United India Insurance Co. Ltd. Etc. Etc vs Patrica Jean Mahajan And Ors. Etc. Etc on 8 July, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2607, 2002 (6) SCC 281, 2002 AIR SCW 2920, (2003) 50 ALL LR 95, 2002 (7) SRJ 397, (2002) 4 ALLMR 886 (SC), (2002) 3 ALL WC 2410, 2002 SCC (CRI) 1294, 2003 (1) ALL LR 95, (2002) 5 JT 74 (SC), 2002 (2) UJ (SC) 1081, 2002 (3) LRI 21, 2002 (4) ALL MR 886, 2002 (58) ALL WC 2410, 2002 (5) SCALE 56, 2002 (4) SLT 262, (2002) 3 MAD LW 638, (2002) 4 CIVLJ 48, (2002) 3 ACJ 1441, (2002) 2 ACC 460, (2002) 2 ANDHWR 228, (2002) 4 GUJ LR 2900, (2002) 4 MAD LW 719, (2002) 4 MAHLR 420, (2002) 3 PUN LR 281, (2002) 4 RAJ LW 526, (2002) 3 SCJ 232, (2002) 2 TAC 721, (2002) 4 ANDHLD 118, (2002) 4 SUPREME 518, (2002) 3 RECCIVR 534, (2002) 5 SCALE 56, (2002) WLC(SC)CVL 572, (2002) 3 CIVLJ 853, (2002) 3 CURCC 23, (2002) 98 DLT 410, (2002) 2 MAD LJ 370

Author: Brijesh Kumar

Bench: D.P. Mohapatra, Brijesh Kumar

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           CASE NO.:
Appeal (civil)  3655-58 of 2002

PETITIONER:
UNITED INDIA INSURANCE CO. LTD. ETC. ETC.

RESPONDENT:
PATRICA JEAN MAHAJAN AND ORS. ETC. ETC.

DATE OF JUDGMENT: 08/07/2002

BENCH:
D.P. MOHAPATRA & BRIJESH KUMAR

JUDGMENT:
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JUDGMENT 2002 (3) SCR 1176 The Judgment of the Court was delivered by BRIJESH KUMAR, J. Leave granted.

The above noted four appeals arise out of the proceedings before the Motor Accident Claims Tribunal Tis Hazari, Delhi in Suit No. 325 of 1995. Since in all the appeals the judgment and order passed by the Division Bench of Delhi High Court has been challenged and the matters relate to the same accident, all these appeals have been heard together and they are being disposed of by this order.

The brief facts are that Dr. Suresh K. Mahajan aged 47-48 years a medical graduate went to America and established himself in the medical profession and became an American National. He established his own hospital in Michigan, U.S.A. He was on visit to India and on February 3, 1995 while proceeding to Jaipur from Delhi in a Maruti Car No. DL-4CB-1926 belonging to one of the two brothers travelling with him, a truck No. HR-29D-1125 hit the rear part of the Maruti Car. Dr. Mahajan was sitting on the back seat was injured and succumbed to his injuries. The Dependants of Dr. Suresh K. Mahajan filed a petition under Section 166 of the Motor Vehicles Act for compensation on account of death of Dr. Mahajan. According to the claimants Dr. Mahajan had specialized in the field of Nephrology and had set up his good practice and a hospital in Michigan U.S.A. According to the claimants, income of the deceased was progressively increasing every year out of his practice and the hospital and in the year 1994 his income was to the tune of 9 lacs US dollars. At the time of his death Dr. Suresh K. Mahajan left behind his wife Patrica Jean Mahajan, two daughters, a son and his parents residing in Delhi. According to the claimants, he was providing good education to his children and had also been sending a sum of Rs. 8,000 to his parents in Delhi. A compensation for a sum of Rs. 54 crores was claimed.

The Motor Accidents Claims Tribunal, after appreciation of the evidence and the material on the record and on detailed discussion therefore, recorded the finding that Dr. Mahajan received injuries and died because of the rash and negligent driving of the Troller No. HR 29-D-1125. So far the amount of compensation is concerned, the Tribunal came to the conclusion that the carry home income of the deceased was 3,09204 US Dollars. Out of which, 2/3rd amount was set apart on account of self expenses of the deceased and 1/3rd amount was held to be the amount of dependency which came to 1,03068 US Dollars. A multiplier of 7 was applied to arrive at the figure of compensation, the amount came to 7,21,476 US Dollars, out of which deduction on account of benefits of social security system/LIC was deducted which included an amount of 2,50,000 US Dollars received by the claimants on account of personal life insurance of Dr. Mahajan. The other amounts paid to Mrs. Mahajan and two of her children on account of social security coming to a sum of 51,300 US Dollars were also deducted. The Tribunal deducted a total amount of 3,22,900 dollars. Applying the exchange rate of Rs. 30 a sum of Rs. 1.19 crores was awarded with interest at the rate of 12% from the date of filing of the petition up to the date of payment, the total amount thus come to about Rs. 1.62 crores.

