**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 3482 OF 2009**
[Arising out of Special Leave Petition (Civil) No. 2997 of 2007]


JUDGMENT

**ORIENTAL INSURANCE CO. LTD. …APPELLANT**

**VERSUS**

**DEO PATODI & ORS. … RESPONDENTS**

**WITH**

**CIVIL APPEAL NO. 3492 OF 2009**
[Arising out of Special Leave Petition (Civil) No. 3807 of 2007]

**DEO PATODI & ANR. …APPELLANTS**

**VERSUS**

**DEVENDRA ARORA & ANR. … RESPONDENTS**

**J U D G M E N T**

**S.B. Sinha, J.**

1. Leave granted.

2. What should be the appropriate multiplier as also the multiplicand in a case where a student having a brilliant career and had an offer of employment from a U.S. based Company is the question involved in these appeals.

They arise out of the following factual matrix.

Deepak Patodi was 22 years of age on 12.6.2003 when the accident took place. He was the only son of the claimants. The accident took place when he was going to Bhopal along with his friends in a Tata Indica Car. He was immediately taken to "Chirayu Hospital" at Bhopal and thereafter

shifted to 'Bhandari Hospital' in Indore. On 18.6.2003, he succumbed to the head injury suffered by him in the said incident..

3. His parents filed an application under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") on or about 24.12.2003 inter alia claiming a sum of Rs.75 lakhs as compensation on the premise that while he was doing his Business Administration Course in U.K. he was also doing a part-time job with World Bank on a monthly salary of Rs.80,000/- (UK £ 1008.31) and he was offered an employment in the capacity of EU Controller in GOA LLC, a company registered in USA at an annual remuneration of Rs.18 lakhs per annum approx. ($41,600/-)

Indisputably, he did not accept the said offer. He intended to pursue his higher studies in MBA at Central Queensland University in Australia.

4. The learned Tribunal opined that keeping in view his capability he would have been employed on a monthly salary of Rs.18,000/- per month. 2/3$^{rd}$ was deducted from the said amount for working out the loss of dependency of the claimants at 1/3$^{rd}$. The multiplier of 13 was applied keeping in view the age of the claimants. An amount of Rs.9,36,000/- by

way of compensation was awarded by the Tribunal. A sum of Rs.2000/- was also granted towards funeral expenses.

5. The claimants preferred an appeal thereagainst in the High Court which was registered as M.A. No. 1842 of 2005. Enhancement in the amount of compensation was claimed inter alia on the premise that the dependency of the parents should have been taken into consideration at 2/3rd of the income of the deceased and furthermore the expenses incurred during treatment should have also been awarded. The insurance company filed cross objections in the said appeal in terms of Order XLI Rule 22 of the Code of Civil Procedure on the ground that the income of the deceased could not be taken at Rs.18,000/- per month in the absence of any cogent evidence and that the claimants were not dependents on the deceased.

6. By reason of the impugned judgment, the High court while maintaining the estimated income of the deceased at Rs.18,000/- per month on a notional basis opined that the dependency of the claimants should have been taken at 2/3rd of the income of the deceased. The High court also noticed that although the Tribunal had found that claimants must have spent a sum of Rs.2 lakhs towards treatment of the deceased, but no compensation

on that head was awarded by it. The High Court, thus, awarded a sum of Rs.1,25,000/- towards the medical expenses. Applying the multiplier of 13, the loss of dependency was calculated at Rs.18,72,000/-. A sum of Rs.25,000/- was also granted towards the funeral expenses.

Both the insurance company as also the claimants are before us.

7. Mr. M.K. Dua, learned counsel appearing on behalf of the insurance company would contend that the deceased being a bachelor and for all intent and purport being a dependant on his parents and as he intended to pursue his higher studies in Australia, the Tribunal had rightly calculated the loss of dependency of parents at 1/3rd of his income and not 2/3rd.

8. Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the claimants, on the other hand, would contend that the learned Tribunal could not have estimated the income of the deceased only at Rs.18,000/- per month keeping in view the background as also the salary he had obtained even as part-time employee as also the offer which he received from an U.S. based Company..

9. The question in regard to the calculation of loss of dependency, it is trite, would vary from case to case.

The fact that the deceased was a brilliant student is not in dispute. He had graduated in Business Administration in U.K. Even as a student, in a job on a part-time basis he was being paid a salary of Rs.80,000/- per month ((UK £ 1008.31). He paid his income-tax even in U.K.

After his graduation, he came back to India. He was offered a job as EU Controller by GOA LLC, a company based in Chicago, USA at an annual salary of Rs.18 lakhs (i.e. $ 41,600/-). However, when the accident took place he was not working; having not accepted the said offer. He was still a student. It would have been hazardous for the Tribunal to calculate the amount of compensation towards the loss of dependency on that basis.

