

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

+ **MAC.APP.NO. 323/2008**

NEW INDIA ASSURANCE CO. LTD. Appellants
Through: Mr.L.K. Tyagi, Advocate.

versus

SARLA KUMARI AND ORS. Respondents
Through: Ms. Manmeet Arora,
Advocate.

AND

+ **MAC.APP.NO. 248/2008**

SARLA KUMARI AND ORS. Appellants
Through: Ms. Manmeet Arora,
Advocate.

versus

UPPER ESTATE TRANSPORT AND ORS. Respondents
Through: Mr.L.K. Tyagi, Advocate for
the respondent No.3/ Insurance
Company.

% Date of Decision : February 15, 2012

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. By this common judgment, it is proposed to decide an appeal filed by M/s New India Assurance Company Limited being MAC.APP. No. 323/2008 as also an appeal filed by the legal representatives of the deceased Darshan Lal being MAC.APP. No. 248/2008. Both the appeals emanate from the judgment and award dated 2nd February, 2008 of the Motor Accident Claims Tribunal, New Delhi passed in Suit No. 75A/1999 and seek to assail the same.
2. The aforesaid claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 was initially filed at Jaipur but by orders of the Supreme Court dated 16.10.1998 was transferred to Delhi, and thereafter registered in the Motor Accident Claims Tribunal, Delhi.
3. Amended petition was filed on 24.07.2002 by which the co-owner of truck No. DIG 3657 was impleaded as a party respondent and certain other typographical mistakes were corrected.

4. Concisely, the factual matrix is that on 22.10.1990 an accident happened on the Jaipur-Delhi National Highway between Achrol-Labana Village, within the jurisdiction of Police Station Chandwaji (Jaipur), which resulted in the untimely demise of Sh. Darshan Lal. The deceased was travelling in car No. DL-3C-4738, which was being driven by one Om Parkash Chauhan, an employee of Shri S. Kumar, who was a friend of the deceased. At about 8.00 a.m., when the said car reached Village Labana, 30 kilometers from Jaipur towards Delhi, a truck bearing No. DIG 3657 came from the Delhi side at a fast speed, driven by its driver (name unknown) in a careless and negligent manner. The driver of the said truck was attempting to overtake another truck going ahead of it, and for the aforesaid purpose brought his truck to the middle of the road and hit the car, which was being driven on the correct side of the road, that is, the left side of the road. Due to the impact, the car was pushed towards a tree and it dashed against the tree on the kacha side of the road. The driver of the car (Om Prakash Chauhan) received serious injuries and remained unconscious for 5 to 6 hours. The deceased, who was

sitting in the car on the left side of the driver's seat, was trapped in the car, wherefrom his dead body was extricated by cutting open the left door of the car.

5. As stated above, a claim petition was filed by the legal representatives of the deceased Darshan Lal alleging that the accident had been caused due to the rash and negligent driving of truck No. DIG 3657 by its driver, who had brought the truck to the wrong side in the process of overtaking another truck. It was further alleged that the truck, which was being driven at a very high speed had hit the car on the front driver's side, that is, the right side of the car and front right mud-guard and bonnet. The truck driver had neither given any horn nor any signal before overtaking, and due to his high speed and negligent driving he had lost control of the truck, resulting in the death of the deceased. The driver of the car too, it was stated, had received serious injuries, his leg had been operated and it had taken him 5 to 6 months to recover. During this period, he remained mentally disturbed and was not in a position to give his statement to the police. On recovery, he (the driver) reported the matter to the

police, who refused to register a case against the truck driver. He then reported the matter by registered post to the I.G. Police, Jaipur and the Police Superintendent (Urban) on 17.4.1991. Copy of the aforesaid report and postal receipt are placed on record.