The claimants approached the High Court in appeal. The learned Single Judge found that carry home income of the deceased was 3,39,445 US Dollars and out of the said amount, l/3rd of it instead of 2/3rd was liable to be deducted on account of self expenditure of the deceased, the amount of dependency thus, was fixed at 226297 US dollars. The learned Single Judge applied the multiplier of 10 and disallowed any deductions on account of social security system. The same rate of interest was maintained as awarded but the rate of exchange at Rs. 47/- was applied being the current rate as then prevailing. The total amount of compensation thus arrived at, came to Rs. 10.38 crores. The FAO No. 273 of 1998 preferred by the claimants was thus allowed in the manner indicated above. And the appeal preferred by the United India Insurance company Ltd. FAO No. 366 of 1998 was dismissed with an observation that there was no scope to disturb the finding of the Tribunal on the question of negligence of offending troller/driver. The parties preferred three Letters Patent Appeals before the Division Bench, which have been decided by the judgment and

order dated 17.10.2001. The LPA No. 179 of 2001, preferred by Patrica Mahajan, and LPA No. 225 of 2001 and 236 of 2001 had been filed by the United Insurance Company Ltd. challenging the amount of compensation as awarded by the learned Single Judge and also the order upholding the finding of rash and negligent driving on the part of driver of the troller. By means of impugned judgment, the Division Bench maintained the order passed by the learned Single Judge but for application of multiplier and the exchange rate. In so far it related to exchange rate of Dollar, the Division Bench observed that it was a closed chapter since the amount awarded by the Tribunal at the exchange rate of Rs. 30 was withdrawn by the claimants and the exchange rate of Rs. 47 as awarded by the Single Judge was disallowed. The Division Bench applied the mutiplier of 13 according to second schedule to the Act referable to Section 163A of the Act. It was found that there was no reason not to follow the schedule which has been held by the Supreme Court to be safe guide to arrive at the amount of just compensation. In the result, the total amount i.e. principal with interest came to about Rs. 16.12 crores.

The above noted appeals have been filed against the judgment of the Division Bench, the United Insurance Company Ltd. raising a grievance against application of multiplier of 13 and disallowance of deduction on account of social security system. They also feel aggrieved by award of interest at the rate of 12% per annum. In one of the appeals preferred by the United India Insurance Company the finding of rash and negligent driving on the part of driver of the troller has also been sought to be challenged. In the appeal preferred by the claimants, conversion rate of Dollar in terms of Rupees has been asked @ Rs. 47 as was awarded by the learned Single Judge.

We may first take up the question of application of appropriate multiplier in the facts and circumstances of this case. The multiplier of 13, has been applied by the Division Bench of the High Court strictly following the Second Schedule to the Act referable to Section 163A of the Act. The Petition was filed by the claimant for award of compensation under Section 166 of the Motor Vehicles Act. Before adverting to the case law on the point cited by the learned counsel for both the sides, it may be beneficial to peruse the two provisions indicated above. Section 163A as inserted by Act 54 of 1994 w.e.f. 14.11.1994 reads as under:-

> "163A. Special Provisions as to payment of compensation on structured formula basis.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, an indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
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> Explanation.-For the purposes of this sub-section, "permanent disability"

shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of the 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle/ or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

The noticeable features of this provision are that it provides for compensation in the case of death or permanent disablement due to accident arising out of use of Motor Vehicle. The amount of compensation would be as indicated in the Second Schedule. The claimant is not required to plead or establish that the death or permanent disablement was due to any wrongful act or negligence or default of the owner of the vehicle or any other person. Award of compensation according to Schedule under this provision is also known as structured formula.

Section 166 reads as under:-

> "Application for compensation-(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-
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> (a) by the person who has sustained the injury; or
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> (b) by the owner of the property; or
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> (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
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> (d) by any agent duly authorised by the person injured or all or any of
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> the legal representatives of the deceased, as the case may be;
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> Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.
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> (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:
>
> Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect

immediately before the signature of the applicant.

(4) The claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.

It would also be necessary to peruse sub-Section 1 of Section 165 which reads as under:-

165. Claims Tribunals.-(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.-For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under Section 140 and section 163A."

From the provisions quoted above, it is clear that a claim under Section 166 covers cases of all kinds of bodily injuries or damage to the property of third party or both. Under the explanation to sub-Section 1 of Section 165 it has been indicated that the provision includes the claims for compensation under Section 140 and Section 163A but it is nowhere provided that the amount of compensation is to be assessed or calculated according to the second Schedule. On the other hand, Section 168 provides the key leading to determination of amount of compensation under Section 166 of the Act. The relevant part of Section 168 reads as under:-

"168. Award of the Claims Tribunal.-On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity if being heard, hold an inquiry into the claims or as the case may be, each of the claims and, subject to the provisions of section 162 may make an award an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer of owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be;

Provided that where such application makes a claims of compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X. (2) The Claims Tribunal shall arrange shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

> (3) When an award is made under this section. The person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

It thus makes it clear that it is for the Tribunal to arrive at an amount of compensation which it may consider to be just in the facts and circumstances of the case. This Court however has been of the view that structured formula as provided under the Second Schedule would be a safe guide to calculate the amount of just compensation. Deviation though permissible may only be resorted to for some special reasons to do so. So far structured formula is concerned, it provides for a maximum multiplier of 18. The application of the multiplier depends upon the age of the deceased, age of his dependants, number of his dependents, the amount of dependency etc. Again we find that the structured formula relates to victim whose income is up to a sum of Rs. 40,000 per annum. It may be clarified that in the present case, it is not in dispute that the multiplier method, which is accepted and prevalent method, would be applicable and has been applied. The question of setting apart l/3rd of the income on account of expenditure on the self by the deceased is also not in dispute, i.e. to say that the amount of multiplicand shall be the 2/3rd of annual income of the deceased. The annual income of the deceased, as found by the learned Single Judge and the Division Bench namely $3,39445 is also not in dispute, nor the amount of dependency 2,26297 US Dollars. The only dispute is about application of 13 as multiplier as applied by a Division Bench of the High Court following the Second Schedule to the Act.

