

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. App. 1007-08/2006

Judgment reserved on: October 09, 2007

Judgment delivered on: February 20, 2008

Sh. Narinder Bishal & Anr. Appellants
Through: Mr.O.P. Mannie, Advocate.

versus

Sh.Rambir Singh & Ors. Respondents
Through: Mr.P.K. Seth, Advocate.
Mr.S.L. Gupta, Advocate for
respondent No.3.
Mr.Arvind Kumar, Advocate for
respondent Nos.4 & 5.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

The present appeal is preferred against the award dated 17th August, 2006 of the Motor Accident Claims Tribunal, whereby the Tribunal awarded a sum of Rs. 2,01,400/- along with

interest @ 7.5% per annum to the appellant.

The factual scenario in nutshell is as follows:

On 6th July, 1999 at about 2 pm Sh. Pragati Bishal along with Ms. Shilpi Chaudhary was traveling in his two-wheeler scooter and were proceeding towards Rohini. When they reached Road No. 41, Opposite Gautam Hospital, Wazirpur Depot Road, Delhi, the scooter was hit from behind by a tempo bearing registration no. DDL 6850 driven in a very rash and negligent manner by the driver Sh. Munish as a result of which Sh. Pragati Bishal fell on the road. At that point of time a bus bearing registration no. DL 1P A 1046 which was being driven by Sh. Ranbir Singh came from behind and ran over the deceased, who succumbed to his injuries and died on the spot. Consequent to this, a claim petition was filed before the Motor Accident Claims Tribunal on 11th November, 1999 by the mother and father of the deceased, appellants herein.

Aggrieved with the award of the learned Claims Tribunal the present appeal has been preferred by the appellants. Sh. O.P. Mannie, learned counsel for the appellants has assailed the quantum of compensation awarded in the impugned award and has claimed enhancement in compensation. The Counsel

contended that the deceased was a bachelor, hail and hearty and was of 21 years of age. He had qualified Higher Secondary Exams and was pursuing graduation through correspondence. He was also a diploma holder in both, computers and business accountancy. At the time of the accident, he was also doing accounts work and was teaching computer course to some students at his house where he had installed three computers and was earning around Rs.10,000/- to Rs.12,000/- per month out of which Rs. 6,000 per month, he was contributing towards household expenses. The counsel contended that ignoring all these, the tribunal has erroneously determined the income of the deceased on the basis of minimum wages of a matriculate workman at Rs. 2,796 per month. The counsel further contended that the learned tribunal erred in not noticing that the minimum wages are revised twice in a year and that at the time of pronouncement of the judgment i.e. 17/08/2006, the minimum wages for a matriculate were Rs. 3,760 per month. The second contention of the counsel was that the future prospects of the deceased were not considered even though the deceased was a diploma holder in both, computers and business accountancy and at the time of the accident, he was also doing accounts work and

was teaching computers to some students. It was also contended that the tribunal did not consider the increase in earnings of the deceased and the fact of the value of rupee denunciating due to high rates of inflation. The counsel urged that the learned tribunal had committed grave error in not only taking minimum wages as the basis of the income of the deceased but by also deducting 2/3rd towards personal expenses of the deceased after perceived marriage of the deceased for the multiplier of 6. The counsel vehemently contended that the tribunal failed to appreciate the fact that in all probability the deceased would have married a working girl and she would also have contributed to support the appellants.

The counsel raised another contention stating that the multiplier of 13 applied by the tribunal is on the lower side and the tribunal should have applied multiplier of 15 for the reason that the appellant no. 1 was of 52 years of age and appellant no. 2 of 42 years of age and average age of the appellants being 47 years at the time of the death of their son. The counsel pointed out that the tribunal has awarded a meagre amount of Rs. 10,000 and Rs. 5,000 towards loss of love and affection and funeral expenses, respectively. The counsel urged that knowing that the

deceased was the only son of the appellants/claimants, the tribunal should have awarded at least Rs. 1 Lac towards loss of love and affection. It was also pointed out by the counsel that nothing has been awarded by the tribunal towards shock, mental torture and agony suffered by the appellants on account of sudden and premature death of their son. Finally, the counsel rounded on the impugned award to contend that the rate of interest awarded by the learned tribunal @ 7.5% per annum was on a lower side and the tribunal ought to have awarded interest @ 18% per annum.

The counsel for the appellant has relied upon following judgements in support of his contentions.

