

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

Pronounced on: 19th March, 2012

+ **MAC.APP. 997/2011**

Reserved on: 7th March, 2012

SMT DHANESHWARI & ANR. Appellants
Through: Ms. Pooja Goel, Advocate

versus

TEJESHWAR SINGH & ORS. Respondents
Through: Ms. Shantha Devi Raman,
Advocate for R-3.

+ **MAC.APP. 203/2006**

Reserved on: 23rd January, 2012

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. R. B. Shami, Adv.

versus

RAM RATTI & ORS. Respondents
Through: Mr. Charan Singh, Adv.

+ **MAC.APP. 955/2011**

Reserved on: 29th February, 2012

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD
..... Appellant
Through: Ms. Suman Bagga, Advocate

versus

MEERA & ORS Respondent
Through: Mr. Rupinder Pal Singh Simak

with Mr. Rigasha Takkar,
Advocates for the Respondents
No.1 to 4.

+ **MAC.APP. 958/2011**

Reserved on: 28th February, 2012

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Advocate

versus

MEENU DEVI & ORS

..... Respondent

Through: Mr. Sanjiv Gupta, Advocate for
the Respondents No.1 to 5.

+ **MAC.APP. 461/2010**

Reserved on: 6th March, 2012

PREM LATA CHHETRI & ORS

..... Appellants

Through: Mr. Manish Maini, Adv.

versus

BHORDIYA GIRDHAR & ORS..... Respondents

Through: Ms. Shantha Devi Raman, Adv.
for R-3.

+ **MAC.APP. 768/2010**

Reserved on: 24th February, 2012

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr.K.L.Nandwani, Advocate.

versus

ANJU & ORS

..... Respondent

Through: None.

+ **MAC.APP. 137/2011**

Reserved on: 24th February, 2012

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Adv.

versus

RAJNI & ORS

..... Respondent

Through: Nemo.

+ **MAC.APP. 566/2010**

Reserved on: 12th January, 2012

DAYA MALIK & ANR

..... Appellants

Through: Appellant in person.

versus

SANNA & ORS.

..... Respondents

Through: Mr. Peeush Sharma, Advocate
for R-1 to 5.

+ **MAC.APP. 51/2012**

Reserved on: 12th January, 2012

SANNA & ORS

..... Appellants

Through: Mr. Peeush Sharma, Advocate

versus

DAYA MALIK & ANR

..... Respondent

Through: Respondent No.1 in person.

+ **MAC.APP. 81/2011**

Reserved on: 27th February, 2012

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Adv.

versus

SANTOSH & ORS

..... Respondent

Through: Mr. Anshuman Bal, Adv. for R-1 to R-5.

+ **MAC.APP. 493/2011**

Reserved on: 24th February, 2012

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Adv.

versus

MANJU DEVI & ORS

..... Respondent

Through: Nemo.

+ **MAC.APP. 536/2011**

Reserved on: 24th February, 2012

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr.K.L.Nandwani, Advocate.

versus

SUMAN DEVI & ORS

..... Respondents

Through: Mr.Ashok Popli, Advocate for R-1 to R-5.

+ **MAC.APP. 862/2011**

Reserved on: 24th February, 2012

UNITED INDIA INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Adv.

versus

SMT ANITA & ORS Respondent
Through: Mr. Dalip Singh, Adv. with
Mr. Anil Kumar Shukla, Adv.
for R-1 to R-3.

+ **MAC.APP. 38/2011**

Reserved on: 28th February, 2012

NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Kanwal Choudhary,
Advocate

versus

RIMJHIM ISPAT LTD & ORS Respondents
Through: Mr. F.M.Siddiqui, Advocate

+ **MAC.APP. 40/2011**

Reserved on: 28th February, 2012

NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Kanwal Choudhary, Adv.

versus

RIMJHIM ISPAT LTD & ORS. Respondents
Through: Mr. F.M.Siddiqui, Advocate

+ **MAC.APP. 39/2011**

Reserved on: 28th February, 2012

NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Kanwal Choudhary, Adv.

versus

RIMJHIM ISPAT LTD & ORS Respondents
Through: Mr. F.M.Siddiqui, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. A common question of law falls for determination in these Appeals:
2. “Whether, in view of the Division Bench judgment of this Court in *Delhi Transport Corporation and Anr. v. Kumari Lalita* 22 (1982) DLT 170 (DB) and *Rattan Lal Mehta v. Rajinder Kapoor & Anr. II* (1996) ACC 1 (DB) an increase towards inflation can be granted, particularly when the loss of dependency is to be assessed according to the minimum wages?

as such addition has been granted by this Court in catena of judgments rendered by the learned Single Judges including *Smt. Anari Devi v. Shri Tilak Raj & Anr., II* (2004) ACC 739; (2005 ACJ 1397), *National Insurance Co. Ltd. v. Pooja & Ors., II* (2006) ACC 382 (2007 ACJ 1051), *Om Kumari & Ors. v. Shish Pal & Ors,* 140 (2007) DLT 62, *Narinder Bishal & Anr. v. Rambir Singh & Ors.,* MAC APP. 1007-08/2006, decided on 20.02.2008, *New India Assurance Co. Ltd. V. Vijay Singh* MAC APP. 280/2008 decided on 09.05.2008; *Oriental Insurance Company Limited v. Smt. Rajni Devi & Ors.* MAC APP.286/2011 decided on 06.01.2012; *Smt. Gulabeeya Devi v.*

Mehboob Ali & Ors. MAC APP.463/2011 decided on 10.01.2012 and IFFCO TOKIO Gen. Ins. Co. Ltd. v. Rooniya Devi & Ors. MAC APP.189/2011 decided on 30.01.2012.

3. The increase in minimum wages is being granted for computation of loss of dependency primarily on the ground that minimum wages get doubled within a span of 7 to 10 years on account of inflation. Thus, protection is required to be given to the legal representatives (the Claimants) of the deceased on account of depreciation in the value of money.
4. Indubitably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitution in *integrum*. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong. (*Livingstone v. Rawyards Coal Co. (1880) 5 AC 25 (HL)*).
5. The first judgment of this Court, on which I could lay my hands on, where 50% increase was awarded when the deceased's income was computed according to minimum wages is *Anari Devi (supra)* where S.K. Mahajan, J. observed that on account of inflation and rise in the cost of living, minimum wages also increase from time to time. This Court held that the Claims Tribunal ought to have taken into consideration increase in the minimum wages from the date of death of the deceased during

the last five years. Thus, although the minimum wages on the date of accident were ₹ 1784/-, the learned Single Judge assumed it to be ₹ 2700/- to compute the loss of dependency.

6. Then, there is a report of *National Insurance Co. Ltd. v. Pooja & Ors., II* (2006) ACC 382 (2007 ACJ 1051) decided by the Learned Single Judge on 19.04.2006. Here again, increase in the minimum wages was given holding as under:-

“15. The deceased expired in 1999. At that time he was 30 years old. Due to inflation and rapid economic progress, minimum wages have been going up. The deceased had long working life ahead of him. It was natural that his earnings in normal course would have gone up in the next about 30 years. Loss of dependency is calculated keeping in view the monetary loss suffered by the dependants in future. Therefore, ld. Tribunal was justified in not ignoring the possibility of increase in earnings/income due to inflation, price rise, etc. of the deceased and taking this factor into consideration.”

7. In *Om Kumari & Ors. v. Shish Pal & Ors*, 140 (2007) DLT 62, while giving the increase on account of minimum wages, another Learned Single Judge held as under:-

“16. The future prospects may not be linked to promotional avenues but certainly would be linked to the inflation and increased wages over the years.

17. I have before me the minimum wages notified under the Minimum Wages Act, 1948, which show that pertaining to matriculates, minimum wages have risen from ₹ 325/- per month as on 1.1.1980 to ₹ 1,014 per month as on 1.5.1989. The same have risen to ₹ 2,796 per month as on 1.2.1999. Between 1.1.80 and 1.5.1989, the

percentage increase is slightly over 200. Over the next 10 years, percentage increase is approximately 180.

18. Minimum wages are notified keeping into account the inflationary trends and cost indices. These are the minimum wages which law presumes would be required for a person to sustain himself at the minimum level of subsistence.”

8. In *Narinder Bishal & Anr. v. Rambir Singh & Ors., MAC APP. 1007-08/2006, decided on 20.02.2008*, a distinction was drawn between future prospects and increase granted on account of inflation by the learned Single Judge of this Court. It was held that minimum wages has co-relation with the growth and development of the nation's economy, postulating increase in the price index, reduction of purchasing power and depreciation in the value of currency. This Court granted 50% increase in the minimum wages holding as under:-

“16. 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.

17. 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.

18. For instance, minimum wages of unskilled workman in the year 2000 were ₹ 2524/- under the Minimum Wages Act. The said minimum wages in the year 2007 for the same class of unskilled workman came to be ₹ 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 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 indeed and the inflationary trends and the same have no correlation with the future prospects of a skilled, semi-skilled or an unskilled workman.

19. 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

Bijov Kumar Dugar v. Bidva Dhar Dutta and Others, (2006) 3 SCC 242. While in other cases where in the absence of sufficient evidence, the Tribunal applied 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."

9. In *New India Assurance Co. Ltd. v. Vijay Singh MAC APP. 280/2008* decided by this Court on 09.05.2008, yet another Learned Single Judge relying on *Narinder Bishal (supra)* also drew a distinction between the grant of future prospects which is given on account of advancement in career and progression in employment, on the one hand and increase in the minimum wages which is granted on account of inflation on the other hand. The learned Single Judge held as under:-

".. 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.

10. 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 v. Bidya Dhar Dutta and Others, (2006) 3 SCC 242. 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.”

10. Relying on *National Insurance Company Ltd. v. Renu Devi & Ors.*, III (2008) ACC 134, *Narinder Bishal & Anr. v. Rambir Singh & Ors.*, MAC APP. 1007-08/2006, decided on 20.02.2008 and *National Insurance Co. Ltd. v. Kailash Devi*, 2008 ACC 772, I also took the view that 50% increase has to be added to the income of the deceased on account of inflation and growth of GDP, when it is computed according to the minimum wages.
11. It is important to note that the benefit of future prospects is given to the LRs of the deceased, only when there was evidence of bright future prospects (*Bijoy Kumar Dugar v. Bidya Dhar Dutta and Others*, (2006) 3 SCC 242), but, the benefit of inflation is being given only in case of minimum wages *de hors* the evidence of any future prospects. Perhaps, the lowest paid workers or the persons in the lowest income group were

considered as a class to be given this benefit.

12. Section 168 of the Motor Vehicles Act (the Act) enjoins the Claims Tribunal to make an award determining *the amount of compensation which appears to it to be just*. However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression "which appears to be just" vests a wide discretion in the Tribunal in the matter of determination of the compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. Although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected, nor should it be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable, by accepted legal standards.
13. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, M.N. Venkatachaliah, J. observed that the determination of the quantum must answer what contemporary

society *"would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales?"* At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in, before the accident and not to make a fortune out of misfortune that has befallen them.

14. In calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly, stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained.
15. Thus, in the realm of determination of damages in a motor accident claim case some speculation and guess work is permissible to award just compensation.

16. The issue of grant of increase of 50% in the minimum wages has been raised by the Insurance Companies (the Insurers) where LRs of the deceased have been granted such benefits, on the ground that the same is not permissible. Similarly, the LRs of the deceased have come in Appeals wherever this benefit has been denied to them by the Claims Tribunal. For the sake of convenience, the Insurance Companies will be referred to as Insurers and the LRs/Victims as the Claimants.
17. The contentions raised on behalf of the Insurers are:-
- (i) Grant of compensation is based on the liability of the tortfeasor to pay the damages to the victim. The damages suffered must be proved by the victim or his LRs as the case may be.
 - (ii) The Court cannot take judicial notice of the increase in future inflation as nobody knows what is in store in future.
 - (iii) Damages are to be assessed on the date of the incident. Benefit of inflation is inbuilt in the multiplier and if further addition is made, it would mean increase in the multiplier and punishing the tortfeasor beyond his liability.
18. On the other hand, it is urged on behalf of the Claimants that although the benefit on account of inflation is not akin to future

prospects, yet, the Court cannot be oblivious to the trend over the last six decades, since independence. Thus, it is contended that in case of minimum wages, the Claimants are entitled to the benefit of 50% increase, as granted by the learned Single Judges of this Court in various judgments.

19. I will deal with the contentions one by one.

ONUS TO PROVE DAMAGES

20. In an ordinary civil suit the burden to prove a fact lies on a party, who would fail, if no evidence at all is given by the either side. In a Claim Petition filed under Section 166 of the Act the Claims Tribunal, trained in law, which is manned by a Senior Judicial Officer is to hold an inquiry under Section 168 of the Act to award just compensation. Thus, even if a Claimant failed to adduce any evidence, the Claims Tribunal is expected to summon all relevant materials to form an opinion and award a fair and proper compensation. In *Kuldeep Singh Bawa v. Tika Ram*, MANU/DE/3525/2009 J.R. Midha, J. held as under:-

“5. Section 168 of the Motor Vehicles Act provides that the learned Tribunal shall conduct an inquiry into the claim petition. Section 169 of the Motor Vehicles Act provides that the learned Tribunal shall follow such summary procedure as it deem fit to conduct such an inquiry. The inquiry stipulated in Section 168 of the Motor Vehicles Act is different from the civil trial. Section 168 of the Motor Vehicles Act casts a duty on the learned Tribunal to conduct an inquiry in a meaningful manner. The object of the legislature behind making this

provision is that the victims of road accident are not left at their own mercy.....”