We may refer to the decision reported in [1994] 2 SCC 176 General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.

In this case while considering the law on the subject, it was observed in para 13 of the report as follows:-

> "The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last."

It was reiterated in para 16 that the multiplier method is logically sound and legally well established as compared to other methods indicated in the other decisions in which different methods of computation was applied. It was observed that those cases cannot be said to have laid any principle of computation of compensation. The Court then further observes as follows:-

> "The proper method of computation is the multiplier method. Any departure except in exceptional and extraordinary, cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from

> the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 in so far as it envisages the compensation to be just, the statutory determination of a just compensation would unshackle the exercise from any rigid formula. 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."

In another decision reported in [1996] 4 SCC page 362 UP State Road Transport Corporation and Ors. v. Trilok Chand and Ors., the view taken in the case of Susamma Thomas (supra) has been reiterated. It has been held that in the case of Susamma Thomas maximum multiplier which could be applied was found to be 16 which according to this case can now be up to 18, in view of the Second Schedule. This part of the judgment has also been particularly relied upon by the learned counsel for the claimants. The Court has also agreed with the observations made in the case of Susamma Thomas that there should be no departure from the multiplier method, particularly on the ground of awarding just compensation, as it was provided under Section 110B of the Motor Vehicles Act 1939 corresponding to the present Section 168 of the Motor Vehicles Act 1988. It is further observed that multiplier method is accepted method for determining just compensation, which also brings about uniformity and certainty of award. In paragraph 18 it has however, been observed about Second Schedule that neither the Tribunals nor the Court can go by the ready recknor, it can only be used as guide. The Court has emphasized that in no case a multiplier should exceed 18 years purchase factor. It is however, observed as follows:-

> "It can only be used as a guide. Besides the selection of multiplier, cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of mutiplier." (emphasis supplied) What thus emerge from the above decisions is that the Court must adhere to the system of multiplier in arriving at the proper amount of compensation, and also with a view to maintain uniformity and certainty. Use of higher multiplier has been depricated and it is emphasized that it can not exceed

> 18. The multiplier, as would be evident from the observations quoted earlier, may differ in the peculiar facts and circumstances of a particular case as according to the example cited where bachelor dies at the age of 45, the age of his dependent parents may be relevant for selecting a proper multiplier. Meaning thereby that a multiplier less than what is provided in the schedule could be applied in special facts and circumstances of a case. In the later cases also this Court has taken the same view that multiplier system is more appropriate and proper method for calculating the amount of compensation. [2001] 8 SCC 197 Lata Wadhwa and Ors. v. Stale of Bihar and Ors. may be referred to. Decision in the case of Sushamma Thomas (supra) and other English decision considered in the judgments referred earlier namely, Devis v.

Tailor (1997) AC 207, Devis v. Paul Duffryn Associated Limited. 1942 (1) All Er. 657 (HL). Malleett v. Me Monagle (1970) AC 166 have been referred to.

In Jyoti Kaul and Ors. v. State of Madhya Pradesh, JT (2000) 7 SC page 367 this Court again referring, to the decision in the case of Susamma Thomas (supra) reiterated that multiplier system should be applied for the purposes of calculation of amount of compensation. It has also been observed that the question as to what mutiplier should be applied would depend upon various facts and circumstances of the case, hence the multiplier may change to some degree.