- (1)Arun Sodhi vs. Delhi Transport Corporation – I (2001) ACC 615;
- (2)New India Assurance Co. Ltd. Vs. Smt. Nirmala Devi & Ors. – 2007 (3) TAC 414 (Del);
- (3)H.S. Ahammed Hussain vs. Irfan Ahammed & Anr. – 2002 ACJ 1559 (SC);
- (4)Fakeerappa & Anr. Vs. Karnataka Cement Pipe Factory & Ors. – 2004 III AD 373 (SC)

(5) Unreported judgment in MAC. App. No.40/2004 and Cross Objection /2004 dated 25.1.2007

Per contra, Sh. S.L. Gupta, counsel for Respondent no. 3, Sh. Arvind Kumar, counsel for Respondent nos. 4 & 5 and Sh. P.K. Seth, counsel for Respondent no. 6 have vehemently traversed the said contentions of the counsel for appellants. The Counsel for Respondent No. 3, Sh. S.L. Gupta, submitted that the learned tribunal committed no error in awarding a sum of Rs. 2,01,400 along with the interest @ 7.5% to the appellants. The counsel also contended that the impugned award is quite fair, just and reasonable, therefore, requires no interference. The counsel further contended that the tribunal had correctly applied its judicial mind by not allowing any compensation towards future prospects of the deceased, in the absence of any cogent evidence to show entitlement to such future prospects of the deceased. The Counsel has relied on the judgment **of Bijoy Kumar Dugar vs. Bidyadhar Dutt** reported in **(2006) 3 SCC 242**, in this regard. The counsel lashed out that the impugned award is already on the higher side and cannot be enhanced any further.

I have heard learned counsel for the parties and have

perused the record.

The first contention of counsel for the appellant is that the Tribunal has erred in correctly assessing the income of the deceased by taking into consideration the minimum wages of a matriculate workman at the rate of Rs.2,796/- per month, while in fact the deceased was actually earning Rs.6,000/- per month. In support of this contention, the counsel has placed reliance on the judgments of this Court reported in **2007 3 TAC 414 Delhi, New India Assurance Company Vs. Smt. Nirmala Devi and Ors.** and an unreported judgment in the case of **MAC. App. No.40/2004** decided on 25.1.2007 and another judgment *MAC. App. No.350/2007*, **Oriental Insurance Co. Ltd. Vs. Satish Sharma and Ors.** In these judgments Justice Pradeep Nandrajog has taken a view that for deciding the income of the deceased in the absence of any cogent evidence recourse should be made to the income of skilled/unskilled/semi skilled workman, as the case may be, as specified in the Minimum Wages Act on the relevant date and also to consider the increase of the minimum wages from time to time as notified under the Minimum Wages Act. The Court held that the perusal of the minimum wages notified under the Minimum Wages Act show that the

minimum wages gets increased by nearly 150% in 10 years. The Court further observed that the raise in the minimum wages is carried out by the government to neutralize increase in inflation, cost of living and fall in purchasing power of rupee. The Court also observed that increase in minimum wages is not akin to future prospects for the reason that inflation eats into the purchasing power of the rupee and to neutralize this falling power of rupee, the wages are increased from time to time.

Toying the same line of argument, counsel for the insurance company has vehemently urged that since the appellants had failed to give any proof regarding the income of the deceased, therefore, under no circumstance, the income of the deceased could have been considered by the Tribunal at the rate of Rs.6,000/- per month, therefore, in the absence of any evidence to this effect, the finding of the Tribunal to hold the income of the deceased as per the Minimum Wages Act at Rs.2,796/- cannot be faulted as perverse or illegal. Counsel further contended that in view of the recent decision of the Supreme Court reported in 2006 ACJ 1058, **Bijoy Kumar Dugar Vs. Bidyadhar Dutt**, the future prospects of the deceased in the absence of any evidence on record, cannot be taken into

consideration. Counsel, thus, contended that the increase of minimum wages as laid down under the Minimum Wages Act cannot be considered by this Court unless a specific evidence to this effect is led and proved by the appellants.

It is true that in the present case, the appellants have not led any evidence to prove the exact income of the deceased and only evidence which was led before the Tribunal was that the deceased was doing his graduation course at the time of the accident. In this regard, the Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. v. Meena Variyal, (2007) 5 SCC 428** has given following observations:-

"It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis--vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral

evidence of the widow when without any difficulty the claimants could have got the employer Company to produce the relevant documents to show the income that was being derived by the deceased from his employment.”

The case set up by the appellants in the claims petition was that the deceased was studying and was also teaching computer to students for which he had installed 3 computers at his home and was charging about Rs.1,000/- per month from each student. It was also pleaded in the petition that he used to pay Rs.6,000/- towards household expenses and was having 10 to 12 students for computer training. It is not in dispute that no evidence to this effect was led by the appellants to prove the said income of the deceased and this is evident from the following observations of the Tribunal:-

“In the absence of any proof of the income of the deceased, the minimum wage of a matriculate workman at the time of accident can be taken as income of the deceased. The minimum wages of matriculate workman on the date of accident was Rs.2,796/-.”

