THE HIGH COURT OF SIKKIM : GANGTOK

M.A.C. APPEAL NO.1 OF 2005

(Arising out of the Orders dated 4th December, 2004 and 29th November, 2004 passed by Mr. B. C. Sharma, Member, Motor Accident Claims Tribunal, South & West Districts at Namchi in M.A.C.T. Case Nos.6 and 4 of 2004)

1. Mr. Gopi Krishna Kakrania
   S/o Late Ram Kumar Kakrania
2. Mrs. Vimla Devi Kakrania
   W/o Mr. Gopi Krishna Kakrania
   Both R/o 336 Canal Street,
   P.O. Shree Bhumi,
   Kolkata – 48
   West Bengal. **..... Appellants**

versus

1. Mr. Mahendra Pradhan
   S/o Mr. B. B. Pradhan,
   R/o Dentam Bazar,
   West Sikkim.
2. United India Insurance Co. Ltd.,
   Above Centurion Bank,
   Hill Cart Road,
   Siliguri,
   Dist. Darjeeling,
   West Bengal. **..... Respondents**

HIGH COURT OF SIKKIM ★ GANGTOK ★

AND

M.A.C. APPEAL NO.2 OF 2005

1. Mr. Gopi Krishna Kakrania
   S/o Late Ram Kumar Kakrania
2. Mrs. Vimla Devi Kakrania
   W/o Mr. Gopi Krishna Kakrania
   Both R/o 336 Canal Street,
   P.O. Shree Bhumi,
   Kolkata – 48
   West Bengal. **..... Appellants**

versus

1. Mr. Mahendra Pradhan
S/o Mr. B. B. Pradhan,
R/o Dentam Bazar,
West Sikkim.

2. United India Insurance Co. Ltd.,
Above Centurion Bank,
Hill Cart Road,
Siliguri,
Dist. Darjeeling,
West Bengal. **..... Respondents**

For the appellants : Mr. Ajay Rathi and Mr. Suraj Chettri, Advocates.

For the respondent no.1 : Mr. B. Pokhrel, Advocate.

For the respondent no.2 : Mr. A.K. Upadhyaya, Advocate.

PRESENT: THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.

Last date of hearing : 19th April, 2005.

DATE OF JUDGMENT : 13TH MAY, 2005.

HIGH COURT OF SIKKIM ★ GANGTOK ★

J U D G M E N T

A. P. Subba, J.

Since both these appeals involve common question of law and fact, they are heard together and are being disposed of by this common judgment.

2. The incident that gave rise to the cause of action for filing of the two claim petitions before the MAC Tribunal (South & West) against whose orders/awards both these appeals have been preferred in this Court is the vehicular accident that occurred on Legship-Reshi road, West Sikkim on 10th October, 2003. It is stated that the claimants' son and daughter-in-law who met with death in the said accident were

traveling in the ill-fated vehicle which was on its way from Gyalshing to Siliguri on the fateful day. The claimants filed two claim petitions separately in respect of their deceased son late Praveen Kakrania and daughter-in-law late Pragati @ Anita Kakrania before the Motor Accident Claims Tribunal (South & West) at Namchi against Mahendra Pradhan, respondent no.1 the owner of the vehicle and United India Insurance Co. Ltd., respondent no.2 with whom the vehicle was insured.

The claim petition filed in respect of late Pragati @ Anita Kakrania the deceased daughter-in-law was registered as M.A.C.T. Case no. 6 of 2004. The opposite parties resisted the claim by filing separate written objections challenging the maintainability of the claim petition filed by the claimants. In his written objection, the respondent no.1 contended that the vehicle in question was insured with the respondent no.2 and that the claim for compensation, if any, lies against the Insurance Co. only. In their written objection, the respondent no.2 denied and disputed each and everything that 'shall be contrary to and inconsistent therewith from what shall transpire from records'.

