IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No.980/2006

M/s.United India Insurance Company ..... Appellant
! through: Mr.A.K.De, Adv.

VERSUS

$ Smt.Kusum Jindal & Ors. ..... Respondents
^ through: Mr.Sanjeev Mehta & Ms.Aruna Mehta, Advs. for respondents
Ms.Eashita Mandal, Adv. For respondent No.6

MAC. APP. No.985/2006

M/s.United India Insurance Company ..... Appellant
! through: Mr.A.K.De, Adv.

VERSUS

$ Shri Ankit & Anr. ..... Respondents
^ through: Ms.Shantha Devi Raman, Adv. for respondent No.1
Mr.Vijay Kumar Wadhwa, Adv. for respondent No.2

MAC. APP. No.986/2006

M/s.United India Insurance Company ..... Appellant
! through: Mr.A.K.De, Adv.

VERSUS

$ Mrs.Rani Gupta & Ors. ..... Respondents
^ through: Ms.Shantha Devi Raman, Adv. for respondents No.1 to 4
Mr.Vijay Kumar Wadhwa, Adv. for

respondent No.5

% **D**ATE OF DECISION: 31-05-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. Apart from a question of fact pertaining to quantification of the loss of dependence and compensation payable to the injured which are different in each appeal, a common question of law arises for consideration in the three appeals which arise out of the same accident involving the same car. Thus, the three appeals are being decided by a common order. Needless to state, they arise out of a common award under which 3 claim petitions have been decided.

2. The date was 12.2.2004. Praveen Kumar Gupta, Rajender Jindal and Ankit Gupta were travelling as passengers in a TATA Indica car bearing No. HR 26U 3423. The car was owned by Avtar Singh, a friend of Praveen Kumar Gupta and Rajender Jindal. Ankit Gupta is the son of

Praveen Kumar.

3. The owner/driver Avtar Singh lost control of the vehicle and rammed into a tree by the side of the road with such great force that the resultant impact led to the instant death of Praveen Kumar and Rajender Jindal at the spot. Ankit survived but with injuries on the face.

4. Praveen Kumar Gupta was survived by his wife and 3 children. Rajender Jindal was survived by a wife and 4 children. The two set of survivors filed claim petitions for compensation invoking Section 140 read with Section 166 of the MV Act 1988. Ankit Gupta did likewise for injuries sustained by him.

5. The car was insured with the appellant. Admitting the said fact of the car being insured with it and that the accident was caused due to the rash and negligent driving by the insured i.e. Avtar Singh, a defence was taken by the appellant that the deceased as also the injured were gratuitous passengers in the car and the policy of insurance covered pubic risk to third parties and since passengers in a car are not third parties, appellant was not liable to satisfy the award.

6. The learned Tribunal has returned a finding

against the appellant.

7. Whether a Gratuitous Passenger travelling in a Private car would fall within the meaning of 'third party' and covered by 'Statutory Policy' within the meaning of Section 147 of the Act may be a question of debate, but in the instant case I need not deal with the said issue for the reason, admittedly, the policy in question taken out by the insured and issued by the appellant is a 'PRIVATE CAR PACKAGE POLICY' and as notified by the Tariff Advisory Committee, with effect from 1.7.2002, the terms and conditions of a private car package policy mandate as under:-

> "SECTION II -LIABILITY TO THIRD PARTIES
>
> 1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall become legally liable to pay in respect of:-
>
> (i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.
>
> (ii) damage to property other than property

belonging to the insured or held in trust or in the custody or control of the insured."

8. It is thus obvious that where policy issued after 1.7.2002 is a Package Policy for Private Car the risk coverage would include the sum payable by the insured in respect of death of or bodily injury to any person including occupants carried in the vehicle provided such occupants are not carried for hire or reward.

9. Learned counsel for the appellant cited the opinion published as II (2006) ACC 1 (SC) *United India Insurance Co. Ltd. Shimla vs. Tilak Singh & Ors.* to urge that gratuitous passengers in a private vehicle would not be entitled to be treated at par with third parties and that the insurance company would not be liable to indemnify the insured i.e. pay under the award where the death caused is to a gratuitous passenger in a private vehicle.

10. I may note at the outset that para 21 of the said decision clearly reveals that the Supreme Court was dealing with a 'STATUTORY POLICY' and not 'A PACKAGE POLICY FOR PRIVATE CARS'.