6. The driver of the offending truck and the insured of the ill-fated car were not impleaded for want of particulars. Notice of the institution of the petition was issued to all the respondents and was duly served. M/s New India Assurance Company Limited, insurer of the offending truck, alone contested the petition and also moved an application under Section 170 of the Motor Vehicles Act, which was allowed by the Claims Tribunal.

7. After holding an enquiry, the Claims Tribunal arrived at the conclusion that the accident was the outcome of the rash and negligent driving of the offending truck, insured with M/s New India Assurance Company Limited. It held that the deceased was a passenger in the other vehicle (that is the car involved in the accident) and hence as per law, it was the choice of the claimants to claim compensation from either. The Tribunal observed that the owner of

the offending truck, though he contested the claim petition by filing written statement, did not choose to disclose the name of its driver and since it was nobody's case that the driver of the truck was driving without any driving licence or under any fake driving licence and in violation of the terms and conditions of the insurance policy, the insurer, M/s New India Assurance Company Limited, was liable to pay the award amount.

8. Aggrieved from the aforesaid findings of the learned Tribunal, an appeal being MAC.APP.No.323/2008 is preferred by the Insurance Company in which, principally, the award is assailed on three grounds:-

- (i) The truck insured with the appellant was not involved in the accident;
- (ii) The particulars of the driver were not disclosed in the claim petition; and
- (iii) The compensation awarded by the Tribunal was much too excessive.

9. Mr. L.K. Tyagi, the learned counsel for the appellant-Insurance Company, in order to substantiate his contention that the truck insured with the appellant was not involved in the accident has taken me through the First Information Report registered by the police of Police Station Chandwaji (Jaipur) being FIR No. 155/90 under Section 279/337/304 IPC dated 22.10.1990, registered on the complaint of the driver of the car, Om Prakash Chauhan. Mr. Tyagi submitted that the Tribunal ignored the fact that in the said FIR, which was lodged immediately after the accident, the driver of the car in which the deceased was travelling made statement to the police that on seeing the truck, he tried to swerve his car towards the left side and lost control as a result of which the car hit against the tree. Thus, he submitted that from the contents of the FIR, which are proved on record as Exhibit PW5/A, it was clear that the truck insured with the appellant was not involved in the accident, and therefore, the appellant-Insurance Company cannot be held liable to pay any compensation to the claimants/respondents No. 1 to 5.

10. Mr. Tyagi further contended that PW-6, Om Prakash Chauhan, the driver of the car on whose statement the FIR was recorded, doubtlessly tried to improve his statement when he appeared in the witness-box before the Tribunal. Hence, his statement made before the Tribunal was not at all creditworthy. So far as the statement of the eye-witness was concerned, Mr. Tyagi submitted that the statement of PW-4 Durga Dutt Sharma was of no evidentiary value as his name did not figure in the list of witnesses prepared by the police. As such, he was a procured witness, whose presence at the place of occurrence was doubtful and whose statement, therefore, was not at all trustworthy.

11. In order to buttress his aforesaid contentions, Mr. Tyagi referred to and relied upon the judgment of the Supreme Court rendered in the case of *Oriental Insurance Co. Ltd. Vs. Premlata Shukla & Ors. (2007) 13 SCC 476*. In the said case, the deceased Shivnandan Prasad Shukla was travelling in a Tempo Trax. for going to Allahabad from Bhopal. It collided with a truck. The registration number of the truck could not be noticed. The truck also could not be

traced. A First Information Report was lodged by one of the occupants of the Tempo Trax. As during investigation the truck could not be traced out, the case was closed. A Claim Petition was filed before the Motor Accident Claims Tribunal against the driver, the owner and the Insurance Company with which the Tempo Trax. was insured. The Tribunal upon analyzing the materials brought on record by the parties, including the First Information Report, arrived at the finding that the claimants had failed to prove that the accident was caused by the rash and negligent driving of the Tempo Trax. It, therefore, dismissed the claim petition. Claimants being aggrieved preferred an appeal before the High Court. The High Court relying upon the deposition of certain witnesses held the driver of the Tempo Trax. to be guilty of rash and negligent driving. On a further appeal to the Supreme Court by the Insurance Company, it was contended on behalf of the claimants/respondents that only because the First Information Report was relied upon for the purpose of proving the accident, the contents thereof *ipso facto* cannot be said to have been proved. Setting aside the order of the High Court, the Supreme Court

