Assessment of Compensation for Personal Injury and Death

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I. INTRODUCTION

Under the general Law of torts, a victim of medical negligence is entitled to recover damages from the tortfeasor for the personal injuries suffered by him or her. Under the Legal Representatives' Suits Act, 1855 and the Fatal Accidents Act, 1855, compensation can be recovered for the losses caused to the estate and to the dependent of a deceased victim of medical negligence. The Consumer Protection Act, 1986 also confers a right on the victims of medical negligence to claim compensation for "deficiency in service." Even though these enactments create rights for claiming compensation, they do not provide any guidelines or objective criteria either for the identification of the items of loss to be compensated or for assessing the quantum of compensation. What losses have to be compensated and how those losses have to be assessed are questions which have been left to be answered by the judiciary. Thus judge-made law developed under the Fatal Accidents Act and the Motor Vehicles Act becomes relevant for the purpose of assessment of compensation for personal injury and death arising out of medical negligence in India. But unfortunately, this judge-made law has not yet become settled and stable. In this paper, a modest attempt has been made to cull out the basic principles from the catena of conflicting decisions of the Supreme Court and various High Courts.

II. CLASSIFICATION OF LOSSES

Proper identification and classification of the various compensable losses suffered by the victims of medical negligence and/or family members constitutes the first step in the assessment of compensation. The orthodox approach was to bring the various components of damages under two heads - special damages or general damages. But in actual practice it has been found that these two heads often overlap and it is not always possible to maintain the distinction between them. Therefore another classification has evolved in actions for personal injury based on the distinction between damages which are capable of substantially exact pecuniary assessment and those which are not. Prof. McGregor says: "The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses." This classification has also been used in Charlesworth on Negligence and in the Report of the Pearson Commission. Munkman prefers to use the term 'Personal loss' instead of 'non-pecuniary' or 'non-economic' loss. Tilbury speaks of economic loss and non-economic loss.

The basis for this distinction is traceable to the judgement of Cockburn C.J. in Fair v. London & North Western Ry. Co. "In assessing (the) compensation the jury should take into account two things: first, the pecuniary loss (the plaintiff) sustains by the accident; secondly, the injury he sustains in his person, or his physical capacity of enjoying life."

As in other countries, in India, too, this classification of losses into pecuniary and non-pecuniary, has gained wide currency. But as yet, there is no uniformity with respect to the various components that comprise these two heads. The possible sub-heads and components under each of these heads are depicted in the following chart:

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# LOSSES

<table>
<thead>
<tr>
<th>Pecuniary Losses</th>
<th>Non-Pecuniary Losses</th>
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<td><strong>Pre-Trial Losses</strong></td>
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<td>1. Medical &amp; Hospital expenses</td>
<td>1. Loss of Future income or Dependancy</td>
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<td>2. Transport</td>
<td>2. Cost of future care (payable or gratuitous)</td>
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The pre-trial pecuniary losses are incurred by injured victims up to the date of trial. They are also incurred in fatal accident cases up to the time of death, if the death is not instantaneous. These include medical and hospital expenses, transport expenses, money spent on extra nourishment, money equivalent of gratuitous services provided by others, loss of actual income from the date of the injury to the death of trial, and funeral expenses. The post-trial pecuniary losses are losses that reside in the realm of future. Loss of future income (in injury cases) and loss of future dependency (in death cases) constitute the most important and substantial losses. Non-pecuniary losses are suffered by accident victims as well as by their relatives and near and dear ones. Loss of expectation of life is suffered both by the injured as well as deceased victims. Pain and suffering is felt by injured victims as well as by dead victims, if the death is not instantaneous. Loss of amenities, physical disability and disfigurement are applicable only to injury cases. Nervous shock may be suffered by the relatives of a seriously injured or a dead victim. In fatal accident cases, the near dear ones may suffer the loss of love and affection. The spouse of a dead or a seriously injured victim (who cannot lead a normal marital life henceforth because of these injuries) suffers loss of consortium. It is submitted that this four-fold classification of losses is more logical, comprehensive and just.

