

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th December, 2012

+ **MAC.APP. 272/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SMT. KRISHNA & ORS. Respondents
Through: Mr. Anshuman Bal, Adv. for the
Claimant.
Mr. J.P. Tiwari, Adv. for R-2 to R-4

+ **MAC.APP. 273/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SMT. KRISHNA & ORS. Respondents
Through: Mr. Anshuman Bal, Adv. for the
Claimant.
Mr. J.P. Tiwari, Adv. for R-2 to R-4

+ **MAC.APP. 274/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

MS. PAYAL & ORS. Respondents
Through: Mr. Anshuman Bal, Adv. for the
Claimant.
Mr. J.P. Tiwari, Adv. for R-2 to R-4

+ **MAC.APP. 275/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SMT. GOMA & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Adv. for the
Claimants/R-1 to R-5.
Mr. J.P. Tiwari, Adv. for R-6 to R-8

+ **MAC.APP. 276/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SHRI RAM PAL GIRI & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Adv. for the
Claimant/R-1 & R-2.
Mr. J.P. Tiwari, Adv. for R-3 to R-5

+ **MAC.APP. 277/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SMT. KRISHNA & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Adv. for the
Claimant/R-1 to R-4.
Mr. J.P. Tiwari, Adv. for R-5 to R-7

+ **MAC.APP. 278/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SMT. RANI & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Adv. for the
Claimant/R-1.
Mr. J.P. Tiwari, Adv. for R-2 to R-4

+ **MAC.APP. 279/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SHRI KRISHAN & ORS. Respondents
Through: Mr. Anshuman Bal, Adv. for the
Claimant/R-1.
Mr. J.P. Tiwari, Adv. for R-2 to R-4

+ **MAC.APP. 282/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

MS. MADHU & ORS. Respondents
Through: Mr. Anshuman Bal, Adv. for the
Claimant/R-1.
Mr. J.P. Tiwari, Adv. for R-2 to R-4

+ **MAC.APP. 283/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SH. RAJESH KUMAR & ORS. Respondents
Through: Mr. Anshuman Bal, Adv. for the
Claimant/R-1.
Mr. J.P. Tiwari, Adv. for R-2 to R-4

+ **MAC.APP. 284/2012**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SMT. GOMA & ORS. Respondents
Through: Mr. O.P. Mannie, Adv. for the
Claimants/R-1 to R-5.

Mr. J.P. Tiwari, Adv. for R-6 to R-8.

+ **MAC.APP. 530/2012**

SMT. GOMA & ORS.

..... Appellants

Through: Mr. O.P. Mannie, Adv.

versus

DHARMENDER KUMAR & ORS.

..... Respondents

Through: Mr. J.P. Tiwari, Adv. for R-1 to R-3.
Mr. Pankaj Seth, Adv. for R-4/NICL

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These 12 Appeals arise out of three separate judgments dated 23.11.2011 arising out of a motor vehicle accident which occurred on 28.10.2008.
2. MAC APP. Nos.272/2012, 273/2012, 274/2012, 275/2012, 276/2012, 277/2012, 278/2012, 279/2012, 282/2012, 283/2012 and 284/2012 have been preferred by the National Insurance Company Limited. The Insurance Company challenges the finding on negligence attributed to the driver of the Tata 709 No.UP-13F-7407 as also the quantum of compensation awarded in favour of the Respondents (Petitioners before the Claims Tribunal).
3. MAC APP.530/2012 is preferred by the legal representatives of the deceased Sushma for enhancement of compensation, who lost her life in the accident.