It would be, thus, apparent that in the given circumstances, the Tribunal has resorted to the minimum wages of a matriculate workman as were applicable on the date of

accident since no evidence was adduced by the appellants to prove the income of the deceased. In such like cases, the Motor Accident Claims Tribunals are left with no option but to derive support from the Minimum Wages Act to determine the income of the deceased and I do not find any infirmity in such an approach. In the facts of a given case and in the absence of any cogent evidence regarding proof of income, the Tribunal can very well take into consideration the qualification of the deceased, the nature of activity he was performing or has acquired any specialized or technical knowledge or any other special merit in any particular field in order to determine the category of nature of his avocation whether of a skilled, semi-skilled or of an unskilled nature.

I, therefore, do not find any infirmity in the impugned award so far taking the monthly income of the deceased at Rs.2,796/- as prevalent on the relevant date of the tragic accident by the Tribunal is considered.

As regards the plea of the appellant to consider the revision of minimum wages of the deceased after taking into consideration such increase under the Minimum Wages Act, which show such wages virtually becoming double after a gap of 10

years period. This contention of counsel for the appellant is repelled by counsel appearing for the respondent on the strength of the Apex Court's judgment reported in **Bijoy Kumar Dugar's case (Supra)** that in the absence of any evidence regarding future prospects, the future prospects cannot be taken into consideration. In most of the recent appeals, this controversy has become a bone of contention between the claimants as well as the insurance companies. In **Bijoy Kumar Dugar's case (Supra)**, the Apex Court was dealing with the case of a student, science graduate, pursuing his law studies and who at the relevant time was earning a sum of Rs.4,000/- per month as an attorney holder of some petrol pump and in the said case, the contention was raised that the deceased would have earned minimum wages of Rs.8,000/- or Rs.10,000/- per month, if not, more, had he not died in the accident. No evidence was adduced by the claimants in the said case to prove how the deceased would have earned the said income of Rs.8,000/- to Rs.10,000/- per month. In the backdrop of facts of the said case, the Supreme Court held that the bald assertion of the claimants that the deceased would have earned Rs.8,000/- to Rs.10,000/- per month in the span of his life time had he not met with the accident

cannot be accepted as his legitimate income unless the facts are proved by leading cogent and reliable evidence before the MACT. It would be relevant to refer to the observations of the Supreme Court in the said judgment, which are reproduced as under:-

"8. 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."

In the above judgment, the Supreme Court has also considered the case of **General Manager, Kerala Transport Road Corporation Vs. Susamma Thomas, 1994 ACJ 1(SC)**, wherein the claimants had satisfactorily proved on record the prospects of the deceased concerning his advancement in his future career therefore, taking into consideration the said aspect of future career, the Court had made highest estimate of his income and then granted the relief to the claimants. The Apex Court has also considered in the aforesaid judgment, the

celebrated judgment of **Sarla Dixit vs. Balwant Yadav & Ors.** reported in 1996 (III) AD 13(SC) in which also enough evidence was led with regard to the future prospects of the deceased. After considering the above said cases, the Hon'ble Supreme Court in **Bijoy Kumar Dugar's** case observed that no evidence was led by the claimants to prove the future prospects regarding increase of income in the course of his employment or business or profession, therefore, the aspect of future prospects could not be considered. The legal position after the judgment of **Bijoy Kumar Dugar's** case thus emerges that where the claimants are able to establish and sufficiently prove the future prospects of the deceased in the course of his employment or business or profession the criteria as laid down in **Sarla Dixit's** case can be made applicable as in the said criteria, there is an inbuilt mechanism of taking into account the future prospects of the deceased, while in other cases in the absence of any evidence, the said criteria of **Sarla Dixit's** case cannot be adhered to and a normal method of calculating the income of the deceased with an appropriate multiplier after deducting the personal expenses out of the total income to assess the exact loss of dependancy can be arrived at. For determining the earning of the deceased

or victim of the accident, the claimants are supposed to prove the exact income of the deceased by leading some cogent and reliable documentary evidence as to the nature of his employment or trade or business or in any other activity he was involved in and then the said income can be taken into consideration for determining the quantum of compensation and if in such a case, the claimants are further able to establish the future prospects as well, then the criteria laid down in **Sarla Dixit's** case would get attracted. There can be another category of cases where the claimants are able to establish the future prospects of the deceased by quantifying the amount to be earned by the deceased in future with the help of cogent, reliable and convincing evidence and in all such cases the tribunal can take into consideration such future increase as has been established by the claimants on record. The difficulty however, would arise in all those cases where although the claimants are able to sufficiently establish on record the educational qualification of the deceased or the nature of his employment whether skilled, semi-skilled or unskilled but fail to establish by any reliable evidence to prove the exact income of the deceased. In such cases, question arises whether the Tribunal can take into