## III. PRINCIPLES OF ASSESSMENT

Compensation means restitution for loss. It is this meaning that forms the basis for the quantification of compensation in personal injury claims. The fundamental legal principle which underpins the assessment of appropriate compensation for victims of negligent action who were not contributorily negligent is designed as *restitutio in integrum*. This principle was stated by Lord Blackburn thus in *Livingstone v. Rawyards Coal Co.*,<sup>12</sup>:

"I do not think there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in setting the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting compensation."

It can be seen that this principle of *restitutio in integrum* aims at the perfect or the ideal compensation. If it can be realised in practice, then it means that the injured party has been compensated in full. Unfortunately, this principle is easy to enunciate, but difficult to apply. It is impossible to compensate by money a plaintiff for his permanent personal injury or for the death of a near and dear relative. It is really difficult to assess the exact
amount of compensation which may be equivalent to the pain, suffering and the loss suffered by the claimant.

So court charged with the impossible task of effecting *restitutio in integrum* have necessarily resorted to a modified and more concrete concept in awarding compensation for personal injuries. This modified concept can be termed as full and fair compensation.

This concept has been clearly enunciated by Kirby J. in *Andrews v. Grand & Toy Alberta Ltd.* "1. The plaintiff is entitled to full compensation for pecuniary loss, past and future, subject, with reference to loss of prospective earnings, to allowance for contingencies of life and to discount for accelerated payment.

2. With respect to non-pecuniary loss, such as pain and suffering, shortened expectation of life, loss of amenities, which do not lend themselves to mathematical calculation, damages should be fair and reasonable."

Thus it is clear that different principles are to be applied for assessing different types of losses. The pre-trial losses are capable of exact computation since they constitute expenses actually incurred or amounts actually foregone. On the other hand, the post-trial pecuniary losses are based on "guesstimates". They are not capable of exact measurement. There would not be much material before the Courts to arrive at mathematically exact figures. Still, with the available data, an attempt at objectivity can be made. But as regards non-pecuniary losses, the courts can only award some arbitrary but conventional amounts as compensation since there is no way of assessing these losses objectively. This different emphasis of the compensatory principle as between pecuniary and non-pecuniary loss has been endorsed by the highest courts in Australia, Canada and the United Kingdom as well as by leading writers in those countries.

IV. ASSESSMENT OF COMPENSATION FOR LOST FUTURE EARNINGS

The assessment of compensation for pre-trial pecuniary losses can be done very easily from the data made available by the plaintiffs in their evidence. The Compensation for non-pecuniary losses is assessed on the basis of conventional awards made in comparable cases. Of the post-trial pecuniary losses, the loss of future income (in injury cases) or future dependency (in death cases) is the most important and substantial loss. Where bodily disability has been caused, the victim himself or herself suffers loss of future income and where death has been caused, the dependents of the victim suffer loss of dependency which is but a derivative of the loss of future earnings of the deceased victim. It is just and reasonable that the victims or their dependants receive full compensation for this pecuniary loss. To be just and reasonable, such compensation must not be arbitrary or capricious or be based on the whims and fancies of the judges; it must be uniform, predictable and be amenable for easy assessment based on some intelligible criteria. One of the most vexing questions before the judiciary today is the assessment of compensation for this loss of future earnings. The judges of our various High Courts and the Supreme Court have been using different methods for the computations of the loss of future earnings.

To compute this loss an estimate of the probable future earnings of the accident victim over the remaining period of his work-life expectancy has to be made. This can be done by multiplying the quantum of loss with the period of loss. In cases of death, a further calculation has to be made to arrive at the loss of dependancy or loss to the dependants. Loss of dependancy is that percentage portion of the probable future earnings which the deceased would have spent had he continued to live, on the dependent-claimants(s). It can therefore, be seen that loss of dependancy is a derivative from the loss of earnings. So conceptually and computationally this head of loss of future earnings in personal injury actions is almost similar to the loss of dependancy in fatal cases. The few differences are these.