4. The Appellants in all the Appeals (except MAC APP.530/2012) shall be referred to as the Insurance Company whereas the Appellants in MAC APP.530/2012 shall be referred to as the Claimants.
5. Eleven separate Claim Petitions were preferred by the injured/legal representatives of the deceased, namely, Smt. Krishna, Payal, Smt. Goma, Ram Pal Giri, Smt. Rani, Shri Krishan, Ms. Madhu and Rajesh Kumar alleging that on 28.10.2008 at about 7:00 P.M. deceased Baby Rakhi, Rakesh Kumar, Baby Anshu, Virender Giri and Smt. Sushma along with injured Smt. Krishna, Ms. Payal, Smt. Rani, Shri Krishan, Ms. Madhu and Rajesh Kumar were travelling in a Maruti Van No.DDU-7263. They were proceeding to Hinnot from Delhi. When the Maruti Van reached near *Kajaria Mor*, Sikandrabad, a Tata 709 No.UP-13F-7407 came from the opposite direction. It was being driven in a rash and negligent manner. It came on the wrong side of the road and struck against the Maruti Van. As a result of the forceful impact, the Maruti Van capsized resulting in injuries on the person of all the occupants of the Maruti Van. The injuries in case of Baby Rakhi, Rakesh Kumar, Baby Anshu, Virender Giri and Smt. Sushma proved fatal.
6. A joint written statement was filed by the driver and the owner of Tata 709 No. UP-13F-7407 denying any negligence on the part the driver of Tata 709. They took up a plea that on 28.10.2008 at the time of the accident, vehicle No. UP-13F-7407 was parked on the extreme left side of the main road, at *Kacha Patri* near *Kajaria Mor* on account of a punctured tyre and some mechanical defect. The driver of the Tata 709 was waiting for the mechanic, when he (the driver) noticed that an overloaded Maruti Van No.DDU-7263 came from Delhi side. The

Maruti Van was being driven at a very high speed in a zig-zag manner and the driver of the Maruti Van tried to overtake a DTC bus from its right side. In the process, the driver lost control over the Maruti Van and hit the stationary Tata 709 on the front. Thus, the driver and owner of Tata 709 squarely laid the blame on the driver of the Maruti Van for the unfortunate accident.

7. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of Tata 709 No. UP-13F-7407 and awarded the compensation in the 11 cases; which is tabulated hereunder:-

Sl. No.	MAC APP.	Suit No.	Name of the injured (I) /deceased (D)	Name of the Claimant	Total Compensation Awarded
1.	272/2012	27/11	Baby Rakhi (D)	Smt. Krishna	₹3,75,000/-
2.	273/2012	14/11	Smt. Krishna (I)	Smt. Krishna	₹14,500/-
3.	274/2012	21/11	Payal (I)	Payal	₹47,000/-
4.	275/2012	22/11	Rakesh Kumar (D)	Smt. Goma & Ors.	₹8,24,200/-
5.	276/2012	26/11	Baby Anshu (D)	Ram Pal Giri & Anr.	₹3,75,000/-
6.	277/2012	15/11	Virender Giri (D)	Smt. Krishna & Ors.	₹8,32,000/-
7.	278/2012	16/11	Smt. Rani (I)	Smt. Rani	₹95,000/-
8.	279/2012	24/11	Sh. Krishan (I)	Sh. Krishan	₹62,100/-
9.	282/2012	25/11	Ms. Madhu (I)	Ms. Madhu	₹47,000/-
10.	283/2012	18/11	Rajesh Kumar (I)	Rajesh Kumar	₹1,40,900/-
11.	284/2012	23/11	Sushma (D)	Smt. Goma & Ors.	₹5,29,000/-

8. The following contentions are raised by the learned counsel for the Appellant:-
- (1) The accident was caused solely on account of the rash and negligent driving of Maruti Van No.DDU-7263. Thus, the driver and owner of Tata 709 Canter No.UP-13F-7407 and consequently the Appellant Insurance Company has no liability to pay the compensation. The negligence can be inferred from the fact that 14 persons were travelling in a Maruti Van which had a sitting capacity of just four persons (including the driver).
 - (2) The compensation awarded is exorbitant and excessive.
9. On the other hand, learned counsel for the Respondents (the Claimants) supports the judgments and urges that the compensation awarded in Suit No.23/2011 was on the lower side and prays for enhancement of compensation.

NEGLIGENCE:-

10. Smt. Krishna, who is one of the injured produced her Affidavit Ex.PW-1/A by way of her examination-in-chief. She deposed that on 28.10.2008 at about 7:00 P.M. she along with her husband and children and some other relations was proceeding in a Maruti Van No.DDU-7263 from Delhi to Hinnot. When Maruti Van reached *Kajaria Mor*, Sikandrabad, a Tata 709 No.UP-13F-7407 came from the opposite direction. She testified that Tata 709 came on the wrong side of the road and hit the van. As a result of the impact, five people including her husband and her daughter Rakhi died. Rest suffered serious injuries. She was put to a searching cross examination on behalf of the driver, owner and the

Appellant Insurance Company. She admitted that seven adults and seven children were travelling in the Maruti Van. She denied the suggestion that the driver did not possess a valid driving licence or that he did not know how to drive a vehicle. She denied the suggestion that the accident was caused on account of the rash and negligent driving of the driver of the Maruti Van. No question was put to the witness that Tata 709 was parked on the extreme left side of the road.