In the case in hand it is amply clear that it is not the case of any party that proper method of computing the amount of compensation, namely the multiplier method has not been applied. We have already seen that in the decisions referred to, in the earlier part of this judgment it is clearly stated that except in very rare cases, multiplier system should not be deviated from. The other methods, which were in vogue prior to introduction of multiplier system have been held to be no more good system. The choice of multiplier may differ to some degree as observed in the case of Jyoti Kaul (supra) depending upon various facts and circumstances of the case. Though, normally the multiplier as indicated in 2nd schedule should be applied as it is as found to be a safe guide for the purpose of calculation of amount of compensation. The Tribunal had applied the mutiplier of 7, which obviously was very low. While applying the mutiplier of 7, the Tribunal has observed that it had taken into consideration the age of the deceased and the yield, which, would have come by way of interest on the amount of compensation. The Tribunal though had also discussed that the two daughters of the deceased were age of 19 and 17 years and the age of son was 13 years, parents of the deceased were 69/ 73 years. The Tribunal was of the view that period of dependency may not be long for the children. Then in consideration of the fact that amount awarded by applying multiplier of 7 would yield an interest of about 87,000 US Dollars if invested at the rate of 12% per annum. The learned Single Judge of the High Court considering the age of the deceased and his dependants and the provisions of the Second Schedule and the decision of this Court in the case of Trilok Chand (supra) took the view that the application of mutiplier of 10 would be appropriate in the present case. The Division Bench in appeal has laid much stress on the fact that according to the decision in Susamma Thomas and Trilok Chand (supra) there should not be any deviation in the method of working out the amount of compensation applying multiplier method. There is nothing wrong in the statement of above propositions as indicated by the Division Bench. Different method can be resorted to only in rare and exceptional cases but the learned Single Judge had applied only mutiplier method and none-else, however looking to the facts and circumstances of the case, applied the multiplier of 10 instead of 13 as provided for the victims of the age group of deceased as in this case between 45 to 50 years. It is true as also noticed by the High Court that the 2nd Schedule should be taken as a guide, but it does not mean that no deviation in the figure of mutiplier itself, would be permissible in any case whatsoever. Normally, Second Schedule may provide a guide for application of multiplier but for valid and proper reasons, different mutiplier can be applied, indeed not exceeding 18 in any case on the upper side. As indicated in the case of Susamma Thomas (supra) itself the Court gave an example of a situation where the age of the victim may be 45 years, but who may be a bachelor with his parents alone as dependents, obviously, meaning thereby that lesser mutiplier could be applied in such a case. By applying a mutiplier other than the scheduled

multiplier does not mean that any method other than multiplier method has been applied. For some special reasons some deviation from the scheduled multiplier can be made.

In the present case we find that the parents of the deceased were 69/ 73 years. Two daughters were aged 17 and 19 years. Main question, which strikes to us in this case is that in the given circumstances the amount of multiplicant also assumes relevance. The total amount of dependency as found by the learned Single Judge and also rightly upheld by the Division Bench comes to 226297 Dollars. Applying multiplier of 10, the amount with interest and the conversion rate of Rs. 47 comes to Rs. 10.38 crores and with multiplier of 13 at the conversion rate of Rs. 30 the amount came to Rs. 16.12 crores with interest. These amounts are huge indeed. Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much under compensated as well, in the background of the country where most of the dependent beneficiaries reside. Two of the dependants namely, parents aged 69/73 years live in India, but four of them are in the United States. Shri Soli J. Sorabjee submitted that the amount of multiplicand shall surely be relevant and in case it is a high amount, a lower mulitplier can appropriately be applied. We find force in this submission. Considering all the facts and factors as indicated above, to us it appears that application of multiplier of 7 is definitely on the lower side. Some deviation in the figure of multiplier would not mean that there may be a wide difference between the multiplier applied and the scheduled multiplier which in this case is 13. The difference between 7 and 13 is too wide. As observed earlier, looking to the high amount of multiplicand and the ages of the dependants and the fact that parents are residing in India in our view application of multiplier of 10 would be reasonable and would provide a fair compensation i.e. purchase factor of 10 years, We accordingly hold that multiplier of 10 as applied by the learned Single Judge should be restored instead of multiplier of 13 as applied by the Division Bench, We find no force in the submission made on behalf of the claimants that in no circumstances the amount of multiplicand would be a relevant consideration for application of appropriate multiplier. We have already given our reasons in the discussion held above.

The court can not be totally oblivion to the realities. The 2nd Schedule while prescribing the multiplier, had maximum income of Rs. 40,000 p.a. in mind , but it is considered to be a safe guide for applying prescribed multiplier in cases of higher income also but in cases where the gap in income is so wide as in the present case income is 2,26,297$, in such a situation, it can not be said that some deviation in the multiplier, would be impermissible. Therefore, a deviation from applying the multiplier as provided in the 2nd Schedule may have to be made in this case. Apart from factors indicated earlier the amount of multiplicand also becomes a factor to be taken into account which in this case comes to 226297$ that is to say an amount of around Rs. 68 lacs per annum by converting it at the rate of Rs .30. By Indian standards it is certainly a high amount. Therefore, for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand. A deviation would be reasonably permissible in figure of multiplier even according to the observations made in the case of Susamma Thomas where a specific example was given about a person dying at

the age of 45 leaving no heirs being a bachelor except his parents.

The purpose to compensate the dependants of the victims is that they may not be suddenly deprived of source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be just and fair compensation, But in cases where the amount of compensation may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. In such cases amount of multiplicand becomes relevant. The intention is not to over compensate.

We therefore hold that ordinarily while awarding comprehension, the provisions contained in the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as one in hand, which may fall in the category having special feature or facts calling for deviation from the multiplier usually applicable.

Now we come to the next point raised by Mr. Soli J. Sorabjee, learned senior counsel appearing on behalf of the Insurance Company, about deductions, from the amount of compensation as received by the claimants on account of social security system. In this connection. It has been submitted that admittedly, the claimants had received 2,50,000 Dollars on account of life insurance policy of the deceased. Apart from that, Patricia Mahajan had also received unemployment allowance for a period of 8 and 9 months as well as two children out of the three. It may be noted here that the Tribunal had deducted the said amount, but it was disallowed by the learned Single Judge and upheld by the Division Bench.