21. Difficulty arises where a Claims Tribunal is unable to find any evidence to assess the loss of dependency. What should be taken as income to arrive at the loss suffered by the LRs of the deceased or the victim himself in the case of injury in a motor accident? In all such cases, a Claims Tribunal sometimes has to make some guess work objectively considering the facts and circumstances of each case.
22. At this juncture, I would refer to the Second Schedule to Section 163-A of the Act, which was inserted by way of amendment w.e.f. 14.11.1994. Clause 6 of the Second Schedule provides that even in the case of persons who had no income prior to the accident, a notional income of ₹ 15,000/- per annum is to be considered to assess the loss of dependency or for grant of compensation towards permanent disability.
23. It may be noticed that the minimum wages of an unskilled worker on 14.11.1994 (on the date of insertion of Section 163-A of the Act) were ₹ 1420/- per month or ₹ 17,040/- per annum. It can be presumed that, it must have taken sometime for the legislature in passing the Amendment Bill and bringing the amendment on the statue book. Thus, by taking notional income as ₹ 15,000/- in case of a non earning person, the legislature intended that even in Claim Petitions under Section 163-A of the Act where LRs/victims can claim compensation

even without proving negligence, compensation should be awarded on a scale almost equal to the minimum wages of an unskilled worker under the Minimum Wages Act.

24. In *Ningamma & Anr.v. United India Insurance Company Limited*, (2009) 13 SCC 710, the Supreme Court held as under:-

“34. Undoubtedly, Section 166 of the MVA deals with “just compensation” and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting “just compensation” in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award “just compensation” irrespective of the fact whether any plea in that behalf was raised by the claimant or not.”

25. Section 168 of the Act enjoins upon Claims Tribunal to award “just compensation” and even if in the pleadings no specific claim is made, a party cannot be deprived of from getting just compensation in case the claimant is able to make out a case. It was held that Motor Vehicles Act is a beneficial and welfare legislation and the Court is duty bound to award “just compensation”, whether any plea in that regard was raised by the Claimants or not.

26. In *Rajnaja Jain v. Aditya Singh*, ILR (2008) 2 Delhi 968, the Appellant had claimed the deceased’s income to be ₹ 5,000/- per month by imparting tuitions at home. In the absence of any

cogent evidence, the Claims Tribunal accepted the deceased's income to be minimum wages as per the deceased's qualification i.e. matriculation which was subsequently affirmed by the High Court.

27. In *Anita Devi v. Mohinder Singh*, ILR 2007 (2) Delhi 127, the deceased was working as a commission Agent for selling yarn. His income was claimed to be ₹ 5,000/- per month. At the time of the accident he was travelling on a two wheeler and was in possession of two cheques one for ₹ 1,00,000/- and the other for ₹ 60,000/- to pay a third party. His income was accepted to be that of a skilled person under the Minimum Wages Act.
28. In *P.Mathiyalagan v. P. Sagunthala* (2006) 2 TN MAC 301 (Mad) the deceased was an auto driver, aged 35 years. While computing the compensation payable under the Workman Compensation Act, in the absence of any evidence with regard to his income, his wages were considered to be of an skilled worker.
29. In *United India Insurance Co. Ltd. v. R. Vijayakumar*, (2010) 2 TN MAC 307 (Mad) (DB) the injured claimed his income to be ₹ 50,000/- per film on an average. However, no document was produced to show that the Claimant was in receipt of ₹ 50,000/- per film on an average. Even the Income Tax assessment documents were not proved. In the absence of any cogent evidence with regard to proof of income, the Madras High

Court held that some amount of conjecture is possible and assumed the Claimant's income to be ₹ 20,000/- per month or ₹ 2,40,000/- per annum.

30. In the case of a student pursuing a professional course, the Claims Tribunal is to consider the potential income of the deceased after completion of the course. In the case of *Haji Zainullah Khan (Dead) by Lrs. v. Nagar Mahapalika, Allahabad, 1994 (5) SCC 667*, death of a young boy, aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc (Biology) Ist year, a compensation of ₹ 1,46,900/- was increased and rounded off to ₹ 1,50,000/-.
31. This Court and other High Courts have been following the Supreme Court's judgment in *Haji Zainullah Khan (supra)* accepting the potential income of a student pursuing a professional course in medicine, management, engineering etc. to award just compensation. This Court in *New India Assurance Co. Ltd. v. Ganga Devi & Ors., MAC APP.135/2008* deduced on 23.11.2009, J.R. Midha, J. assumed the income of a third year student pursuing a degree in medicines to be ₹18,000/- per month to compute the loss of dependency.
32. For instance, the Claimants may be able to prove that the deceased was working as a driver of a truck or a bus or a taxi or an auto rickshaw; the Claimants may be able to prove that the

deceased was a tailor, a barber or was running a tea shop. But, they (Claimants) may not be in possession of any evidence to prove the deceased's actual income though, they may establish the profession of the deceased. In the absence of any evidence as to the deceased's actual income produced by the Claimant, the Claims Tribunal has to make an endeavor during the course of inquiry to elicit some material to make an assessment of the deceased's income or to make a guess work wherever possible or in appropriate cases, the Claims Tribunal may have to take assistance from the Minimum Wages Act to award the compensation to the Claimants.

33. The bone of contention is the grant of addition in the minimum wages, on account of inflation. The learned counsel for the Insurers place reliance on the report in *Kumari Lalita (supra)*. In that case a school going girl named Lalita, aged 8 years suffered grievous injuries in an accident, caused by a DTC bus on 05.12.1961. A compensation of ₹ 15,000/- awarded by the Claims Tribunal was increased by the learned Single Judge in the first Appeal to ₹ 50,000/-. Injured Lalita as well as the DTC were dissatisfied with the judgment of the Learned Single Judge therefore they preferred to appeal before the Division Bench. Since the accident took place in the year 1961 and lot of time had passed in the interregnum, a plea was sought to be raised on behalf of Kumari Lalita that on account of inflation the real value of the money was not able to take care of the expenses

incurred by her and her sufferings on account of loss of amenities. The Division Bench of this Court declined to enhance the compensation on the ground of inflation holding that the relevant year which is to be considered, is the date of accident to the date of Award i.e. 1961 to 1964. I would extract relevant portions of the report hereunder:-

“21. Counsel for Lalita made a passionate appeal to us that seeing the severity of the injuries we should increase the amount of damages especially in view of the fact that there has been a steep fall in the purchasing power of money in recent years. He argued that on the ground of depreciation in the value of money the award of Misra J. should be updated and brought in line with the current level of inflation. This argument we cannot accept.

22. In our inflationary times the real value of damages is dependent upon the state of the currency. The nominal value of the award must increase as the value of the rupee decreases. There will be a tendency in times of inflation for awards to increase. Otherwise the amount awarded will be contemptible. If the requirement of the law is to be met, the sum awarded must be substantial in the context of current money values where the loss is substantial and the injury grievous. Increase for inflation is designed to preserve the ‘real’ value of money. (Pickett v. British Rail Engineering Ltd. (1979) (I) All E.R. 774 (782) (10) per Lord Wilberforce). The award should keep pace with the times. The award must be reasonable and should have a relation with the changing value of money. While it is important from the point of view of public policy that the general level of damages should be kept moderate rather than extravagant, a judge must keep up with the times and in particular with the decline in the purchasing power of money. (Bingham's Motor Claims cases 8th ed. P. 482).

23. *It would be unrealistic to disregard the present fall in the value of money. Judges cannot shut their eyes to the world outside the courts. They do not forget that inflation affects the plaintiffs as it affects them. If judges do not adjust their awards to changing conditions and rising standards of living, their assessment of damages will be unreal and illusory. In England a radical reappraisal of the law has been recommended by suggesting periodic payments and periodic reviews in personal injury actions. This has been done to mitigate the injustice of the lump sum system. (See Pearson Report).*

24. *It is true that “compensation demanded say ten years ago, is less than quarter of its value when it is received today.” (Motor Owners' Insurance Co. Ltd. v. J.K. Modi, AIR 1981 SC 2059(11) (2060) per Chandrachud CJ). But the factor of future inflation cannot be taken into account in the assessment of damages. That will introduce speculation and uncertainty in the estimates. The awards will become more uncertain than before. Because of the imponderables no one can say what the future holds for us. The imponderables defy the forecasts of the economists. So future inflationary trends should not be admitted. “It would therefore be wrong for the court to increase the award of damages by attempting to make further specific allowance for future inflation” (Cookson v. Koowles (1979) AC 556(12). Only in exceptional cases would it be right to make some specific allowance for future inflation. In a recent case in England Lord Scarman has said :*

“The correct approach should be, therefore, in the first place to assess damages without regard to the risk of future inflation. If it can be demonstrated that upon the particular facts of a case, such an assessment would not result in a fair compensation (bearing in mind the investment opportunity that a lump sum award offers), some increase is permissible. But the victims of tort who receive a

lump sum award are entitled to no better protection against inflation than others who have to rely on capital for their future support. To attempt such protection would be to put them into a privileged position at the expense of the tortfeasor, and so to impose upon him an excessive burden, which might go far beyond compensation for loss.”

(Lim v. Camden Health Authority (1979) 3 WLR 44 (58) (13) (H.L.).

25. In the present case the accident happened on 6-12-1961. In 1964 the tribunal assessed the damages after examining the medical evidence and the nature of injuries. We have to keep these years—1961 and 1964—in mind while assessing damages. The principle of law is that damages must be assessed as at the date when the damages occurs. The material date for ascertaining the extent of liability is the date of the accrual of the cause of action for a claim arising out of the accident, which in general would be the date of the accident. (Padma Srinivasan v. Premier Insurance Co. Ltd. (1982) 1 SCC 613)(14). Tort losses are ordinarily assessed as of the time when the cause of action accrued, but in case of personal injuries the Judgment date is justified for continuing injuries (Philips v. Ward (1956) 1 All E.R. 874, 877)(15). The award must be made in the context of the time. The computation of loss has to be made in this case with reference to early sixties. For the loss of 1962 we cannot adopt the yardstick of 1982. This will be doing injustice to the tortfeasor. Damages must not be unreasonably deficient nor a windfall to the injured. The damages “must necessarily fall to be estimated within a bracket in justice both to the sufferer and to the tortfeasor” Yorkshire Electricity Board v. Naylor (1968) AC 529(16), 552, Rs. 50,000 the learned judge thought was the right sum to award to Lalita “to see her through” the rest of her life. Some element of conjecture

or prophecy is inevitable in assessment of damages (M.P. State Road Transport Corporation v. Sudhakar (1977) ACJ 290(17), 292 (SC). Unless we find that Misra J. has made an entirely erroneous estimate of damages we ought not to interfere with his award.

26. Future inflation has to be disregarded for another good reason. As has been said by Lord Scarman in Lim's case (supra) that the victim of the injury is not entitled to more protection than any other economic group of society. He cannot enjoy a privileged position. As another judge has put it. "In an inflationary period the plaintiffs cannot expect to find themselves in a class which is shielded from the effects of inflation which the rest of their fellow citizens battle with." (Moriarity v. Mc'Carthy (1978) (18) I WLR 155 (159), per O'Connor J.).

27. The truth is that judicial awards of damages follow but rarely keep pace with inflation (Pickett (supra) at page 800). In this case Misra J. could not have gazed into the future and predicted that some day the value of rupee will go down to less than 25 paise. Knowledge of the future was denied to him as it is denied to all of us."

34. From the observations of the Division Bench, three things can be culled out. Firstly, that the future inflation has to be kept out while making assessment of damages. On making such assessment if it is evident that the compensation is not fair, some increase may be awarded on account of inflation. Secondly, the Division Bench observed that the years to be taken into account for award of compensation were 1961 when the accident occurred and 1964 when the compensation was awarded and, thirdly, that the material date of ascertaining the compensation for damages is the accrual of the cause of action

and not thereafter.