11. The instant 3 cases deal with a policy which was issued in the year 2003. Admittedly, the policy is a Package Policy for Private Cars. Thus, the very basis on which

defence has been predicated by the appellant, being untenable, in so far challenge is made on the very liability to pay, the appeals must fail.

12. Since learned counsel for the appellant argued that it is impermissible to issue a policy which violates the provisions of the M.V.Act 1988, I need to consider whether the terms of the notification issued by the Tariff Advisory Committee pertaining to a Package Policy for Private Cars with effect from 1.7.2002 violates any provision of the M.V.Act 1988 or not.

13. In order to decide the said issue it would be useful to refer to the provisions of the M.V.Act 1939, the forerunner of the M.V.Act 1988, and the case law.

14. To appreciate the position under the M.V.Act 1939 as amended up to the year 1969, reference may be made to Section 95 of the M.V.Act 1939. It reads as under:-

> "95. Requirement of policies and limits of liability :-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which
>
> (a) is issued by a person who is an authorized insurer or by a co-operative society allowed under Section 108 to transact the business of an insurer;"
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in

sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of an in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried on or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the even out of which a claim arises, or

(iii) to cover any contractual liability.

Explanation- xxxx (Not relevant in this case)

15. It is pertinent to note that clause (II) to sub section (1) (b) of Section 95 was inserted by Act 56 of 1969. The said provision came for consideration before the Supreme Court and the opinion is reported as AIR 1977 SC 1735 *Pushpabai Purshotam Udeshi v. M/s. Ranjeet Ginni and Pressing Company Pvt. Ltd.*

16. The case related to the death of a gratuitous passenger travelling in a private motor car which met with an accident. The car was insured for third party risks and the policy of insurance was described as a 'Comprehensive Policy of Insurance' but the liability to such passenger was limited to Rs.15,000/-. Interpreting the provisions of section 95(a) and 95(b) (i) of the M.V.Act 1939 in para 20 it was observed:-

> "20. x x x x x The plea that the words "third party" are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers made clear by the proviso to Sub-section which provides that a policy shall not be required:
>
> (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried

> in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises. x x x x x"

17. It was held that it was not necessary that a policy of insurance should statutorily cover risks to the passengers who are not carried for hire or reward.

18. Decision of the Andhra Pradesh High Court reported as AIR 1974 AP 310, *Madras Motors & Insurance Co. V. Kattan Reddy Subha Reddy* which was noted with approval by the Supreme Court in the opinion reported as AIR 1998 SC 1433, *Amrit Lal Sood v. Kaushalya Devi Thapar* may also be noted. Two gratuitous passengers in a private car suffered injuries due to the car being involved in an accident. The car was insured for third party risks and the policy of insurance was 'Comprehensive Policy of Insurance'. In the context of proviso (ii), it was held that the policy was wide enough to cover liability incurred by the insurer in respect of injury caused to the occupants of the car. The decision refers to an interesting observation of Lord Denning in the opinion reported as 170 ACJ 144 CA *Motor Insurer's Bureau v. Connell*. The observations relate to providing compulsory insurance for passengers. They read as under:-

> 'Many people think the Act should be altered so as to provide compulsory Insurance for passengers. I think so too. It is very hard on a

> passenger that he should be injured by the driver and have no recourse for damages. I hope that Parliament will soon remedy the position. Meanwhile, I would suggest that anyone, who asks for or accepts a lift should ask the driver :
>
> "Are you insured for passengers or not?" for, if he is not, and there is an accident, he may be unable to get any compensation.'

19. *Amrit Lal Sood* (Supra) related to a private car involved in an accident and the driver who was a friend of the insured, travelling gratuitously, in the car was injured and sought compensation. The car was insured under a 'Comprehensive Insurance Policy'. Interpreting the expression 'any person' in the policy of insurance it was held that it could include an occupant of the car who was travelling gratuitously.

20. In para 4 of the judgment, it was observed that "*the statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms*

of the policy have to be considered to determine the liability of the insuer."