10. The Tribunal and the High Court, however, in our opinion, keeping in view the aforementioned backdrop might not be correct in holding that he would have earned only Rs.18,000/- per month. It is true that the cost of living in the western countries would be higher. The standard of living in the western countries cannot be followed; in the absence of any material placed before this Court it should not be followed in India. Even in a case

where the victim of an accident was earning salary in U.S. Dollars, this Court opined that a lower multiplier should be applied.

In United India Insurance Co. Ltd. & Ors. vs. Patricia Jean Mahajan & Ors. [(2002) 6 SCC 281], this Court held:

> "19. In the present case we find that the parents of the deceased were 69/73 years. Two daughters were aged 17 and 19 years. The main question, which strikes us in this case is that in the given circumstances the amount of multiplicand 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 2,26,297 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 comes 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 undercompensated 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 multiplier can appropriately be applied. We find force in this submission….
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> 20**.** The court cannot be totally oblivious to the realities. The Second 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 the 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 dollars, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible. Therefore, a deviation from applying the multiplier as provided in the Second 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 2,26,297 dollars, that is to say an amount of around Rs. 68 lakhs 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."

The said decision, however, to some extent was clarified by this Court in Punjab National Bank v. Indian Bank & Anr. [(2003) 6 SCC 79].

11. It is in the aforementioned situation, we are of the opinion that the fair amount of compensation should have been calculated at Rs.25,000/- per month being about 1/3rd of the amount which he was receiving in U.K.

12. The next question which arose for our consideration for the purpose of loss of dependency is whether 1/3rd from the said amount should be deducted or 2/3rd.

13. Mr. Dua relied on a decision of this Court in Donat Louis Machado & Ors. v. L. Ravindra & Ors. [1998] 8 SCC 633] wherein it was opined:

> "Consequently, the total amount would work out at Rs. 7500 per month during the whole span of future career and taking an average at 50%, his future monthly income during the rest of the life could have worked out at Rs. 3750. On that basis, 12 months' earning would have been Rs.45,000 and adopting a multiplier of 15 looking to the young age of the deceased the total economical gain to his estate would work out at Rs. 6,75,000 at least. But taking a conservative figure of Rs 6 lakhs it can easily be visualised that the claimants who are the parents and unmarried sister and who are dependent on him would have got at least 1/3 amount as he would have spent the rest of 2/3 amount of his earnings on his own family which he would have raised and on himself. This would come to a figure of Rs. 2 lakhs. This can easily be treated to be the appropriate compensation payable to the claimants on account of economical loss

> suffered by them as a result of the unfortunate accident to their breadwinner."

In Halkibai and Anr. vs. Managing Director, Rajasthan State Road Trans. Corpn. and Anr.[2004 ACJ 481], the Division Bench of the High Court of Madhya Pradesh (Gwalior Bench) held as under:

> "As regards determining dependency of the mother of the deceased is concerned, this question has already been settled by the Apex Court in the case of Donat Louis Machado, 1999 ACJ 1400 (SC). This judgment was considered by this court in a recent decision in the case of Parathsingh v. Sanjay Sharma, 2003 (1) TAC 103 (MP) and in Rajesh v. Rajesh alias Pappu, M.A. No. 291 of 2003; decided on 18.8.2003 and ratio has been laid down that in the case of parents of the deceased, dependency will be 1/3rd of the income of the deceased at the time of his death. The judgment of Supreme Court is binding upon this court and there is no reason to differ from the said judgment. Therefore, we hold that the dependency of the parents of the deceased shall be 1/3rd of income of the deceased. This view has been taken by various Division Benches and this being consistent view, we do not wish to differ from it."

However, somewhat different view was taken by this Court in Fakeerappa & Anr. vs. Karnataka Cement Pipe Factory & Ors. [(2004) 2 SCC 473], wherein it was held:

"6. Learned counsel for Respondent 2, submitted that there cannot be any rigid formula as to what would be the percentage or quantum of deduction. The Tribunal and the High Court have taken note of the relevant aspects to hold that 50% deduction would be appropriate. There is no scope for any interference with the percentage of deduction as fixed. Further, before the High Court there was no challenge to the rate of interest awarded by the Tribunal. Therefore, for the first time before this Court such a grievance cannot be raised. It is also submitted that multiplier of 18 as adopted is on the higher side.

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8**.** It has to be noted that the ages of the parents as disclosed in the claim petition were totally unbelievable. If the deceased was aged about 27 years as found at the time of post-mortem and about which there is no dispute, the father and mother could not have been aged 38 years and 35 years respectively as claimed by them in the claim petition. Be that as it may, taking into account special features of the case we feel it would be appropriate to restrict the deduction for personal expenses to one-third of the monthly income. Though the multiplier adopted appears to be slightly on the higher side, the plea taken by the insurer cannot be accepted as there was no challenge by the insurer to the fixation of the multiplier before the High Court and even in the appeal filed by the appellants before the High Court, the plea was not taken."