35. By the time the Division Bench decided *Kumari Lalita (supra)* the multiplier method of awarding compensation had not been firmly established nor there was any authoritative pronouncement of the Supreme Court whereby any benefit on account of bright future prospects could be given. It was in this context that the Division Bench observed that the material date for ascertaining the accident of liability is the date of accrual of the cause of action. The Division Bench was not averse to the grant of inflation up to the date of the passing of the award by the Claims Tribunal.
36. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176*, it was firmly established that the multiplier method was the best method to award just, fair and proper compensation. Further, it was also established that wherever there was evidence of the deceased having a bright future prospects, benefit thereof must be given to the Claimant which was against the principle laid down in English decisions, where it was observed that the damages must be assessed as on the date of the incident. On the basis of *Kumari Lalita (supra)* therefore, it cannot be said that future inflation was liable to be totally ignored.
37. The Division Bench judgment of this Court in *Rattan Lal Mehta*

v. Rajinder Kapoor & Anr. II (1996) ACC 1 (DB) which is heavily relied on by the counsel for the Insurers, the question of taking future inflation into consideration was directly dealt with. The Division Bench noticed adoption of a higher multiplier of '18' as against '15' already being granted by the Claims Tribunal and the Courts. The Division Bench referred to the actuarial method of assessment of damages and relied on *Chairman A.P.S.R.T.C. v. Shifya Khatoon, AIR 1985 AP 83* and *Bhagwandas v. Mohd. Ariff, AIR 1988, AP 99*. The Division Bench observed as under:-

“Multiplier cannot be the difference between age at death (or age at trial of injured person) and total expected life. If does not exceed 18 or 20:

This aspect does not indeed fall for consideration because Parliament has now prescribed the Table in 1994. The maximum multiplier as per the Table is only 18.

Though this aspect is now not relevant still there is chance of somebody contending that the Table is not to be applied as multipliers are not above 18. With a view to clarify the position, we are dealing with this aspect.

27. A multiplier cannot be the difference between the age at the death (for age at the trial of an injured person) and his expected years of remaining life. This is because even if there is no accident, the person's expectation of life depends upon the general mortality rates applicable to him as he moves up from one birthday to the next birthday. While death is certain and men are mortal, the time of death remains a mystery. Knowledge of future is denied to mankind (Lord Scarman in Lim's case) 1980 A.C. 174. and that is where mortality rates play an

important role in mathematics, statistics and with actuaries. Insurance premia are based on these theories and are computed by actuaries. R. Kidner & K. Richards (See The Economic Journal, 1974, p.130 at 133) point out:

"In the case of payment up to the retirement age of the husband, the probability of his living each year up to the age of retirement is less than one and diminishes as time goes on. The probability of a man aged 21 living until 50 is, for example, 0.94 and to age 60 is 0.82 and so on. These probabilities are used in calculation of the theoretically-correct amount of the award ..."

The same principle was reiterated in KSRTC v. Susamma Thomas, AIR 1994 SC 1631, by the Supreme Court

(See also J.H. Preveett "Actuarial assessment of Damages: The Thalidomide Case" (Vol.35) Mod. L. Rev. 1972 (p. 140 at p. 146); M/s. K. Richards & R. Kidner in 124 New Law Journal, 1974, p.105).

The future chances of survival from year to year have to be added up. Present values have to be arrived at by a discount rate applicable to periods of stable currency (This is explained below).

28. The advantage of the actuarial multiplier is that it will give a sum which will exhaust the principal over the period for which the future dependency (or earnings in injury case) is to last. The amount arrived at is not like the one arrived at in the interest method where the principal remains as an additional gain while interest is consumed periodically.

In fact, in the most advanced countries like U.K, Australia, Canada or U.S.A, where mortality rates are far lower as compared to India and survival rates higher,

the multipliers do not generally extend beyond 18 or 20. No doubt as per the Supreme Court in G.M.K.S.R.T.C. v. Susamma Thomas (supra), the highest multiplier can be only 15. This stands now slightly modified by the statutory multiplier table of 1994 which shows a maximum of 18. In fact Winfield & Jolowicz & on Torts (13th Ed. 1989) (p.618) say that in practice, the maximum multiplier is seldom more than 16: Street, on Damages (1983), 7th Ed) (p.218) puts it at 16; McGregor on Damages, (15th Ed. 1988) (para 1572) treats maximum as 18. The leading authorities which treat actuarial evidence as admissible are all set out in Chairman A.P.S.R.T.C. v. Shifya Khartoon, AIR 1985 AP 83 at 87-88 and in Bhagwandas v. Mohd. Ariff, AIR 1988 AP 99. These principles show that the difference between the age at death (or trial in case of injured person) and expected age of life cannot be the multiplier.”

38. The Division Bench went on to add that multiplier takes care of inflation. In fact, when the rates of interest are high as in the Indian context, any multiplier above 15 would definitely take care of some inflation. Before demonstrating the same in a tabulated form, I would refer to the relevant portion of the report in *Rattan Lal Mehta (supra)* hereunder:-

“Multiplier takes care of inflation

The mathematical formula which is used in the law of Economics (See Prof. A Samuelson of the Massachusetts Institute of Technology in his Textbook on Economics (10th Ed. 1980 at p. 609) shows that the discount rate for discounting future payments to present value occurs in the dominator and that is why a lower interest rate would result in a higher multiplier and that is why the 'real rate' of interest enunciated by Fisher was applied by Lord

Diplock in Mallet v. Mc Monagle, 1970 AC 166. That case has been followed by our Supreme Court in M.P.S.R.T.C. v. Sudhakar, AIR 1977 SC 1189 and in KSRTC v. Susamma Thomas (supra). The rate adopted is of a 'stable period of currency' say 4% or 5% so that multipliers will be larger and help full compensation. It must be noted here that if we adopt a higher rate of interest for reducing future payments to present values the multiplier will be very small, as the rate of interest occurs, in the formula, in the denominator. That is why a smaller rate of interest applicable to stable periods is prescribed by Economists of the highest repute like Fisher or Prof. Samuelson and in all books dealing with Economics and Insurance. This is also the principle in pension commutations. Government of India has applied a rate of 3.5% or 4.5% only. Otherwise if higher rates of interest are applied pension commutations will get reduced to smaller figures. Superior Courts in England, Australia, Canada and USA have accepted this principle of Economics and held that rate of discount for converting future payments to present value must relate to stable periods of currency.

29. In a celebrated passage Lord Diplock said "In estimating the loss, money should be treated as retaining its value at the date of the Judgment and in calculating the present value of annual payments which would have been received in future years, interest rates appropriate to time of stable currency such as 4 per cent to 5 per cent should be adopted". That was to be the discount rate for reducing future earnings/losses to present value. In England it was to be 4% or 5%. In Australia, in Todorovic vs. Waller, (1981) 150 C.L.R. 402, the High Court followed Lord Diplock's judgment and advocated a discount rate of 3% for converting future payments to present value. In the Canadian trilogy of cases, referred to earlier, the Diplock theory was accepted and a rate of 7% was applied. In U.S.A. the same principles were set out in Chesapeake & Ohio Rly vs. Kelly (1916) 241 U.S.

485 and recently in *Jones and Laughlin vs. Pfeifer*, 462 U.S. 523 (1983), proposing 3%.

30. In *Bhagwandas* case, AIR 1988 99 after referring to the rate applied by Government of India in regard to pension commutations and the other data relating to inflation, a 'real rate' of 4% was applied in our country and a multiplier Table was worked out on that basis. The above judgment was affirmed by a Division Bench in *Naravva' vs. V.R. Shangde*, 1989 ACJ 715 by Jeevan Reddy, J. (as he then was) and V.N. Rao, J. The multipliers evolved in *Bhagwanda's* case compare very favourably with the statutory multiplier Table published in the amendment to the Motor Vehicles Act in 1994. A smaller discount rate relatable to a stable period of currency reduces future payments (say) of 1997, 1998 and so on, by giving a higher multiplier in present and leaves it to the recipient of the money to make a proper investment today of the said monies. There is voluminous literature on this subject (See: *Inflation, Taxation & Damage Assessment* (1980) Can B. Rev. 280; 1974 *Economic Journal* p. 130 by R. Kidner & K. Richards; *Damages for Personal Injury & the Effect of Future Inflation* (1982) 56 Aust L.J. 168; *Economic Analysis vs. Court room Controversy, The Present Value of Future Earnings* : John A. Carlson Vol. 62 ABAJ 628; *Tort Damages for Loss of Future Earnings* (1986) 34 Amer J. Comp. L (Supp) 141; *Economic Theory & Present Value of Future Lost Earnings* : Anderson & Roberts (1985) U. Miami L.R. 725); A plain English approach to loss of Future Earning Capacity (1985) 24 Washburn LJ. 253;) See also leading books, Munkman; Kemp P. Keap; MC Grregor; Warfield; John A Fleming etc.

31. After the pecuniary damages are arrived at, Courts are also awarding 12% interest generally on the sum arrived at. Together with that interest, the amount comes into the plaintiffs' hands.

No deduction is to be made from the sum arrived at by using multiplier:

32. As the statutory multiplier reduces, by means of a mathematical formula (see the formula explained in Bhagwandas' case AIR 1988 AP 99), the future amounts to present value, there is no need to further deduct 1/3 or 1/4. The multiplier takes in not only mortality and future inflation but also the fact that the claimants are receiving an accelerated payment once and for all''

39. For the purpose of an illustration, let me assume the income of the deceased, aged 26 years, to be ₹ 800/- per month who has left behind him, four dependents including a widow. If I assume actual rate of interest since the year 1990, (or even interest @ 8% per annum) the capital sum awarded towards the loss of dependency would never come to an end, if the inflation is not factored. Rather, the same would go on increasing from year to year. The table appended below would make the aforesaid observations very clear:-

S.No	Year	Capital Amount	Interest Received	Dependency	Rate of Interest	Excess Amount
1.	1990	1,22,400	12,240	7200	10%	5040
2.	1991	1,27,440	14,018	7200	11%	6818
3.	1992	1,34,258	16,782	7200	12.5%	9582
4.	1993	1,43,840	15,103	7200	10.5%	7903

5.	1994	1,51,743	15,174	7200	10%	7974
6.	1995	1,59,717	18527	7200	11.6%	11,327
7.	1996	1,71,044	21,551	7200	12.6%	14,351
8.	1997	1,85,395	20,949	7200	11.3%	13,749
9.	1998	1,99,144	21,905	7200	11%	14,705
10.	1999	2,13,849	22,454	7200	10.5%	15,254 and so on

40. The compensation which is awarded on basis of multiplier method is such that as the years go by, some amount should be taken out from the principal sum so that by the time the dependency comes to an end, the principal as well as interest earned on the principal amount are exhausted. The Supreme Court in a catena of judgment including in *United India Insurance Co. Ltd. v. Bindu*, (2009) 3 SCC 705, referred to *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) 2 SCC 176, *Nance v. British Columbia Electric Railway Co. Ltd.*, (1951) AC 601, *Mallet v. McMonagle*, (1970) AC 166, and *Halsbury's Laws of England, Volume 34, Para 89*, presumed the real value of money and observed as under:-

“6. There were two methods adopted to determine and for calculation of compensation in fatal accident actions. The first multiplier method was mentioned in Davies v. Powell Duffryn Associated Collieries Ltd. (supra) and the second in Nance v. British Columbia Electric Railway

Co. Ltd. (supra).

7. “13. 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.

14. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in Mallet v. McMonagle (supra) where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

“The starting point in any estimate of the amount of the “dependency” is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But ... there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that

the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4½ per cent the present value of an annuity for 20 years, of which the first ten years are at £100 per annum and the second ten years at £200 per annum, is about 12 years' purchase of the arithmetical average annuity of £150 per annum, whereas if the first ten years are at £200 per annum and the second ten years at £100 per annum the present value is about 14 years' purchase of the arithmetical mean of £150 per annum. If therefore the chances of variations in the "dependency" are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the "dependency" used for the purpose of assessing the damages."

15. In regard to the choice of the multiplicand, Halsbury's Laws of England in Vol. 34, Para 98 states the principle thus:

'98. Assessment of damages under the Fatal Accidents Act, 1976.—The courts have evolved a method for calculating the amount of pecuniary benefit that dependants could reasonably expect to have received from the deceased in the future. First the annual value to the dependants of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages

the estimated amount of his own personal and living expenses.

The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have elapsed between the death and the trial is deducted from a multiplier based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death.'

As to the multiplier, Halsbury states:-

*“However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependants can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependants will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. **The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5***

per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure.”

41. I have obtained the Bank rates of interest (of Nationalized Banks) and compared it with the inflation prevailing in the country. I have attempted three tables to demonstrate whether the rate of interest in the Indian context takes care of the inflation or not.

TABLE – I

- It is assumed that the deceased who is aged 26 years dies leaving behind a widow, a mother and two minor children.
- In this Table a notional amount of Rs.800/- is taken to be the income of the deceased and therefore the capital amount is arrived at Rs.1,22,400/- ($\text{Rs. } 800 - \frac{1}{4}^{\text{th}} \times 12 \times 17$).
- The dependency is taken to be Rs. 800 p.m – $\frac{1}{4}^{\text{th}}$ (Rs.600) x 12 = 7200 p.a. in 1990.
- Further, a notional interest and inflation rate of 8% and 4% respectively, is taken into consideration which is an assumption of ‘real rate of interest’ (actual inflation rate – actual interest rate) in stable economy.
- The dependency is increased according to the inflation i.e. 4% and the interest on the Capital amount is taken @ of 8%.

- The compensation lasts for over 30 years.