In cases of an injured plaintiff, compensation will depend on the nature - partial or total, and on the duration- temporary or permanent, of the injury. In death cases, the loss is total, but the compensation will depend on the factum and magnitude of dependancy of the claimants. In case of a permanently totally injured plaintiff, the loss is calculated till the end of his worklife expectancy. In a death case also, the loss is similarly computed but can get reduced if the dependancy is extinguished earlier. For calculating the period of loss, the starting point in a death case is the date of death, Whereas in a personal injury action, it is from the date of trial, since the losses
upto the date of trial are known and hence compensable under the head of pre-trial pecuniary losses. Therefore their loss of future earnings starts only from the date of trial.

There are many methods currently in use in our country for the assessment of loss of future income (which term includes loss of earnings in injury cases and loss of dependancy in death cases). Each method uses a different formula and produces a different result, even though their avowed objective is to reimburse in full the injured - victim or the dependants of the deceased-victim the loss that they have suffered on account of the dependants of the deceased-victim the loss that they have suffered on account of the accident. Most of these methods involve the multiplication of two values, namely, the quantum of annual loss and the period of loss. In this multiplication, the quantum of annual loss (in rupees) is usually referred to as the multiplicand, and the period of loss (in years) as the multiplier. Where the difference lies between one method and other is in their computation of the multiplier and whether or not any deductions are made in the product so obtained.

There are at present three important methods for the computation of loss of future income. They are:

1. Remaining Years (Without Deductions) Method,
2. Remaining Years (with Deductions) Method, and

Each of these methods are elaborated below:

REMAINING YEARS (WITHOUT DEDUCTIONS) METHOD

According to this method, the computation of the loss of future earnings is just a simple multiplication of the amount of annual loss of earnings (in rupees) with the remaining years of worklife expectancy or dependancy (in years). Supposing at the time of the permanent disablement resulting out of a negligent act, a victim is aged 40 years having an annual income of Rs.36,000/- and worklife expectancy of 60 years, then his loss of future earnings would be Rs.7,20,000/- which is obtained by multiplying Rs. 36,000/- with 20 years.

There is a criticism that the formula used in the Remaining Years (Without Deductions) Method fails to take into account two important factors, namely, uncertainties of life and accelerated payment. These two concepts are explained below:

UNCERTAINTIES OF LIFE

Even of the victim had not been killed or disabled in the instant happening, there is no certainty that he or she would have lived upto his or her full lifespan. The victim might die or get disabled earlier either due to natural caused or illness or some other crime or accident. Or he might become unemployed for various reasons. Similarly even the dependants may die before the end of their dependancy. So there is no certainty either that the victim would have earned upto the end of his or her normal worklife-span of that the dependant would have been alive throughout the period of dependancy. So allowance must be made for his factor by making a deduction of a certain amount from the projected future earnings as calculated earlier.

ACCELERATED (OR LUMPSUM) PAYMENT

It must be remembered that the loss of future earnings as the term itself makes clear is a loss that is felt every month over a period of time well into the future. So correct restitution demands that the victim (or victim's dependants) receive this compensation towards loss of future earnings (or dependancy) in the form of monthly payments. But the present practice in our country is to make lumpsum compensation awards. What this means is that the victim (or victim's dependants) are being given a single once-for-all lumpsum payment now which but for the present unfortunate happening would have been available to them in small quantities spread over a number of years in the future. In other words, income that is not yet due is being paid in advance. And it is common knowledge that such lumpsum is capable of earnings interest. To the extent of such interest, there would be over-compensation. So to be just, the lumpsum should be discounted to its present worth. In other words, it must be seen that the lumpsum paid now together with the interest that lumpsum is likely to earn should get exhausted at the end of the period of worklife expectancy or dependancy, as the case may be. For this purpose also, a deduction needs to be made in the compensation computed by using the Remaining Years Method.

