of"fair." or moderate compensation laid down earlier in 1873 by Brett L.J. in Rowley vs. London & N.W. Rly.

Co. (1873) L.R. 8 Ex. 221. He said that the Court "must not attempt to give damages to the full amount of a perfect compensation for the pecuniary injury, but must take a reasonable view of the case, and give what they consider, under all the circumstances, a fair compensation." (8) Full and fair - compensation settled in U.K."Fair" compensation for non-pecuniary damages was, as pointed out by Munkman in his 'Damages for Personal Injuries and Death' (17th Edition, 1985, p.6) a Victorian phrase meaning not an exaggerated award which could be passed by an over-sympathetic jury. Moderate or fair did not mean an imperfect sum. This explanation is to some extent to be found in what Field,J stated in Philips vs. S.W. Rly (1879) 4 Q.B.D. 406). He used both the words "full and fair" compensation. Canadian authors too - like the English author Munkman - suggest that Field,J explained the word "fair" and put the words in Rowley in 'proper context'. Munkman states (p. 5 ibid) that "perfect compensation is the same thing as fair compensation". Again, Kemp & Kemp (Vol.1) in their book 'The Quantum of Damages' (4th Ed, 1975) clearly say that dictum of Brett,J in Rowley^ case was erroneous and they quote Mc Gregor also holding the same view about what Brett L.J. said. (Appendix 6, para 45.001). (9) Lord Denning agreed with Brett L.J. but serious criticism has been levied on the observations which Lord Denning made in Fletcher vs. Autocar Transporters Ltd (1968) (2) Q.B.322) where he said that there need not be full compensation and 'fair' meant moderate so as not to burden premium and other costs. The dissenting view of Lord Devlin to a similar effect in H. West vs. Shepherd (1964A.C. 326 (356) has also come for criticism. In fact, the majority view in H.West vs. Shepherd led by Lord Morris rejected the theory advocated by Brett L.J. On the other hand, the broader view of by Fie'ld,J that compensation is to be both 'fair and full' has been now accepted recently by Lord Scarman in Lim Poh Choo's vs. Camden and Irlington Area Health Authority (1979) (2) All E.R. 910 (917), stating: "Such generalities as that damages must be treated as a Jury question and kept in line with public policy I do not find helpful, ... the modern practice of reasoned awards by Judges is a substantial advance on the inscrutable awards of Juries. Of course, awards must befair. But this means no more than l:hat they must be a proper compensation for the injury suffered and the loss sustained." (10) THE: conceptual, personal and functional approaches: Unfortunately, the; theory of 'fair' and 'not full' compensation advocated by Brett L.J. was accepted and further narrowed down in Australia in Skelton vs. Collins (1966) 39 Alj 480) stating that an injured plaintiff could be granted non-pecuniary da mages, only as a matter of 'solace'. Windeyer J described the compensation for non-pecuniary damages as based on a principle of 'solace'. An unconscious plaintiff need not be paid any as he cannot receive solace. This was the functional approach. This has been contrasted with other approaches, such as the 'conceptual approach' and the 'personal approach'. (See in this context, the Australian view by Prof. Luntz in 'Damages for Personal Injury : Rhetoric, Reality and Reform from an Australian Perspective' (1985) Current Legal Problems, p.29) and the Canadian view by Prof. Beverley Me Lachlin, in 'What Price Disability?' : A Perspective on the Law of Damages for Personal Injury, (Vol. 59, Can. Bar Rev. 1981, p.1). (11) The conceptual