21. In the light of the above noted decisions, the legal position under the M.V.Act 1939 would be that the Insurance Company was not liable to compensate for the death or bodily injuries to a gratuitous passenger in a private car or other category vehicles unless and until there was a separate contract between the insurer and the insured. In other words, unless the Insurance Company agreed to bear extra risk to a gratuitous passenger in a private car, the Act as it stood then, did not contemplate liability on the part of Insurance Company to indemnify the insured. But if there existed a comprehensive policy of insurance, then the risk to gratuitous passenger was covered. Meaning thereby a policy of insurance could be in excess of the limits stipulated under the M.V.Act 1939.

22. Observations of the Supreme Court in the decision reported as (1999) 1 SCC 403 *Mallawwa v. Oriental Insurance Company Ltd.* may also be noted. Dealing with Section 95 of the Act 1939 and in particular the proviso (ii) to Section 95, it was observed:-

> "7. x x x x x What is important to be noted is that the legislature, after providing generally in

> clause (*b*) of sub-section (1) in wide terms so as to include “any person” and every motor “vehicle” within its sweep, carved out a certain exception by adding a proviso to that clause. By proviso (*ii*), it restricted the generality of the main provision by confining the requirement to cases where “the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment”. *In the absence of the proviso, the main provision would have included all classes of vehicles including goods vehicles and all passengers whether carried for hire or reward or by reason of or in pursuance of a contract of employment or otherwise.* That is the reason why there is a reference to different classes of vehicles in proviso (*i*). It refers to “vehicle”, “public service vehicle” and “goods vehicle”. The words “any person” in the main provision would have included the employee of the person insured, and therefore, an exception was made by enacting proviso (*i*) so as to restrict liability of the insurer in respect of his employees. Both those exceptions were made as the legislature did not want to widen the liability of the insurer and the insured by making it more than what it was under the English Act, upon which Section 95 was based. x x x x x”

23. In the concluding para 14 of the report it was noted that the M.V.Act 1988 has introduced Section 147 which has specifically altered Section 95 of the M.V.Act 1939.

24. At the outset it may be noted that the M.V.Act 1988 does not define the expression 'third party' except that Section 145 (g) of the Act states that it includes the Government. The object of insurance of vehicles against

third party risks is to ensure that the sufferer is compensated for the loss sustained by him independent of the financial condition of the driver and owner of the vehicle involved. The provisions of the Act have to be construed in such a manner as to ensure this object of the enactment.

25. Section 146 of the M.V.Act 1988 mandates that a motor vehicle must have a policy of Insurance against third party risks.

26. Section 147 of the M.V.Act 1988 reads as under :-

> "147. **Requirement of policies and limits of liability** (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--
>
> (a) is issued by a person who is an authorised insurer; and
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section-(2)
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service caused by or arising out of the use of the vehicle in a public place.
>
> Provided that a policy shall not be required-
>
> (i) to cover liability in respect of the death,

arising our of the and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a good carriage, being in the vehicle, or

(ii) to cover any contractual liability."

27. A bare reading of the afore noted provision shows that the policy of insurance has to cover liability in respect of death or bodily injury to **any person** including owner of the goods or his authorized representative who may be carried in a goods vehicle/carriage as defined under Section 2(14) of the Act.

28. Section 149 of the M.V.Act 1988 casts a duty on the insurer to satisfy judgments and awards passed against the insured in respect of third party risks notwithstanding that insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy. There is no statutory limit of liability provided under the M.V.Act 1988 unlike the old Act of 1939.

29. At first blush it would be revealed to a reader that a third party must necessarily indicate a party other than those who are parties to the contract of insurance. Thus, insured and insurer are the first and second party and all others are third parties except that category of persons who may be excluded specifically by the Act or the contract of insurance. The owner, insured and third party cannot be rolled into one. In other words, the insured is not covered by the policy of insurance as third party unless he has taken personal insurance or coverage. Reference in this connection may be made to the decision reported as AIR 2004 SC 4767 *Dhanraj V. New India Assurance Company Ltd.*

30. In the decision reported as AIR 2003 SC 607 *New India Insurance Company Ltd. v. Asha Rani* Section 147 of the M.V.Act 1988 came up for discussion in the context of cause of action that arose prior to the amendment in the M.V.Act 1988 with effect from 14.11.1997. It was held that the legislature has brought within the sweep of Section 147 of the M.V.Act 1988 compulsion for the insurer to insure, even in case of goods vehicle, the owner of the goods or its authorized representative being carried in a goods vehicle

when that vehicle meets with an accident and the owner of the goods or his representative either dies or suffers bodily injuries. In para 26 of the report it was observed:-

> "In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

31. It was held that gratuitous passenger travelling in a goods vehicle shall not be covered within the meaning of the expression 'any person' and shall not be a third party unless additional premium is paid in regard to the passenger and/or Insurance Company extends its contractual liability.