S.No	Year	Capital Amount	Interest Received	Dependency	Rate Of Interest	Inflation	Excess Amount
1.	1990	1,22,400	9,792	=600x12 =7,200	8%	4%	2,592
2.	1991	1,24,992	9,999	=7,200+288 =7,488	8%	4%	2,511
3.	1992	1,27,503	10,200	=7,488+299 =7,787	8%	4%	2,413
4.	1993	1,29,916	10,393	=7,787+311 =8,098	8%	4%	2,295
5.	1994	1,32,211	10,576	=8,098+324 =8,421	8%	4%	2,155
6.	1995	1,34,366	10,749	=8,421+336 =8,757	8%	4%	1,992
7.	1996	1,36,358	10,908	=8,757+350 =9,107	8%	4%	1,801
8.	1997	1,38,159	11,052	=9,107+364 =9,471	8%	4%	1,581
9.	1998	1,39,740	11,179	=9,471+378 =9,849	8%	4%	1,330
10	1999	1,41,070	11,285	=9,849+393 =10,242	8%	4%	1,043
11.	2000	1,42,113	11,369	=10,242+409 =10,651	8%	4%	718
12.	2001	1,42,831	11,426	=10,651+426 =11,077	8%	4%	349
13.	2002	1,43,180	11,454	=11,077+443 =11,520	8%	4%	-65
14.	2003	1,43,114	11,449	=11,520+460 =11,980	8%	4%	-530
15.	2004	1,42,583	11,406	=11,980+479 =12,459	8%	4%	-1,053
16.	2005	1,41,530	11,322	=12,459+49	8%	4%	-1,634

				8 =12,957			
17.	2006	1,39,895	11,191	=12,957+518 =13,475	8%	4%	-2,283
18.	2007	1,37,611	11,008	=13,475+539 =14,014	8%	4%	-3,005
19.	2008	134605	10,768	=14,014+560 =14,574	8%	4%	-3,805
20.	2009	1,30,799	10,463	=14,574+582 =15,156	8%	4%	-4,692
21.	2010	126106	10,088	=15,156+606 =15762	8%	4%	-5,673
22.	2011	1,20,432	9,634	=15,762+630 =16,392	8%	4%	-6,757
23.	2012	1,13,674	9,093	=16,392+656 =17,048	8%	4%	-7,954
24.	2013	1,05,719	8,457	=17048+681 =17,729	8%	4%	-9,272
25.	2014	96,447	7,715	=17,729+710 =18,439	8%	4%	-10,723
26.	2015	85,723	6,857	=18,439+737 =19,176	8%	4%	-12,318
27.	2016	73,404	5,872	=19,176+767 =19,943	8%	4%	-14,070
28.	2017	59,333	4,746	=19,943+798 =20,741	8%	4%	-15,994
29.	2018	43,338	3,467	20,741+829 =21,570	8%	4%	-18,102
30.	2019	25,235	2,018	21,570+863 =22,433	8%	4%	-20,414
31.	2020	4,820		22,433+897 =23,330	8%	4%	

TABLE – II

- In this Table a notional amount of Rs.800/- is taken to be the income of the deceased and therefore the capital amount is arrived at Rs.1,22,400/- (Rs. 800 – 1/4th x 12 x 17).

- The dependency is taken to be Rs.800/- p.m – 1/4th (Rs.600) x 12 = 7200 in 1990. For the subsequent years the actual inflation rate is applied to increase the dependency accordingly.
- The capital amount is being increased as per the actual Bank interest rate on long term fixed deposit.
- The compensation lasts for about 21 years.

S.No	Year	Capital Amount	Interest Received	Dependency	Rate Of Interest	Inflation	Excess Amount
1.	1990	1,22,400	12,240	=600x12 =7,200	10%	8.9%	5,040
2.	1991	1,27,440	14,018	=7,200+993 =8,193	11%	13.8%	5,825
3.	1992	1,33,265	16,658	=8,193+958 =9,151	12.5%	11.7%	7,507
4.	1993	1,40,772	14,781	=9,151+576 =9,727	10.5%	6.3%	5,054
5.	1994	1,45,826	14,582	=9,727+992 =10,719	10%	10.2%	3,863
6.	1995	1,49,689	17,363	=10,719+1,093 =11,812	11.6%	10.2%	5,551
7.	1996	1,55,240	19,560	=11,812+1,051 =12,863	12.6%	8.9%	6,697
8.	1997	1,61,937	18,298	=12,863+939 =13,802	11.3%	7.3%	4,496
9.	1998	1,66,433	18,307	=13,802+1821 =15,623	11%	13.2%	2,684
10	1999	1,69,117	17,757	=15,623+718 =16,341	10.5%	4.6%	1,416
11.	2000	1,70,533	15,689	=16,341+637 =16,978	9.2%	3.9%	-1,288
12.	2001	1,69,244	14,047	=16,978+747 =17,725	8.3%	4.4%	-3,677
13.	2002	1,65,566	11,424	=17,725+655 =18,380	6.9%	3.7%	-6,955
14.	2003	1,58,610	9,199	=18,380+698 =19,078	5.8%	3.8%	-9,878
15.	2004	1,48,731	8,180	=19,078+744 =19,822	5.5%	3.9%	-11,641
16.	2005	1,37,089	8,225	=19,822+1,228 =21,050	%	6.2%	-12,824

17.	2006	1,24,264	8,449	=21,050+1,326 =22,376	6.8%	6.3%	-13,926
18.	2007	1,10,337	9,930	=22,376+1,409 =23,785	9%	6.3%	-13,855
19.	2008	96,482	8,876	=23,785+1,974 =25,759	9.2%	8.3%	-16,882
20.	2009	79,599	6,367	=25,759+2,781 =28,540	8%	10.8%	-22,172
21.	2010	57,426	4,307	=28,540+3,396 =31,936	7.5%	11.9%	-27,628
22.	2011	29,797	2,681	=31,936+3,864 =35,800	9%	12.1%	-33,118
23.	2012	-3,321			9%	9.2%	

TABLE – III

- In this Table the minimum wages which were prevailing in the year 1990 is considered as the income of the deceased for computing the dependency and capital amount.
- Since there are two revisions in the Minimum wages every year, the average of the two ($767+792 = 1559/2 = 780$) is considered for the calculation. This procedure is followed in all the years when the minimum wages were increased twice in a year.
- The dependency is gradually increased according to the minimum wages increased from time to time. The capital amount is being increased as per the actual Bank interest rate on long term fixed deposit.
- Therefore, the Capital amount = $780 - 1/4^{\text{th}} \times 12 \times 17 = 1,19,340/-$.
- The dependency = $780 - 1/4^{\text{th}} \times 12 = 7020/-$.
- The amount lasts for 17 years.

S.No	Year	Capital Amount	Interest Received	Dependency	Rate Of Interest	Excess Amount
1.	1990	1,19,340	11,934	7,020	10%	4,914
2.	1991	1,24,254	13,667	7,836	11%	5,831
3.	1992	1,30,085	16,260	8,844	12.5%	7,416
4.	1993	1,37,501	14,437	9,876	10.5%	4,561
5.	1994	1,42,062	14,206	12,600	10%	1,606
6.	1995	1,43,668	16,665	13,680	11.6%	2,985
7.	1996	1,46,653	18,478	15,084	12.6%	3,394
8.	1997	1,50,047	16,955	16,058	11.3%	897
9.	1998	1,50,944	16,603	17,424	11%	-820
10.	1999	1,50,123	15,763	21,132	10.5%	-5,368
11.	2000	1,44,754	13,317	22,236	9.2%	-8,918
12.	2001	1,35,835	11,274	23,256	8.3%	-11,981
13.	2002	1,23,853	8,545	24,048	6.9%	-15,502
14.	2003	1,08,350	6,284	25,896	5.8%	-19,611
15.	2004	88,738	4,880	27,924	5.5%	-23,043
16.	2005	65,694	3,941	29,617	6%	-25,675
17.	2006	40,018	2,721	31,437	6.8%	-28,715

42. Thus, the compensation awarded in the Indian perspective with a high inflation is unable to provide for full life expectancy even if some discount is made towards the imponderables in life.

43. At this stage, I may refer to the inflation rate prevailing in India and other developed countries i.e. UK and USA.

Year	India	UK	USA
2011	12.1%	4.47%	3.16%
2010	11.9%	3.28%	1.64%
2009	10.8%	2.16%	-0.34%

2008	8.3%	3.61%	3.85%
2007	6.3%	2.32%	2.85%
2006	6.3%	2.33%	3.24%
2005	6.2%	2.04%	3.39%
2004	3.9%	1.34%	2.68%
2003	3.8%	1.36%	2.27%
2002	3.7%	1.25%	1.59%
2001	4.4%	1.23%	2.83%
2000	3.9%	0.78%	3.38%
1999	4.6%	1.33%	2.19%
1998	13.2%	1.58%	1.55%
1997	7.3%	1.77%	2.34%
1996	8.9%	2.48%	2.93%
1995	10.2%	2.65%	2.81%
1994	10.2%	1.97%	2.61%
1993	6.3%	2.50%	2.96%
1992	11.7%	4.26%	3.03%
1991	13.8%	7.53%	4.25%
1990	8.9%	6.97%	5.39%

44. Thus, it will be seen that in developed countries the inflation ranges between 1% to 3% most of the times. So much so that sometimes the inflation is even negative. Thus, an interest rate of 4 to 5% in those countries is sufficient to take care of inflation when the multiplier as mentioned in the Second

Schedule or in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 is adopted.

45. At this time, the average life expectancy in India (for a male and female) is about 64 years. (Female 63.2 years and Male 64.7 years). The life expectancy takes care of the imponderables because untimely deaths on account of illness are included therein. Even if further reduction of 10 to 15% is made in the life expectancy towards the imponderables (accidental death, disability and unemployment), the dependency for the widow is to last for whole life and for the dependent children till they are settled in their life. When the children grow older a lot of amount is needed for their higher education. The condition in this country is different from the developed countries, where one can easily get education loan on nominal rate of interest and finding employment on completion of higher studies are much easier. As stated earlier, the principle for grant of compensation is that the person entitled to damages should, as nearly as possible get that sum of money as would put him in the same position as if he had not sustained the wrong.
46. In *Susamma Thomas (supra)* some provision was made towards the bright future prospects which came to be reiterated in a catena of judgments including *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 wherein the Supreme Court held that when the deceased's age is upto 40, years an addition of 50% is to be made in the actual

income and when the deceased is aged between 40 to 50 years an addition of 30% is to be made in the same income to compute the loss of dependency.

47. I have obtained data which shows that during the last 26 years the income of the same category of employees has grown up by about 15 times on account of inflation and growth in the economy.

Sl. No.	Group of Employees	Initial salary (including allowances) as on Ist January, 1986	Initial salary (including allowances) as on Ist January, 2012
1.	Group D	930/-	14,108/-
2.	LDC	1245/-	15,480/-
3.	Section Officer	2550/-	36,650/-
4.	Under Secretary to Govt. of India	3700/-	52,714/-

48. Apart from this almost everybody working in the govt. department gets at least 4 to 5 promotions during their tenure. A Clerk at least becomes a Section Officer, an Assistant becomes a Director in the Govt. of India if not a Joint Secretary, a Civil Servant (IAS) becomes an Additional Secretary, if not a Secretary. In private sectors pastures are much greener for some and not so rosy for the others.

49. The question is whether in all cases, the Courts are providing compensation which can be said to be just and fair.
50. It will be seen that the compensation is far less than the just compensation as envisaged under the Act mainly on account of inflationary trend in this country. Though the multiplier method does take care of future inflation as held by the Division Bench of this Court in *Rattan Lal Mehta (supra)* yet, on account of inflation which remains in double digits in our country most of the times, even after the increase granted on account of future prospects the compensation awarded is not able to take care of the actual loss of dependency.
51. It is respectfully submitted that I am bound by the Division Bench judgment of this Court in *Rattan Lal Mehta (supra)* which on the aspect of the multiplier taking care of future inflation was not brought to the notice of this Court earlier and more importantly escaped my attention. Thus, increase in minimum wages on account of inflation given by the learned Single Judges of this Court in various cases including the one which have been extracted hereinabove, was not permissible.
52. It is urged by Sh. K.L.Nandwani learned counsel for the Insurance Company that the Judgment in *Narinder Bishal and Anr. v. Rambir Singh and Ors* MAC. App. 1007-08/2006 reported as 2009ACJ1881 and many other Judgments where increase on minimum wages is granted, have been challenged by way of a Special Leave Petition before the Supreme Court.

By an order dated 14.11.2008, in SLP (CC) No.11630-11631 of 2008, the SLP was admitted and the operation of the judgment of this Court was stayed subject to the deposit of 50% of the award amount.