opined that if a document was allowed to be marked at the instance of the party which has proved the same and wherefor consent of the other party has been obtained, the former cannot be permitted to raise the contention that the contents of the said document have not been proved, and thus, should not be relied upon. It made the following apposite observations:-

“13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document having been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the

rest, on the technical ground that the same had not been proved in accordance with law, would not arise.”

12. On the basis of the aforesaid law enunciated by the Supreme Court, Mr. Tyagi contended that the version of the accident now being given by PW-4 Durga Dutt Sharma and PW-6 Om Prakash Chauhan could not be believed and relied upon in preference to the version given in the First Information Report.

13. Rebutting the aforesaid argument of Mr. Tyagi, Ms. Manmeet Arora, the learned counsel for the claimants/respondents No.1 to 5 argued that an FIR is not substantive evidence and cannot be relied upon if it is not corroborated by any other cogent evidence. In the present case, the contents of the FIR, she submitted, had been seriously disputed by the complainant, Om Prakash Chauhan when he was examined as PW-6 before the Tribunal. Om Prakash Chauhan (PW-6) in his testimony had clearly deposed that he had stated to the police that the truck had hit the car but his statement was not thus recorded by the police, and that the police had wrongly recorded his statement and so he made a complaint to the DIG in this regard. Ms.

Arora contended that since there was a serious inconsistency regarding the contents of the FIR, which, in any case had not been proved by any corroborative evidence, the contention of Mr. Tyagi that it is borne out by the FIR that the truck insured with the appellant was not involved in the accident is wholly misconceived.

14. Without prejudice to her aforesaid contention, Ms. Manmeet Arora, in the alternative urged that even if reliance is placed on the contents of the disputed FIR, it is apparent that the driver of the car had swerved his car (as stated in the FIR) only to avoid the accident, which in fact occurred due to the truck driver's negligent driving of the offending truck, which came at a high speed from the opposite direction onto the wrong side of the road as it overtook the other truck, without any concern for the car being driven on the correct side of the road, that is, the left side of the road. Further, the FIR registered on the day of the accident itself records the statement of the driver of the car, Om Prakash Chauhan, to the effect that Truck No. DIG 3657 was involved in the accident which led to the untimely demise of Sh. Darshan Lal. The respondents No.1 to 5 had not only

examined the driver of car as PW-6 but also another eye-witness, PW-4 Durga Dutt Sharma, both of whom clearly stated in the witness-box that the offending truck was involved in the accident and also corroborated each other's testimony about the manner in which the accident occurred, stating that the offending vehicle did not care for the vehicle coming from the opposite side and in order to overtake another truck in front of it, the offending vehicle came to the wrong side of the road and hit the car, which was coming from the opposite direction on its correct side.

15. The aforesaid statements of PW-4 and PW-6, who witnessed the accident, were not challenged in cross-examination nor anything brought on record to prove that they were deposing falsely or were in any manner interested witnesses. This apart, the appellant failed to adduce any evidence to rebut the testimonies of PW-4 and PW-6. The best evidence would have been the testimonies of the driver and the owner of the offending truck, but the same were withheld by the appellant for reasons best known to the appellant. It is trite that in

such circumstances, adverse inference is liable to be drawn against the driver of the offending truck.