After recording evidence and hearing the parties, the learned Tribunal awarded an amount of Rs.1,65,700/- as compensation in the following manner. Para 16 of the impugned order which shows how the compensation was worked out is as follows:-

> **"16.** It is seen from the claim petition as well as from the deposition of the claimant No.1 that the income of the deceased Pragati Kakrania was Rs.6,800/- per month. The claim of the claimants on this score remained unchallenged. It is also seen that the claimant No.1 is 74 years old and the claimant No.2 is 67 years old. Hence, in my considered opinion the multiplier 3 can safely be applied in this case. The monthly income of the deceased is Rs.6,800/-. Thus the annual income of the deceased Pragati kakrania comes to Rs.81,600/- (i.e. Rs.6,800 x 12 = Rs.81,600) Considering the ages of the claimants and applying multiplier 3 in this case the amount comes to Rs.2,44,800/- (i.e. Rs.81,600 x 3 = Rs.2,44,800/-). Out of this amount 1/3rd is to be deducted in consideration of the expenses, which the victim would have incurred towards maintaining herself had she been alive which comes to Rs.81,600/- (i.e. Rs.2,44,800 ÷ 3 = Rs.81,600/-). Hence, after deducting Rs.81,600/- out of the annual total income of the deceased compensation amount to be paid to the claimants comes to Rs.1,63,200 (i.e. Rs.2,44,800 - Rs.81,600 = Rs.1,63,200/-)."

From the above amount of Rs.1,63,200/-, the amount of Rs.50,000/- already paid as interim award was deducted which left the balance of Rs.1,13,200/-. The claimant was entitled to get simple interest @ 9% p.a. on this amount. Over and above this an amount of Rs.50,000/- was awarded as funeral expenses along with further amount of Rs.2,500/- for loss of estate bringing the total amount of compensation awarded at Rs.1,65,700/-.

3. The claim petition filed by the claimants in respect of Praveen Kakrania, the deceased son, was registered as M.A.C.T. Case no.4 of 2004. The claim was resisted by the opposite parties more or less on the same ground as in the M.A.C.T. Case no.6 of 2004 as already narrated above.

After recording evidence and hearing the parties, the learned Tribunal granted an amount of Rs.4,10,500/- as compensation to the claimants following the same method of computation of the compensation as follows:-

> "16. It is seen from the claim petition as well as from the deposition of the claimant No.1 that the income of the deceased Praveen Kakrania was Rs.17,000/- per month. The claim of the claimants on this score remained unchallenged. The monthly income of the deceased thus taken to be Rs.17,000/-. Hence, the annual income of the deceased Pravenn kakrania comes to Rs.2,04,000/- (i.e. Rs.17,000 x 12 = Rs.2,04,000/-). It is also seen that the age of the claimant No.1 is 74 and the claimant No.2 is 67. Considering the ages of the claimants and applying multiplier 3 in this case the amounts comes to Rs.6,12,000/- (i.e. 2,04,000 x 3 = Rs.6,12,000/-). Out of this amount 1/3rd is to be deducted in consideration of the expenses, which the victim would have incurred towards maintaining himself had he been alive which comes to Rs.2,04,000/- (i.e. Rs.6,12,000 ÷ 3 = Rs.2,04,000/-). Hence, after deducting Rs.2,04,000/- out of the annual total income of the deceased compensation amount to be paid to the claimants comes to Rs.4,08,000 (i.e. Rs.6,12,000 - Rs.2,04,000 = Rs.4,08,000/-)."

From the above amount of Rs.4,08,000/- an amount of Rs.50,000/- already received by the claimants as interim award was deducted leaving the balance of Rs.3,58,000/-. The claimants were allowed interest @ 9% p.a. on this amount. Over and above this, the learned Tribunal awarded further sums of Rs.50,000/- towards funeral expenses and Rs.2,500/- for loss of estate thus bringing the total amount of compensation awarded at Rs.4,10,500/-.

4. Aggrieved by the awards passed by the learned Tribunal in the above two claim petitions, the present

appellants who are the claimants have come up in the present appeals which have been registered as MAC Appeal nos.1 and 2 of 2005.

5. Mr. Suraj Chettri assisted by Mr. Ajay Rathi, learned counsel for the appellants, Mr. B. Pokhrel, learned counsel for the respondent no.1 and Mr. A. K. Upadhyaya, learned counsel for the respondent no.2. were heard.

6. The only point urged by the learned counsel for the appellants pertains to the application of multiplier 3 by the learned Tribunal in working out the amount of compensation in both the cases. The submission of the learned counsel is that the application of multiplier 3 by the learned Tribunal in arriving at the total amount of compensation in the impugned awards is arbitrary and not appropriate in the circumstances of the case. It is, according to him, neither in conformity with the guidelines laid down in schedule II of the Motor Vehicles Act nor with the table of higher multiplier evolved by the Division Bench of Karnataka High Court in Gulam Khader and another vs. United India Insurance Company Limited and another reported in ILR 2000 Kant. 4416 referred to and relied on by the Full Bench of the same Court in V.S. Gaudar vs. Oriental Insurance Company Ltd. and another reported in 2003 (3) TAC 343 (Kant.).