In M.P.S.R.T.C. v. Sudhakar, where the deceased was a 23 year-old earning lady with retirement at 58 years,
a Division Bench of the Supreme Court consisting of V.R. Krishna Iyer and A.C. Gupta, JJ., stated these principles in the following words:

"In assessing damages certain other factors have to be taken note of ... such as the uncertainties of life and the fact of accelerated payment that the husband would be getting a lumpsum payment which but for this wife’s death would have been available to him in driblets over a number of years. Allowance must be made for the uncertainties and the total figure scaled down accordingly. The deceased might not have been able to earn till the age of retirement for some reason or the other, like illness or for having to spend more time to look after the family which was expected to grow. Thus the amount assessed has to be reduced taking into account these imponderable factors."

So the critics of the Remaining Years (Without Deductions) Method argue that the compensation so computed must be reduced to reflect the uncertainties of life and accelerated payment. At present, two methods are in use in our country to give effect to this reduction.

REMAINING YEARS (WITH DEDUCTIONS) METHOD

This is merely an extension of the Remaining Years (Without Deductions) Method. From the amount obtained by multiplying the annual loss with the period of loss, a straight deduction of some percentage portion is made towards uncertainties of life and lumpsum payment.

An illustration of this method can be found in the case of Jyotsna Dey v. State of Assam. In this case, the deceased person was aged 45 years. The Supreme Court took life expectancy as 70 years and dependancy as Rs. 250/- p.m. From these data the loss of dependancy has been calculated as follows:

Annual loss of dependancy
= Rs. 250 \times 12 = Rs. 3000/-

Period of loss = Life expectancy minus Age of deceased
= 70 — 45 = 25 years

Loss of dependancy
= Annual loss \times Period of Loss
= Rs. 300 \times 25 = Rs. 75,000/-

Less Deduction of 20% to be made towards uncertainties of life and lumpsum payment
= 20\% (Rs. 15,000/-)

So, net compensation payable towards loss of dependancy
= Rs. 75,000 — Rs. 15,000
= Rs. 60,000/-

But the main drawback of this method is the unfettered discretion exercised by the judges in deciding the quantum of this deduction. The deductions have varied from 10\% to 50\%. In the above illustration, the Court has made a deduction of 20\% towards uncertainties of life and lumpsum payment and reduced the compensation to Rs. 60,000/- instead of 20\%, if the Court had made a deduction of, say, 33\% as has been done in Digvijai Tewari v. Rakesh Prasad Pathak, the amount of compensation would have been only Rs. 50,000/- so it can be seen that the element of subjectivity plays a major role in the outcome.

MULTIPLIER METHOD

In the second method called the Multiplier Method, the projected annual earnings/dependancy (called the multiplicand) will be multiplied by a figure (called the multiplier) which will be lower than the expected remaining years of the victim. So this "multiplier" itself has got a built-in deduction component. It takes care of the uncertainties-of-life element as well as the lumpsum-payment element. There is no necessity to make any further deductions in the product on these two counts.

This method has been well-described by the Supreme Court in General Manager, Kerala State Read Transport Corporation v. Susamma Thomas: "The multiplier method involves the ascertainment of the loss of dependancy or the multiplicand having regard to the circumstances of the case and capitalising 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 calculationas 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 dependancy is expected to last."

In this case, the deceased was aged 38 years at the
time of this death in an unfortunate road accident. The
Supreme Court adopted a multiplier of 12 to assess the
loss of dependancy of the widow, children and parents of
the deceased.

The Bench has also categorically stated that this is
the method that has to be followed for computing loss of
future earnings.