Mr. Soli J. Sorabji submitted that while assessing the amount of compensation, the benefits which have accrued to the claimants by reason of death must also be taken into account. A kind of balancing of losses and the gains or benefit by reason of death would be necessary. In support of the above contention he has referred to a decision reported in [1962] 1 SCR 929 Gobald Motors Service Limited v. R.M.K. Veluswami and Ors. It is a decision by three judges Bench of this Court, and at page 938 the observations made by the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd., (1942 AC page 601) has been quoted which reads as follows:-

> "The general rule which has always prevailed in regard to the assessment of damages under the fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately."

To further elaborate the above proposition, observations made by Lord Wright in Devies case (supra) have also been quoted. It reads as follows:-

> "The damages are to be based on the reasonable expectation of pecuniary benefit of benefit reducible to money value. In assessing the damages all circumstances which may be legitimately placed in diminution of the damages must be considered. The

> actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and on the other, any pecuniary advantage which from whatever source comes to him by reason of the death"

The learned counsel laid stress on the last part of observation made to the effect that - for the purposes of balancing losses and gains any pecuniary advantage which from whatever source come to them , has to be considered.

It is submitted in Gobald's case the principle of Devies case was referred and taken into consideration. Reliance has also been placed on a decision reported in [1971] 1 SCC page 785 M\s Shekhupura Transport Co. Ltd. v. Northern India Transport Company particularly to the observations made by the Court in paragraph 6 of judgment where the principle in the case of Gobalds Motors, (supra) has been reiterated. In this connection learned counsel for the Insurance Company has also drawn our attention to the decision in the case of Susamma thomas, (supra) particularly on paragraph 8 of the report, where it is observed that the principle in the case of Devies v. Powell was adopted, in the case of Gobald Motors (supra) It is thus submitted that principle of balancing of loss and gains, so as to arrive at a just and fair amount of compensation has been accepted by this court as well, On behalf of the Insurance company 1988 (3) All ER. 870 Hodgson v. Trapp and Anr. has been relied in which our attention has particularly been drawn to the following observations made at page 873.

> ".....the basic rule is that it is the net consequential loss and expense which the Court must measure, it, in consequence of the injuries sustained, the plaintiff has enjoyed receipts to which he would not otherwise have been entitled, prima facie, those receipts are to be set against the aggregate of the plaintiff's losses and expenses in arriving at the measure of his damages. All this is elementary and has been said over and over again. To this basic rule there are of course, certain well established, though not always precisely defined and delineated, exceptions. But the Courts are, I think, sometimes in danger, in seeking to explore the rationale of the exceptions, of forgetting that they are exceptions. It is the rule which is fundamental and axiomatic and exceptions to it which are only to be admitted on grounds which clearly justify their treatment as such"

From the above passage it is clear that the deductions are admissible from the amount of compensation in case the claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to. It does not cover cases where the payment received is not dependent upon an injury sustained on meeting with an accident. The other observation to which our attention has been drawn at Page 876 plassitam F also does not help the contention raised on behalf of the Insurance Company for deduction of amounts in the present case. The Court was considering a situation where due to the injuries received the victim was claiming cost of care necessary in future in respect of which statutory provision, provided for attendant's allowance. It was found that the statutory benefit and the damages claimed were designed to meet the identical expenses. This is however not so at least not shown, to be so in the case in hand.

Shri Soli J. Sorabjee has also made references from ALR Digests under the heading Damages, From American Law Report 84 ALR2d. In some cases, depending upon the provisions of the Act, it was held that the amount of compensation for death by wrongful act should not be diminished on receipt of social security benefit. In general, such payments have been regarded as being in the same category as amount paid to a surviving beneficiary on a life or casualty insurance policy or as a pension, which, it is well settled, are not to be considered in mitigating all damages sustained as a result of tortious death. (It is extracted from page 765 with reference to 16 Am Jur, Death $$ 222 and 223). In some cases a different view was taken by the American Courts. But it all depended upon the terms of the provisions of the policies.

A reference was also made to the report of the Royal Commission on civil liability and compensation for personal injury under the Chairmanship of Lord Pearson Volume-1 At pages 106 and 107 it recommended for taking into account the benefits which may be deducted from the amount of damages payable to the claimants. At page 109 it has recommended as follows:-

> "Benefits to be offset-
>
> 481-We agree with the principle in the 1948 Acts that the benefits deducted should be limited to those payable to the plaintiff as a result of injury for which damages are awarded. In practice, this means that such benefits as state retirement pensions, child benefits and maternity benefits should be disregarded.
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> 482-We recommend that the full value of social security benefits payable to an injured person or his dependents as a result of an injury for which damages are awarded should be deducted in assessment of damages."

