

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2009
(Arising out of SLP (C) No. 13452 of 2007)

United India Insurance Co. Ltd.

...Appellant

Versus

Bindu and Ors.

...Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Kerala High Court dismissing the appeal filed by the appellant questioning correctness of the award passed by the Motor Accident Claims Tribunal, Paravur (in short the ‘MACT’).
3. Background facts in a nutshell are as follows:

One Anil lost his life in a vehicular accident on 17.6.1999. The respondents filed a Claim Petition in terms of Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act'). It was stated in the claim petition that when the deceased was driving a motor cycle, a tractor owned by respondent no.5 which was being driven in rash and negligent manner by respondent No.4 dashed against him and he suffered serious injuries. The vehicle was the subject matter of insurance with the present appellant (hereinafter referred to as the 'insurer'). A claim of Rs.12,00,000/- was made. The stand taken by the insurer was that the accident took place only due to the negligence of the deceased and there was no negligence on the part of the driver. It was also submitted that there was no evidence regarding the income of the deceased and, therefore, the claim was highly exaggerated. It was indicated in the claim petition that the age of the deceased was 32 years and that he was getting Rs.7,427/- as monthly salary. The MACT found that the monthly income as claimed has been established. Adopting a multiplier of 17 the entitlement of the claim was fixed at Rs.10,61,000/- with 9% interest from the date of filing of the claim petition.

An appeal was filed before the High Court which dismissed the appeal on the ground that the award made was in order.

3. It was submitted by learned counsel for the appellant that not only the claim of income was without any basis but also the multiplier has no rational basis. It is also submitted that the rate of interest awarded is high.

4. There is no appearance on behalf of the respondents in spite of service of notice.

5. There were two methods adopted to determine and for calculation of compensation in fatal accident actions. The first multiplier method mentioned in Davies v. Powell Duffryn Associated Collieries Ltd. (1942 AC 601) and the second in Nance v. British Columbia Electric Railway Co. Ltd. (1951 (2) All ER 448).

6. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of

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

7. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in Mallett v. Mc Mongle (1969 (2) All ER 178) where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

“The starting point in any estimate of the amount of the ‘dependency’ is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But....there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the

chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4- 1/2% the present value of an annuity for 20 years of which the first ten years are at \$ 100 per annum and the second ten years at \$ 200 per annum, is about 12 years' purchase of the arithmetical average annuity of \$ 150 per annum, whereas if the first ten years are at \$200 per annum and the second ten years at \$ 100 per annum the present value is about 14 years' purchase of the arithmetical mean of \$ 150 per annum. If therefore the chances of variations in the 'dependency' are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the 'dependency' used for the purpose of assessing the damages."

8. In regard to the choice of the multiplicand, Halsbury's Laws of England in vol. 34, para 98 states the principle thus:

"98. Assessment of damages under the Fatal Accident Act, 1976 – The courts have evolved a method for calculating the amount of pecuniary benefit that dependants could reasonably expect to have received from the deceased in the future. First the annual value to the dependants of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses.

The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death."

9. As to the multiplier, Halsbury states:

"However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependants can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependants will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer.

The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure.”

10. In both General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.

(1994 (2) SCC 176) and U.P. State Road Transport Corporation And Others

v. Trilok Chandra and Ors. (1996 (4) SCC 362) the multiplier appears to have been adopted by this Court taking note of the prevalent banking rate of interest.

11. In fact in Trilok Chand's case (supra), after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects.

It was pointed out that the same is to serve as a guide, but cannot be said to be invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian Citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age.

12. Keeping in view the parameters indicated above it would be appropriate to fix the multiplier at 13 and the rate of interest at 6% p.a. The MACT shall work out the entitlements on the aforesaid basis. It is stated by learned counsel for the appellant that pursuant to the order of this Court on 27.7.2007, a sum of Rs.7,00,000/- has been deposited. The balance amount payable in terms of this Court's order shall be deposited by the insurer with the MACT within eight weeks. The MACT shall permit withdrawal of the amount on such terms including the fixed deposit in a scheduled bank after a deposit is made, as the circumstances warrant.

13. The appeal is allowed to the aforesaid extent.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
February 05, 2009