view: The conceptual view treats the loss of a limb as a loss of an 'asset' or property. The loss, though intangible, is said to have a value. A.I. Ogus in his 'Law of Damages' (1973, p.l95) says that the "the plaintiffs life, his faculties, his capacity tor enjoying life, his freedom from pain and suffering are all 'value' personal assets, alone to his house, his shares or his china vase. To deprive him of one or more of these assets is to deprive him of something to which he has a 'proprietory right'. Each asset bears .an objective value which is fully recoverable in the case of loss, even if the plaintiff is unaware of his loss." So under the conceptual approach, the victim gets damages for pain and suffering, because he has lost one of his possessions (freedom from pain and suffering); for the loss of amenities because he has forfeited a second possession (the right to unimpaired bodily function); and for loss of expectation of life because he has been further deprived of his natural span of years on earth. (See 'Personal Injury Damages in Canada',1981, by Cooper-Stephenson & Sanders, p. 343). (12) The personal approach: The 'personal approach' values "feelings' in addition to the loss of asset in the 'conceptual approach'. Damages are to be gauged not in relation to impersonal asset price but in relation to human happiness, by evaluating the difference between the happiness the victim would have enjoyed if he had not been injured and the happiness or unhappiness he has experienced and will experience as an injured person. (Wise vs. Kay) 1962 1 Q.B. 638 at 666 (CA); He recovers for pain and suffering and also for loss of amenities.. He feels or senses a loss of happiness. (Cooper-Stephenson p. 343-344.) (13) The functional or solace approach and the 'awareness' principle: in Australia & Canada: Then comes the 'functional approach'. Here the focus is on 'solace' for unhappiness. Damages can be awarded only if they can be 'used' to purchase a measure of consolation. Conscious plaintiffs can get compensation only as 'solace'. Windeyer, J observed:"If he has been deprived of his ability to do somethings that he had enjoyed doing or had hoped to do, then money may enable him to enjoy other things instead. But the money is not then a recompense for a loss of something having a money value. It is given as some consolation or solace for the distress that is the consequence of a loss on which no monetary value can be put". (14) Compensation as solace is awarded towards pain & suffering, loss of amenities of life and loss of expectation of life. If, therefore, the plaintiff is unconscious, he can get no compensation under this functional theory as he cannot be consoled. The plaintiff according to Windeyer,J"is not, like Samson Agonistes, aware and able to bemoan his fate 'to life a life half-dead, a living death'. His existence is, in very truth, a living death". (15) The 'solace' theory has found acceptance by the Canadian Courts in a trilogy of cases in Andrews vs. Grand and Toy Alberta Ltd: 83 Dlr (3D) 452; Thgornton vs. School Dt. No. 57 : 83 Dlr (3d) 480; Amold vs. Teno : 83 Dlr (3d) 609 (all being cases of quadriplegics). Dickson, J said in Andrews's case"THE(functional approach) attempts to assess the compensation required to provide the injured person "with reasonable solace for his misfortune". 'Solace' in this sense is taken to mean physical arrangements which can make his life more endurable rather than 'solace' in the sense of sympathy. ... The money for future care is to provide physical arrangements for assistance, equipment and facilities directly related to the injuries.

Additional money to make life more endurable should then be seen as providing more general physical arrangements above and beyond those relating directly to the injuries." (16) The Court said that non pecuniary awards were to be fair and reasonable,moderate, and there was need for 'assessability', uniformity and predictability' and there was need to put a cap at $ 100,000 as a global sum covering all non pecuniary heads so that non- pecuniary damages do not soar high as in the United States. (17) The peculiar feature of the Canadian 'solace' or 'functional approach' - which is the state as in Australia - is that it did not clearly spell out how 'moderate' damages for solace could be computed. It is also clear that as per Brett L.J. and Lord Denning the solace theory was aimed at controlling aggravated or excessive awards as in U.S. As for computation, the Canadian Supreme Court, while on the one hand in theory it. advocated the functional approach, in practice it applied the 'conceptual' approach in all the three cases. Cooper-Stephenson (ibid,p.369) clearly refer to this anomaly between theory and practice in the three Judgments : "Though the Court undoubtedly espoused the functional theory in principle, actual quantification in Andrews, Arnold and Thornton resembled more closely the conceptual view." In fact, Prof. Beverley Mc Lachlin has also pointed out, in the article already referred to, that though Dickson, J had resorted in theory to the 'conceptual' view, however, when it came to the actual compilation of the figures and values, the loss of the limb was valued objectively and while awarding a global sum, the learned Judge made an award for loss of happiness or loss of amenities, applying the 'personal approach' method. This was so far as plaintiffs who were conscious was concerned. So far as unconscious plaintiffs were concerned, it appears in theory that according to the Australian and Canadian approaches there will be no award for non- pecuniary losses i.e. pain and suffering, loss of amenities and loss of expectation of life inasmuch as the plaintiff cannot receive 'solace' if he is unconscious. (Ogus, ibid, pages 206-207), and Atiyah, Accidents, Compensation and the Law (1975)p.l92, explain that to be the result of the Canadian approach.) (18) English approach: Full and fair compensation subject to a slight difference regarding awards for 'pain & suffering' based on absence of awareness: The English approach to non-pecuniary damages is for payment of fil and fair compensation as stated by Lord Morris,J in West vs. Shepherd and by lord Scarman in Lim Po Choo's case already referred to. As to the awareness or functional approach, the same was not accepted except in relation to the award for pain and suffering. In Lim Po Choo's case itself, Lord Scarman laid down this minor distinction saying that there could be an award for 'pain and suffering' only if the plaintiff was aware or conscious but not otherwise. However, so far as' loss of amenities' and loss of expectation of life' were concerned, compensation therefor had to be paid whether plaintiff was aware or not aware, conscious or unconscious. Lord Scarman said that the award under the head 'pain and suffering' depended "upon the plaintiffs' personal awareness of pain, the capacity for suffering". However, he went on to add that damages for loss of amenities "are awarded for the fact of deprivation - a substantial loss, whether the plaintiff is aware of it or not'. But later, under the Administration of Justice Act 1982, Section l(l)(a), damages for loss of expectation of life were