consideration the minimum wages and the periodical revision of minimum wages as are fixed by the Government under the Minimum Wages Act. To examine this question, it will have to be considered whether the revision which takes place under the Minimum Wages Act can be equated with the future prospects of a deceased. As would be evident from catena of judgments of the Supreme Court, the future prospects have no correlation with the price index, inflation or denunciation of currency value. The future prospects would necessarily mean advancement in future career, earnings and progression in one's life. It could be considered by seeing, from which post a person began his career, what avenues or prospects he has while being in a particular avocation and what targets he/she would finally achieve at the end of his career. The promotional avenues, career progression, grant of selection grades etc. are some of the broad features for considering one's future prospects in one's career.

The minimum wage, in the very context of economy has a correlation with the growth and development of the nation's economy, postulating increase in the price index, reduction of purchasing power with the denunciation of currency value and consequent fixation of minimum wages giving some periodical

increase so as to ensure sustenance and survival of the workman class. Keeping this in view, under no circumstance the revision of minimum wages can be treated on the same footing with the factor of future prospects.

For instance, minimum wages of unskilled workman in the year 2000 were Rs.2524/- under the Minimum Wages Act. The said minimum wages in the year 2007 for the same class of unskilled workman came to be Rs.3470/- under the Act. This increase is not due to any promotion of unskilled workman or any kind of advancement in his career but the same are due to increase in the price index and cost of living which are the determining factors taken into consideration for increasing the wages under the Minimum Wages Act. The nature of the job of unskilled workman will not change as the same shall remain unchanged. The same principle may be true even in the case of business or trade or other such allied activities where the future prospects of the deceased can be considered on the basis of his assets, income tax return, wealth tax return, balance sheet etc. But as far as the increase in the minimum wages is concerned the same takes into consideration the price index and the inflationary trends and the same have no correlation with the future prospects

of a skilled, semi-skilled or an unskilled workman.

In the light of the above discussion, I find myself in agreement with the argument of counsel for the appellants that in the given facts and circumstances of the case, the Tribunal ought to have taken into consideration the revision in the minimum wages so as to determine just and fair compensation. In all cases where the claimants are able to sufficiently establish the income of the deceased, the benefit of granting any compensation for future prospects can be taken into consideration only when sufficient and reliable evidence is placed and proved by the claimants as per the dictum laid down in **Bijoy Kumar Dugar's case(supra)**. While in other cases where in the absence of sufficient evidence, the Tribunal applies the yardstick of minimum wages, in all such cases, the Tribunals can take judicial notice of the revision of minimum wages, as laid down under the Minimum Wages Act.

As regards, the second contention of counsel for the appellants that the Tribunal has committed grave error in taking into consideration deduction of personal expenses to the extent of 2/3rd of the income of the deceased on the presumption that he would have got married at the age of 27 years had he not died in

the accident leaving back only 1/3rd of the income for the dependant members of the family. The contention of counsel for the appellant is that the deceased could have even married a working girl which ultimately would have increased the contribution towards the dependant family members instead the same being reduced. In support of this argument, counsel for the appellant has placed reliance on the judgment of the Supreme Court reported in (2004) 3 AD 373 (SC) **Fakeerappa & Anr. Vs. Karnataka Cement Pipe Factory & Ors.** In the facts of this case before the Supreme Court, the deceased was an unmarried person, aged 27 years and was getting Rs.2,000/- per month. The Tribunal in this case had applied multiplier of 18 and directed deduction to the tune of 50% of income towards personal expenses. The appeal filed against the order of the Tribunal was dismissed by the High Court and thereafter the Hon'ble Supreme Court after taking into consideration the facts and circumstances of the case, felt it appropriate to restrict the deduction towards personal expenses only to the extent of 1/3rd monthly income of the deceased. It would be relevant to refer to the following paras from the said judgment.

“7. What would be the percentage of deduction for

personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction.

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."