32. In the report published as II (2006) ACC 1 (SC), *United India Insurance Company Ltd. vs. Tilak Singh*, the decision which was vehemently relied upon by learned counsel for the appellant, the position of gratuitous passenger was discussed in relation to the M.V.Act 1939 vis-a-vis the later amendment brought by the M.V.Act 1988. In para 20 and 21 of the report it was held that even under the new Act, the legal position as regards 'gratuitous passenger'

is the same. Following observations in para 25 and 27 of the report published as (2003) 2 SCC 223 II 2002 ACC 753 *New India Assurance Co. V. Asha Rani* were noted with approval:-

> "25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".
>
> 27. Furthermore, sub-clause (*i*) of clause (*b*) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (*ii*) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."

33. *Tilak Singh's* case (Supra) holds that the proposition of law in *Asha Rani's Case* (Supra) in relation to goods vehicle shall apply with equal force to 'gratuitous passenger' in any other vehicle also. As noted herein above *Tilak Singh's* case (supra) related to a statutory policy. It would be pertinent to mention here that *Tilak Singh's* case (supra) related to the death of a pillion rider on a two

wheeler scooter and his legal representatives had claimed compensation against the registered owner of the scooter and the insurer. The two wheeler scooter was insured for third party risk for the period 07/03/1989 to 06/03/1990 and the accident had taken place on 31.10.1989. The Court found that the Insurance Policy covering the risks did not contain an endorsement of IMT 70 covering liability to pillion riders and, therefore, in that context held that the Insurer Company was not liable to indemnify the insured and pay compensation to the legal representatives of the deceased. I may indicate here that IMT-70 is no longer in operation and as per Section 3 of the present tariffs even a pillion rider is covered by Third Party risks unless he happens to be an employee of the insured for which extra premium is to be required to be paid.

34. To summarize, where the policy is a statutory policy or an act only policy, a gratuitous passenger in a private vehicle would not be covered for a bodily injury or death under the policy of insurance. But, nothing prevents the insurance company from issuing a wider coverage i.e. assuming a greater risk liability. As in the instant case, where the policy is a Package Policy for Private Cars, terms

of the policy and the applicable conditions as notified by the Tariff Advisory Committee would have to be looked into to determine the risk liability assumed by the insurer.

35. Reverting to the quantification of the claims in the three claim petitions filed by the wives and children of the two deceased passengers and by the surviving injured i.e. Ankit Gupta, individual facts pertaining to the income of the deceased and nature of injuries on the injured need to be noted.

36. Pertaining to the claim lodged by the wife and children of Praveen Kumar Gupta admitted position is that the deceased was aged 46 years when he died. He had left behind his wife, 3 major children and parents. He was operating a manufacturing unit where machines were being fabricated. He was conducting business under the name and style: 'M/s. Bharat Industries'.

37. Praveen Kumar Gupta was an income tax assessee. 3 income tax returns pertaining to the assessment years 2001-02, 2002-03 and 2003-04 were proved as Ex. PW1/A to Ex. PW1/C respectively. The last return reveals an annual income of Rs.1,27,432/-. Based thereon, learned Tribunal held that the annual income of the

deceased in the year immediate prior to his death would be treated as Rs.1,25,000/-. Since the 3 income tax returns i.e. Ex. PW-1/A to Ex. PW-1/C revealed a gradual increase in the annual income, learned Tribunal opined that there is proof of future prospects i.e. income increasing over the years. Holding that by the time deceased ceased to be in gainful business his income would have doubled, mean average annual income was determined as Rs.1,87,500/-. Deducting 1/3rd as the personal expenses of the deceased loss of dependence has been treated to be Rs.1,25,000/- per annum. Applying the multiplier 13 total loss of dependence has been determined as Rs.16,25,000/-. Rs.15,000/- has been awarded towards funeral expenses. To the wife Rs.25,000/- has been awarded towards loss of consortium. To the 3 children Rs.75,000/- has been awarded towards loss of love and affection. Total compensation granted is Rs.17,40,000/-.