7. The manner in which the compensation has been worked out by the learned Tribunal in the two cases has already been noticed above. It is clear from the impugned awards that in both the cases, the learned Tribunal has applied

the multiplier 3. It may be noted that the claimants being same in both the cases, the age of the claimant no.1 is 74 years and age of claimant no.2 is 67 years. The learned Tribunal has, after taking note of the age of the claimants, observed that considering the age of the claimants the multiplier 3 can safely be applied and accordingly applied the same in both the cases. However, no rationale for choosing the multiplier 3 is discernible from the discussion except that in view of the age of the claimants multiplier 3 can safely be applied. As stated above, the contention of the learned counsel for the appellants is that the use of multiplier 3 is in total disregard of the second schedule to the Motor Vehicles Act and the table of higher multiplier evolved by Karnataka High Court in Gulam Khader's case (supra).

8. A perusal of the schedule II of the Motor Vehicles Act shows that if the age of the claimant is above 65 years the multiplier to be applied would be 5 and as per the table of higher multiplier evolved by the Karnataka High Court the multiplier in cases where the age of the claimant is above 65 years would be 7. It may be noted that the higher multiplier 7 would be applicable to claims relating to accidents that took place on or after 14th November, 1994 i.e. the date on which the amendment which incorporated sections 163-A and 163-B came into force. In this regard, para 20 of the judgment in Gulam Khader's case (supra) in which the Karnataka High Court drew up the tabular form showing enhanced operative

multiplier as per the decision of the Hon'ble Supreme Court in U.P.S.R.T.C. and others vs. Trilok Chandra and others reported in (1996) 4 SCC 362 would be relevant and the same is reproduced as follows:-

> **"20.** The position therefore is that in regard to the accidents which took place before 14th November, 1994 (introduction of Second Schedule by amendment of Motor Vehicles Act), the operative multiplier will be 16 and in regard to accidents which occurred after 14th November, 1994, the operative multiplier will be 18. This Court in several decisions has stated and reiterated that selection of multiplier in the cases of accidents prior to 14th November, 1994 will have to be determined with reference to the principles laid down by this Court in *H.T. Bhandary's* case, *supra,* and the decision of the Supreme Court in *Susamma Thomas* case, *supra*, and in cases of accidents on and after 14th November, 1994, the selection of multiplier will be governed by the enhanced operative multiplier as per the decision in *Trilok Chandra's* case, *supra.*"

The tabular form then drawn up by the Court showing appropriate multiplier for different age groups is as under:-

Age of the deceased	Multiplier to be applied	
	In regard to accidents prior to 14th November, 1994	In regard to accident on or after 14th November, 1994
18-22 years	16	18
23-27 years	15	17
28-32 years	14	16
33-37 years	13	15
38-42 years	12	14
43-47 years	11	13
48-52 years	10	12
53-57 years	09	11
58-62 years	08	10
63-67 years	07	09
68-72 years	06	08
73-77 years	05	07

9. It is, therefore, clear that the multiplier 3 chosen by the learned Tribunal is neither in conformity with the second schedule to the Motor Vehicles Act nor in conformity with the table of higher multiplier evolved by the Karnataka High Court in Ghulam Khader's case (supra) relying upon the observation made by the Hon'ble Supreme Court in Trilok Chandra's case (supra).

10. So far as the method of arriving at 'just' compensation is concerned, the Hon'ble Supreme Court in Trilok Chandra's case (supra) has observed that multiplier method is a sound method of assessing compensation. Referring to the earlier judgment of the Court in the case of G. M. Kerala SRTC vs. Susamma Thomas (1994) 2 SCC 176 the Hon'ble Court at paragraph 13 has observed as follows:-

> **"13.** It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B, Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168, Motor Vehicles Act, 1988) envisaged payment of 'just' compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country."