totally abolished both for living plaintiffs and for the estates of deceased persons. Under Section 1(1)(b), if life had been shortened and the injured person was aware of it, the assessment under the head of pain and suffering not only might but 'should' take into account any suffering caused or likely to be caused' by that awareness of loss of expectation of life. (19) Full and fair compensation under all sub-heads: Indian approach: What is the position in India ? In P. Satyanarayana vs. I. Babu Rajendra Prasad (1988 Acj 88 (A.P), one of us (the Chief Justice) had occasion to refer to the differences in comparative law. A view was expressed differing from functional approach of the Australian and Canadian Courts,but agreeing with the British point of view except, however, in relation to pain and suffering, advocating full and fair compensation in all cases. The view was that 'full and fair' compensation was to be paid for non pecuniary damages and not as a matter of 'solace'. The view also was that in cases of victims who were unconscious, there must be an award not only for loss of amenities and loss of expectation of life, but also for pain and suffering. The view is close to the British view expressed by Lord Scarman with this difference that an award was to be made even for pain and suffering in case of unconscious plaintiffs. This was because the tortfeasor was not to gain an advantage by involving the victim in an accident which made the latter unconscious. The following view was expressed in P. Satyanarayana's case:"I agree entirely with the objective approach of the English Courts for assessing loss of expectation of life' and loss of amenities or enjoyments of life' in the case of unconscious plaintiffs. So far as damages for 'pain and suffering' are concerned, the subjective approach adopted in such cases by the English Courts is no doubt based on the principle of 'awareness' but it looks strange that wrongdoer whose negligence makes the victim unconscious is placed in a more advantageous position than one who inflicts a lesser injury which does not render the victim unconscious . . . " (20) The view that compensation is to be 'full and fair' (and not merely based on 'solace') has been also expressed in a large number of cases in our country (Concord of India Insurance Co. Ltd. vs. Nirmala Devi (1980 Acj 55 (SC); State of Uttar Pradesh vs. Vinod Kumar Bhatnagar (1984 Acj 776 (Allahabad); Ranjit Singh Gopal Singh vs. Meenaxi Ben (1972) 13 Guj. L.R. 662); Rajendra vs. Bishambernath (1987 Acj 23 (M.P); S.K. Devi vs. Uttam Bhoi (1974 Acj 291 (Orissa); Krishna Kishore Kar vs. Calcutta Tramway & Co. (1982 Acj 290 (Calcutta). If KA. Kurup vs. Sukumaran Nair (1982 Acj (Supple) 136 (Kerala) and Perumal vs. State of Madras (1971 Acj 144 (Madras) have said anything to the contrary, we respectfully disagree with those decisions. Again so far as victims who are unconscious are concerned, our Courts have always awarded damages for non-pecuniary damages including pain and suffering. (State of Assam vs. Urmila Datta 1974 Acj 414 (Assam); Union of India vs. Marcia E. Dutta (1982 Acj 31 (Assam) (claimant reduced to a 'cabbage'); Inderjit vs. Mehar Singh (1988 Acj 389 (Delhi); Ayub Yousuf vs. Prabhudas (1981 Acj 167 (Gujarat); S. James Vincent vs. KA. George (1983 Acj 774 (Kerala); Rajendra vs. Bishambermath (1987ACJ 23 (M.P); Minati Das vs. Laxmidhar (1976 Acj 512 (Orissa); Prafulla vs. Suresh (1978 Acj 123 (Patna); New India Assurance Co. vs. Punjab Roadways (1958-65 Acj 381 (P&H). (21) NON-PECUNIARY losses: Various

other general principles: We shall now refer to certain other important aspects which are to be borne in mind while computing non-pecuniary damages. (I)No comparison is to be made with total awards in similar cases:

(22) Sometimes, comparison is made with awards already made in respect of certain injuries without noticing that the award amount covered both pecuniary damages (i.e. loss of earnings) and the non-pecuniary damages (i.e. for pain and suffering, loss of amenities, loss of expectation of life, disfigurement etc.). One has to be careful in making such comparisons and if the award for the sub-heads of non-pecuniary damages are separately shown, one can certainly take them into account while dealing with compensation for similar injuries. It may,however, be necessary to increase the figure keeping in mind the effect of inflation over the period. In Bird vs. Cocking & Sons Ltd (1951(2) Tlr 1260) Birkett L.J. explained as follows:- "Although there is no fixed and unalterable standard, the Courts have been making these assessments for many years, and I think they form some guide to the kind of figure which is appropriate ... When,therefore, a particular matter comes up for review, one of questions is, how does this accord with the general run of assessment over the years in comparable cases.

(23) These become 'conventional' amounts in regard to the same type of comparable injury (H. West & Sons Ltd vs. Shepherd : 1964 A.C. .325; Sing Toong Fong vs. Omnibus Co. Ltd: 1964 (3) All E.R. 925 (PC). (II)Positive and negative factors:

(24) Then one has to take in positive and negative factors. The extent to which the goods things of life were taken away (loss of amenities) and, on the other hand, the positive infliction of unpleasant things (pain and suffering). The approach must be a pragmatic one. In the philosophical system of Aristotle, allowance was made for practical Judgment (phronesis) as a valid mode of correct decision, its foundation being that one who is familiar with the subject can decide by sheer instinct. (Munkman, p. 21-22). (III)Range or Brackets for different levels of injuries - Conventional figures and inflation

(25) The more important aspect is to have a 'Brackets' or 'Range' for non pecuniary damages. The award for serious injuries are put at a higher level, while awards for injuries less serious are below that level. Lord Diplock explained in Wright vs. British Railways Board 1983(2) A.C. 773: "THUS,so called"brackets' are established, broad enough to make allowance for circumstances which make the deprivation suffered by the individual plaintiff... greater or less than in the general run of cases, yet clear enough to reduce unpredictability of which is likely to be the most important factor ... "Brackets" may call for alteration not only to take into account of inflation for which they ought automatically to be raised, but also ... to take into account of advances in medical science ..."