11. The driver of the Tata 709 No.UP-13F-7407 entered the witness box as RW1. He deposed that on 28.10.2008 Tata 709 was parked on the extreme left side of the road at *Kacha Patri* near *Kajaria Mor*, Sikandrabad due to a punctured tyre and some mechanical defect in the earlier said vehicle. He deposed that while he was waiting for a mechanic and as cleaner of his truck was about to take off the punctured tyre, he noticed a white Maruti Van overloaded with 14-15 passengers coming from the Delhi side at a very high speed. The driver of the Maruti Van while overtaking a DTC bus lost control of the vehicle and hit against his (Tata 709) vehicle. He squarely put the blame on the driver of Maruti Van for the accident in question. In cross-examination, R1W1 deposed that he informed the police about the manner of the accident. He admitted that a criminal case was registered against him. He did not lodge any complaint against the police officer regarding his false implication. He denied the suggestion that the accident was caused solely on account of his own negligence.
12. Learned counsel for the Appellant urges that PW-1 had admitted in his cross-examination that a DTC bus was going ahead of their vehicle. The learned counsel thus says that this admission lends some credence to the

version put forth by the driver and the owner of the vehicle which was corroborated by the sole testimony of R1W1, the driver of Tata 709.

13. For a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) the negligence is required to be proved on the touchstone of preponderance of probability. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a petition for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

14. The observations of the Supreme Court in *Bimla Devi* were referred with approval in a later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.
15. Admittedly, the manner of the accident as claimed by the owner and driver of the offending vehicle and as stated by R1W1 (the driver) has not been even suggested to PW-1. A criminal case was registered against the driver of Tata 709 supports the version of PW-1. A perusal of the site plan prepared by the IO in case FIR No.795/20-08 shows that Tata 709 travelled on the right side of the road and collided with Maruti Van which was coming on his left side. The site plan completely negates the version

as put forth by R1W1. Thus, culpable negligence on the part of Respondent Dharmender Kumar, driver of Tata 709 was clearly established.

16. Of course, Maruti Van was overloaded with 14 persons; although, it had a carrying capacity of only four adults. It was established that seven adults and seven children were travelling in the Maruti Van at the time of the accident. The cause of the accident, however, is not overloading of the Maruti Van rather negligence on the part of the driver of Tata 709 and, particularly, taking the offending vehicle on the wrong side and hitting the Maruti Van head on. Unfortunately, all these facts were not discussed by the Claims Tribunal thus giving an opportunity to the Appellant to challenge the finding on negligence.
17. In view of my observations above, there is no manner of doubt that Respondent Dharmender Kumar, driver of Tata 709 Canter No.UP-13F-7407 caused the accident because of his rash and negligent driving.
18. I shall deal with the quantum of compensation in all the cases one by one.

MAC APP.272/2012 (death of Baby Rakhi)

19. This case relates to the death of Baby Rakhi, a nine year old child. The quantum of compensation is squarely covered by the judgment of this Court in *National Insurance Company Limited v. Farzana & Ors.*, 2009 ACJ 2763 where after considering the judgments of the Supreme Court, a compensation of ₹3,75,000/- was awarded. I extract paras 4 to 8 of the judgment as under:-

“4. In the case of Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257, the Hon’ble Supreme Court awarded compensation of

Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-

5. The case of Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997 relates to the death of a 12-year old boy. Following the decision of the Apex Court in Manju Devi’s case (supra), the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

6. The case of Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320 relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in Manju Devi’s case (supra) awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

“3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional

income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to Rs.15,000 x 15 = Rs.2,25,000/-.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of R.K. Malik vs. Kiran Pal, III (2006) ACC 261, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as R.K. Malik vs. Kiran Pal, 2009(8) Scale 451. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children.....”