The above being the position of law, it hardly needs to be emphasised that while computing just compensation the Tribunals must adhere to the system of multiplier. No doubt, the learned Tribunal in the present case has adopted the multiplier method while assessing the amount of compensation. However, it is evident that the learned Tribunal ignored the

multiplier 5 given in the column no.2 of the schedule II and applied a multiplier 3 on its own without cogent reasons thereby leading to award of inadequate amount of compensation. As already noted above, the reasons for which the learned Tribunal chose the multiplier 3 is not clear from the award.

11. It is to be noted that the multiplier 3 does not find place in the column two of the second schedule to the Motor Vehicles Act and also in the table of higher multiplier evolved by the Karnataka High Court. As already noticed above, the multiplier shown in the table given in the second schedule for the age range of the claimant i.e. 65 years and above is 5 while the higher multiplier given in the tabular form evolved by the Karnataka High Court for the age range of claimants i.e. above 65 years and above is 7 (in regard to accident that took place on or after 14th October, 1994). It is, therefore, clear that not only the second schedule of the Motor Vehicles Act has been completely ignored in the matter of application of appropriate multiplier for arriving at a just amount of compensation but note has also not been taken of the higher multiplier evolved by the Division Bench of the Karnataka High Court which is based on the guidelines laid down by the Hon'ble Supreme Court in Trilok Chandra's case (supra).

It may be noted that the multiplier represents the number of years' purchase on which the loss of dependency is capitalised. The Hon'ble Supreme Court in Susamma Thomas's

case (supra) has observed in paragraph 13 of the judgment that "the choice of the multiplier is determined by the age of the deceased (or that of the claimants which ever 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". It has further been observed that "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 would be convenient to reproduce the mathematical example taken as illustration of the principle as follows:-

> "Take for instance a case where annual loss of dependency is Rs 10,000. If a sum of Rs 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs 10,000 would be 20. Then the multiplier, i.e., the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up."

Thus, it becomes clear from the above that the choice of multiplier cannot be without any basis and arbitrary. In the

later decision of the Hon'ble Supreme Court rendered in United India Insurance Co. Ltd. and others vs. Patricia Jean Mahajan and others reported in (2002) 6 SCC 281 it has been observed that though the choice of multiplier may differ to some degree as observed in the case of Jyoti Kaul JT (2000) 7 SC 367 depending upon various facts and circumstances of the case, normally the multiplier as indicated in the second schedule should be applied as it is found to be a safe guide for the purpose of calculation of the amount of compensation. Therefore, deviation from the scheduled multiplier is permissible only on special reasons.

12. From the above, it also becomes clear that the multiplier method which is accepted method of determining and ensuring payment of just compensation, needs to be adhered to for the purpose of bringing uniformity and certainty in the matter of assessment of compensation all over the country. Explaining the reasons as to why the Hon'ble Supreme Court thought it necessary to reiterate the method of working out just compensation the Hon'ble Court in paragraph 15 of the judgment in Trilok Chandra's case (supra) has observed as follows:-

> **"15.** We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the awards made by tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal /Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of

> compensation. It must be realized that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused."

13. On a perusal of the impugned awards in the light of the above principles and the guidelines laid down by the Hon'ble Supreme Court in the various decisions cited above it becomes clear that the learned Tribunal in the cases at hand totally lost sight of the principle on which the multiplier method has been developed and has thereby contributed towards uncertainty and lack of reasonable uniformity in the matter of determination of compensation.

14. It must however to be noted that before the amendment Act 54 of 1994 amending the Motor Vehicles Act, 1988 the law did not provide for any notional fixation of income and the method of arriving at just compensation in Motor Accident Claim cases. Section 163(A) and the schedule prepared under it were introduced to the Motor Vehicles Act for the first time by the Amendment Act of 1994. Prior to this no fault liability existed only to the extent provided for in section 140 of the Act. The provision of the new sections 163A and 163B are, to borrow the phrase of the Full Bench of Karnataka High Court in V. S. Gowdar's case (supra), 'extension of the philosophy underlying section 140 of the Act'. No doubt, the structured formula provided in the second schedule to the Act was intended to be applicable only to no fault claims made under section 163A of the Motor Vehicles Act. However, note

must be taken of the fact that even though the structured formula was evolved for the purpose of section 163A the same has been taken as a safe guideline also for purposes of dealing with claims based on fault liability. In this regard, the following observation made by the same Full Bench of Karnataka High Court in the case of V. S. Gowdar (supra) is apposite.