(26) A Judge takes judicial note of the current levels or brackets or range of awards as between more serious, less serious, ordinary or simple injuries. This will naturally require injuries to be classified. Such classifications can be found in Bingham's Motor Claim Cases, Kemp & Kemp 'Quantum of Damages' etc.

(27) Cases of injuries can be classified into four major categories (a) total wrecks, (b) partial wrecks, (c) where limbs and eyes and other specific parts of the body are lost and (d) smaller injuries which cannot be specifically grouped e.g. comparing permanent 'wrist injury with loss of hand' or comparing a temporarily broken arm with loss of arm etc. Total wreck category comprise of cases of complete incapacity or work and virtually no enjoyment of life e.g. paralysis, severe brain damage causing insanity, multiple injuries leaving the victim cripple. The 'partial wreck' cases are cases where body is affected and not one set of limbs alone as in the third category. Cases of brain injury resulting in personality change and multiple injuries with grave disfigurement fall in the second category. The third category does not present any difficulty in classification. The fourth category deals with minor injuries of limb.

(28) In America, a leading Lawyer, Mr. Melvin M. Belli, had classified injuries into Ii categories - (1) Back, (2) Traumatic amputation of leg, (3) Paralysis, (4) Hand and arm off, (5) Death, (6) Multiple fractures, (7) Burns, (8) Personality change, (9) Blindness, (10) Brain injury, and (II) Occupational diseases. By 1967 awards (say) for blindness had risen to $ 930,000. (Munkman p 181-182).

(29) Conventional figures for non-pecuniary damages must keep pace with the times we live in. They must take into account inflation and advances in science, medicine and rehabilitation. In Walker vs. John Mclean & Sons (1980ACJ429 (CA) the Court found that while the value of Pound fell by 50% between 1957 and 1972 there was steeper fall between 1973 to 1978 by 50%. Kemp & Kemp point out that an award of 16,000 Pounds in 1879 for non pecuniary damages would be 500,000 Pounds in 1982. (III)Claims under sub-heads can be altered - total claim remaining the same:

(30) It is also now settled that though claimants might have estimated in the pleadings different sums under different sub-heads, it is still open to the Court to award higher under one sub-head or lower under another, than claimed, so long as the award does not exceed the total amount claimed. Such a principle was laid down in Bai Nanda vs. Shivabhai Shankarbhai Patel (1966 Acj 290 (Gujarat) (in fact, that was a case of murder) Judgment was by J.B. Mehta and M.V. Shah, JJ. The adjustment was between claims towards loss to dependency and loss to the estate. The same principle was extended to claims in injuries cases in Babu Mansa vs. Ahmedabad Municipal Corporation (1978 Acj 485 (Gujarat) by Justice P.D. Desai (as he then was) and M.K. Shah, J.

(31) Separate itemization under various sub-heads of non- pecuniary damages and pecuniary - necessary: Separate itemization under various sub-heads like pain and suffering, loss of amenities, loss of expectation of life, disfigurement is necessary. That was the view of Cantley,J in Fletcher's case. The reversal of this view on appeal in Fletcher's case (1969 Alj 99) by Lord Denning and Diplock Lj has not been appreciated by text writers. Salmon Lj in fact, dissented. The Canadian Supreme Court preferred itemization in the trilogy Andrews, Thornton and Teno.

(32) itemization is necessary even while computing pecuniary damages. Pecuniary losses are divided into (I)special damages or pre-trial pecuniary loss, (ii) prospective loss of earnings and profits, (iii) cost of future care and other expenses. Non pecuniary damages are divided into sub-heads (i) pain and suffering, (ii) loss of amenities of life, (iii) loss of expectation of life, (iv) disfigurement and (v) discomfort or inconvenience. In India, we do not award a global sum, but we itemise.

(33) Having regard to the general principles applicable, we do not think it necessary to elaborate the meanings of the various heads of non-pecuniary damages. Several Judgments of this Court and other Courts have explained their meaning. There is also a detailed discussion in the Judgment by one of us (Chief Justice) in K. Sapana vs. B. Appa Rao (1988 Acj 113). In the said Judgment there is a discussion on these sub-heads.