38. It is urged by learned counsel for the appellant that the compensation awarded is excessive on two counts. Firstly, considering the age of the deceased being 46 years, multiplier of 13 is excessive. Secondly, since income of the deceased was from a capital asset, the asset having

survived to the family, loss of dependence had to be determined with reference to the decision of the Supreme Court reported as 2005 (10) SCC 720 *New India Assurance Co. Vs. Charlie & Anr.*

39. The assessment of compensation for the dependents is beset with difficulties because from the nature of things it has to take into account many imponderables like life expectancy of the deceased and the dependents; the amount which the deceased would have earned during the remainder of his life; the amount he would have contributed to the dependents; the chance of income improving or losing. Most of these calculations remain as mere hypothesis. To provide objectivity in the determination of loss of dependence a multiplier method was evolved in the opinion reported as (1942) 1 All ER 657 *Davies Vs. Powell Duffryn Associated Collieries Ltd.* This has been consistently followed by courts in India. This multiplier method requires the ascertainment of the loss of dependence or the multiplicand on the basis of capitalizing; applying an appropriate multiplier. The existing income as also future growth is considered and since a lump sum amount is paid to the dependents, the said income is multiplied by an

appropriate multiplier. The choice of the multiplier is based upon the age of the deceased or the dependents (whichever is higher) and the rate of return by way of interest which would flow to the dependents if money awarded is invested in a dividend yielding annuity.

40. In the MV Act 1988, with the insertion of Section 163 A and Schedule II to in the year 1994 a statutory recognition was accorded to the multiplier method to be adopted while determining the loss of dependence. However, defects and deficiencies were noted in the multiplier stipulated in the II'nd Schedule to the MV Act 1988. These were highlighted by the Supreme Court in the decision reported as (1996) 4 SCALE 22 *UPSRTC Vs. Trilok Chand*. It was pointed out that the II'nd Schedule serves as a guide but not as an invariable ready reckoner. Pertaining to deceased having different ages (as is noted against each case hereinunder noted) different multipliers as noted in each case were adopted:

a) AIR 1994 SC 1631 *General Manager, Kerala State Road Transport Corporation Vs. Sussamma Thomas & Ors.* For a deceased aged 38 years multiplier adopted was 13.

b) 2007 (2) SCALE 227 *New India Assurance Co. Vs.*

Kalpana & Ors. For a deceased aged 33 years multiplier adopted was also 13.

c) AIR 2005 SC 2985 *Tamilnadu State Road Corporation Vs. S.Rajapriya & Ors.* For a deceased aged 38 years multiplier adopted was 12.

d) 2004 ACJ 53 *The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer & Ors.* For a deceased aged 18 years and age of parents being 47 years and 43 years multiplier adopted was 10.

41. Taking guidance from the afore-noted decisions I am of the opinion that in the instant case, appropriate multiplier to be adopted is 10.

42. In the decision reported as (2005) 10 SCC 720 *New India Assurance Co. Ltd. Vs. Charlie & Anr.*, it was noted that where income is derived from a capital asset, normal rule about the deprivation of income is directly not applicable and other circumstances have also to be considered.

43. The decision does not list out what would be the other parameters. But, to a rational mind it is obvious that where income is not the sole yield of the personal labour of an individual and is the yield of a personal labour cum

capital i.e. a synthesis of the two, impact of the capital asset surviving to the family has to be considered and discounted for while determining the loss of dependence.

44. The other method could be to determine the wages paid for employing a person to manage the capital i.e. substitute the labour value for the income which was being generated from the capital asset due to the labour input by the deceased.

45. Thus treating mean average income accruing from the capital asset due to the personal labour of the deceased i.e. Praveen Kumar as Rs.1,87,500/- per annum as worked out by the Tribunal and applying the multiplier 10, the loss determined is Rs.18,75,000/-. From this, amount which the deceased would have spent on himself has to be deducted. Further, discount has to be given due to the capital asset surviving to the family.

46. Apportioning 2/3rd as the labour input i.e. personal input of the deceased in the business and treating 1/3rd as the yield from the capital asset, loss occasioned due to death of the deceased comes to Rs.12,50,000/-. The remaining loss of Rs.6,25,000/- could be made good by the family by renting out the factory or after liquidating the

capital asset investing the money in an annuity yielding income by way of interest.