> **"17.** ..... Suffice it to say, that even on a purely theoretical plane, the difference between claims based on no fault liability and that based on proof of fault is slowly eroding. We therefore see no reason why the multiplier prescribed by the Parliament for determination of compensation in no fault cases should not be applicable even to cases based on proof of fault."

15. Thus keeping in view the fact that the schedule II brought into existence by the 1994 Amendment would be a safe legislative guidelines for determining just compensation both in fault claim cases as well as in no fault claim cases and also keeping in view the observation of the Hon'ble Supreme Court in Trilok Chandra's case (supra) that the multiplier method if followed will ensure uniformity and certainty of awards to be made by the Tribunals, the importance and desirability of adhering to the second schedule of the Motor Vehicles Act and the guidelines laid down by the Hon'ble Supreme Court in this regard cannot be over emphasised. It thus follows that there can be no departure from the scheduled multiplier in the present cases so as to ensure fair compensation and uniformity and certainty of the awards in similar cases. So far as the question of selecting appropriate

multiplier in the present case is concerned it may be noted that the learned counsel for the appellants have no grievance if the multiplier 5 provided in the second schedule is applied in both the cases.

16. However, before embarking on the calculation of the compensation as per schedule II it is necessary to deal with a specific grievance voiced by Mr. A. K. Upadhyaya, the learned counsel for the respondent no.2 with regard to the amount awarded on the head of funeral expenses. His submission in this regard is that the amount of Rs.50,000/- awarded by the Tribunal for funeral expenses is far in excess of Rs.2,000/- which is a fixed sum provided in second schedule for funeral expenses. Bearing in mind the foregoing discussion, it is hardly necessary to examine this issue in any depth. Suffice it to say that the learned Tribunal has exceeded the permissible amount thereby showing lack of awareness of the fixed amounts prescribed in the schedule. Therefore, the amount awarded in excess of what is provided in the schedule cannot be sustained and the same must be slashed to bring it on a par with the amount provided for the specific head of funeral expenses in the schedule.

17. Thus working out the compensation payable using the multiplier 5 as provided in Schedule II of the Motor Vehicles Act the amount of fair and just compensation in MAC Appeal no.1 of 2005 comes to Rs.2,26,700/- as shown below.

The annual income of the deceased which comes to Rs.81,600/- is not disputed. Now using the multiplier 5 in place of 3 the total amount comes to Rs.4,08,000/- (Rs.81,600 x 5). On deduction of 1/3rd of this amount, the total amount comes to Rs.2,72,000/-. To this amount, further amount of Rs.2,000/- on funeral expenses and amount of Rs.2,500/- for loss of estate may be added. This brings the total amount to Rs.2,76,500/- (Rs.2,72,000 + Rs.2,000/- + Rs.2,500/-). On deduction of the interim amount of Rs.50,000/- already paid from this amount the total balance amount comes to Rs.2,26,500/- (Rs.2,76,500 – Rs.50,000).

Similarly, in MAC Appeal no. 2 of 2005 the amount payable as fair and just compensation comes to Rs.6,34,500/- as shown below.

The annual income of the deceased which comes to Rs.2,04,000/- is not disputed. Now using the multiplier 5 in place of 3 the total amount comes to Rs.10,20,000/- (Rs.2,04,000 x 5). On deduction of 1/3rd of this amount, the total amount comes to Rs.6,80,000/-. To this amount, further amount of Rs.2,000/- on funeral expenses and amount of Rs.2,500/- for loss of estate may be added which brings the total amount to Rs.6,84,500/- (Rs.6,80,000 + Rs.2,000/- + Rs.2,500/-). From this amount, the interim amount of Rs.50,000/- already paid may be deducted. Thus the total amount comes to Rs.6,34,500/- (Rs.6,84,500 – Rs.50,000).

18. In the result, the appeals are allowed. The compensation payable in MAC Appeal no.1 of 2005 is determined at Rs.2,26,500/- and similarly the compensation payable in MAC Appeal no.2 of 2005 is determined at Rs.6,34,500/- as per the details shown above. The two impugned awards stand modified accordingly. However, the rate of interest allowed is not disturbed.

In the circumstances of the case there shall be no order as to costs.

A copy of this judgment be sent to the concerned Tribunal along with the original records for compliance.

Sd/-
(A. P. Subba)
Judge
13.05.2005

CERTIFIED TO BE TRUE COPY

Assistant Registrar
High Court of Sikkim
at Gangtok