(34) As for pecuniary damages in injury cases, one has to compute loss of earning upto date of trial, prospective loss of earnings, taking into account (i) probable future earnings, as if there was no accident, and (ii) potential future earning after the accident, and find the difference (iii) and fix the period of incapacity. One can also go into the value of perquisites including loss of free board or lodging, loss of house keeping capacity, loss of career, prospects of marriage, medical and hospital expenses, nursing services at home, employment of substitute etc. Voluntary assistance by friends, relations etc. cannot be deducted. Collateral benefits from life insurance, gratuity, provident fund cannot be deducted. (VI)Non-pecuniary damages cannot be kept low because pecuniary damages are high

(35) Sometimes, tribunals feel that inasmuch as they have awarded substantial pecuniary damages, the non- pecuniary damages can be kept low. This is a wrong approach. The view of Lord Denning to the contrary in Smith vs. Central Asbestos Co. (1972 (1) Q.B. 244) has not been accepted by the British Law Commission (Law Comm d.No.56 para 199) and by leading writers. (VII)No discrimination between rich and poor in awarding non-pecuniary damages:

(36) There can generally be no discrimination between rich and poor victims for evaluating non-pecuniary damages as laid down by Diplock L.J and Salmon LJ. in Fletcher's case 1969 Acj 99 (CA).

(37) Pecuniary Damages Multiplier: the arrival of a statutory multiplier under Motor Vehicles Amendment Act 54/1994: (Certain mistakes in Rs. calculation to be ignored)

(38) A statutory multiplier Table has arrived in India with effect from 15.11.94. That means that our Parliament is ahead of the Parliament in U.K. and other countries. The amendment by .Act 54 of of 1994 to the Motor Vehicles Act,1988 contains a multiplier Table in the Second Schedule. The amendment is prospective and applies to cases of accidents which have occured after 15.11.94. (Unfortunately, in the quantum fixed for different levels of loss of annual earnings, there are clear arithmetical errors in multiplication. In our view, the arithmetical mistakes in the Table can be corrected by the Courts/Tribunals for if there is an obvious arithmatical mistake in the Table appended to a statute, the Courts can correct the same. The mistakes are confined to the other columns which refer to the amounts in Rupees).While the column relating to the appropriate multiplier for different age levels does not contain any mistakes, the mistakes are confined to the other columns which refer to the amounts in Rupees).

(39) We shall now refer to certain aspects relating to the multiplier.

(40) Multiplier as per age at Death/age at date of trial in Injury cases: In cases of death, the appropriate multiplier applicable to the age of the deceased has to be selected and multiplied by the annual loss to the dependants for the purpose of arriving at the present value of future earnings that would have been contributed to the family.

(41) In cases relating to personal injury, the future loss of earnings to the plaintiff can be worked out on an actual basis as on the last date of trial inasmuch as the victim is alive as on that date. This can be easily computed. So far as loss of earnings after last date of trial is concerned, a multiple has to be selected in injury cases from the statutory Table appropriate to the age of the injured person as on the last date of trial. This is because of the fact that the injured person is alive and available at the trial and the question of applying a survival rate as per census figures arises only for the period after the last date of trial and this principle is accepted in all countries and strictly followed by the Gujarat High Court in several decided case.

(42) To give example, if a victim was 22 on the date of accident and died, the multiplier in death cases is to be one appropriate to the age 22. In an injury case, if the victim was 22 at the time of accident and 26 on the time of last date of trial, the loss of earnings upto the last date of trial is one capable of exact calculation. The mortality rate is relevant only for the period after the last date of trial and a multiplier from the Table suitable to 26, the age at the last date of trial, has to be selected. Thereafter both the amounts can be added up.

(43) Multiplier Table appended by Motor Vehicles Amendment Act, 1994: if can be treated as relevant for accidents before 15.11.1994. (This will help avoid selection of multiplier based on conflicting judicial decisions).Question arises whether the multiplier in the Table appended by the Motor Vehicles Amendment Act, 1994 which is prospective, can also be of relevance in respect of accidents which occured before 15.11.94, on which date the Table came into force. In our opinion, the statutory multiplier table is clearly relevant for the following reasons.