47. Notwithstanding the extended size of the family of the deceased, I consider deduction of 1/3rd for the personal spending of the deceased as appropriate for the reason all his children were major as on the date of the accident. From the sum of Rs.12,50,000/-, deducting 1/3rd as the personal expenses of the deceased i.e. Rs.4,16,666/-, loss of dependence determined is Rs.8,33,334/-. Rounded of to Rs.8,35,000/-.

48. Maintaining the other compensation awarded by the Tribunal, MAC.APP.No.986/2006 which pertains to the death of Praveen Kumar Gupta stands disposed of reducing the compensation which has been awarded by the Tribunal by sum of Rs.7,90,000/-. Noting that the Tribunal has awarded a total compensation of Rs.17,40,000/- I hold that the compensation payable to the dependents of Praveen Kumar Gupta would be Rs.9,50,000/-. Other terms of the award are retained as per the award.

49. Pertaining to the death of Rajender Jindal, admitted fact is that he was aged 52 years when he died. He had left behind his wife and 4 major children. He was a

Manager with a Private Firm 'M/s. Jindal Electricals'. On the basis of evidence led, learned Tribunal has determined the annual income of the deceased on mean average basis as Rs.72,000/-. Appropriating 1/3rd as the personal expenses of the deceased loss to the family has to determine as Rs.48,000/-. Multiplier adopted is 11. Thus, pecuniary loss determined is Rs.5,28,000/-. Rs.10,000/- has been awarded towards funeral expenses. Rs.25,000/- has been awarded towards loss of consortium to the wife. Rs.1,00,000/- has been awarded towards loss of love and affection to the 4 children. Thus, total compensation awarded is Rs.6,63,000/-.

50. Laying a challenge to the compensation determined vide MAC.APP.No.980/2006, learned counsel for the appellant restricted challenge only on the issue of multiplier adopted. Conceding that evidence on record justify mean average income of the deceased being determined at Rs.72,000/- per annum, Sh. A.K.De, learned counsel for the appellant urged that since the deceased was aged 52 years, multiplier to be adopted ought to be 8 and not 11.

51. For the reasons noted hereinabove while dealing with the compensation payable to the dependents of

Praveen Kumar Gupta, multiplier to be adopted while determining pecuniary loss to the dependents of Rajender Jindal has to be 8.5.

52. I note that the deceased was maintaining besides self, his wife and four children. However, since three children of the deceased were major as on the date of the accident, I consider deduction of 1/3rd towards the personal expenses of the deceased as appropriate.

53. Treating mean average income of the deceased as Rs.72,000/- per annum and deducting 1/3rd towards personal expenses of the deceased, loss of dependence comes to Rs.48,000/- per annum. Applying multiplier of 8.5, total loss of dependence comes to Rs.4,08,000/-.

54. Maintaining the other compensation awarded by the Tribunal, total compensation payable to the dependents of the deceased Rajender Jindal comes to Rs.5,43,000/-. Thus, MAC. APP. No.980/2006 which pertains to death of Rajender Jindal stands disposed of by reducing the compensation by sum of Rs.1,20,000/-. Other terms of the award are retained.

55. MAC.APP.No.980/2006 is accordingly allowed in terms of para 54 above .

56. Pertaining to the personal injuries suffered by Ankit Gupta, award whereto is a subject matter of challenge in MAC.APP.No.985/2006, I note that total compensation awarded to him is Rs.1,05,000/-. The break-up is as under:-

A.	Medical Expenses	Rs.35,000/-
B.	Pain and suffering	Rs.35,000/-
C.	Loss of amenities	Rs.20,000/-
D.	Conveyance charges	Rs.10,000/-

52. A mild attempt was made at the hearing that non pecuniary loss awarded was excessive. I do not think so for the reason as a result of the accident, Ankit suffered multiple injuries on the face. The jaw was fractured. 8 teeth were broken. He remained hospitalized from 12.2.2004 to 16.2.2004. Taking into account the permanent disfigurement of the face, non pecuniary damages awarded are not excessive.

53. MAC.APP.No.985/2006 is dismissed.

May 31, 2007 **PRADEEP NANDRAJOG, J.**
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