16. Ms. Arora further contended that the defence of the appellant that on the date of the accident, the offending truck was plying on the route starting from Koyali to Khetri Nagar via Jaipur and Neem Ka Thana, which did not touch the Delhi- Jaipur Highway, that is, the site of the accident and that the truck reached the Khetri Copper Complex as per the material receipt dated 23.10.90 issued by the Hindustan Copper Ltd., Khetri Nagar on the face of it is false, in view of the fact that the appellant miserably failed to produce any evidence in this regard. Neither the alleged receipt dated 23.10.90 issued by the Hindustan Copper Ltd. was produced nor the owner of the truck appeared in the witness-box to corroborate the plea raised by the appellant nor any personnel from M/s Hindustan Copper Limited was produced in the witness box nor the log book of the vehicle was produced in evidence.

17. Adverting to his second contention that the learned Tribunal erroneously held the appellant-Insurance Company liable to satisfy

the award in the absence of particulars of the driver of the offending vehicle on record, Mr. Tyagi urged that the law is well settled by the Supreme Court in the case of *The Oriental Insurance Co. Ltd. vs. Meena Variyal and Ors., IV (2007) ACC 335* that even if the driver is not impleaded as a party to the Claim Petition, it is the duty of the claimants to disclose the name and particulars of the person who was driving the vehicle at the time of the accident. Unless the particulars of the driver are disclosed in the Claim Petition, the Insurance Company is not enabled to take the statutory defence available under Section 149(2) of the Motor Vehicles Act, 1988 that the driver was not possessing a valid and effective driving licence on the date of the accident, and thus cannot claim its absolution from the payment of compensation. Reliance was also placed in this context by Mr. Tyagi on the judgment rendered in the case of *New India Assurance Company Ltd. vs. Munnidevi, I (1994) ACC 648 (MP)*.

18. In answer to the aforesaid contention of Mr. Tyagi, Ms. Manmeet Arora on behalf of the respondents No.1 to 5, submitted that the name and address of the driver of the offending truck could

not be set out in the Claim Petition as the same were not disclosed by the owners of the truck (the respondents No.6 and 9 in MAC. APP. No.323/2008) at any point of time. No issue was pressed by the appellant-Insurance Company before the Claims Tribunal that the Claim Petition was not maintainable for non-joinder of parties and, as a matter of fact, even in the written submissions filed by the appellant-Insurance Company, at page 991 of the record of the Tribunal, no such submission regarding non-impleadment of the driver was made before the Tribunal. Significantly also, not even a notice was issued by the appellant-Insurance Company to the owners of the offending truck to enquire about the name of the driver nor any attempt was made to examine him in order to prove that the truck was not driven in a rash and negligent manner or to find out whether the driver had a valid licence. There was, Ms. Arora submitted, total inaction on the part of the appellant to take any of the aforementioned steps and this by itself proves the collusion between the appellant-Insurance Company and the respondents No.6 and 9 to deprive the claimants (the respondents No.1 to 5) of the compensation legally due

to them. Significantly also, Ms. Arora contended that the record of the learned Tribunal shows that while closing its evidence a statement was made on behalf of the appellant-Insurance Company that despite all efforts made by it the driver of the offending truck could not be traced out.

19. The last contention of Mr. Tyagi, the learned counsel for the appellants is with regard to the quantum of compensation awarded by the Tribunal being excessive. It is proposed to deal with this contention at a subsequent stage while dealing with the appeal filed by the respondents No.1 to 5, being MAC. APP. No.248/2008, for enhancement of the compensation awarded to them.

20. Dealing with the first contention of the learned counsel for the appellant-Insurance Company, viz., that the truck insured with the appellant was not involved in the accident, suffice it to state that it is evident from the record of the learned Tribunal that the appellant-Insurance Company has not examined any witness to rebut the evidence adduced by the respondents No.1 to 5 that the accident was caused due to the rash and negligent driving of the offending truck,