(44) Actuarial multipliers are based on mortality rates of different persons bearing different ages and are published by the Registrar General,Government of India. Census in our country are taken once in 10 years. In our view, there can be no difficulty in taking judicial notice of the fact that over the last 10 years medical facilities have increased considerably and that is why there is also a general increase in the survival rates or decrease in mortality rates. This position has been accepted by the Supreme Court. The multiplier published, in the Amending Act,1994 is based on the mortality or rather survival rates officially published for the period just before 1994. If a Court or Tribunal is considering the case of an accident which occured prior to 15.11.94 when death rates were higher and survival rates lesser, then it is obvious that these multipliers in the statutory table are more favourable to the claimants if a latter multiplier based upon a higher survival rate of a latter date, immediately preceding 1994, is applied in respect of an accident which occured long before 15.11.94. This can be explained from another angle. If in fact a multiplier table had been published .by Parliament (say) for 1984 then those multipliers would have been lesser than the multipliers now published in 1994. This is because survival rates in 1984 and earlier thereto were less than those in 1994. That is why we are of the view that even in regard to cases of accidents prior to 15.11.94 the date from which the Table in the Second Schedule brought in by the Amending Act,1994 has came into force, it will be open to the Courts/Tribunals to take the multiplier as per the said statutory table as relevant. (In fact, the objection or dispute must come from the tortfeasors or the insurance companies. Even if they do raise an objection, we may say from experience, that the defendants need not be apprehensive of a higher award on the basis of the 1994 statutory table, because differences in each multiplier over a period of 10 years will be higher only by small fractions ranging between 0.25 or 0.50 generally.) (45) If the above procedure enunciated by us based on the statutory multiplier provided by Parliament is applied, we can steer clear of conflicts in the multipliers applied by Courts on the judicial side in several cases. This approach of ours will help in rationalising awards, remove ad-hocism in selection of multipliers based on individual preferences. A whole range of discrimination between case and case can easily be avoided. That is why we have taken pains to give reasons as to why the statutory multiplier Table provided for prospective use can also be used for the accidents which occured before

15.11.1994.

(45) In fact, if ad hoc multipliers like 26 etc. are used for pre-15.11.94 accidents and only maximum multiplier of 18 as per the Table are bound to be used for post 15.11.94 accidents, there will be undue overpayment in regard to accidents prior to 15.11.94 i.e. in the seventies or eighties, when survival rates were far less than in 1994. Our view will eliminate any such anomaly.

(46) Multiplier cannot be the difference between age at death (or age at trial of injured person) and total expected life. If does not exceed 18 or 20 This aspect does not indeed fall for consideration because Parliament has now prescribed the Table in 1994. The maximum multiplier as per the Table is only 18.

(47) Though this aspect is now not relevant still there is chance of somebody contending that the Table is not to be applied as multipliers are not above 18. With a view to clarify the position, we are dealing with this aspect.

(48) A multiplier cannot be the difference between the age at the death (for age at the trial of an injured person) and his expected years of remaining life. This is because even if there is no accident, the person's expectation of life depends upon the general mortality rates applicable to him as he moves up from one birthday to the next birthday. While death is certain and men are mortal, the time of death remains a mystery. Knowledge of future is denied to mankind (Lord Scarman in Lim's case) (1980 A.C. 174). and that is where mortality rates play an important role in mathematics, statistics and with actuaries. Insurance premia are based on these theories and are computed by actuaries. R. Kidner & K. Richards (See The Economic Journal, 1974, p.130 at 133) point out: "In the case of payment upto the retirement age of the husband, the probability of his living each year upto the age of retirement is less than one and diminishes as time goes on. The probability of a man aged 21 living until 50 is, for example, 0.94 and to age 60 is 0.82 and so on. These probabilities are used in calculation of the theoretically-correct amount of the award . . . "

(49) The same principle was reiterated in Ksrtc Vs. Susamma Thomas . by the Supreme Court (See also J.H. Prevett "Actuarial assessment of Damages: The Thalidomide Case" (Vol.35) Mod. L. Rev. 1972 (p. 140 at p. 146); Mis. K. Richards & R. Kidner in 124 New Law Journal, 1974, p.105).

(50) The future chances of survival from year to year have to be added up. Present values have to be arrived at by a discount rate applicable to periods of stable currency (This is explained below).

(51) The advantage of the actuarial multiplier is that it will give a sum which will exhaust the principal over the period for which the future dependency (or earnings in injury case) is to last. The amount arrived

at is not like the one arrived at in the interest method where the principal remains as an additional gain while interest is consumed periodically.

(52) In fact, in the most advanced countries like U.K, Australia, Canada or U.S.A, where mortality rates are far lower as compared to India and survival rates higher, the multipliers do not generally extend beyond 18 or 20. No doubt as per the Supreme Court in G.M.K.S.R.T.C. VS. Susamma Thomas , the highest multiplier can be only 15. This stands now slightly modified by the statutory multiplier table of 1994 which shows a maximum of 18. In fact Winfield & Jolowicz & on Torts (13th Ed. 1989) (p. 618) say that in practice, the maximum multiplier is seldom more than 16: Street, on Damages (1983), 7th Ed) (p. 218) puts it at 16; Mc Gregor on Damages, (15th Ed. 1988) (para 1572) treats maximum as 18. The leading authorities which treat actuarial evidence as admissible are all set out in Chairman A.P.S.R.T.C. vs. Shifya Khartoon and in Bhagwandas Vs. Mohd. Ariff . These principles show that the difference between the age at death (or trial in case of injured person) and expected age of life cannot be the multiplier.