"It must be borne in mind that the multiplier method
is the accepted method of ensuring a "just" compensation
which will make for uniformity and certainty of the awards.
We disapprove these decisions of the High Courts which
have taken a contrary view."22

This method has since been endorsed by a three-
judge Bench of the Supreme Court in U.P. State Road
Transport Corporation v. Trilok Chandra.23

Even though it has received the imprimatur of the
highest Court in the land, the multiplier method of
calculating the loss of future earnings, too, suffers from
an important shortcoming. It is not evident as to how the
judges select a particular multiplier in a given case. The
learned authors Winfield and Jolowicz on Tort24 pointed
out that judges did not "usually reveal the mathematical
process (if such it be) by which they arrived at the
appropriate multiplier". In same vein, another leading
authority Munkman25 comments that Judges have been
selecting the multiplier "without saying where they got it
from". Lord Reid's argument26 that "Judges and counsel
have a wealth of experience which is an adequate guide
to this selection of the multiplier and any expert evidence
is rightly discouraged", is hardly convincing. It is therefore
clear that multipliers are selected in this method on the
whims and fancies of the presiding judges. They are not
based on any hard data there are absolute no guidelines
for the judges to follow. So as pointed out in A.P. State
Road Transport Corporation v. Shafiya Khatoon27,
"there is every possibility of the awards being arbitrary of
speculative if it" - the multiplier - "is left to the uncontrolled
discretion of the Court."

An illustration will make this point clear. Let us take
the case of a victim aged 40 years with an annual income
of Rs. 40,000/- and retirement age of 60 years. Since his
remaining work-life expectancy is 20 years (60 minus 40),
the multiplier will be taken as a figure less than 20. There
being no precise guidelines for the selection of the
multiplier, it may, at the discretion of the presiding judge,

V. ACTUARIAL MULTIPLIER METHOD FOR
ASSESSING LOST FUTURE EARNINGS

It is suggested that the arbitrariness inherent in the
multiplier method can be obviated and the vexed problem
of selecting a suitable multiplier solved by making use of
actuarial multipliers which are based on certain well-
established statistical and mathematical principles.
Adjustment towards uncertainties of life can be done by
taking into account the survival probabilities contained in
life tables (also called as mortality tables), prepared by
actuaries from a community's (or country's) demographic
data. And the concept of present discounted value (PDV)
can be utilised to make adjustments for accelerated
payment. These two concepts are explained below:

SURVIVAL PROBABILITIES

A life table traces a cohort of person from birth till
death and provides measures of probability of dying
before reaching certain exact age or probability of
surviving to certain exact age, the number of persons
expected to die or survive and the average expectation
of life at various ages. Preparation of life tables forms a
legitimate part of an actuary's work. If certainty of survival
is taken as 1.0, then the probability of any person
belonging to a particular age surviving to the next year
would be less than 1.0 as life is fraught with uncertainties.
So as age increases, the survival probability decreases.
The probability of persons aged 40 years surviving to
the 41st year would be, say, 0.96; to the 42nd year 0.91;
to the 43rd year 0.86; to the 44th year 0.82; and so on.
Actuaries estimate these survival probabilities by studying
group experience. These estimates obviously refer to that
of an average person; they would be higher in the case
of some persons in the group and lower in roughly as
many people. In the absence of information about the
exact chances or survival of the deceased person had
he not met with the accident, the correct approach would
be to take him as average for his age-group, and then to
increase or reduce the figure if the evidence indicates
better or worse prospects than average. Such average
survival probabilities are presented in life tables which
are prepared from comprehensive national demographic statistics.