And at page 118 under para 537 our attention has also been drawn to a passage which reads as under:-

> "537. Under the present law in England, Wales and Northern Ireland, pecuniary benefits derived by a dependent of a deceased person from his estate are taken into account in assessing damages under the Fatal Accidents Acts. Usually, any deduction is unimportant because, if the sum would have been paid to the plaintiff in any event in the future (for example, under a will), it is not deducted in full. Instead, an allowance may be made for accelerated payment and certainty of receipt. Nor does the rule apply to payments under a life insurance policy or to the use of a home or property. A full deduction is, however, made where the dependant receives a sum awarded to the estate of the deceased for non pecuniary loss." A perusal of the recommendations of the Royal Commission headed by Lord Pearson as referred to and relied upon on behalf of the Insurance Company also does not indicate that, all kinds of receipts or benefits as may be payable to the claimants from whatever source and under whatever statutory provisions have to be deducted. The recommendations made specific mention about non deductibility of amount of pension the benefit on account of Life Insurance. Child benefit and maternity benefit etc. !t is also

specifically provided under para 482 quoted above that the recommendation is for deducting full value of social security benefits payable as a result of injury for which damages are awarded. That is to say benefits not related to the injury are not to be taken into account for deductions.

A reference to Mac Grager on damages 16 Edition has also been made in relation to deduction of social security benefits. Our attention is drawn to page 1065 paragraph 1628 and paragraph 642 at page 1071 where reference of the decision in Hodgson case (supra) has been made. It is stated that unless receipts fell within one of the very few exceptions to the basic rules, all benefits received as a result of injuries should now be deductible in order to achieve the proper compensation, and not over compensation of the plaintiff. It is further observed that payments by way of social security are not exceptional for these purposes according to the Hodgson's case.

Shri Soli J. Sorabjee, learned senior counsel also referred to Encyclopedia America page 186(1). There seems to be social security Act 1935 in force in America, providing for different kinds of social security. It is also indicated how the social security fund is constituted and utilized for payments under the social security of unemployed, dependent children, to the needy aged and to the disabled people etc. Tax is also realizable contributing into social security fund.

Shri P.P. Rao, learned senior counsel appearing for the claimants has submitted that only such amount received on account of social security can be deducted, which becomes payable by reason of death by accident and not otherwise. We find force in the submissions of the learned counsel on this score. It is further submitted that the unemployment allowance or other such social security benefit under the social security Act etc. are not necessarily dependent upon the accidental death of the bread earner. Such allowances are payable otherwise even though the victim may not have died and may be still alive. Therefore, such payments which are unconnected and unrelated with the event of an accident resulting in injury or death, have to be disregarded for the purposes of deduction from the amount of damages. He has also referred to some American decisions one of them is 230 S.O. 2(d)(1) 1968 Flaapp Lexis 5073 Marc A. O'NEAL.....Appeal No. H-303. The Court of Appeals Florida first Districts the opinion of judge Carrol was countered by the other judges and the Chief Justice. He has drawn our attention to the following observation:

"Stated broadly the general Rule founded upon decisional law as well as logic and justice seems to be that a dependent can not reduce the damages for which there was otherwise be liable by showing that the plaintiff received compensation from a Collateral source such as benefits received from welfare and pension funds."

Learned senior counsel appearing on behalf of the claimants also submits that the High Court has rightly placed reliance upon a decision of this Court reported in [1999] 1 SCC page 90 Helen Rebellos' case. It is further submitted that this Court has rightly made a distinction between the

claims under the Fatal Accidents Act and the Motor Vehicles Act. Both parties have relied upon and referred to the above decision. The main question for consideration of the Court was in respect to the amount of Life Insurance as to whether the same was to be deducted from the amount of compensation payable to the claimants or not.

Shri P.P. Rao, learned counsel appearing for the claimants submitted that the scope of the provisions relating to award of compensation under the Motor Vehicles Act is wider as compared to the provisions of the Fatal Accident Acts, it is further indicated that the Gobald's case (supra) is a case under the Fatal Accident Acts. For the above contention he has relied upon the observation made in the Rebello's case. It has also been submitted that only such benefits, which accrued to the claimants by reason of death, occurred due to an accident and not otherwise, can be deducted. Apart from drawing distinction between the scope of provisions of the two Acts namely, Motor Vehicles Act and the Fatal Accident Act, this Court in the Helen Rebello's case accepted the argument that amount of insurance policies would be payable to the insured, the death may be accidental or otherwise, and even where the death may not occur the amount will be payable on its maturity. The insured chooses to have insurance policy and he keeps on paying the premium for the same, during all the time till maturity or his death. It has been held that such a pecuniary benefit by reason of death would not be such as may be deductible from the amount of compensation.

It may be useful to quote paragraph 33 of the decision which reads as under:-

> "Thus it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage" liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee."

The Court has observed in the last part of the para 34:-

> "How can an amount of loss and gains of all one contract be made applicable to the loss and gain of an other contract."

Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same line within the same sphere, of course, subject to the contract to the contrary or any provisions of law. The court has further referred to receipts of Provident Fund which is a deferred payment out of contribution made by an employee during tenure of his service Such an amount is payable irrespective of accidental death of

the employee. The same is the position relating to family pension. There is no co-relation between the compensation payable on account of accidental death and the amounts receivable irrespective of such accidental death which otherwise in the normal course one would be entitled to receive. This Court for taking the above view has also referred to certain English decisions as discussed in paragraph 18 of the judgment.