53. There is another aspect of increase being given in the minimum wages. The increase on account of inflation is given only where the deceased or the claimant was getting the minimum wages. In other cases, the increase towards future prospects is given only when the deceased or the Claimant (in case of injury) had bright future prospects which is established by leading evidence in this behalf. Thus, the person getting minimum wages would be in advantageous position than a person earning more than the minimum wages. Take a case where a deceased is getting minimum wages of ₹ 4,000/- per month and another deceased, not entitled to future prospects, is having an income of ₹ 5,000/- per month (more than the minimum wages). There would be 50% increase in the income of the person getting minimum wages and there would not be any such increase in the income of the person who was getting more than the minimum wages (because there are no future prospects). The loss of dependency in the case of a deceased getting minimum wages of ₹ 4,000/- would be calculated at ₹ 6,000/- per month whereas, the deceased who was earning ₹ 5,000/- per month; his LRs would end up getting a lesser compensation, even though the deceased had a better employment and more income than the deceased

getting the minimum wages. This is not a hypothetical example; this Court has got umpteen cases where such a situation has arisen and I would be dealing with the specific cases at the appropriate stage. Suffice it to say that, if benefit of inflation has to be given, everybody is entitled to that benefit and not only the person getting the minimum wages unless, they are treated as a class by themselves.

54. The Supreme Court in *Reshma Kumari v. Madan Mohan* (2009) 13 SCC 422 framed following two questions in Para 10 of the report, which are extracted hereunder:-

“10. The common questions which arise for our consideration in these appeals are:

(1) Whether the multiplier specified in the Second Schedule appended to the Act should be scrupulously applied in all the cases?

(2) Whether for determination of the multiplicand, the Act provides for any criterion, particularly as regards determination of future prospects?”

55. Although, the question of considering future inflation was not directly framed, yet, my Lord Hon’ble Mr. Justice S.B. Sinha (as he then was) held that, one of the incidental issues which has also to be taken into consideration while computing compensation under the Motor Vehicles Act was inflation. I would extract Para 47 to 49 of the report hereunder:-

“47. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of

taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor.

48. A large number of English decisions have been placed before us by Mr. Nanda to contend that inflation may not be taken into consideration at all. While the reasonings adopted by the English courts and its decisions may not be of much dispute, we cannot blindly follow the same ignoring ground realities.

49. We have noticed the precedents operating in the field as also the rival contentions raised before us by the learned counsel for the parties with a view to show that law is required to be laid down in clearer terms.”

56. The tables extracted in the earlier part of the judgment show that the interest rates in this country do not always rise with the inflation. In some of the years the interest rates were lower than the inflation which would show that the real value of money was depleting.
57. It may be mentioned that the judgment in *Sarla Verma (supra)* was pronounced on 15.04.2009 i.e. before *Reshma Kumari (supra)* but the same escaped attention of the learned Judges when the matter of grant of future prospects was considered and decided, but the Court was silent about the grant of any benefit towards the increase in inflation.

58. The subsequent reports of the Supreme Court in *Laxman v. Oriental Insurance Co. Ltd.*, (2011) 10 SCC 756, *Sanjay Batham v. Munnalal Parihar*, (2011) 10 SCC 665, *Govind Yadav v. New India Insurance Co. Ltd.* (2011) 10 SCC 683, and *Ibrahim v. Raju*, (2011) 10 SCC 634 also referred to Para 47 of the report in *Reshma Kumari (supra)* but did not lay any guidelines as to how and upto what extent the inflation is to be taken into account in award of just compensation.
59. The learned counsel for the Claimants place reliance on a judgment of the Patna High Court in *Hindustan Concrete Pipe v. Anjali Devi & Ors.*, 1990 ACJ 603 wherein my Lord Hon'ble Mr. Justice S.B.Sinha as a learned Single Judge of Patna High Court (as he then was) expressed his sentiments that the Tribunals while awarding compensation should also take into consideration the monetary inflation and the reduced buying power of the citizens in the present-day context. In view of *Rattan Lal Mehta (supra)* a Division Bench judgment of this Court, *Anjali Devi (supra)* cannot be taken as a precedent.
60. In view of the foregoing discussion, I am of the view that no addition in the minimum wages cannot be made on account of inflation for computation of compensation.
61. Having decided the question of law, I proceed to deal with each cases one by one.

MAC APP.997/2011

62. The Appellants seek enhancement of compensation of ₹ 4,55,568/- on the ground that the addition of 50% to the income of the deceased Prashant Gupta, which was computed according to the minimum wages was not done.
63. The deceased Prashant Gupta was working as a Sales Executive with M/s. Marvy Outsourcing Pvt. Ltd. During inquiry before the Claims Tribunal it was claimed that the deceased was getting a salary of ₹ 7132/-. In the absence of any cogent evidence, the Claims Tribunal took the minimum wages of a Matriculate i.e. ₹ 6448/-, deducted 50% towards personal living expenses, the deceased being bachelor and adopted the multiplier of '11' as the deceased's mother was 53 years, to compute the loss of dependency as ₹ 4,25,568/-.
64. Appellant Dhaneshwari filed her Affidavit Ex.P-2/1 and entered the witness box as PW-2. She testified that her son Prashant Gupta joined M/s. Marvy Outsourcing Pvt. Ltd. in pursuance of the appointment letter Ex.PW-2/3. Clause (B) of the appointment letter shows that the deceased was offered a salary of ₹ 7139/-. In cross-examination the Appellant admitted that she had no documentary evidence to show that the deceased had joined M/s. Marvy Outsourcing Pvt. Ltd. in pursuance of the appointment letter. The genuineness of the appointment letter was not disputed. The appointment letter is dated 21.07.2008 whereas, the deceased died on 24.02.2010. As per Clause (E) of the appointment letter the deceased was entitled to bonus as per

the payment of Bonus Act, 1965. As per Clause (H) the appointment could be terminated by giving one month's notice.

65. In the absence of any evidence being produced by the Appellant that the deceased was in permanent employment, obviously, the benefit of future prospects could not be given, yet considering that the deceased was entitled to bonus, his income should have been taken as ₹ 8,000/- per month (7139/- being the salary) in addition to the medical and insurance benefits. The loss of dependency thus comes to ₹ 5,28,000/- (₹ 8,000/- ÷ 2 x 12 x 11).
66. The Claims Tribunal awarded a sum of ₹ 10,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would enhance the compensation under this head from ₹ 10,000/- to ₹ 25,000/-.
67. The overall compensation is re-assessed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	₹4,25,568/-	₹5,28,000/-

2.	Loss to Estate	₹ 10,000/-	₹ 10,000/-
3.	Loss of Love & Affection	₹ 10,000/-	₹ 25,000/-
4.	Funeral Expenses	₹ 10,000/-	₹ 10,000/-
	Total	₹ 4,55,568/-	₹ 5,73,000/-

68. The overall compensation is enhanced from ₹ 4,55,568/- to ₹ 5,73,000/-. (It may be noticed that if the compensation would have been granted on 50% addition in the minimum wages, it would have been higher than the one granted on the actual income).
69. I have earlier mentioned the rate of interest being paid by the Nationalized Banks. Higher rate of interest is payable to the senior citizens by half a percent. In *Sarla Verm (supra)* the Hon'ble Supreme Court granted rate of interest @ 7.5 % per annum.
70. Rate of interest were in double digits in 1980's and 1990's. The interest rate started falling at the beginning of this century. They started rising and firming up since 2007. Since the rate of interest on long term deposit is now about 9% per annum, it is unreasonable to award interest @ 7.5% per annum to the victims of the motor accident.
71. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India, (2003) 3 SCC 148*, the Supreme Court culled out the factors to be taken into consideration while awarding interest in

motor accident case. Para 6 and 18 of the report are extracted hereunder:-

“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.

x x x x x x x x x x x
x x x x x x x x x x x

18. Three decisions were cited before us by Mr. A.P. Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. 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 deducted 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."

72. In *Rubi (Chandra) Dutta v. United India Insurance Co. Ltd.* (2011) 11 SCC 269, the interest granted by the National Commission @ 9% was upheld by the Supreme Court. In *Sant Singh v. Sukhdev Singh*, (2011) 11 SCC 632, interest @ 9% per annum was awarded by the Hon'ble Supreme Court. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the interest @ 9% awarded by the Claims Tribunal was approved. In *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254, interest @ 9% was awarded on the enhanced amount of compensation.
73. In the circumstances, I would also follow the Bank rate of interest and would award interest @ 9% per annum on the enhanced amount.
74. The enhanced compensation of ₹ 1,17,432/- shall carry interest @ 9% per annum from the date of filing of the petition till the

amount is paid. The Respondent Insurance Company is directed to deposit the enhanced amount within six weeks.

75. The first Appellant shall be getting 75% and the second Appellant shall be getting 25% of the enhanced amount. The amount shall be held in fixed deposits for a period of one year in UCO Bank, Delhi High Court Branch, New Delhi.

76. The Appeal is allowed in above terms.

MAC APP.203/2006

77. The Appellant Oriental Insurance Co. Ltd. seeks reduction of compensation of ₹ 5,67,528/- awarded for the death of Kali Charan who died in a motor accident which occurred on 27.02.2003.

78. The contention raised on behalf of the Appellant are:-

- (i) The deceased as per the postmortem report was aged about 55 years, though the Claimants averred his age to be 45 years. The multiplier of '16' adopted by the Claims Tribunal was high. The rate of interest @ 7.5% per annum awarded by the Claims Tribunal is high.
- (ii) The driving licence held by the first Respondent was valid for the period from 23.12.1999 to 22.12.2002 and was renewed on 13.03.2003. The Appellant successfully proved the breach of the policy condition, yet it was made

liable to pay the compensation even the recovery rights were not granted.

79. The first Respondent Ram Ratti in her Affidavit Ex.PW-3 testified the deceased's age to be 45 years, which was not challenged in cross-examination. In the absence of rebuttal the deceased's age was rightly taken as 45 years. The number of dependents was 7 and thus the deduction towards the personal living expenses as per *Sarla Verma (supra)* was required to be one-fifth instead of one-third. Although, the multiplier of '16' adopted by the Claims Tribunal was on the higher side. The appropriate multiplier as per *Sarla Verma (supra)* was '14'.
80. On re-computation and deduction of one-fifth towards personal living expenses, the compensation would work out as ₹ 5,61,254/- (₹ 4167/- x 4/5 x 12 x 14) as against ₹ 5,34,528/- calculated by the Claims Tribunal.
81. In the absence of any Appeal for enhancement of compensation, I cannot interfere with the same.
82. Although the rate of interest @ 7.5% is averred to be on the higher side in the memorandum of Appeal this point was not raised during the hearing of the Appeal. Otherwise also, grant of interest @ 7.5% per annum cannot be said to be exorbitant or excessive.
83. On the question of liability, the Claims Tribunal held as under:-

“Here one contention of R-3 needs to be discussed. By examining R3W1 and R3W2, R-3 has proved that the licence of R-1 was valid only from 23-12-1999 to 22.12.2002 and R-1 got the licence renewed only on 13.3.2003. Counsel for R-3 submitted that R-1 had no valid and effective licence on the date of the accident and so recovery rights be granted. I have carefully considered this submission of the Ld. Counsel for R-3. The fact that R-1 had a valid driving licence till 22.12.2002 shows that he was not disqualified from holding the licence or from getting this licence renewed after 22.12.2002. There is a grace period for renewal of the expired licence and on such renewal the licence regains its effectiveness. The insurer can avoid liability if the vehicle was driven by a person who is not duly licenced or by any person who had been disqualified for holding or obtaining a licence. In fact R-1 had a driving licence valid till 23.12.1999 and there is no material on record to infer that R-2 and R-2A had a knowledge that the driving licence of R-1 had expired on 23.12.1999. There is no evidence of R-3 that on the date of the accident i.e. 27.2.2003 R-1 had been disqualified from getting his expired licence renewed. In this regard, reference can be made to an authority reported 2004 ACJ 457 wherein it has been held that licence inspite of expiry of its validity period continues to exist unless the licensee had been disqualified to hold it. In view of this I hold that there is no merit in the submission of the counsel for R-3 for grant of recovery rights against R-2 and R-2A. Accordingly, I hold that the amount of compensation is to be paid by R-3. This issue stands decided accordingly.”

84. Thus, it may be seen that the Claims Tribunal made the Insurer liable to pay the compensation merely on the ground that no material was produced on record to infer that the Eighth Respondent and Ninth Respondent had any knowledge that the

driving licence of the Seventh Respondent (the First Respondent before the Claims Tribunal) had expired. It is expected of the owner of every vehicle to at least check the validity of the driving licence of the driver while engaging him. Once it was established that the driving licence had expired much before the accident it was for the owner to have shown the circumstances under which the vehicle was entrusted to the Seventh Respondent. It can very well be said that the owner failed to exercise reasonable care to ensure that there is no breach of the terms of policy. Thus, the owner would be guilty of the conscious and willful breach of the condition of policy.