In the first-mentioned method of computing compensation for loss of future earnings, namely, the Remaining Years (Without Deductions) Method, the compensation was computed by multiplying the quantum of annual earnings with the remaining years of work life expectancy. The underlying assumption in this method is that the victim would have certainly continued to have these annual earnings throughout the remaining period of his expected worklife. But as has already been noted, this assumption is not valid; after all, life is beset with uncertainties which are represented by the diminishing survival probabilities. So correct computation requires that the annual earnings should be multiplied by the survival probability for each successive year. If the annual earnings of a victim aged 40 years are Rs. 10,000/-, then the anticipated earnings of the victim in his 41st year should be taken as Rs. 10,000/- multiplied by 0.96, which is the probability of his surviving to the 41st year. So, the earnings of the victim in his 41st year should be taken as only Rs. 9,600/- and not as Rs. 10,000/-. Similarly, for each subsequent year, the annual earnings of Rs. 10,000/- must be multiplied with the respective survival probability. It can be seen that the product so obtained for the 42nd year would be Rs. 9,100/-; for the 43rd year Rs. 8,600/-, for the 44th year Rs. 8,200/- and so on in a reducing fashion till, say, the 60th year, which we take as the last year of the victim's expected worklife. The products so obtained for all the years are then added up to arrive at the amount of compensation duly corrected for uncertainties of life. This is how survival probabilities from life tables can be made use of to adjust the compensation amount for uncertainties of life.

**PRESENT DISCOUNTED VALUE**

As already stated earlier, whenever a lumpsum has to be awarded now in lieu of a series of small future receipts, one must reduce each such future receipt to its present worth and then add up such reduced values to arrive at the total. Economists call this procedure as computing the Present Discounted Value (PDV). For calculating PDV, they use a formula which is exactly the reverse of compound interest formula. In principle it is simple to discount a payment in any single future year to its present value by reversing the compound interest formula.

**Compound Interest Formula :**

\[ P_n = P_0 (1+r/100)^n \]

**Present Discounted Value Formula:**

\[ P_0 = P_n / (1+r/100)^n \]

Where

- \( P_n \) = capital at compound interest or the future annual figures;
- \( P_0 \) = Initial capital invested or the discounted present value;
- \( r \) = the rate of interest; and
- \( n \) = the number of years (in case of injured plaintiffs, this would be the number of years between the date of trial and date relating to the year for which the income is being converted into present value. In death cases, instead of the date of trial, the date of death would be taken).

Thus we can tell what sum is required now, at a given rate of interest, to produce a specified annual sum at the end of 1, 2, 3...\( n \) years. This could be calculated for each successive year, and the total of the items - smaller in each successive year could be added up.

Now let us go back to the illustration given in the previous section. From the figures given there, it is clear that an amount of Rs. 9,600/- is due to the claimant one year from now; Rs. 9,100/- two years from now. Rs. 8,600/- three years from now; Rs. 8,200/- four years from now; and so on. It must be remembered that these figures have already been adjusted for uncertainties of life. Now to make allowance for accelerated payment in the form of a lumpsum, each of these separate amounts have to be discounted to their present values by using the PDV formula and then added up. The resulting total would represent the correct amount of compensation payable to the claimants wherein adjustments have been made mathematically both for uncertainties of life as well as accelerated payment.

**DISCOUNT RATE**

In the PDV formula, 'r' represents the rate of interest at which the future receipts are to be discounted. So this rate of interest is also called the discount rate. The question that arises is: What should be the rate of interest
at which the future receipts are to be discounted? The accepted practice is to take the 'real interest' rate as the discount rate. Real interest rate is the current interest rate minus the inflation rate. If the current interest rate is, say, 13% and inflation rate is 9%, then the real interest rate works out to 4%. In other words, real interest rate is that rate of interest which rules in times of stable inflation-free currency. Historically, it has been found that the real interest rate tends to vary between 3% and 5%. So in foreign countries and Courts usually use a discount rate in this range.

**ACTUARY’S MULTIPLIER**

It can be seen that survival probabilities from the life tables and the PDV formula with an appropriate discount rate can be used to effect reductions in the lumpsum compensation towards uncertainties of life and accelerated payment. But it can also be seen that these calculations have to be made for each successive year and added up. To avoid such laborious calculations, the actuary, who is an expert in the field, uses a single algebraic formula which combines both the survival probability and the given discount rate to compute the present value of future earnings. The actuary takes the annual loss as Re. 1/- and works out the 'multipliers' for various ages. So the table would indicate a multiplier for each age. Such actuarial tables would be prepared for different interest rates, say, from 3% to 7% at half-percent intervals. A judge has now only to decide the discount rate, select from the actuarial table a multiplier appropriate to the age of the claimant and multiply it with the annual earnings to arrive at the lost future earnings.