20. Considering the latest judgment of the Supreme Court in *R.K. Malik v. Kiran Pal, 2009 (8) Scale 451*, the Claimants are entitled to a compensation of ₹3,75,000/- i.e. ₹2,25,000/- on account of loss of dependency, ₹75,000/- towards future prospects and ₹ 75,000/- towards non pecuniary damages.
21. The compensation of ₹3,75,000/- awarded by the Claims Tribunal is just and reasonable and cannot be said to be exorbitant or excessive.
22. The Appeal is devoid of any merit; the same is accordingly dismissed.

MAC APP.273/2012 (injuries suffered by Smt. Krishna)

23. After the accident Claimant Smt. Krishan was removed to Sushruta Trauma Centre (STC), Metcalf Road, Delhi where she remained admitted from 30.10.2008 to 01.11.2008. She had suffered injuries on her elbow and other parts of the body. After her discharge from STC, she was admitted in Ish Medical Centre & A+ Diagnostics, Main Market, Sant Nagar, Burari where she remained admitted for two days. She paid a bill of ₹3420/- to Ish Medical Centre & A+ Diagnostics. The compensation of ₹14,500/- awarded by the Claims Tribunal is tabulated hereunder:-

Sl.	Compensation under various heads	Awarded by the Claims Tribunal
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No.		
1.	Medicines and Medical Treatment	₹3,500/-
2.	Loss of Wages	₹ 2,000/-
3.	Pain and Suffering	₹ 5,000/-
4.	Conveyance	₹ 2,000/-
5.	Special Diet	₹ 2,000/-
	Total	₹ 14,500/-

24. The overall compensation of ₹14,500/- awarded by the Claims Tribunal cannot be said to excessive or exorbitant.
25. The Appeal is devoid of any merit; the same is accordingly dismissed.

MAC APP.274/2012 (injuries suffered by Payal)

26. While dealing with the injuries suffered by the Respondent Payal in Para 20 of the impugned judgment, the Claims Tribunal observed as under:-

“20. As per discharge summary of Lok Nayak Jai Prakash Hospital Petitioner Payal had suffered fracture of right leg and head injuries. She was admitted in the hospital on 29.10.2008 and was discharged on 07.12.2008. She was discharged from the hospital with advise to attend the OPD and was also referred to Plastic Surgeon for dressing of the wounds and for treatment of facial scar. Further medical treatment record of Petitioner Payal shows that she had remained an OPD patient of Lok Nayak Jai Prakash Hospital. The OPD slip of 28.01.2009 shows that she had undergone treatment for the injuries sustained in the accident. The Petitioner has filed on record medical bills in the sum of ₹160/-. Considering the nature of injuries suffered by the Petitioner, I am inclined to grant her a sum of ₹1,000/- as token amount towards medicines and medical treatment.”

27. The Claims Tribunal awarded a compensation of ₹47,000/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Medical Treatment	₹1,000/-
2.	Loss of Academics	₹ 5,000/-
3.	Pain and Suffering	₹ 25,000/-
4.	Conveyance	₹ 8,000/-
5.	Special Diet	₹ 8,000/-
	Total	₹ 47,000/-

28. Taking into consideration the fact that the Claimant Payal suffered fracture of both bones of right leg, head injury and remained an indoor patient for a period of nine days and an outdoor patient for a couple of months, the overall compensation of ₹47,000/- awarded by the Claims Tribunal cannot be said to be exorbitant and excessive.
29. The Appeal is devoid of any merit; the same is accordingly dismissed.

MAC APP.275/2012 (death of Rakesh Kumar)

30. This Appeal relates to the death of Rakesh Kumar. During inquiry before the Claims Tribunal it was claimed that the deceased Rakesh Kumar was working as a Carpenter and was earning ₹8,000/- per month. In the absence of any evidence with regard to the deceased's income, the Claims Tribunal took the minimum wages of an unskilled worker, added 50% towards inflation, deducted one-fourth towards personal and living

expenses as the number of dependents were five and applied the multiplier of 16, as per the age of the deceased (35 years).