85. The other ground on which the Insurer was made liable was that in spite of the expiry of the validity period the driving licence of the driver had not been disqualified to hold the same. The Claims Tribunal relied on *Oriental Insurance Company Limited v. Paulose*, 2004 ACJ 457 to fasten the liability on the Insurance Company.
86. This is no longer good law in view of the judgment of the Supreme Court in *National Insurance Company Limited v. Jarnail Singh & Ors.*, (2007) 15 SCC 28, *Ram Babu Tiwari v. United India Insurance Co. Ltd. & Ors.*, (2008) 8 SCC 165 and *New India Assurance Company Ltd. v. Suresh Chandra Aggarwal*, (2009) 15 SCC 761.
87. In *Jarnail Singh (supra)* the driver had a driving licence which

expired on 18.05.1994. The accident took place on 20.10.1994. The licence was renewed with effect from 28.10.1996. While referring to Section 15 (1) of the Act, the Supreme Court held that the driver had no licence to drive the vehicle on the date of the accident i.e. 20.10.1994 and recovery rights were granted to the Insurance Company. The relevant para of the report are extracted hereunder:-

“7. There is no dispute that the policy stipulated a condition that the vehicle would not be driven by a person without a valid driving licence. It means that the policy condition had been violated.

8. This Court held in New India Assurance Co. v. Kamla (2001) 4 SCC 342 that the insurance company is nonetheless liable to pay the compensation to the third party on the strength of the valid insurance policy issued in respect of a vehicle, but the remedy of the insurer when there was breach or violation of the policy condition was to recover the amount from the insured...”

88. In para 18 of the report in *Ram Babu Tiwari (supra)* it was held as under:-

“18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to Sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days

after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured. The second proviso appended to Sub-section (4) of Section 15 is of no assistance to the appellant. It merely enables the licensing authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of Sub-section (3) of Section 9. It does not say that the renewal would be automatic. ...”

89. Similarly, in *Suresh Chandra Aggarwal (supra)*, the driving licence of the driver had expired on 25.10.1991 i.e. four months prior to the date of accident which occurred on 29.02.1992. The driving licence was renewed w.e.f. 23.03.1992. Since the renewal of the licence was not within 30 days of the expiry, it was held that the driver did not possess any effective driving licence and there was breach of the terms of the policy.
90. Thus, the owner cannot escape the liability.
91. Initially, the Claim Petition was filed against Satish Kumar being the driver of the offending vehicle and Smt. Surjit Kaur as owner of the offending vehicle. Surjit Kaur did not dispute the ownership in the written statement filed by her. Later on, an application under Order 1 Rule 10 CPC, moved by the Respondents No.1 to 5 was allowed and Joginder Singh was impleaded as Respondent No.2A, being registered owner of the vehicle.

92. The terms “owner” is defined under Section 2 (30) of the Act means “a person in whose name a motor vehicle stands registered”. Thus, although the actual owner (Respondent No.8) in law remains vicariously liable for the acts of his servant, the registered owner (Respondent No.9) also cannot escape the liability. (*Dr. T.V. Jose v. Chacko P. M.*, AIR 2001 SC 3939).
93. Since the Seventh Respondent also had an expired licence, resulting into breach of the condition of policy, the Appellant was entitled to be granted recovery rights.
94. I accordingly hold that the Appellant is entitled to recover the amount of compensation paid from the Respondents Nos. 7,8 and 9 who were jointly and severally liable to pay the same along with the driver of the vehicle.
95. The Appeal is allowed in above terms.

MAC APP.955/2011

96. The Appeal is for reduction of compensation of ₹ 10,21,200/- awarded for the death of Shoorbir Singh. He was aged about 39 years at the time of the accident and had studied upto 12th class. It was claimed that he was working as a ‘Field Executive’ with M/s. Zetetic House Keeping since 09.03.2009 and was posted at Jas India Forwarding Pvt. Ltd.; he was getting a salary of ₹ 6500/- per month.

97. PW-1 Meera, the deceased's widow testified about the deceased's employment and proved the salary certificate Ex.PW-1/D. PW-2 Umed Singh also deposed that the deceased was working with M/s. Zetetic and was drawing a salary of ₹ 6500/- per month. In the absence of any evidence from the employer, the Claims Tribunal rejected the salary certificate Ex.PW-1/D, took the deceased's income according to the minimum wages and added 50% towards the future inflation. Although, a suggestion was given to PW-1 Meera, who was the deceased's widow that the salary certificate was not genuine, no such suggestion was given to PW-2 who corroborated PW-1's testimony on the aspect of deceased's salary. Moreover, The Appellant could have produced some evidence to rebut the salary certificate through its investigator. In the circumstances, the Claims Tribunal erred in disbelieving the salary certificate Ex.PW-1/D. Relying on the same, the loss of dependency works out as ₹ 8,77,500/- ($6500/- \times \frac{3}{4} \times 12 \times 15$) as against the loss of dependency of ₹ 8,91,200/- worked out by the Claims Tribunal.
98. Relying on *Kailash Kaur v. New India Insurance Company*, MAC APP.318/2008 decided on 24.03.2009, the Claims Tribunal awarded a sum of ₹ 1,00,000/- i.e. ₹ 25,000/- each to the four legal representatives towards loss of love and affection.
99. The loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts

while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head from ₹ 1,00,000/- to ₹ 25,000/- only.

100. The overall compensation is re-assessed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	₹8,91,200/-	₹8,77,500/-
2.	Loss of Love & Affection	₹ 1,00,000/-	₹ 25,000/-
3.	Loss of Consortium	₹ 10,000/-	₹ 10,000/-
4.	Funeral Expenses	₹ 10,000/-	₹ 10,000/-
5.	Loss to Estate	₹ 10,000/-	₹ 10,000/-
	Total	₹ 10,21,200/-	₹ 9,32,500/-

101. The overall compensation is thus reduced from ₹ 10,21,200/- to ₹ 9,32,500/-.

102. The excess amount of ₹ 88,700/- alongwith proportionate interest and the interest, if any, accrued during the pendency of the Appeal shall be refunded to the Appellant Insurance

Company.

103. The compensation held payable to Respondents No.1 to 4 shall be paid in the same proportion as directed by the Claims Tribunal.

104. The Appeal is allowed in above terms.

MAC.APP. 958/2011

105. The Appellant seeks reduction of compensation of ₹ 12,18,800/- awarded for the death of Monu Gupta, who was aged about 23 years at the time of the accident which occurred on 26.12.2009.

106. The quantum of compensation is challenged on the following grounds:-

(i) 50% addition in the minimum wages was not justified. The loss of dependency ought to have been calculated on the minimum wages.

(ii) Award of compensation under the head of loss of love and affection is on the higher side.

(iii) Interest awarded @ 9% per annum is on the higher side.

107. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a cook with Mama Hotel, D-137/7, Gautam Nagar, New Delhi and was getting a salary of ₹ 5700/- per month in addition he was also driving an auto

rickshaw (TSR) during night time and was earning ₹ 5,000/- per month.

108. Although, the accident took place with the offending vehicle No.HR-47A-9095 while the deceased Monu Gupta was driving TSR No.DL-1RG-1115, the Claims Tribunal disbelieved the deceased to be working either as a cook or even driving TSR in the absence of any documentary evidence. A salary certificate from Mama Hotel was placed on record but it was not proved in accordance with law. A suggestion was given to the deceased's widow that the deceased was not working in the said hotel. Since the salary certificate was not proved, it was rightly discarded by the Claims Tribunal. Permit of TSR No.DL-1RD-1115 dated 16.04.2007 in deceased's name was placed on the record. Moreover, the accident took place with this very TSR. The income of the TSR driver owning his own TSR can be presumed atleast ₹ 200/- per day. On working for 25 days, his income from driving the TSR should be atleast ₹ 5,000/- per month. The Respondents No.1 to 5 were entitled to loss of dependency on the income of ₹ 5,000/- per month instead of the income of minimum wages. The loss of dependency thus works out as ₹ 8,10,000/- ($5,000/- \times \frac{3}{4} \times 12 \times 18$).
109. The Claims Tribunal awarded a sum of ₹ 1,25,000/- towards loss of love and affection which for the reasons stated by me hereinabove while dealing with MAC APP.955/2011 is reduced from ₹ 1,25,000/- to ₹ 25,000/- only.

110. The overall compensation is re-assessed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	₹10,63,800/-	₹8,10,000/-
2.	Loss of Love & Affection	₹ 1,25,000/-	₹ 25,000/-
3.	Loss of Consortium	₹ 10,000/-	₹ 10,000/-
4.	Funeral Expenses	₹ 10,000/-	₹ 10,000/-
5.	Loss to Estate	₹ 10,000/-	₹ 10,000/-
	Total	₹ 12,18,800/-	₹ 8,65,000/-

111. The overall compensation is thus reduced from ₹ 12,18,800/- to ₹ 8,65,000/-.

112. The excess amount of ₹ 3,53,800/- alongwith proportionate interest and the interest, if any, accrued during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

113. Certain amounts were released in favour of Respondents Nos.1, 4 and 5 by the order dated 01.11.2011. Rest of the amount shall be disbursed in the same proportion/held in the fixed deposits as directed by the Claims Tribunal.

114. The Appeal is allowed in above terms.

MAC.APP. 461/2010

115. The Appellants who are the parents of deceased Manoj seek enhancement of compensation of ₹ 2,27,000/-. It was claimed that the deceased was doing a private job and was earning ₹ 6,000/- per month. He was also pursuing the Graduation from Delhi University. The Claims Tribunal, in the absence of any evidence took the deceased's income to be ₹ 3,000/- per month, deducted 50% towards his personal and living expenses and adopted the multiplier of 14, as per the age of the deceased's mother to compute the loss of dependency as ₹ 2,52,000/-.
116. The Appellants did not disclose the name of the employer nor presented any evidence to show that the deceased was employed and was earning ₹ 6,000/- per month. In the circumstances, the Claims Tribunal rightly did not take into consideration the deceased's income of ₹ 6,000/- per month.
117. The minimum wages of a Matriculate on the date of the accident were ₹ 3964/- or say ₹ 4,000/- per month. The loss of dependency thus works out as ₹ 3,36,000/- (₹ 4,000/- - 50% x 12 x 14).
118. Other pecuniary and non-pecuniary damages and the overall compensation is re-assessed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	₹2,52,000/-	₹3,36,000/-
2.	Loss of Love & Affection	₹ 10,000/-	₹ 25,000/-
3.	Funeral Expenses	₹ 10,000/-	₹ 10,000/-
4.	Loss to Estate	--	₹ 10,000/-
	Total	₹ 2,72,000/-	₹ 3,81,000/-

119. The overall compensation is thus enhanced from ₹ 2,72,000/- to ₹ 3,81,000/- which shall carry interest @ 9% per annum from the date of filing of the petition till the date of payment.
120. The enhanced compensation along with proportionate interest shall be deposited within 30 days which shall be equally shared in favour of the Appellants and shall be held in fixed deposits for a period of one year with UCO Bank, Delhi High Court Branch, New Delhi.
121. The Appeal is allowed in above terms.

MAC.APP. 768/2010

122. The Appeal is for reduction of compensation of ₹ 9,85,500/- awarded for the death of Devendra Kumar who died in an accident which occurred on 07.04.2009.

123. It was claimed that the deceased was pursuing job of a driver with the owner of the offending bus and his salary was claimed to be ₹ 6,000/- per month. The Claims Tribunal, in the absence of any documentary evidence, disbelieved the deceased's salary, took the minimum wages of a skilled worker as ₹ 4400/- per month, added 50% towards inflation to compute the loss of dependency as ₹ 9,50,400/-.
124. The averments made in Para 23 of the Claim Petition that the deceased was working as a driver were not controverted though the factum of the deceased's salary as ₹ 6,000/- per month was disputed by the Appellant Insurance Company.
125. The accident took place in year 2009. Since the factum of deceased's employment as a bus driver is not disputed, I would assume his income to be ₹ 6,000/- per month i.e. ₹ 200/- per day. In my view, the Respondents No.1 to 6 were entitled to loss of dependency on the income of ₹ 6,000/- per month. The dependents were deceased's widow, three children and his mother. The Claims Tribunal rightly deducted one-fourth of the deceased's income towards his personal and living expenses. The loss of dependency thus works out as ₹ 8,64,000/- (₹ 6,000/- x $\frac{3}{4}$ x 12 x 16).
126. The overall compensation is re-assessed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	₹9,50,400/-	₹8,64,000/-
2.	Loss of Love & Affection	₹ 10,000/-	₹ 25,000/-
3.	Loss of Consortium	₹ 10,000/-	₹ 10,000/-
4.	Funeral Expenses	₹ 5,000/-	₹ 10,000/-
5.	Loss to Estate	₹ 10,000/-	₹ 10,000/-
	Total Round off	₹ 9,85,400/- ₹ 9,85,500/-	₹ 9,19,000/-

127. The overall compensation is thus reduced from ₹ 9,85,500/- to ₹ 9,19,000/-.

128. The excess amount of ₹66,500/- alongwith proportionate interest and the interest, if any, accrued during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

129. The Appeal is allowed in above terms.

MAC.APP. 137/2011

130. The Appellant ICICI Lombard General Insurance Company Limited seeks reduction of compensation of ₹ 9,72,215/- awarded for the death of Ashok Kumar, who was aged 30 years at the time of the accident which occurred on 08.11.2009.