which was insured with the appellant. The respondent No.7, Om Parkash Chauhan in his evidence as PW6 has clearly asserted that he had stated to the police that the truck had hit the car but his statement had not been recorded by the police, and the police wrongly recorded his statement and so he made a complaint to the DIG in this regard. In his cross-examination, no suggestion was put to the respondent No.7 Om Parkash Chauhan that his statement was contrary to the statement recorded in the FIR, and the version of the accident being given by him in the witness-box was an after thought and an improvement upon the version given by him to the police in the FIR. As a matter of fact, the statement of this witness (PW6) has emerged unscathed after cross-examination. His statement is further corroborated by the statement of PW4 Durga Dutt Sharma, an independent eye witness to the accident. Further, there are on record photographs showing that the driver's side of the car was hit, that is, the front right hand portion of the car, as deposed by PW4 Durga Dutt Sharma, who clearly stated that after the car was hit by the truck, the car hit the tree, that is, the left hand portion of the car. However, even assuming the contents of

the FIR to have been correctly recorded, there is no denying the fact that the accident was the outcome of the rash and negligent driving of the truck driver as concluded by the Tribunal. The truck was coming from the opposite direction on the wrong side as it overtook the other truck. The driver of the car swerved his car (as stated in the FIR) to avoid the accident that eventually occurred due to the truck driver's negligent driving. In the circumstances, I have not the least bit of hesitation in holding that there is no merit in the contention of Mr. Tyagi that the offending truck was not responsible for the accident.

21. As regards the contention of Mr. Tyagi that the appellant-Insurance Company cannot be fastened with the liability to pay compensation in view of the fact that the name and particulars of the driver of the offending vehicle were not disclosed, the said contention, in my considered opinion, cannot be countenanced in view of the statement made on behalf of the appellant-Insurance Company that despite all efforts made by it, it could not trace out the whereabouts of the driver. If the appellant-Insurance Company with all the wherewithal at its disposal could not trace out the whereabouts

of the driver of the offending truck, how could the claimants who were left destitute after the death of their bread winner be expected to do so? Further, the record bears out the contention of the learned counsel for the respondents No.1 to 5 that not even a notice was issued by the appellant-Insurance Company to the owners of the offending truck calling upon them to disclose the particulars of the driver. The issue of non-joinder of the driver of the truck was never raised before the trial court and is sought to be pressed into service at this stage for the first time by the appellant-Insurance Company, even though the appellant-Insurance Company did not raise a little finger to find out the whereabouts of the driver, either by issuance of notice to the owners or by using the vast investigative machinery at its disposal. The police too, for reasons best known to it, issued no notice under Section 133 of the Motor Vehicles Act to the owners of the offending truck. The owners of the offending truck though duly served with notice of the institution of the petition also did not care to disclose the particulars of the driver. Rather, they chose to absent themselves from the proceedings.

22. The reliance placed by Mr. Tyagi on the judgment of the Supreme Court in the case of *Meena Variyal (supra)* is also, in my view, misplaced. In that case, the name of the driver of the truck, Mahmood Hasan, was known to all concerned and it was in such circumstances that the Supreme Court held that the Tribunal ought to have directed the claimants to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident, the rationale being that when a car belonging to the owner, insured with the Insurance Company and being driven by a driver employed by the insured, meets with an accident, the primary liability under law for the payment of compensation is that of the driver. The liability of the owner is only vicarious and that of the insurer is by virtue of the contract of insurance with the owner. In the instant case, on the other hand, the name of the driver is not forthcoming on the record and it is not known who was the driver. For the same reason, the reliance placed on behalf of the appellant upon the judgment of a Single Bench of the Madhya Pradesh High Court in *Munnidevi (supra)* is also misplaced.