(53) Multiplier takes care of inflation:The mathematical formula which is used in the law of economics (See Prof. A Samuelson of the Massechusetts Institute of Technology in his Textbook on Economics (10th Ed. 1980 at p. 609) shows that the discount rate for discounting future payments to present value occurs in the dominator and that is why a lower interest rate would result in a higher multiplier and that is why the 'real rate' of interest enunciated by Fisher was applied by Lord Diplock in Mallet vs. M Monagle (1970A.C. 166). That case has been followed by our Supreme Court in M.P.S.R.T.C. vs. Sudhakar and in Ksrtc vs. Susamma Thomas . The rate adopted is of a 'stable period of currency' say 4% or 5% so that multipliers will be larger and help full compensation. It must be noted here that if we adopt a higher rate of interest for reducing future payments to present values the multiplier will be very small, as the rate of interest occurs, in the formula, in the denominator. That is why a smaller rate of interest applicable to stable periods is prescribed by economists of the highest repute like Fisher or Prof. Samuelson and in all books dealing with economics and insurance. This is also the principle in pension commutations. Government of India has applied a rate of 3.5% or 4.5% only. Otherwise if higher rates of interest are applied pension commutations will get reduced to smaller figures. Superior Courts in England, Australia, Canada and Usa have accepted this principle of economics and held that rate of discount for converting future payments to present value must relate to stable periods of currency.

(54) In a celebrated passage Lord Diplock said "In estimating the loss, money should be treated as retaining its value at the date of the Judgment and in calculating the present value of annual payments which would have

been received in future years, interest rates appropriate to time of stable currency such as 4 per cent to 5 per cent should be adopted". That was to be the discount rate for reducing future earnings/losses to present value. In England it was to be 4% or 5%. In Australia, in Todorovic vs. Waller (1981) 150 C.L.R. 402, the High Court followed Lord Diplock's judgment and advocated a discount rate of 3% for converting future payments to present value. In the Canadian trilogy of cases, referred to earlier, the Diplock theory was accepted and a rate of 7% was applied. In U.S.A. the same principles were set out in Chesapeake & Ohio Rly vs. Kelly (1916) 241 U.S. 485 and recently in Jones and Laughlin vs. Pfeifer 462 U.S. 523 (1983) proposing 3%.

(55) In Bhagwandas case, Air 1988 page 99 after referring to the rate applied by Government of India in regard to pension commutations and the other data relating to inflation, a 'real rate' of 4% was applied in our country and a multiplier Table was worked out on that basis. The above judgment was affirmed by a Division Bench in Naravva' vs. V.R. Shangde = 1989 Acj 775 by Jeevan Reddy, J. (as he then was) and V.N. Rao, J. The multipliers evolved in Bhagwandas' case compare very favourably with the statutory multiplier table published in the amendment to the Motor Vehicles Act in 1994. A smaller discount rate relatable to a stable period of currency reduces future payments (say) of 1997,1998 and son, by giving a higher multiplier in presentation and leaves it to the recipient of the money to make a proper investment today of the said monies. There is voluminous literature on this subject (see foot note).

(56) After the pecuniary damages are arrived at, Courts are also awarding 12% interest generally on the sum arrived at. Together with that interest, the amount comes into the plaintiffs' hands. (INFLATION,Taxation & Damage Assessment (1980) Can B. Rev. 280; 1974 Economic Journal p. 130 by R. Kidner & K. Richards; Damages for Personal Injury & the Effect of Future Inflation (1982) 56 Aust L.J. 168; Economic Analysis vs. Court room Controversy, The Present Value of Future Earnings : John A. Carlson Vol. 62 Abaj 628; Tort Damages for Loss of Future Earnings (1986) 34AmerJ. Comp. L (Suppl) 141; Economic Theory & Present Value of Future Lost Earnings : Anderson & Roberts (1985) U. Miami L.R. 725); A plain English approach to loss of Future Earning Capacity (1985) 24 Wash- burn LJ. 253;) See also leading books, Munkman; Kemp P. Keap; Mc Grregor; Warfield; John A Fleming etc. (58) No deduction is to be made from the sum arrived at by using multiplier: As the statutory multiplier reduces, by means of a mathematical formula (see the formula explained in Bhagwandas' case), the future amounts to present value, there is no need to further deduct 1/3 or 1/4. The multiplier takes in not only mortality and future inflation but also the fact that the claimants are receiving an accelerated payment once and for all.

(57) On Facts Here the appellant was injured in the accident which occured

in 28.3.1978. He was in Aiims till 10,6.78. He was aged 51 years at the time of accident and retirement was at 65 years. The claim was filed on 8.11.78 and the Tribunal gave judgment on 8.3.1983. The trial ended in 1983. The Tribunal awarded Rs. 66,200 with interest at 9% from 8.11.78 realisation and costs. The appellant was Commercial Assistant drawing 3000.00 p.m. from Swiss Embassy. One eye was removed on account of accident. He cannot drive his car and has to employ a driver.

(58) Tribunal awarded Rs. 15,000.00 towards pain and suffering, Rs. 6000.00 for medical expenses; increase in expense to reach office at Rs. 175.00 p.m. (or Rs. 2100.00 per annum) for 10 years (as appellant might resume driving after 10 years) and not for 14 years resulting in Rs. 21,000; Rs. 4200.00 towards loss of loans for 2 months and 12 days; and Rs. 20,000.00 towards loss of amenities, in all Rs. 66,200.00 with interest at 9%.