**VI. CONCLUSION**

It is submitted that Actuarial Multiplier method offers a conceptually-sound, simple, objective and easy-to-use means of obtaining the present worth of future earnings. The judge's discretion is limited to the selection of a discount rate. Even this can be fixed statutory or by the highest Court in the land. Once that is done, it would be very easy to select a multiplier appropriate to the age of the deceased or injured victim and multiply it with the annual income or annual dependancy, as the case may be. There would be no scope for any arbitrariness or capriciousness in the exercise of their discretion by the Judges. Multipliers based on the actuarial tables would be more objective than the traditional multipliers based on the unfettered discretion of the judges. Awards would then become more predictable leading to more settlements out-of-court or in informal forums like the Lok Adalats. This in turn reduces the burden on the courts and at the same time provides speedy relief to the claimants.

It may be noted that the utility of actuarial multiplier tables is not limited to motor accident claims alone. In all cases of personal injury or death, howsoever arising, actuarial tables can be used in the computation of compensation for the loss of future earnings or future care or future dependancy.

Such tables are being followed in the U.S. and Canada for a long time. Even in England, Prof. Harry Street, in his *Principles of the Law of Damages* (1962), strongly recommended these tables as early as in 1962. Kemp & Kemp, in their classic work *The Quantum of Damages in Personal Injury and Fatal Accident Claims* (1982), also advocated the use of these tables and provided in their book the tables prepared by J.H. Prevett, Actuary. The British Law Commission, in its working papers Nos. 27 and 41, as well as the Pearson Commission (Royal Commission on Civil Liability and Compensation for Personal injury), favoured the use of such tables. So even in the U.K., the Courts have by now got over their initial reluctance and are more and more relying on Actuarial Multipliers.

However, the position in India is very much different. For the first time, in *A.P. State Road Transport Corporation v. Shafiya Khatoon*, a Division Bench of the A.P. High Court, consisting of Jeeven Reddy and Jagannadha Rao, JJ. (as they then were), explained the rationale behind actuarial tables and selected multipliers from one such table given in Kemp and Kemp's *Quantum of Damages*. Later, a Full Bench of the same High Court, in *A.P. State Road Transport Corporation v. Ch. Narsava*, approved the use of actuarial tables for the purpose of computing compensation in accident cases. The Bench stated: “We hold it is not improper, illegal or objectionable to use A.T. tables in motor accident cases”. At the same time, the Full Bench criticised the judgment of the Division Bench in *Shafiya Khatoon* case for relying on tables which have been prepared on the basis of foreign demographic data. To make amends for this lacuna, Justice Jagannadha Rao, in a case reported in *Bhagawan Das v. Mohd. Arif*, singlehandedly and...
painstakingly prepared an actuarial table from the demographic data compiled by the Registrar-General, Vital Statistics Division, Government of India and used it for selecting a suitable multiplier. In this path-breaking judgment, the learned Judge has also given a lucid and comprehensive exposition of the subject of actuarial tables. The actuarial tables prepared in this decision received the express approval of a Division Bench of the same High Court in Nirmala Narsava v. Vilas Ramachandra Shangda, and Rajkamal Transport v. Co. Suguna Devi, and by a Single Judge of the Jammu & Kashmir High Court in Shriram Khorana v. Riaz Ahmed. These tables were also utilised by a Single Judge of the Andhra Pradesh High Court in A.P.S.R.T.C v. B. Krishnaji Rao. Unfortunately, apart from these sporadic attempts, the lead provided by Justice M.J. Rao to inject an element of scientific method into our personal injury compensation law has not been taken up in a serious way by the rest of our judiciary.

