

A       UTTARNACHAL TRANSPORT CORPORATION LTD.

V.

SMT. VIPLA DEVI AND ORS.

Civil Appeal No. 1069 of 2009

FEBRUARY 16, 2009

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[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,  
JJ.]

Motor Vehicles Act, 1988 :

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*s. 173 – Enhancement of compensation – Appropriate multiplier – Determination of – Fatal accident of contractor aged 43 years – Compensation of Rs, 1,84,500 by tribunal – High Court taking notional income as Rs. 36,000/- and adopting multiplier of 15 enhanced compensation to Rs. 3,60,000/- – On appeal, held: In view of the parameters, multiplier fixed at 10 – Rs. 2,40,000/- awarded as compensation with 6% interest from date of claim.*

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**BS-contractor, aged 43 years met with a fatal accident while riding a scooter when bus of the appellants Corporation dashed against it. MACT fixed Rs. 15,000/- p.a. as notional income of deceased and awarded compensation of Rs. 1,84,500/- with 9% p.a. from the date of claim. High Court fixed notional income as Rs. 36,000/- p.a. It adopted multiplier of 15 and awarded Rs. 3,60,000/- with 9% interest from the date of claim. Hence, the present appeal.**

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Partly allowing the appeal, the Court

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**HELD: 1.1 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**

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higher) and by the calculation as to what capital sum, if A  
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 B  
consumed-up over the period for which the dependency  
is expected to last. [Para 8] [507-F, G]

1.2 Considering the age of the deceased the multiplier  
as adopted appears to be on higher side. Keeping in view  
the parameters, it would be appropriate to fix the multiplier C  
at 10 and the rate of interest @ 6% p.a. No basis has been  
indicated by the High Court for its presumptuous  
conclusion that the deceased could have earned  
Rs.36,000/- p.a. Taking an overall view of the matter and  
the multiplier to be adopted, the quantum of Rs.2,40,000/  
- with 6% interest is fixed from the date of claim. [Paras D  
14, 15 and 16] [ 510-H; 511-A, B]

*General Manager, Kerala State Road Transport  
Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*  
1994 (2) SCC 176; *U.P. State Road Transport Corporation and  
Ors. v. Trilok Chandra and Ors.* 1996 (4) SCC 362 – referred E  
to.

*Davies v. Powell Duffreyn Associated Collieries Ltd.* 1942  
AC 601; *Nance v. British Columbia Electric Railway Co. Ltd.*  
1951 (2) All ER 448; *Mallett v. Mc Mongle* 1969 (2) All ER 178  
– referred to. F

*Halsbury's Laws of England vol. 34, para 98* - referred to.

#### Case Law Reference

1942 AC 601	Referred to.	Para 7	
1951 (2) All ER 448	Referred to.	Para 7	G
1969 (2) All ER 178	Referred to.	Para 9	
1994 (2) SCC 176	Referred to.	Para 12	
1996 (4) SCC 362	Referred to.	Para 12.	H

A CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1069  
of 2009

From the Judgement and Order dated 29.11.2006 of the  
High Court of Uttaranchal at Nainital in A.O. No. 213 of 2004.

B Pradeep Misra, for the Appellant.

The Judgement of the Court was delivered by

**DR. ARIJIT PASAYAT, J.**

1. Leave granted.

C 2. Challenge in this appeal is to the judgment of a learned  
Single Judge of the Uttaranchal High Court partially allowing  
the appeal filed by the respondents. The appeal was filed before  
D the High Court in terms of Section 173 of the Motor Vehicles  
Act, 1988 (in short the 'Act') seeking enhancement of the  
compensation as fixed by learned 1st Additional District Judge-  
cum-Motor Accident Claims Tribunal, Haridwar. (In short the  
'MACT'). The MACT had awarded compensation of  
Rs.1,84,500/- alongwith interest @ 9% p.a. from the date of  
E claim.

3. The claim petition was filed inter-alia stating that on  
2.9.2003 one Bijendra Singh (hereinafter referred to as the  
'deceased') was riding a scooter. Suddenly, the bus owned by  
the present appellant-Corporation dashed against it. The vehicle  
F was being driven in a rash and negligent manner. It is stated  
that the deceased was aged 43 years at the time of the accident  
and was a contractor and earning Rs.12,000/- p.m. The  
Corporation took the stand that there was actually no rash and  
negligent act of the driver. When the scooter was trying to  
G overtake the truck it lost control and the accident occurred due  
to negligence of the deceased. The MACT held that there was  
no material to establish the income as claimed and accordingly  
a sum was fixed at Rs.15,000/-p.a. which is the notional income.

4. The High Court held that the notional income has to be  
H taken at Rs.30,000/- p.a. and since the deceased was a

contractor he could have easily earned Rs.3,000/- p.m. and accordingly after making  $\frac{1}{3}$ <sup>rd</sup> deduction for personal expenses the loss of dependency was assessed at Rs.24,000/- p.a. and multiplier of 15 was adopted. Accordingly, the compensation was fixed at Rs.3,60,000/- with 9% interest from the date of claim. A

5. In support of the appeal, learned counsel for the appellant submitted that there was no basis indicated for taking the income at Rs.36,000/- p.a.. On surmises the High Court came to the conclusion that the deceased could have earned Rs.36,000/- p.a. There was no basis for coming to such a conclusion. It was also submitted that the multiplier adopted is high. B C

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

7. 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). D E

8. 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. F G

9. 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 H

A 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:

B "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

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have only a relatively small effect in increasing or diminishing the 'dependency' used for the purpose of assessing the damages."

10. 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."

11. 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

A 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  
B 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  
C 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  
D of wages at the date of trial. No interest is allowed on the  
total figure.”

12. 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.

13. 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.

14. Considering the age of the deceased the multiplier as adopted appears to be on higher side.

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15. Keeping in view the parameters indicated above it would be appropriate to fix the multiplier at 10 and the rate of interest @ 6% p.a. The MACT shall work out the entitlement on the aforesaid basis. A

16. No basis has been indicated by the High Court for its presumptuous conclusion that the deceased could have earned Rs.36,000/- p.a. Taking an overall view of the matter and the multiplier to be adopted, as noted above, we fix the quantum of Rs.2,40,000/- with 6% interest from the date of claim. B

17. It is stated by learned counsel for the appellant that a sum of Rs.2,50,000/- has been deposited in terms of the order of this Court dated 20.7.2007. The balance amount shall be deposited in the concerned MACT within a period of 8 weeks. The withdrawal of the amount in the fixed deposit shall be fixed by the MACT taking into account the relevant aspects. C

18. The appeal is allowed to the aforesaid extent with no order as to costs. D

N.J.

Appeal party allowed.