The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into consideration many imponderables and nothing can be said with certainty in carrying out such assessment of damages. In plethora of judgments the Hon'ble Supreme Court has held that there can be no golden rule applicable to these kind of cases for measuring the value of human life and with no precise mathematical calculations, the

assessment of damages can be made. The cardinal principle as envisaged under Section 168 of the Motor Vehicles Act is to grant 'just' compensation. What would be 'just' compensation is to be determined by the Tribunal in a most judicious manner taking note of the facts and circumstances of each given case but not acting simply on whims, fancies, wild guesses, conjectures or surmises. The expression 'just' denotes equitability, fairness, reasonableness and non-arbitrariness. In this regard the Hon'ble Apex Court in **Divisional Controller, KSRTC v. Mahadeva Shetty**, (2003) 7 SCC 197 has given following observations:-

“15. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be “just”. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim.

Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness. If it is not so, it cannot be just."

The Tribunal in the present case has deducted 2/3rd of the income towards personal expenses after taking into consideration marriage prospects of the deceased. Normal presumption in the case of young boy of 21 years is that at least he would get married by the age of 27 years and with the marriage the monthly allowance to the parents are bound to cut down. In **Bijoy Kumar Dugar's** case (supra) the deceased was

a young boy of 24 years of age, was unmarried and the Supreme Court has observed that after the marriage, the monthly allowance given to his parents would have to be cut down. Perusal of the judgment of **Bijoy Kumar Dugar's** case shows that the Hon'ble Supreme Court had not directed any change in the criteria of 1/3rd personal expenses, although observations of expenses being cut down after marriage of the deceased were made. This was so, probably because the Supreme Court felt that already the Tribunal has applied lower multiplier of 12 years in place of 17 years as applicable as per Schedule-II of the Motor Vehicles Act and also because of poor salary of the deceased. In the facts of the present case also, the minimum wages of the deceased have been taken into account and not the actual income as pleaded in the claim petition. Considering the true import of aforesaid two judgments of the Apex Court and of the young age of the deceased, I am of the view that 1/3rd income towards personal expenses would meet the ends of justice in determining just and fair compensation. The order of the learned Tribunal shall stand modified to that extent.

On the third contention of counsel for the appellants that a wrong multiplier of 13 has been applied in the case of the

deceased who was just 21 years of age, I do not find any substance and force in the argument of counsel for the appellants. In a large number of cases the controversy of applicability of proper multiplier has become a subject of controversy. The Hon'ble Supreme Court in its various pronouncements has authoritatively upheld the correctness of adoption of multiplier method, therefore, no fault can be found with the same.

The Supreme Court has held that multiplier method is the appropriate method, a departure from which can only be justified in rare, extraordinary and very exceptional circumstances (refer **Sarla Dixit's** case (supra)). The bone of contention arising in some of the appeals and before the Tribunals is that whether the multiplier as specified in the Second Schedule of Motor Vehicles Act should be straightway made applicable or the same can be deviated from in the given facts and circumstances of the case. The Hon'ble Supreme Court in the following judgments has taken a view that the structured formula laid down in the Second Schedule cannot be blindly followed. Some of these judgments are referred as below:-

1. New India Assurance Co. Ltd. Vs. Kalpana & Ors. – (2007) 3 SCC 538
2. UPSRTC Vs. Krishna Bala & Ors. – (2006) 6 SCC 249
3. Managing Director, TNSTC Ltd. Vs. K.I. Bindu & Ors. – (2005) 8 SCC 473
4. Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya & Ors. – 2005 (2) TAC 305 (SC)
5. New India Assurance Co. Ltd. Vs. Charlie & Anr. – (2005) 10 SCC 720
6. U.P. State Road Transport Corpn. v. Trilok Chandra - (1996) 4 SCC 362

However, in some of the judgments, the Hon'ble Supreme Court has also taken a view that payment of compensation on the basis of structured formula as provided under the Second Schedule should not ordinarily be deviated from. Deviation from the structured formula may be resorted to only in exceptional cases. This view has been taken by the Apex Court in some of the following judgments:

1. United India Insurance Co. Ltd. & Ors. Vs. Patricia Jean Mahajan & Ors. – (2002) 6 SCC 281
2. Abati Bezbaruah v. Dy. Director General, Geological Survey of India – (2003) 3 SCC 148
3. APSTRC Vs. M. Pentaiah Chary, (2007) VIII AD (SC) 552
4. Smt. Supe Dei & Ors. Vs. M/s. National Insurance Co. Ltd. & Anr. – 2002 ACJ 1166 (SC)