In Bijoy Kumar Dugar vs. Bidya Dhar Dutta & Ors. [(2006) 3 SCC 242] this court deducted 1/3rd from the earnings of the deceased inter alia holding:

> "…It is by now well settled that the compensation should be the pecuniary loss to the dependants by the death of a person concerned. While calculating the compensation, annual dependency of the dependants should be determined in terms of the annual loss, according to them, due to the abrupt termination of life. To determine the quantum of compensation, the earnings of the deceased at the time of the accident and the amount, which the deceased was spending for the dependants, are the basic determinative factors. The resultant figure should then be multiplied by a "multiplier". The multiplier is applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependants, the expectancy of the period of dependency of the claimants and so many other factors. Contribution towards the expenses of the family, naturally is in proportion to one's earning capacity. In the present case, the earning of the deceased and consequently the amount which he was spending over the members of his family i.e. dependency is to be worked out on the basis of the earnings of the deceased at the time of the accident. The mere assertion of the claimants that the deceased would have earned more than Rs.8000 to Rs.10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before MACT. The claimants have to prove that the deceased was in a trade

> where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be. It is stated that the deceased was about 24 years old at the time of the accident. MACT has accepted Rs.4000 per month, as the earning of the deceased and after deducting Rs .400 per month for his pocket expenses, the remaining sum of Rs. 3600 has been divided into three equal shares, out of which two shares i.e. Rs.2400 per month or Rs.28,800 (wrongly mentioned as Rs.28,000 in the award), were assessed as loss to both the claimants, who were the parents of the deceased. The ages of the claimants are stated to be between 45 and 50 years and accordingly multiplier of 12 was applied. Thus, a sum of Rs 28,800 x 12 = Rs.3,45,600 was awarded as compensation."

In Bilkish vs. United India Insurance Co. Ltd. [(2008) 4 SCC 259], this Court held:

> "4. After hearing learned Counsel for the parties, we are of the opinion that the view taken by the High Court & Tribunal is not correct. The incumbent was a bachelor and he could not have spent more than 1/3rd of his total income for personal use and rest of the amount earned by him would certainly go to the family kitty. Therefore, determining the loss of dependency by 50% was not correct. Therefore, we assess that he must be

> spending 1/3rd towards personal use and contributing 2/3rd of his income to his family….."

Yet again in Bangalore Metropolitan Transport Corporation vs. Sarojamma & Anr. [(2008) 5 SCC 142], this Court held:

> "9. Whereas in determining an application for grant of compensation under Section 166 of the Act, the Tribunal may be entitled to find out actual loss of damages suffered by the claimants, the formula having not envisaged such a contingency, we are of the opinion that ordinarily one-third should be deducted from the income of the deceased and not the half thereof……"

In Syed Basheer Ahamed & Ors. vs. Mohammed Jameel & Anr. [(2009) 2 SCC 225], one-half (50%) of the income was held to be deductible if the deceased was a bachelor.

14. Indisputably, deduction of 1/3rd towards personal expenses is the ordinary rule in India. We think that in the facts and circumstances of the case, the same should be applied. The concept of joint family unlike the western countries where it has been wholly evaporated, although on the decline, should also be taken into consideration. The deceased's father was a Doctor working in a Government Hospital; he was aged about 51 years at the time of the accident; he would have retired from the Government job

after a few years. He might not, therefore, be completely dependent upon his son. We, therefore, are of the opinion that having regard to his age as also the age of his wife multiplier of 10 should be applied. We do so keeping in view the fact that the Court has a duty to grant a just and reasonable compensation. What would, however, be a just and reasonable compensation depends upon the fact situation obtaining in each case. No hard and fast rule therefor can be laid down. The Court must also bear in mind that compensation should not be treated to be wind-fall.

15. We are not oblivious of the fact that the multiplier referred to in the Second Schedule in the Act may not automatically be applied in a case initiated under Section 166 of the Act. We have applied the aforementioned multiplier keeping in view the fact that the multiplier specified in the Second Schedule would not ordinarily be applicable in a case under Section 166 of the Act.

16. The finding required to be arrived at by the choice of multiplicand as also the multiplier would depend upon a large number of factors as this aspect of the matter has been considered in various judgments, the same need not be reiterated.

17. The question, in an appropriate case, may require consideration by a larger Bench.

18. In this view of the matter, the appeal filed by the insurance company is dismissed and that of the appellant is allowed. Tribunal may draw a fresh award in the light of the observations made hereinbefore. No costs.

…….J.
[S.B. Sinha]

..……..….J.
[Dr. Mukundakam Sharma]

New Delhi;
May 12, 2009