131. Respondents No.1 to 4 claimed that the deceased was looking after business of his father, the fourth Respondent who was not keeping in good health. He was earning ₹ 25,000/- per month from the business of selling automobile parts. A Bank statement Ex.PX-7 was placed on record in support of the financial transaction. The Claims Tribunal did not consider it as substantial evidence to conclude that the deceased was in business and was earning ₹ 25,000/- per month. The Claims Tribunal, therefore, accepted the minimum wages of an unskilled worker as ₹ 3953/-, added 50% towards the inflation to compute the loss of dependency as ₹ 9,07,215/-.
132. The deceased's widow Smt. Rajni filed her Affidavit Ex.PW-1/1 in support of the averments that the deceased was looking after all the affairs and management of the business and was earning ₹ 25,000/- per month. In cross-examination, PW-1 admitted that the deceased was not filing any Income Tax Return. She testified that her husband was running a shop at Mayapuri and had opened a current account in his own name. Copy of the pass book of saving bank account was proved as Ex.PX7.
133. There is no Appeal for enhancement of compensation by legal representatives of the deceased. There are number of entries in the deceased's saving bank account No.20009734251 which shows that more than a sum of ₹ 25,000/- was being credited every month in his account. The deceased owned a motor cycle.

His only son was admitted in a public school, namely, Royal Indian Public School. He paid school fee of ₹ 8938/- in the year 2009-10.

134. In the circumstances, the deceased's income could have been assumed to be atleast ₹ 6,000/- per month, whereas the Claims Tribunal assumed it to be ₹ 3953/- + 50% i.e. ₹ 5929/- per month. The loss of dependency on the income of ₹ 6,000/- works out as ₹ 9,18,000/- as against 9,07,215/- assessed by the Claims Tribunal.
135. The overall compensation of ₹ 9,72,215/- awarded by the Claims Tribunal, in the facts and circumstances cannot be said to be exorbitant or excessive.
136. Some of the compensation amount has already been released. The balance amount of compensation shall be deposited/released in terms of the Claims Tribunal's order.
137. The Appeal is devoid of any merit. The same is accordingly dismissed.

MAC.APP. 566/2010 and MAC.APP. 51/2012

138. These are two cross Appeals. MAC APP.566/2010 is filed by Daya Malik and Manish Sharma, owner and the driver of the offending vehicle which was a Lancer Car No.DL-1CF-7624, seeking exoneration on the ground that the second Appellant was not driving the offending vehicle i.e. Lancer Car, rather her

husband RW-3 Ram Nath Malik was driving the car at the aforesaid time.

139. In MAC APP.51/2012 preferred by the Claimants by way of Cross-Objections, the grounds set up is that the deceased's future prospects were not considered and no compensation was awarded towards loss of love and affection.
140. For the sake of convenience, the Appellants in MAC APP.566/2010 shall be referred to as the Appellants and the Objectors in MAC APP.51/2012 shall be referred as the Claimants.
141. As per the averments made in the Claim Petition, on 27.04.2008 at about 11:23 PM, the deceased was returning from *Majnu Ka Tila* and was proceeding to his house in Pul Bangash, Subzi Mandi on his motor cycle No.DL-3SZ-8996. When he reached opposite Bara Hindu Rao Hospital, a Lancer Car No.DL-1CF-7624 which was being driven in a rash and negligent manner came from Barafkhana's side. The Lancer car came on the wrong side and ran over the motorcycle.
142. In the written statement filed by Daya Malik, owner of the Lancer car, the manner of accident was disputed. It was stated that the Lancer Car was parked alongside the pavement in between Bara Hindu Rao Hospital and Barafkhana. There was no divider in between. The car was parked and the indicators were functioning. It was stated that the Claimants cooked up a

false story in collusion with the police to falsely implicate the owner and her son-in-law.

143. The second Appellant filed a separate written statement raising a plea that he was not driving the Lancer Car at the time of the accident. It was claimed that in reply to a notice under Section 133 of the Act, the IO was informed that it was not the second Appellant but Ram Nath Malik, RW-3 who was the driver of the Lancer Car.

144. The contentions raised on behalf of the Appellants are :-

- (i) There was no negligence on the part of the driver of the Lancer car, rather, there was negligence on the part of the deceased as he was over speeding. The driver of the said car was not the second Appellant but Ram Nath Malik, the husband of its owner.
- (ii) The deceased's income was not proved and the compensation should have been awarded on the basis of minimum wages.

145. On the other hand, the contentions raised on behalf of the Claimants are :-

- (i) There was no negligence on the part of the deceased. The Claims Tribunal rightly held that the driver of Lancer Car was negligent.

- (ii) Although the deceased was in a suitable job, no benefit of future prospects was given.
- (iii) No compensation has been awarded towards loss of love and affection.
- (iv) The compensation awarded towards loss to estate and loss of consortium are on the lower side.

146. In view of the contentions raised by the parties, the question of negligence assumes importance.

147. The Claims Tribunal while dealing with the issue of negligence, held as under:-

6. Issue no. 1:-

PW1 has stated that the deceased was traveling on his motorcycle and was hit by the offending vehicle driven by respondent no. 2 in rash and negligent manner. She has however admitted that she was not an eye witness. Medical record relating to admission, postmortem MLC and certified copies of the challan filed by the Police against respondent no. 2 as Ex. PW1/10 are filed on record. As per postmortem report and M.L.C. deceased had received vertebral damage due to blunt force impact on his neck which was possible in a road traffic accident. It is also stated that the injuries were antemortem in nature which were consistent with vehicular accident. As per Police investigation a case against respondent no. 2 for rash and negligent driving was made out. Respondent no. 2 had been arrested and released on Bail and was facing trial. IO of the criminal case had repeatedly been summoned but did not appear in the court as it was stated that due to severe diabetic condition for past one

year the witness was unable to walk and was taking treatment at Meerut .

R1W1 i.e. respondent no. 1 reiterated her stand taken in the reply. In cross-examination she stated that she has not disclosed in her written statement that her husband was driving the vehicle at the time of accident. She stated that she was owner of the vehicle and her vehicle was not insured. She also stated that she has not lodged any compliant to the higher authorities in regard to falsely being implicated in the case.

Respondent no. 2, R1W2 stated that he has wrongly been implicated in the case and was not driving the offending vehicle at the time of the accident. In cross-examination he admitted that he was facing trial in the criminal case and that he had not lodged any written compliant to higher authorities for falsely implicating him in the criminal case. He stated that he had seen the vehicle standing at the Patri when he reached at 10:30-11:00 p.m.

The mechanical inspection report of the offending vehicle is on record which shows that the Engine Bonnet was damaged, front bumper, front glass were broken, right side mud guard damaged, front right head light broken, front right and left inductor broken. The motorcycle was also found to be damaged as per mechanical inspection report. This clearly shows that the offending vehicle was involved in the accident in question. The spot map of the criminal case also shows the position of the offending car on the wrong side of the road. As per the map, it appears that the offending vehicle was turned on the wrong side of the road and had hit the vehicle of the deceased coming on his right side thereby causing accident. In view of the documents available on record it is reasonably established that deceased died due to injuries

in the accident by the offending vehicle driven in rash and negligent manner by respondent no. 2.

Accordingly, issue no. 1 is decided in favour of the petitioners.”

148. The Appellants claimed that Ram Nath Malik (RW-3) was present with the Lancer car at the time of the accident which was parked on the fourth electrical pole leading from Bara Hindu Rao to Barafkhana as shown in the site plan Ex.RW-3/1. Neither of the two Appellants nor RW-3 Ram Nath Malik have stated the purpose of parking the car beside the pavement late into the night at 11:23 P.M. The mechanical inspection report of the two vehicles reveals that there was extensive damage on the front right side of the car - its bonnet was damaged, bumper broken, front glass broken, front right head light was also broken. The deceased's two wheeler also had extensive damage on its front. Had the Lancer Car been parked on the left side of the road, close to the pavement, there would not have been such an extensive damage to the same. The site plan prepared by the IO filed along with the Challan Ex.PW-1/10 reveals that the Lancer car was parked at Point A after the accident whereas, the two wheeler was lying at Point B. It shows that the Lancer car had travelled on the right side on the road which is not very wide. The negligence on the part of the driver of the Lancer car was writ large and in the absence of any explanation, presumption of negligence can be drawn on the basis of principle of *res ipsa loquitur*. The Claimants were not present at

the time of the accident and no eye witness has been produced. The owner claims that it was her husband and not her son-in-law, the second Appellant, who was driving the Lancer Car. Although, the first Appellant took the plea that the second Appellant was falsely implication in collusion with the police, no reason has been given for false implication. Why would the police involve the son-in-law of the owner of a vehicle? The police would not even know as to who was the son-in-law. No complaint was made to the senior police officers that Ram Nath Malik was the driver at the Lancer Car at the time of the accident and not the second Appellant. It appears that the plea that the vehicle was being driven by Ram Nath Malik has been taken to avoid the criminal case filed against the second Appellant. As far as the Claim Petition is concerned, even if the identity of the driver is not established, the owner cannot escape the liability.

149. Therefore, I agree with the conclusion reached by the Claims Tribunal that it was the second Appellant who was the driving the Lancer Car at the time of the accident and that the accident was caused on account of rash and negligent driving.

QUANTUM OF COMPENSATION

150. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as an Accountant-cum-Sales Manager with M/s. Amar Enterprises and was getting a salary of ₹ 7,000/- per month. Photocopy of the salary certificate

Ex.PW-1/9 was produced by Smt. Sanna, the deceased's widow. Rakesh Kumar Garg, the deceased's employer and Proprietor of M/s. Amar Enterprises was examined as PW-2. Although, he testified that the deceased was working with him since September, 2008, yet his testimony was completely shaken in cross-examination.

151. This accident took place in April, 2008. The deceased therefore could not have joined M/s. Amar Enterprises in September, 2008, he being already dead. PW-2 disowned the Certificate Ex.PW-1/9 which was claimed by Respondent Sanna to have been issued by PW-2. The witness was not even aware of the deceased's qualification. In the absence of the same, it was difficult to believe that the deceased would be employed as an Accountant by PW-2. The Claims Tribunal in the circumstances, erred in relying on the salary certificate Ex.PW-1/9. In the absence of any proof with regard to the deceased's qualification, he could have been awarded compensation only on the basis of minimum wages of an unskilled worker. The deceased's age was 39 years and there were five dependents.
152. The loss of dependency comes to ₹ 4,90,455/- ($3633/- \times \frac{3}{4} \times 12 \times 15$).
153. On adding notional sum of ₹ 25,000/- towards loss of love and affection and ₹ 10,000/- each towards loss of Consortium, loss of Estate and funeral Expenses, the overall compensation comes

to ₹ 5,45,455/-.

154. The compensation payable is accordingly reduced from ₹ 9,81,000/- to ₹ 5,45,455/-.
155. The excess amount of ₹4,35,545/- alongwith proportionate interest and the interest accrued if any, during the pendency of the Appeal shall be refunded to the Insurance Company.

MAC. APP. No.81/2011

156. The Appellant Royal Sundram Alliance Insurance Co. Ltd. seeks reduction of compensation of ₹11,44,700/- awarded for the death of Mahender Singh who was aged 29 years and died in an accident which occurred on 14.09.2009. The deceased was survived by his widow, two sons, a daughter and aged parents.
157. During inquiry before the Claims Tribunal it was claimed that the deceased was working as a driver with Mahavir Traders and was earning ₹8,000/- per month. The Claims Tribunal did not rely on the said certificate, took minimum wages of an unskilled worker, added 50% thereto to compute the loss of dependency as ₹10,04,070/-. The Claims Tribunal added a sum of ₹1,00,000/- towards loss of love and affection, ₹25,000/- towards funeral expenses, ₹10,000/- towards consortium and ₹5,000/- towards loss to estate.
158. The contentions raised on behalf of the Appellant are:

- (i) The deceased was not wearing a helmet at the time of the accident. He, therefore, by himself contributed to the accident.
- (ii) No addition to the minimum wages was permissible.
- (iii) The compensation of ₹ 1,00,000/- awarded towards loss of love and affection and ₹ 25,000/- towards funeral expenses was excessive.

159. The Appellant Insurance Company claims that the deceased contributed to the accident as no helmet was recovered from the spot. Puneet Gupta's affidavit Ex.R3W1/A to the effect that the deceased was not wearing a helmet as it was not seized from the spot cannot be relied upon, to hold that the deceased was not wearing a helmet. The IO was not summoned to depose on this aspect. In the circumstances, I am not inclined to believe the version as put forth by Puneet Gupta, an employee of the Appellant Insurance Company. Moreover, even if it is assumed that the deceased was not wearing a helmet, he cannot be said to have contributed to the accident. Reference is made to a Division Bench judgment of M.P. High Court in *Miss. Vidya Soni & Anr. v. Pushpesh Dwivedi & Ors.*, AIR 2008 MP 319 wherein it was held that if a motorcyclist did not wear a helmet at the time of the accident, he cannot be said to have contributed to the accident.