The structured formula as indicated in the Second Schedule of the Motor Vehicles Act was brought on the statute of Motor Vehicles Act with the enactment of Amendment Act of 54 of 1994 which brought important changes with the insertion of Section 163-A and 163-B in Chapter XI entitled as “Insurance of Motor Vehicles against Third Party Risk”. The said structured formula so far as same is concerned with the claimants approaching the Tribunal under Section 163-A of the Motor Vehicles Act, the same can be made straightaway applicable. However, the difficulty arise in the claim petitions where the claimants filed their petitions under Section 166 of the Motor Vehicles Act, 1988. In the recent decisions the Apex Court in **Smt. Supe Dei & Ors. vs. M/s National Insurance Co. Ltd. & Anr. - JT2002 (Supra 1) SC 451** has held that IInd Schedule can be taken as a guideline while determining compensation under Section 166 of the Act. The said provision of Section 163-A was added by the legislature so as to introduce speedy and expeditious payment of compensation to the third party victims without taking the trouble of proving negligence or tortuous act. The said Second Schedule also laid down certain specific amounts

payable against general and pecuniary damages in the case of death and in the case of injuries/disabilities such as for funeral expenses the amount laid down is Rs.2,000/- and for loss of consortium, if beneficiary is a spouse the amount is Rs.5,000/-. It is also to be borne in mind that no revision in the Second Schedule has taken place after the same was introduced in the year 1994 although under Section 163(3), the Central Government is required to amend the Second Schedule keeping in view the cost of living by appropriate notification in the Official Gazette from time to time. Due to these reasons, the Hon'ble Supreme Court has taken the said view that the structured formula as laid down in the Second Schedule cannot be taken as a ready reckoner to be applied with arithmetic precision.

In the context of the aforesaid Supreme Court decisions, I am of the view that the Hon'ble Supreme Court in its various pronouncements as well as in the Second Schedule of the Motor Vehicles Act has restricted the upper multiplier at 18 therefore, there cannot be any conflict as far as upper limit of multiplier is concerned. As regards the reduction of multiplier of Second Schedule by the Hon'ble Supreme Court in certain cases, the thumb rule has been the grant of just and fair compensation

to the injured or the dependent family members of the deceased, concerning the facts of each case. The selection of particular multiplier to a large extent depends upon the age of the deceased and the age of the dependants, whichever is higher. In this regard, the Apex Court in **New India Assurance Co. Ltd. v. Kalpana**, (2007) 3 SCC 538 has observed as under:-

“7. The multiplier method involves the ascertainment of the loss of dependency 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 calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.”

From the above discussion, it is clear that normally the application of the multiplier on the basis of age of the victim of the accident and of dependents, whichever is higher, has been taken as the basis for the selection of a multiplier but the same cannot be taken as the absolute rule. Therefore, for determining

the compensation under Section 166 of the Motor Vehicles Act, the structured formula laid down under the Second Schedule will act as a guide but the same can be deviated from if there are exceptional and sufficient reasons for such deviation. Under these circumstances, I am of the considered view that normal adherence should be to the structured formula but in the given circumstances the Tribunals may deviate by fixing the upper limit of multiplier or reducing the multiplier by giving sufficient reasons for such deviation. This will be subject to those cases where the Hon'ble Supreme Court has applied higher multiplier or a lower multiplier in a given case, the same can be straightway made applicable wherever facts and circumstances of a given case are substantially similar to the facts of case decided by the Supreme Court.

In the present case, the age of the deceased was 21 years and the Tribunal has applied multiplier of 13 years, I do not find any infirmity in the same as the age of the mother & father of the deceased was 42 years and 52 years respectively and taking mean of the age of the dependant members, the same comes to 47 years and for that the multiplier laid down in the Second Schedule is 13 years. The Tribunal has already taken into

consideration the revised minimum wages for determining the quantum of compensation and this Court has also directed deduction of 1/3rd income towards the personal expenses, therefore, no interference is called for to enhance the said multiplier from 13 to 15 years.

The fourth contention of the counsel for the appellant is with regard to awarding a meagre amount of Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses and that no amount has been awarded by the Tribunal towards shock, mental torture and agony suffered by the appellants on account of sudden and premature death of their deceased son. I feel that the amount of Rs.5,000/- towards funeral expenses is just and fair and requires no enhancement. But grant of Rs. 10,000/- towards loss of love & affection requires interference and the same is enhanced to Rs. 20,000/-. As far as the contention with regard to entitlement of compensation towards shock, mental torture and agony suffered by the appellants is concerned, I do not feel inclined to award any amount of compensation towards the same. If we look into the IInd Schedule to the Motor Vehicles Act, 1988, it would be noticed that the legislature has categorised cases into fatal and