23. Adverting now to the aspect of quantum of compensation, it may be noted that the learned Tribunal, on the basis of the Income-tax Return filed by the deceased for the Assessment Year 1989-90, considered the income of the deceased to be in the sum of ₹ 2,26,861/- per annum and deducted therefrom one-third towards the personal expenses of the deceased, thereby computing the annual loss of dependency of the claimants to be in the sum of ₹ 1,51,241/- (rounded off to ₹ 1,51,240/-). The learned Tribunal, on the basis of the post mortem report of the deceased, took the age of the deceased at the time of the death to be 55 years and applied the multiplier of 8 in accordance with the Second Schedule of the Motor Vehicles Act, 1988. Accordingly, the total loss of dependency suffered by the claimants was calculated to be in the sum of ₹ 12,09,920/-. In addition to this, the Tribunal awarded a sum of ₹ 30,000/- towards the loss of love and affection, loss of consortium and funeral expenses of the deceased, thereby awarding a total sum of ₹ 12,40,000/- to the claimants.

24. The aforesaid quantum of compensation has been challenged by the claimants as well as the Insurance Company *albeit* on different grounds. MAC App. No. 248/2008 has been filed by the claimants claiming enhancement of the award amount on the following grounds:

- (i) The learned Tribunal erroneously held the gross annual income of the deceased to be in the sum of ₹ 2,26,861/- per annum while as per the Income and Expenditure Account for the Financial Year ending 31.03.1989, the gross annual income of the deceased was ₹6,18,809.94/-.
- (ii) The learned Tribunal erred in deducting one-third of the income of the deceased towards his personal and living expenses, while in the facts and circumstances of the case a deduction of not more than one-fourth was warranted as the deceased was survived by five dependant family members.
- (iii) The learned Tribunal erroneously held the age of the deceased as 55 years and resultantly applied the multiplier of 8, while in fact the age of the deceased at

the time of his death, was 51 years and the multiplier of 11 would have been the appropriate multiplier in the instant case.

- (iv) The learned Tribunal erred in not appreciating the fact that the deceased was a wealth tax assessee and a high tax payer and thus, in the instant case, a higher multiplier than the one laid down in Second Schedule of the Motor Vehicles Act, 1988, ought to have been applied.

25. So far as the assessment of income of the deceased for the purpose of computing the loss of dependency of the claimants is concerned, it is the contention of Ms. Manmeet Arora, the learned counsel for the claimants, that the learned Tribunal erroneously held the gross annual income of the deceased to be ₹ 2,26,861/- whereas the gross annual income of the deceased as per the Income and Expenditure Account for the year ending 31.03.1989 was ₹ 6,18,809.94/- and the gross annual income of the deceased as per the Income and Expenditure Account for the year ending 31.03.1990 was ₹16,66,371.12/-. It is further contended that the agricultural

income of the deceased for the year ending 31.03.1989 in the sum of ₹48,600/- ought also to have been included in the total income of the deceased.

26. *Per contra*, in MAC App. No. 323/2008 filed by the Insurance Company, Mr. L.K.Tyagi, the learned counsel for the Insurance Company, contended that the Tribunal while computing the income of the deceased had wrongly taken into consideration the rental income from the property of the deceased in the sum of ₹51,965/- and the income from other sources in the sum of ₹1,04,660/- to form part of the total income of the deceased for the Assessment Year 1989-90. He urged that the rental income and income from other sources could not be said to be the personal income of the deceased and, in fact, the said income continued to be earned by the claimants even after the death of the deceased.

27. Having examined the documents on record, I find no substance in the contention of Ms. Arora that the amount of ₹6,18,809.94/- and ₹16,66,371.12/- representing the gross annual income of the deceased from various sources for the assessment years 1989-90 and 1990-91

respectively ought to have been taken into account for assessment of loss of dependency of the deceased, for the reason that the said gross annual income is inclusive of the business expenditure incurred by the deceased for the said years. The expenses like salary, stationary, repairs, advertisement expenses, etc. cannot be said to form part of that income of a businessman which is available to him and his family members for their maintenance. Business expenses are incurred in the ordinary course of business for the purpose of earning income and in the absence of these expenses there can be no income. What is relevant is the income of the deceased available for himself and for the support of his dependants, and therefore the business expenditure incurred by the deceased must in all circumstances be excluded while computing the loss of dependency suffered by the claimants. The learned Tribunal, in my considered opinion, rightly relied upon the Income tax Return of the deceased for the purpose of computing the loss of dependency of the claimants. I, however, find substance in the other contention of Ms. Arora regarding the addition of agricultural income of the deceased to his total income. It also cannot be lost