We are in full agreement with the observations made in the case of Helen Rebello (supra) that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some co-relation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accident Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this Judgment, it is clear that amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some co-relation between the amount received and the accidental death or it may be in the same sphere, absence the amount received shall not be deducted from the amount of compensation. Thus the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to pre-mature death of the insured. So far other items in respect of which learned counsel for the Insurance Company has vehemently urged for example some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system no co-relation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which, payment on account of social security system is made one of the constituent of fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the Insurance Policy and other receipts under social security system which the claimant would have also other wise entitled to receive irrespective of accidental death of Dr. Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains may be on account of savings or other investment etc. made by the deceased would not go to the benefit of wrong doer and the claimant should not be left worse of, if he had never taken an Insurance Policy or had not made investments for future returns.

We therefore, do not allow any deduction as pressed by the Insurance Company an account of receipts of Insurance Policy and social security benefits received by the claimants.

We may now pass on to the next question of rate of interest payable on the amount of compensation. It has been awarded at the rate of 12%.

Learned senior counsel for the respondent Shri P.P. Rao took an objection that the question relating to rate interest was not under challenge before the High Court. He has referred to the observations made by the Division Bench in its judgment to the effect "in any case, the rate of interest is not in

dispute before us". Thereafter it is observed that the Tribunal had awarded interest @ 12% per annum which was maintained by the learned Single Judge. Consequently, the Division Bench also did not think it appropriate to interfere with the award of interest @ 12% per annum. It is however refuted by the learned for the Insurance Company that the rate of interest was not in dispute. The learned counsel for the respondent has however submitted that the factual position as recorded by the Court that the rate of interest was not in dispute before the Court, should not be allowed to be disputed and it should be treated conclusive of the fact that the rate of interest was not is dispute before the Division Bench. He has in support of his contention referred to decisions of this Court, reported in [1982] 2 SCC 463; State of Maharashtra v. Ramdas Shrinivas Nayak and Anr. and [1992] Supp. 1 SCC; Apar (P) Ltd. and Am. v. Union of India and Ors. in which it has been held that concession made by a party and an observation made to that effect in the judgment, cannot be allowed to be denied. Only the Court which recorded the statement itself was competent to rectify the error if the Court recording the statement was approached to consider the matter without delay. The position as indicated in the above-noted decisions is undoubtedly correct and cannot be doubted. But in certain cases where a stray remark or observation made by the Court which is not very clear and is vague, and a different picture emerges from other part of judgment it may be open for this Court to ascertain the correct position on the basis of totality of the observations made in the judgment itself. In that light we may see the observations of the Division Bench in its judgment. It is nowhere indicated that the counsel appearing for the Insurance Company had made any statement conceding the rate of interest nor it is indicated how the concession was made. Then the observation that the "rate of interest was not in dispute before the Court" may only lead to an inference that the rate of interest was not disputed before the Court in the arguments advanced on behalf of the party concerned. But we, on the other hand, find that, on behalf of the Insurance Company, the learned counsel had cited the decisions to indicate that the lower rate of interest was awarded in certain decisions, which had been relied upon by him. This is enough to indicate that the rate of interest was actually disputed. More than one case, a reference of which has been made in the judgment of the Division Bench itself, has been relied upon by the counsel for the Insurance Company for reducing the rate of interest. The Division Bench in its judgment observed as follows:

> "It has, however, also been brought to our notice that in A. Roverl v. United Insurance Co. Ltd., [1999] 8 SCC 228 the Supreme Court awarded interest at 6% from the date of the application till actual payment to the claimant. In Kanshnuma Begum (Smt.) and Ors v. United Insurance Co. Ltd., [2001] 2 SCC 9 this Court awarded interest at the rate of 9% per annum."

Thereafter the observations made in the case of Kanshnuma Begum (Supra) have been quoted. After so much of discussion on the point of rate of interest and after mentioning the decisions relied upon by both the sides on their part, it could not be said that rate of interest was not in dispute before the Court. As indicated earlier the observation is not indicated to have been made in reference to any statement of the counsel for the party nor it comes out that the respective parties may not have advanced arguments for maintaining the rate of interest as awarded and the other party for reducing the rate of interest. In the light of the position indicated above, we do not think it will be possible to shut out the Insurance Company from urging before us that lesser rate of interest should have been awarded in place of 12% as awarded by the High Court. Before us also, learned counsel for the

Insurance Company has referred the decision of this Court reported in [1999] 8 SCC 226-A Robert v. Insurance Company Limited to indicate that interest at the rate 6% was awarded in that case. Another case cited awarding 6% interest is reported in 2001 ACC 540, particularly paragraph 34 has been referred [1970] All ER 1202 Jefford and Anr. v. Gee has also been referred to indicate that the amount awarded is on account of loss of future earnings whereas the interest is payable on being kept out of the money. It is therefore submitted that the interest may not be payable on the loss of future earning. Another decision which has been referred to is reported in [1995] 1 SCC 551-R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Ors. more particularly Para 18 of the judgment where it has been held that no interest is awardable on the amount of future expenditure. It is further observed: "It need not be pointed out that interest is to be paid over the amount which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future" But it is not indicated by the learned counsel for the appellant Insurance Company as to which is that amount out of the amount awarded which is on account of future expenditure yet to be incurred by the claimants. The interest is to be awarded on the amount which is payable on the date of the award. It is also to be noted that in some cases interest at the rate of 6% was awarded. This case however does not help the appellant Insurance Company. The next case which has been cited is reported in [2001] 2 SCC 9 Kaushnuma Begum (Smt.) and Ors. v. New India Assurance Company Ltd. In this case interest at the rate of 9% was awarded. The reason indicated in Paragraph 24 of the Judgment, we quote hereunder:

> "Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claims as may be specified in this behalf. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9% on fixed deposit for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants."