(59) Taking up non-pecuniary damages, appellant has to be paid for pain & suffering, loss of amenities or enjoyment, disfigurement, inconvenience etc. In P. Satyanarayana's case 1988 (ACJ 88 (AP) the-claimant loss both eyes on 4.4.1979 and also loss of mental abilities. As a total wreck case, Rs. 50,000 was awarded. The entire case law on eye losses was reviewed. In the case of loss of one eye, a composite award for pain, suffering, and loss of amenities was given at Rs. 55,000.00 in Ashish vs. Ashwinbhai 1982, Acj (Suppl) 195 (Guj). There the accident was on 4.4.1979. In the present case Rs. 15,000.00 has been given for pain and suffering plus 20,000.00 for loss of amenities. We have to note that pain and suffering depend upon the period for which the pain or suffering have been experienced. In various judgments, one of us (Chief Justice) has awarded Rs.7500.00 towards pain and suffering even in cases of instantaneous death. Having regard to hospitalisation for 42 days, we are of the view that the appellant ought to have been paid Rs. 30,000.00 towards pain and suffering alone and not merely Rs. 15,000.00 . Regarding loss of amenities or happiness for a person aged 51 years, the award under this sub-head in our opinion, would have to be not Rs. 20,000.00 but Rs. 30,000. The award for loss of expectation of life is to be Rs.l5,000.00 . We award Rs. 10,000.00 towards disfigurement. In all this comes to Rs. 30,000.00 , 30,000.00 , Rs. 15,000.00 plus Rs. 10,000.00 and gives a total of Rs. 85,000.00 as against Rs. 35,000.00 awarded under these heads by the Tribunal.

(60) Coming to pecuniary damages, those damages upto trial which are in the nature of special damages, the Tribunal awarded Rs. 6,000.00 towards medical expenses, Rs. 4,200.00 towards loss of leave for 2 months and 12 days. This award for Rs. 10,200.00 is not disturbed.

(61) S o far as loss on account of engaging another driver is concerned, the Tribunal awarded at Rs. 175.00 p.m. only for 10 years upto his 61st year and not upto 65th year which is the year for retirement. This, in our opinion, is unsupportable. The reasoning of the Tribunal that claimant

may be able to drive his car after 10 years cannot be accepted. In our view, this has to be worked for 65 years and even beyond, as per the chances of survival. The claimant has to have a driver to drive his vehicle, be it to the office or elsewhere, for the rest of his life. We think, it will be absolutely dangerous to drive one's car with only one eye for one cannot measure heights or levels with such a disability. Extra expenditure for official or unofficial purposes towards employing driver - with varying rates of wages in future - have to be averaged. We put this amount at a moderate sum of Rs. 600.00 p.m. or on an average Rs. 7,200.00 per annum.

(62) Next comes the increase in salary. We do not have any acceptable data in this behalf.

(63) Taking the multiplicand at Rs. 7,200.00 per annum, and this being a case of personal injury (and not death) the loss upto 1983 (date of trial) for 5 years, has to be put at Rs. 36,000.00 , since this could be computed on an exact basis. So far as future losses from 1983, the multiplier is to be one suitable for his age at 1983, that age being 56 years. The multiplier from the statutory Table of 1994 will be 8. As stated earlier, the Table is relevant. We, however, take the multiplier as 7.5 as we are applying a post 15.11.1994 multiplier for an anterior period. The future loss from date of trial would be Rs.54,000.00 . Total loss on this account would be Rs. 36,000 + Rs. 54,000 = Rs. 90,000.00 .

(64) In the result, the non-pecuniary damages are estimated at Rs. l,00,000.00 while the pecuniary losses would be Rs. 10,200.00 plus Rs.90,000.00 , giving a total of Rs. 2,00,200.00 rounded off to Rs. 2,00,000.00 .

(65) So far as the question of interest is concerned, though a contention was raised that the interest should be awarded only from the date of Judgment, learned counsel for the respondent fairly submitted that the interest could be awarded from the date of petition in view of the overwhelming authority of the Supreme Court in various cases including the Judgments in Smt. Chameli Wati & another vs. The Delhi Municipal Corporation & others (1985 (9) Drj 144 = 1985 Acj 645 (SC); Jasbir Singh & others vs. General Manager, Punjab Roadways and others ; R.L. Gupta and others vs. Jupitor General Insurance Company and others ; Ramesh Chandra vs. Randhir Singh and others ; Hardeo Kaur and others vs. Rajasthan State Transport Corporation and another ; and Urmila Pandey and another vs. Khalil Ahmed and others (1994 Acj 805).

(66) Interest is awarded at 12% from 8.11.1978. Interest will not,however, run on amounts,if any, paid to the claimant from such dates of payment.

(67) The appeal is accordingly disposed of.

(68) Office will send a copy of this Judgment to the learned counsel for the Insurance Company, the four M.A.C.Ts and to the Secretary, Delhi Legal Aid & Advice Board.