sight of that the deceased, in the instant case, was running many businesses and had various sources of income. In the claim petition, the occupation of the deceased is stated as – ‘Contractor (Also deals in other commercial activities). PW7, the widow of the deceased, in her affidavit by way of evidence (PW7/A) stated that at the time of the accident, her husband was self employed and was running many businesses and further stated,

“.... He was a partner in a Chit Fund running in the name of ‘M/s. Ekalavya Chit Funds Pvt. Ltd.’, wherefrom he was receiving Annual Salary, Profit and Dividend. He was also having many properties in his name and was earning rent there from. One such property was in Ahmedabad and one Hotel Building in Shimla. He also had shares in many other businesses where from he had regular income. He had 20% Share in Adarsh Traders, 20% Share in Royal Sales Agency, 19% Share in Balaji Dharamkanta, 50% Share in Vishal Cinema and 25% Share in Mahanagar Travels. He also owned a truck vide registration no. DEL 2530, whose profit was also his income. He also used to take the contract of Bhang in the name of ‘Bihar Bhang Contract’. He had also made investments in many firms and also had shares in many firms, where from also he was having income. He was also dealing in sale-purchase of land and was earning profit there from. He was also having Agricultural income.”

28. As regards the argument of Mr. Tyagi that the rental income from property and income from other sources is not in the nature of personal income of the deceased and deserves to be excluded while ascertaining the loss of dependency suffered by claimants as a result of the death of the deceased, though this argument is not altogether without force, in the peculiar circumstances of the present case and for the reasons mentioned hereafter, I am not inclined to accept the same.

29. A perusal of the documents on record (Mark A-1 to Mark A-64) reveals that the deceased in fact had various sources of income including the aforementioned sources of income. The present is not a case where the deceased, apart from having a major/fixed source of income such as, salary income or income from a business or a profession, earned additional/*ad hoc* income in the nature of rental income, interest income, capital gains, etc., on the other hand, it is a case where the deceased had invested his money in several businesses, shares, lands, trucks, etc. Thus, he had diverse sources of income, that is, by way of share in the profits of various firms and

associations of persons (AOPs) he had invested in, rental income from properties he purchased and managed, interest/dividend income from investment in shares, agricultural income, profit on sale-purchase of properties, etc. Having invested in a variety of businesses, the deceased must have personally supervised and managed them in order to make sure that the investments yield profits and not losses. PW7, in her cross examination categorically stated,

“...It is incorrect that I am getting the same income from the property of my deceased husband as Cinema Hall, Hotel have been closed immediately after the accident. Hotel was initially let on rent thereafter it is lying closed. It is correct that there is no documentary evidence to show that income has been reduced after death of deceased. After the death of deceased, his property has been inherited by the petitioners. It is correct that no documentary evidence has been produced by me on file with regard to income from the property inherited by petitioners from deceased. It is wrong to suggest that the income from properties and investments of the deceased have not reduced after the demise of my husband.....”.

30. In view of the above, in my considered opinion, the claimants may have inherited the properties and buildings which the deceased owned at the time of his death, but it certainly cannot be said that the

income being earned by the deceased, either in the form of rental income or by way of profit on sale of land, continued to be earned by the claimants in the same manner, more so, when the three daughters of the deceased were comparatively young being aged 16 years, 19 years and 21 years, and the only son of the deceased was aged 14 years, at the time of his accidental death.