31. It is urged by the learned counsel for the Appellant that an addition of 50% towards inflation was not justified. 50% addition can be made where there is positive evidence with regard to good future prospects of the deceased, otherwise an addition of 30% towards inflation can be made on the basis of *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
32. I would agree with the learned counsel for the Appellant that augmentation of 50% was not permissible in the absence of any evidence with regard to good future prospects. At the same time, it has to be borne in mind that the Claimant's testimony that the deceased Rakesh Kumar was working as a Carpenter was not challenged in cross-examination. Thus, instead of taking minimum wages of an unskilled worker, the Claims Tribunal ought to have taken the minimum wages of a skilled worker to compute the loss of dependency.
33. The loss of dependency thus comes to ₹7,68,830/- (4107/- + 30% x 3/4 x 12 x 16) as against ₹7,99,200/- awarded by the Claims Tribunal.
34. On making an addition of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses, the overall compensation comes to ₹8,13,830/-.
35. Thus, the overall compensation of ₹8,24,200/- awarded by the Claims Tribunal cannot be said to be exorbitant and excessive so as to call for any interference in the award of compensation.

36. There is no ground to interfere with the impugned judgment; the Appeal is accordingly dismissed.

MAC APP.276/2012 (death of Baby Anshu)

37. This case relates to the death of Baby Anshu, who was aged eight months at the time of the accident.
38. The Claims Tribunal relied on the judgment in *Shyam Narayan v. Kitty Tours Tavel & Ors.*, IV (2005) ACC 1; and *R.K. Mailk v. Kiran Pal*, 2009 (8) SCALE 451; and awarded a compensation of ₹3,75,000/-.
39. This case is covered by a judgment of this Court in the case of '*Satender Mahto & Ors. v. Mohd. Sahbir & Ors.*' MAC APP. 309/2010, decided on 23rd July, 2012, wherein this Court granted a compensation of ₹2,25,000/- towards loss of dependency and a sum of ₹75,000/- towards non-pecuniary damages.
40. Paras 3 and 4 of the report are extracted hereunder:-

“3. This Court in *National Insurance Company Limited v. Farzana & Ors.* MAC APP.13/2007 decided on 14th July, 2009 considered *Manju Devi v. Musafir Paswan*, VII (2005) SLT 257, *R.K. Malik & Ors. v. Kiran Pal & Ors.* AIR 2009 SC 2506 and opined that in the case of death of a child a notional income of ₹ 15,000/- is to be taken and applying the multiplier of 15 the loss of dependency was held to be ₹ 2,25,000/-. The Claimants were further held to be entitled for a sum of ₹ 75,000/- towards future prospects and ₹ 75,000/- towards loss of love and affection. The present case is squarely covered by the judgment in *National Insurance Company Limited v. Farzana & Ors.* (supra).

4. The only distinction between the judgments referred to above is that the deceased in this case was a child of just two years. In the circumstances, the Appellants would not be entitled to any

compensation towards future prospects. Accordingly, I award a sum of ₹2,25,000/- towards loss of dependency and a sum of ₹75,000/- towards non-pecuniary damages.”

41. Following the above, the overall compensation is thus reduced from ₹3,75,000/- to ₹3,00,000/-.
42. The excess compensation of ₹75,000/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
43. Rest of the compensation shall be disbursed in favour of the Claimants in terms of the order passed by the Claims Tribunal.
44. The Appeal is allowed in above terms.

MAC APP.277/2012 (death of Virender Giri)

45. During inquiry before the Claims Tribunal it was claimed that the deceased Virender Giri was working as a Carpenter and was earning ₹8,000/- per month. In the absence of any evidence with regard to the deceased's qualification or his income, the Claims Tribunal took the minimum wages of an unskilled worker to compute the loss of dependency, added 50% towards inflation, deducted one-fourth towards personal and living expenses as the number of dependents were four and applied the multiplier of 16, as per the age of the deceased (35 years).
46. In view of my observations in MAC APP.275/2012 which equally apply to this case, the compensation has to be awarded on the minimum wages of a skilled worker with addition of 30% only towards inflation.

47. The loss of dependency thus comes to ₹7,68,830/- (4107/- + 30% x 3/4 x 12 x 16) as against ₹7,99,200/- awarded by the Claims Tribunal.
48. On making addition of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses, the overall compensation comes to ₹8,13,830/-.
49. Thus, the overall compensation of ₹8,32,000/- awarded by the Claims Tribunal cannot be said to be exorbitant and excessive.
50. The Appeal is devoid of any merit; it is accordingly dismissed.