In our view the reason indicated in the case of Kaushnuma Begum (supra) is a valid reason and it may be noticed that the rate of interest is already on the decline. We therefore, reduce the rate of interest to 9% in place of 12% as awarded by the High Court.

The next point which remains to be considered is in relation to the exchange rate of the Dollar in Rupee. The Motor Accident Claims Tribunal allowed the exchange rate of the Dollar at Rs. 30. The learned Single Judge allowed it at the then current rate of Rs. 47. The Division Bench restored the exchange rate at Rs. 30 observing that the matter was closed since the claimants had withdrawn the amount as awarded by the Tribunal and the matter was now on the second stage relating to enhanced amount of compensation. Shri P.P. Rao, learned senior counsel appearing for the appellants has vehemently urged that it is only the current rate which should be allowed since the value of the Rupee has fallen in exchange of Dollar after the application for claim was made and award was given. Therefore, the amount of Rupees as arrived at the change rate of Rs. 47 should be allowed. In connection with this submission about rate of conversion, a reference to a case reported

in 1984 Supp SCC 263-Oil and Natural Gas Commission v. Forasal has been made. This Court held that rate of conversion as on the date of passing of the decree should be taken on the basis of which conversion should be allowed. We however find that the facts in that case are different. According to the contract itself, a part of the payment was to be made in French currency. The question then arose as to what rate of conversion should be allowed. The Court was of the view that there would be three relevant dates for the purpose, namely, the date on which the amount became payable, the date of the filing of the suit and the date of the judgment and it was further held that it would be fairer to both the parties to take the latest of these dates, namely, the date of passing the decree as the relevant date for applying the conversion rate. In the present case since the deceased was an American citizen, settled there and income accrued to him in America in terms of Dollars, details of income etc. have been given in Dollars but so far the prayer for passing a decree is concerned, it was for a sum indicated in Rupees which figure was arrived at by the claimants applying Rs. 30 as the conversion rate. Therefore, in the present case there is no such dispute as to what rate of conversion was to be applied. As a matter of fact, whatever rate may have been applied by claimants, the fact remains that the decree in terms of Rupees specified for a sum of Rs. 54 crores was prayed for. In terms of the prayer whatever amount in rupee was found to be payable to the claimants was decreed. In the present case the exchange rate of Dollar against Rupee was relevant for the purpose of arriving at a fair assessment of the loss of the dependency of the claimants at the relevant time. In such a situation we are of the view that no such question as in the case of Oil and Natural Gas Commission (supra) is involved. The decree was for a definite sum it terms of Rupees, a part of which was found admissible which amount was decreed. There is no occasion to convert the amount of decree in Rupees into Dollars applying Rs. 30 as rate of conversion and then re- convert it in Rupees at the rate of Rs. 47 The claimants cannot ask for more than what was prayed for in the claim petition. We are therefore not inclined to accede to the request made for calculation of the amount of award at the conversion rate of Rs. 47.

Shri T.R. Rajagopalan, learned senior counsel appearing for the Insurance Company in SLP (c) 20874/2001 preferred on the question of rash and negligent driving against the driver of the Trailer advanced some arguments but we do not think that the finding of fact recorded by the Courts of fact namely the Motor Accident Claims Tribunal and upheld by the learned Single Judge as well as the Division Bench can be re-opened to re-assess the evidence on the point.

In view of the discussion held above, we partly allow the appeals of the Insurance Company (SLP c Nos. 20875 and 21858/2001) and set aside the part of the judgment of the Division Bench of the High Court by which it applied the multiplier of 13 in accordance with 2nd Schedule of the Motor Vehicles Act. We restore the order of the learned Single Judge to the extent it applied the multiplier of 10. The amount of compensation shall be calculated and be payable accordingly. So far rate of interest on the enhanced amount is concerned, we set aside the order passed by the High Court awarding interest at the rate of 12% per annum and we reduce it to 9% per annum. The appeal of the Insurance Company challenging the award against the finding of negligence (S.L.P. c 20874/2001) on the part of the driver of the Troller is dismissed. So far the appeal of the claimants (SLP c No. 22304/2001) for applying the conversion rate at Rs. 47 is concerned, it is dismissed and the order passed by the Division Bench for applying conversion rate at Rs. 30 is upheld. The appeal for allowing the deduction on account of receipt of the sums received by the claimants on social security

system is dismissed and the order passed by the High Court dis- allowing any deduction is upheld.

The Motor Accident Claims Tribunal Tis Hazari, Delhi shall calculate the amount of compensation in accordance with the Judgment passed above that is to say it shall take the dependency amount as $ 226297 and shall apply the multiplier of 10. The conversion rate shall be @ Rs. 30. The amount shall bear interest @ 9% per annum as awarded instead of 12%.

Parties to bear their own costs.