31. In view of the aforesaid, I am inclined to assess the annual income of the deceased in the following manner:

	Particulars	Amount (Rs.)
	Taxable income for the AY 1989-90	2,26,861
Add:	Agricultural Income for the AY 1989-90	48,600
	Annual Income	2,75,461

32. As regards the deduction towards personal expenses of the deceased, in view of the fact that the deceased had five family members to support, I am inclined to agree with the contention of the learned counsel for the claimants that he could not have been spending one-third of his income on his own expenses and

maintenance. Accordingly, a deduction of one-fourth of the income of the deceased towards his personal expenses would, in my view, be just and fair. The same is also in consonance with the judgement of Supreme Court in the case of *Smt. Sarla Verma and Ors. Versus Delhi Transpost Corporation and Anr.* (2009) 6 SCC 121. Thus calculated, the average annual loss of dependency of the deceased comes to ₹2,75,461/- x 3/4 = ₹ 2,06,595.75/- or say ₹ 2,06,596/- (Rupees two lakhs six thousand five hundred and ninety six only).

33. Coming now to the aspect of multiplier, Ms. Arora, the learned counsel for the claimants, has relied upon the claim petition and the statement of PW7 - Smt. Sarla Kumari, widow of the deceased, to contend that the deceased was aged 51 years at the time of his death. It is submitted that during the pendency of the instant appeal, a copy of the passport of the deceased Darshan Lal has been placed on record to further prove that the date of birth of the deceased was 05.10.1939 and the accident having occurred on 22.10.1990, the deceased was 51 years of age on the date of the accident. It may at this stage be noted that the controversy regarding the age of the deceased in the present

case is inconsequential for the reason that the Supreme Court in the case of *Smt. Sarla Verma (supra)* has approved of the multiplier of 11 for the age group of persons between 51 years to 55 years. Indisputably, the deceased in the instant case falls in the age group of victims between 51-55 years of age and accordingly, the appropriate multiplier is the multiplier of 11, irrespective of whether the age of the deceased is taken to be 55 years or 51 years.

34. I am, however, not inclined to accept the further contention of Ms. Arora that the deceased was a wealth tax assessee and a high tax payer and thus, the claimants should be given the benefit of a higher multiplier, for the reason that the Supreme Court in the case of *Sarla Verma (supra)* has laid down the guiding principles to be followed by all the Courts and Tribunals in computing the compensation payable to the victims and/or their legal representatives, so as to avoid inconsistency and to establish uniformity in the adjudication of claims by the Motor Accident Claims Tribunals all over the country and further held the same should not be deviated from except in exceptional and extraordinary facts and circumstances.

35. The total loss of dependency of the claimants, thus, works out to ₹ 22,72,556/- (that is ₹ 2,06,596/- x 11) which may be rounded off to ₹ 22,72,600/- (Rupees twenty two lakhs seventy two thousand six hundred only). The claimants are also held entitled to a notional sum of ₹ 5,000/- towards the loss of estate of the deceased. In addition to the aforesaid sums, the claimants are entitled to the sum of ₹ 30,000/- awarded by the learned Tribunal towards the non-pecuniary damages suffered by the claimants for loss of love and affection, loss of consortium and funeral expenses. The total compensation payable to the appellants, thus, works out to ₹ 23,07,600/- (Rupees twenty three lakhs seven thousand and six hundred only).

36. In view of the aforesaid, the claimants (appellants in MAC App No. 248/2008) are held entitled to receive an enhanced amount of ₹ 10,67,600/- (₹23,07,600/- less ₹ 12,40,000/-) with interest @ 9% per annum, from the date of filing of the petition till realization, payable by the Insurance Company (Respondent no. 3 in MAC App No. 248/2008). The enhanced amount alongwith interest accrued thereon shall be deposited by the Insurance Company with the

Registrar General of this Court within 30 days from the date of the judgment, if any, and the same shall be released to the claimants in equal proportion.

37. MAC App. No. 323/2008 and MAC App No. 248/2008 stand disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

February 15, 2012
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