MAC APP.278/2012 (Injuries to Smt. Rani)

51. The Claimant Rani suffered multiple fractures on the left side of her pelvic area and multiple fractures of right arm. She was admitted in R.M. L. hospital from 29.10.2008 to 03.11.2008. She was advised to take bed rest for six weeks and daily dressing of the wounds. The Trial Court record reveals that she remained under treatment in North Delhi Nursing Home Pvt. Ltd. as an OPD patient from 27.11.2008. She proved expenditure on medical treatment amounting to ₹40,698/-. The Claims Tribunal awarded a sum of ₹95,000/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Medical Treatment	₹41,000/-
2.	Loss of Wages	₹ 8,000/-
3.	Pain and Suffering	₹ 30,000/-
4.	Conveyance	₹ 8,000/-

5.	Special Diet	₹ 8,000/-
	Total	₹ 95,000/-

52. Keeping in view the nature of injuries, the compensation of ₹95,000/- awarded by the Claims Tribunal cannot be said to be excessive or exorbitant.

53. The Appeal is devoid of any merit; it is accordingly dismissed.

MAC APP.279/2012 (Injuries to Shri Krishan)

54. The Claimant in this case suffered dislocation of right hip, abrasion over lower lip and multiple injuries all over his body. The Claimant remained admitted in the hospital from 29.10.2008 to 31.10.2008. After the accident, he was removed to Civil Hospital, Bulandshahr. After giving first aid, he was referred to Sushruta Trauma Centre (STC), Metcalf Road, Delhi where he remained admitted from 29.10.2008 to 31.10.2008. The Claimant claimed that he used to ply a *Tonga* and was earning ₹8,000/- per month. The Claims Tribunal awarded a compensation of ₹62,100/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Medical Treatment	₹5,000/-
2.	Loss of Wages	₹ 11,100/-
3.	Pain and Suffering	₹ 30,000/-
4.	Conveyance	₹ 8,000/-
5.	Special Diet	₹ 8,000/-

	Total	₹ 62,100/-
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55. Keeping in view the nature of injuries, the compensation of ₹62,100/- awarded by the Claims Tribunal cannot be said to be excessive or exorbitant.

56. The Appeal is devoid of any merit; it is accordingly dismissed.

MAC APP.282/2012 (Injuries to Ms. Madhu)

57. After the accident Ms. Madhu (a minor) was also removed to Civil Hospital, Bulandshahr and then was shifted to Sushruta Trauma Centre (STC), Metcalf Road, Delhi where she remained admitted from 29.10.2008 to 02.11.2008. She suffered fracture of both legs, injuries on the chest, injuries on the left hand, and multiple injuries all over her body. She remained an outdoor patient till 18.01.2009. The Claims Tribunal awarded a compensation of ₹47,000/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Medical Treatment	₹1,000/-
2.	Loss of Academics	₹ 5,000/-
3.	Pain and Suffering	₹ 25,000/-
4.	Conveyance	₹ 8,000/-
5.	Special Diet	₹ 8,000/-
	Total	₹ 47,000/-

58. Keeping in view the nature of injuries, the compensation of ₹47,000/- awarded by the Claims Tribunal cannot be said to be excessive or exorbitant. The same is just and reasonable.

59. The Appeal is devoid of any merit; it is accordingly dismissed.

MAC APP.283/2012 (Injuries to Shri Rajesh Kumar)

60. The Claimant Rajesh Kumar in this case suffered fracture of shaft of femur of right leg, fracture of left hand and multiple injuries all over his body. He remained admitted in Hindu Rao Hospital from 29.10.2008 to 11.11.2008. The Claims Tribunal dealt with the nature of injuries and the successive surgeries underwent by the Claimant in Para 16 of the impugned judgment, which is extracted hereunder:-

“As per discharge summary of Hindu Rao Hospital, Delhi, the petitioner had remained admitted in the hospital on 29.10.2008 and was discharged on 11.11.2008. The petitioner has suffered multiple fracture i.e. fracture of shaft of femur of right leg, fracture of left hand and other multiple injuries all over the body. Surgery was conducted and implant was used to unite the fracture. POP slab was imposed on the right leg. Surgery was conducted on 07.11.2008 and then on 14.11.2008 as per the discharge summary. The petitioner was discharged from the hospital with advise to attend the OPD again. Further medical treatment record shows that he had remained an OPD patient on 22.09.2008, 21.11.2008, 11.12.2008 and again surgery was conducted on 01.01.2009 for removal of implant. He was advised not to put weight on the right leg. He had again attended OPD on 12.02.2009. He was again admitted in the hospital on 05.01.2010 and was discharged on 18.01.2010 for removal of ankle implant. No further medical treatment record has been filed on record. The petitioner has filed on record medical bills in the sum of Rs.4,283/(in round figures Rs.4,300/). Therefore, I am inclined to grant a sum of Rs.4,300/ to the petitioner towards medicines and medical treatment.”