injury/disability cases for the purpose of non-pecuniary/general damages. In case of death of the accident victims, the legislature has broadly pointed out heads under which compensation shall be paid as general/non-pecuniary damages, viz. funeral expenses; loss of consortium, if beneficiary is the spouse; loss of estate and medical expenses – actual expenses incurred before death, supported by bills/vouchers and the legislature has also mentioned the maximum amount of compensation payable under each head. Similarly, in case of injury/disability of the accident victims, maximum limit of amount of compensation under each head is mentioned. Compensation towards loss of love and affection is granted by the Tribunals as the same should be awarded to the family members of the victims of accident other than the spouse, this is so because the Courts and Tribunals found that the head of loss of consortium takes care of loss of company to spouse but other family members should also be compensated under the head of loss of love and affection when claimants are members of the family, other than spouse, of the deceased/victim of the accident. But compensation payment towards shock, mental torture and agony suffered by the appellants on account of demise of their only son is neither a

head for grant of compensation under the IIInd Schedule nor same has been awarded by Courts and Tribunals so far and hence, no compensation in this regard is made to the appellants for shock, mental torture and agony. In this regard in **N.Sivammal Vs. Pandian Roadways Corpn., (1985) 1 SCC 18**, the Hon'ble Apex Court observed as under:

"4. Thereafter, the High Court proceeded meticulously to examine every item of compensation included in the award. The High Court held that award of Rs 5000 under the head mental agony suffered by the claimants as a result of the death of the deceased cannot legally be sustained. This is only the different way looking at the same thing which is legally permissible. Muthukrishnan lived for 19 days since the accident and he was throughout under a shadow of death. He had suffered severe injuries. He must have suffered continuous pain and compensation was admissible for pain and suffering, suffered by the deceased. Therefore, the amount of Rs 5000 which the High Court held inadmissible, is legitimately admissible under another head and therefore by changing the head we restore the amount of Rs 5000 awarded by the Tribunal."

In the light of the above discussion, I am not inclined to award any amount of compensation towards shock, mental torture and agony suffered by the claimants on account of death of their only child.

Lastly, the counsel for the appellant has also sought enhancement in the rate of interest from 7.5% to 18%. Section

171 of the Motor Vehicles Act empowers the Tribunal to award simple interest at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

Section 171 of the Motor Vehicles Act is reproduced as under:-

“171. Award of interest where any claim is allowed- Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

It would be evident from the said provision that no rate of interest has been fixed, therefore , varying rates of interest are being awarded by various Tribunals. Award of interest is compensation for forbearance or detention of money and that interest is being awarded to a party on being kept out of the money, which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claims cases having regard to the said provision which vests judicial discretion in the Tribunals to award simple interest in such matters. In this regard in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India, (2003) 3 SCC 148**, the Hon'ble Apex Court has given

following observations:

"6. The question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

18. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same, as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money, which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34 CPC nor Section 4-A (3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my

opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above.”

It would be thus evident that there cannot be any hard and fast rule in awarding particular rate of interest and what should be the rate of interest is solely within the discretion of the Tribunal, which no doubt has to be exercised in a judicious manner and not with arbitrariness after taking an overall view of the facts and circumstances of each case. However, with a view to narrow down any conflict in the grant of rate of interest by various Tribunals, it would be appropriate that the Tribunals shall ordinarily not grant interest lower than the interest rate as is payable on fixed deposits or on National Saving Certificates as on the relevant date of deciding the petition. As on the date of the decision of the present case, the rate of interest on the fixed deposit was 7.5%, therefore, the same is held to be correct rate of interest payable to the claimants in the present case on the compensation awarded from the date of filing of their application. Thus, the award requires no interference in this regard.

I may, however, add here that Tribunals must,

however, exercise their jurisdiction to issue such a direction pertaining to rates of interest upon consideration of the facts and circumstances of each case and keeping in mind that where there is unnecessary prolongation of case by the claimants then the Tribunal may not award interest for that period of delay or may award interest at the rate lower than the prevailing banking rate. Similarly, circumstances may be weighed by the Tribunal where insurer/driver/owner prolongs litigation and may award rate of interest higher than the prevalent bank rate of interest on fixed deposits.

With the massive progress in urbanisation and industrialisation in the recent times, we have switched from fast to faster vehicular traffic which has come as a boon to many and as a bane to some. There has been an acceleration in automobile traffic, which concomitantly has resulted in escalating statics of motor vehicular accidents culminating in to casualties of human lives. There has been an alarming increase in the road accidents. Accidents on Indian roads are perhaps the second highest in the world and about ninety six thousand people were killed in road accidents in the year 2005 itself. As per the recent data released by Delhi Police, a total of 8270 accidents had occurred in the