It is therefore submitted that it is high time for our Supreme Court to take judicial notice of the international practice in this branch of law and make all the lower courts precedent bound to use actuarial multiplier tables for computing compensation for personal injury and death. The Government must be stir itself and take steps to get prepared actuarial multiplier tables at the earliest. In the meantime, the legal fraternity in association with the professional actuaries and organisations like the Actuarial Society of India must take the initiative in promoting the use of such tables.

References and Notes

1. The Legal Representatives Suits Act, 1855 (Act 12 of 1855) was enacted to enable executors, administrators or representatives to sue and be sued for certain wrongs causing pecuniary loss to the estate of a deceased person where action might have been maintained by such person for compensation for such wrong during his lifetime. This is called the 'loss to the estate' claim.

2. The Fatal Accidents Act, 1855 (Act 13 of 1855) confers a new right and provides that, whenever the death of a person is caused by the wrongful act, neglect or default, the wife, husband, parent (which term includes grandfather and grandmother) and child (which term includes grandson, granddaughter, stepson and stepdaughter) of the deceased person shall be entitled to recover such damages from the tortfeasor as the court may think proportionate to the loss resulting from such death to each of the parties respectively. The Act also allows two different claims to be combined in the same action; one for loss to the estate under the Legal Representatives Suits Act and the other for loss to the dependents under Section 1 of the Fatal Accidents Act. The Loss to the estate is to be recovered by those who are entitled to the estate under the law - the heirs on intestacy, or the legatees, administrators or executors in cases of testamentary succession. The loss to the estate comprises of damages that are payable to the deceased towards physical injuries by him as representing pain and suffering and for loss of amenities for the period between the time of accident and the time of death, together with a conventional small sum towards loss of expectation of life. The loss to the dependants is the loss of the amount which would have been spent on the members of the family or the dependents of the deceased victim by the deceased during the lifetime of his expected usual life. Naturally compensation under his head is restricted to the financial loss.

3. The Forums (adjudicatory bodies) set up under the Consumer Protection Act, 1986 have been empowered, under clause (d) of sub-section (1) of section 14, to direct the opposite party (tortfeasor) "to pay such amount as may be awarded by it as compensation to the consumer (victim) for any loss or injury suffered by the consumer due to the negligence of the opposite party". The controversy whether or not medical practitioners are covered by the provisions this Act has finally been settled by the Supreme Court in its judgment delivered in.


6. P 869, para 1421, 6th ed.: "It is proposed to deal with the measure of damages as further sub divided into: (i) Non-pecuniary damage; (ii) Pecuniary loss and (iii) Interest on wards and interim payments".

7. Vol 1 p.23, para 73: "In the assessment of damages, different principles apply to the damages for pecuniary loss and to those for non-pecuniary loss."

8. John Munkman, Damages for Personal Injuries and Death, 7th ed. (1985) at pp. 13 and 105. "Why use a negative description when a simple positive description is available?"

Black’s Law Dictionary (5th ed.) gives the meaning as "equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another... An act which a court orders to be done, or money which a court or other Tribunal orders to be paid, by a person whose acts or commissions have caused loss or injury to another, in order that thereby the person damned may receive equal value for his loss, or be made whole in respect of his injury." In Corpus Juris Secundum, vol. 15, pp. 652-653, the meaning of the word "compensation" with reference to injuries or loss has been defined thus: "In the sense of an act, the word has been defined as meaning an act which a court orders to be done or money which a court orders to be paid by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damned may receive equal value of his loss, or be made whole in respect of his injury; the giving back an equivalent in either money, which is but the measure of value, or in actual value otherwise conferred; in damnification, making amends, payment of damages, or the rendering an equivalent in value of amount; a recompense or reward for some loss, injury, or service, especially when it is given by statute; that return which is given for something else. More specifically with reference to injury or loss, "compensation" has been defined as making amends, an equivalent given to property taken or for an injury done to another, or an equivalent in money for a loss sustained."