61. The Claimant was working as a Carpenter. The Claims Tribunal awarded an overall compensation of ₹1,40,900/- which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medicines and Medical Treatment	₹4,300/-
2.	Loss of Wages	₹ 66,600/-
3.	Pain and Suffering	₹ 50,000/-
4.	Conveyance	₹ 10,000/-
5.	Special Diet	₹ 10,000/-
	Total	₹ 1,40,900/-

62. Thus, it was established that the Claimant was an indoor patient from 29.10.2008 to 11.11.2008, 05.01.2010 to 18.01.2010 and remained an outdoor patient for one and half year. Even after several months, he was not permitted to put weight on his right leg. Keeping in view the nature of injuries, the overall compensation of ₹1,40,900/- awarded by the Claims Tribunal cannot be said to be excessive or exorbitant. The same is just and reasonable.

63. The Appeal is devoid of any merit; it is accordingly dismissed.

MAC APP.284/2012 and MAC APP.530/2012 (Death of Smt. Sushma)

64. These are Cross Appeals. These cases relates to the death of Smt. Sushma who died in the accident. The Claims Tribunal relied on *Lata Wadhwa & Ors. v. State of Bihar & Ors., (2001) 8 SCC 197* and took the value of gratuitous services rendered by the deceased Sushma as a housewife at ₹3,500/- per month, deducted one-fourth towards personal

and living expenses, applied the multiplier of 16 to compute the loss of gratuitous services as ₹5,04,000/-. The Claims Tribunal further awarded a sum of ₹25,000/- towards non pecuniary damages to award overall compensation of ₹5,29,000/-.

65. The award of compensation in case of gratuitous services rendered by a deceased housewife is settled by this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.* MAC. APP. 590/2011, decided on 30.01.2012.

66. In *Master Manmeet Singh* this Court noticed following judgments of the Supreme Court:-

(i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176,

(ii) *National Insurance Company Limited v. Deepika & Ors.*, 2010 (4) ACJ 2221,

(iii) *Amar Singh Thukral v. Sandeep Chhatwal*, ILR (2004) 2 Del 1,

(iv) *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197,

(v) *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1,

(vi) *A. Rajam v. M. Manikya Reddy & Anr.*, MANU/AP/0303/1988,

(vii) *Morris v. Rigby* (1966) 110 Sol Jo 834 and

(viii) *Regan v. Williamson* 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh (supra)* is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.*
- (ii) Minimum salary of a Matriculate where she is a Matriculate.*
- (iii) Minimum salary of a non-Matriculate in other cases.*
- (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.*
- (v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*
- (vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.*
- (vii) There shall not be any deduction towards the personal and living expenses.*

(viii) *As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.*

(ix) *Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.”*

67. An Appeal being SLP (C) No.19711/2012 filed against the above referred judgment titled *ICICI Lombard General Insurance Company Limited v. Shiv Kumar & Ors.*, was dismissed by the Supreme Court by an order dated 24.07.2012.
68. The loss of gratuitous services rendered by the deceased Sushma thus comes to ₹9,30,240/- (3876/- + 25% x 12 x 16).
69. The Claimants are further entitled to a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- towards funeral expenses.
70. The overall compensation comes to ₹9,65,240/- as against ₹5,29,000/- awarded by the Claims Tribunal.
71. The enhanced compensation of ₹4,36,240/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
72. The enhanced compensation along with interest shall be deposited with the Claims Tribunal within six weeks.
73. The compensation awarded by the Claims Tribunal shall be disbursed/held in fixed deposit in favour of the Claimants in terms of the order passed by the Claims Tribunal.

74. Seventy five per cent of award amount shall be held in fixed deposit for a period of five years. Rest 25% shall be released on deposit. The Claimants shall be entitled to quarterly interest on the fixed deposit.
75. Both the Appeals are disposed of in above terms.
76. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company in each of the cases.
77. Pending Applications in all the Appeal, also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 17, 2012

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