capital in the year 2006, in which about 2050 people were killed. The blue line buses are the major killers as far as Delhi is concerned. These killer blue line buses have played havoc on Delhi roads and every year many precious lives get sacrificed by these blue line buses who have unleashed a kind of death drive putting in danger the lives of delhites on the roads of the capital. Death of any person in a family torments and shatters the entire family more particularly when it is death of a sole bread winner. No amount of compensation can bring back the family to the same position. The victims of accident and their family members not only undergo the traumatized and harrowing experience of losing a family member but also they are made to suffer greatest humiliation and embarrassment right from mortuary till the award of compensation. The apathy and insensitivity of various government and other agencies involved in the process instead of lending a helping hand place all sorts of hindrances to make the life of victims and their families worst and miserable. It is a great irony in this country that the insurance companies are prompt in settling the claims of the insured vehicles for its damage but create all sorts of obstructions and bottlenecks in settling the claims of victims of the accidents. The precious life of a human

being is of little concern in comparison to settlement of a claim for the damaged motor vehicle in the estimation of these insurance companies. On reporting damage to a vehicle, immediate steps are initiated by the insurance companies to appoint an investigator/surveyor and photographer etc., for assessing the damage caused to the vehicle and practically no time is lost to get the vehicle repaired and restore the same to original condition. The insurance companies have tied up arrangements with various car manufacturers and the leading auto workshops to help out the insured for immediate delivery of the vehicle after the same is met with an accident. Atrociously, no similar pains are taken by these insurance companies to compensate the victims of the accidents in the injury cases or to the dependent family members in fatal accident cases. The broad parameters for the grant of compensation are almost settled through various recent authoritative pronouncements of the Apex Court and of various state High Courts. In a recent judgment of the Supreme Court, entitled **V. Subbulakshmi & Ors. vs. S. Lakshmi & Anr. in Civil Appeal No. 990/2008** the Court has even gone to the extent of holding that in such like cases the compensation can be granted even by guess work. In

this scenario, the Court is of the opinion that insurance companies should make a serious endeavor to settle the compensation cases preferably at pre-litigation stage and if not at pre-litigation then at least at the earliest possible stage before the Claims Tribunals and in any case at the time of passing of the interim award at least in those cases where there is an admitted liability of the insurer to pay the compensation amount. The payment of compensation amount can be made tentatively to the claimants taking in view the broad legal principles settled by the Apex Court and High Courts. **The realities of life cannot be overlooked. The victims of accident and their family members should not be made to wait for the compensation amount to reach after spending long years in courts, making them vulnerable to come under heavy debts for meeting day to day expenses of life.** This exercise by the insurance companies will not only provide speedy justice to the victims and dependent family members of the victims of the road accidents but will also considerably help the insurance companies to save millions of rupees which gets paid by these companies due to the accumulation of interest amount on the compensation amount to be ultimately awarded by the Tribunal

due to time consuming trials before MACT courts. Such payment of compensation at the early stage would also be of immense help to the victims of the accidents, especially, in those cases where the life of a lone breadwinner is lost. This court hope and trust that all the insurance companies shall immediately take suitable steps in this direction so as to provide immediate succour to the dependent family members of the deceased or the victims of the accident in the same manner as they swung into action to settle the claims in respect of the damaged vehicles. The MACT Tribunals are also directed to ascertain from the insurance companies through their respective counsels at the first available opportunity as to whether the insurance companies are ready and willing to pay some reasonable amount of compensation tentatively as per their own assessment in all those cases of admitted liability and then take on record the response given by the insurance companies to such a query of the MACT court. **In any event, life of a human being is not cheaper than a 'Nano' car.** In any given case where concerned officials of these insurance companies do not initiate action in this direction, then suitable explanation may be called for by the high-ups of the same company or by its regulating authority i.e. Insurance

Regulatory & Development Authority, as non payment of legitimate compensation amount at the initial stage will ultimately unnecessarily burden the company to pay interest amount for the entire trial period.

On the basis of the above discussion, the income of the deceased is taken as Rs.2796/- p.m. and after considering the future increase in minimum wages, the said income is doubled and a mean of both the incomes is taken, which is Rs.4194/-, as the future income and thus the annual income will come as Rs.50,328/- and after deducting 1/3rd towards personal expenses, the annual dependency would come out as Rs.33,552/- and after applying multiplier of 13 the loss of dependency would come out as Rs.4,36,176/-. Along with general damages the total compensation is enhanced to Rs.4,61,176/- from Rs.2,01,400/- as awarded by the Tribunal. Therefore, the appellants are entitled to the difference of Rs.2,59,776/- as compensation to be paid by the respondents @ 7.5% p.a. from the date of institution of the petition till realisation.

With these modifications and directions, the present appeal is disposed of.

Let this order be circulated amongst all the Motor Accident

Claims Tribunal of Delhi.

February 20, 2008

**KAILASH GAMBHIR
JUDGE**