160. During inquiry before the Claims Tribunal, Santosh, the deceased's widow filed an Affidavit Ex.PW-1/A by way of her evidence. She testified that her husband was employed as a driver and was getting a salary of ₹ 8,000/- per month.
161. In cross-examination, the witness deposed that her husband was employed with M/s. Mahavir Traders for the last 10-12 years. He used to ferry the owner in the small vehicle. The driving licence of the deceased was proved as Ex.PW-1/3.
162. The wages of a skilled worker on the date of the accident were ₹ 4377/- per month. The Respondent's testimony that the deceased was working as a driver and the proof of his driving licence was sufficient to conclude that the deceased was employed as a driver. I would assume his income to be about ₹ 5,000/- per month in the later part of the year 2009 when this accident occurred.
163. The loss of dependency would come as ₹ 7,65,000/- ($5000/- \times \frac{3}{4} \times 12 \times 17$).
164. Since, normally a compensation of ₹25,000/- is granted towards loss of love and affection (*Sunil Sharma v. Bachitar Singh (2011) 11 SCC 425* and *Baby Radhika Gupta v. Oriental Insurance Company Limited (2009) 17 SCC 627*), the same has to be reduced to ₹25,000/- from ₹ 1,00,000/- awarded by the Claims Tribunal. Funeral expenses are also granted to the extent of ₹10,000/- unless there is specific evidence to the contrary.

165. The compensation is recomputed as under:-

S. No.	Head of Compensation	Granted by the Claims Tribunal	Granted by this Court
1.	Loss of Dependency	₹10,04,700/-	₹7,65,000/-
2.	Loss of Love and Affection	₹1,00,000/-	₹25,000/-
3.	Loss of Consortium	₹10,000/-	₹10,000/-
4.	Funeral Expenses	₹25,000/-	₹10,000/-
5.	Loss to Estate	₹5,000/-	₹10,000/-
	Total	₹11,44,700/-	₹8,20,000/-

166. The overall compensation is reduced from ₹11,44,700/- to ₹8,20,000/-.

167. The excess amount of ₹ 3,24,700/- along with the proportionate interest and the interest, if any, accrued during the pendency of the Appeal shall be refunded to the Appellant Insurance Company immediately.

168. The Appeal is allowed in above terms.

MAC. APP. No.493/2011

169. The Appeal is for reduction of compensation of ₹ 5,57,160/- awarded, for the death of Rajesh, a bachelor aged 18 years who died in an accident on 01.10.2008.

170. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as an 'Assistant/Clerk' with Mr.

Santosh r/o C-50, Raja Garden and was drawing a salary of ₹ 5,000/- per month. The name of the employer was not mentioned in the Claim Petition. The factum of the deceased's employment as a Clerk was disputed in the written statement filed by the Appellant and Respondents No.2 & 3. In the absence of any cogent evidence, the Claims Tribunal, in my view, rightly disbelieved the Respondents plea that the deceased was working as a Clerk with one Santosh and earning ₹ 5,000/- per month. No evidence was led as to the deceased's qualification. In view of my observations above, no addition was permissible towards inflation. The loss of dependency comes to ₹ 3,31,470/-(3683 X 1/2 X 12 X 15).

171. The compensation is recomputed as under:

S.No.	Head of Compensation	Granted by the Claims Tribunal	Granted by this Court
1.	Loss of Dependency	₹4,97,160/-	₹3,31,470/-
2.	Loss of Love and Affection	₹40,000/-	₹25,000/-
3.	Funeral Expenses	₹20,000/-	₹10,000/-
5.	Loss to Estate	-	₹10,000/-
	Total	₹5,57,160/-	₹3,76,470/-

172. The overall compensation is reduced from ₹5,57,160/- to ₹3,76,470/-

173. The excess amount of ₹1,80,690/- alongwith proportionate interest and the interest, if any, accrued during the pendency of the appeal shall be refunded to the Appellant Insurance Company immediately.

174. The Appeal is allowed in above terms.

MAC. APP. No.536/2011

175. The Appeal is for reduction of compensation of ₹9,89,738/- awarded for the death of Subhash Chand who was aged 30 years on the date of the accident which occurred on 06.01.2008. The deceased left behind five dependents i.e. the widow, three children and a mother.

176. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a *Nakedar* with M/s. Banas Sands Company and getting a salary of ₹5,000/- per month.

177. In the absence of any documentary evidence, the Claims Tribunal declined to believe the Claimants version about the deceased's salary and adopted minimum wages, made addition of 50% to compute the loss of dependency.

178. Before the Claims Tribunal, it was stated that the deceased was getting a salary of ₹3670/- plus overtime and the deceased's approximate income was ₹5,000/- per month. The name of the employer was also mentioned in the Claim Petition. The averments made in paras 5 and 6 were not specifically

traversed. In her affidavit Ex.P1, the First Respondent testified that the deceased was getting a salary of ₹5,000/- per month and was contributing the entire income to the family. The First Respondent denied the suggestion that her husband was not employed and was not earning any amount. In view of non traversal, the averments made in the Claim Petition on the deceased's income of ₹5,000/- and considering his qualification of 12th Standard, from the Board of Secondary Education Rajasthan, I am inclined to accept his income to be ₹5,000/- per month. On the basis of the principles laid down earlier, the loss of dependency comes to ₹7,65,000/-(5000 X 12 X 3/4 X 17).

179. The compensation is recomputed as under:

S.No.	Head of Compensation	Granted by the Claims Tribunal	Granted by this Court
1.	Loss of Dependency	₹9,09,738/-	₹7,65,000/-
2.	Loss of Love and Affection	₹50,000/-	₹25,000/-
3.	Loss of Consortium	₹10,000/-	₹10,000/-
4.	Funeral Expenses	₹10,000/-	₹10,000/-
5.	Loss to Estate	₹10,000/-	₹10,000/-
	Total	₹9,89,738/-	₹8,20,000/-

180. The overall compensation is reduced from ₹9,89,738/- to ₹8,20,000/-

181. The excess amount of ₹1,69,738/- along with interest, if any accrued during the pendency of the appeal shall be refunded to the Appellant Insurance Company immediately.

182. The Appeal is allowed in above terms.

MAC. APP. No.862/2011

183. The Appeal is for reduction of compensation of ₹12,32,000/- awarded for the death of Bhimsen who was aged 45 years who died in an accident which occurred on 10.03.2010.

184. The Motor Accident Claims Tribunal(the Claims Tribunal) by a judgment dated 05.07.2011 disbelieved the Respondents case that the deceased was carrying out private job with a caterer and earning ₹12,000/- per month. The Claims Tribunal took the minimum wages of a skilled worker, added 50% towards inflation to compute the loss of dependency.

185. There was no evidence with regard to the deceased's income or his qualification. His income could have been taken only on the basis of minimum wages payable to an unskilled worker. The addition of 50% was not permissible for the reasons as stated earlier. The loss of dependency comes to ₹5,91,138/- (₹5278 - $\frac{1}{3} \times 12 \times 14$). The compensation on account of loss of love and affection is also required to be reduced to ₹25,000/- from ₹75,000/-. (*Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627).

186. The compensation is recomputed as under:

S. No.	Head of Compensation	Granted by the Claims Tribunal	Granted by this Court
1.	Loss of Dependency	₹10,92,000/-	₹5,91,138/-
2.	Loss of Love and Affection	₹75,000/-	₹25,000/-
3.	Loss of Consortium	₹10,000/-	₹10,000/-
4.	Funeral Expenses	₹10,000/-	₹10,000/-
5.	Loss to Estate	₹10,000/-	₹10,000/-
6.	Medicines & Treatment	₹35,000/-	-
	Total	₹12,32,000/-	₹6,46,138/-

187. The overall compensation is reduced from ₹12,32,000/- to ₹6,46,138/-

188. The excess amount of ₹5,85,862/- alongwith proportionate interest and the interest, if any, accrued during the pendency of the appeal shall be refunded to the Appellant Insurance Company immediately.

189. The compensation held payable to the Respondents No.1 to 3 shall be disbursed/held in Fixed Deposit in the proportion and the manner as directed by the Claims Tribunal. The deposit shall be held in UCO Bank, Delhi High Court Branch.

190. The Appeal is allowed in above terms.

MAC. APP. No.38/2011

191. The Appellant New India Assurance Company Limited impugns a judgment dated 11.08.2010 whereby, a compensation of ₹ 7,93,780/- was granted to the Respondents (Claimants) for the death of Daya Ram who was aged 27 years on the date of the accident which occurred on 05.05.2006.
192. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a driver with M/s. Sonu Tours & Travels and was getting a salary of ₹ 6,000/- per month. In the absence of any cogent evidence with regard to the deceased's employment, the Claims Tribunal took the minimum wages of a skilled worker, added 50% on account of inflation and computed the loss of dependency as ₹ 7,53,780/-.
193. Following contentions are raised on behalf of the Appellant:-
- (i) The Tata Sumo vehicle No.DL-6CA-8077 was being driven by the deceased in a rash and negligent manner. He himself was responsible or in any case contributed to the accident and the Insured or the Appellant Insurance Company were not liable to pay any compensation.
 - (ii) The compensation awarded on the basis of wages of a skilled worker and making addition of 50% in minimum wages was not permissible. Thus, the compensation awarded was exorbitant or excessive.

194. Claim Petition bearing Suit No.289/2006 was being tried with Claim Petition bearing Suit No.280/2006, 282/2006, 288/2006 and 281/2006.
195. Claim Petition bearing Suit No.280/2006 and 288/2006 bearing MAC APP.36/2011 titled '*New India Assurance Company Limited v. Rimjhim Ispat Ltd. & Ors.*' and MAC APP.41/2011 titled '*New India Assurance Company Limited v. Rimjhim Ispat Ltd. & Ors.*' arising out of this very accident were decided by the Claims Tribunal. The Appeals were decided by this Court by a common judgment dated 21.02.2012. In the said Appeals, the only ground of challenge was the negligence on the part of Tata Sumo's driver i.e. the deceased herein. Para 4 to Para 10 of the judgment in MAC APP.36/2011 are extracted hereunder:-

"4. The only ground of challenge common in both the Appeals is that the Tata Sumo vehicle hit the truck from the rear. Unless and until the Tata Sumo was being driven at a very fast speed the accident could have been avoided by the driver of the Tata Sumo. It is thus pleaded that the accident was caused on account of rash and negligent driving of the driver of the Tata Sumo or in the alternative it is submitted that there was contributory negligence of the driver of Tata Sumo. Both these Claim Petition Bearing Suit No. 280/2006 and 288/2006 were tried jointly. The Claimants examined several witnesses including four eye witnesses to the accident.

5. PW 4 Sunil Kumar filed his Affidavit Ex. P-25 by way of evidence. He deposed that the Tata Sumo Car was being driven by Daya Ram at a very slow speed. At about 4.30 A.M. the Tata Sumo reached near Chand Filling Petrol Pump at G.T.Road, Arnia, Police Station

Khurja, Bullandshahar, UP. A truck bearing No.UP 7080 9758 was going ahead of the Tata Sumo Car. The truck was being driven by Gautam Kumar Tiwari at a very fast speed rashly and negligently. The driver of the truck suddenly applied brakes in the middle of the road as a result of which the Tata Sumo Car which was following the truck dashed into the truck. In the cross-examination it was suggested to this witness that the driver was drowsy or that he was drunk. The witness showed his ignorance about the same.

6. *The second witness examined by the claimants was Keshav Dutt. He corroborated Sunil Kumar's testimony in his Affidavit Ex.P-16. In the cross-examination, the witness deposed that the speed of the truck was about 80 km per hour. The Tata Sumo was following it at a distance of about 40 feet almost at the same speed. The witness denied the suggestion that the driver was drunk or that he was sleepy.*

7. *The third witness is PW-6 Narendra Bhatt who in his Affidavit Ex.P-20 corroborated the version as given by PWs 4 and 5. In cross-examination, a suggestion was given to him that the truck gave an indication to take left turn and the accident took place because of negligence of the driver of Tata Sumo which was denied by the witness. The witness also denied the suggestion that the driver of the Tata Sumo was drunk or was sleepy. Thus, a new case was tried to be set up by this witness that the truck driver took a left turn after due indication and that the driver of Tata Sumo on account of his own negligence dashed his vehicle into the truck.*

8. *The fourth witness is PW 7 Shambhu Sharma. He corroborates the three earlier witnesses in his examination-in-chief by way of an Affidavit (Ex.P-35). In cross-examination the witness deposed that the truck was going at the speed of 70-80 kmph whereas the Tata Sumo was going at the speed of 60 kmph. He denied that the Tata Sumo driver was drunk or was feeling sleepy. PW*

4, PW 5 and PW 7's testimony that the truck driver suddenly applied brakes in the middle of the road was not challenged in cross-examination. A contrary stand was taken on behalf of the insurance company in PW6's cross-examination when suggestion was given to this witness that the truck driver took a left turn after due signal and that on account of rash and negligent driving by the driver of Tata Sumo the accident occurred. It is important to note that driver of Truck No.UP-78T-9758 preferred not to contest the proceedings who was ordered to be proceeded ex parte.

9. The owner of the truck M/s. Rimjhim Ispat Ltd. took a contrary stand in the WS and completely denied the involvement of the truck in the accident. The driver of the vehicle was not produced to give his version as to how the accident occurred. Thus I am inclined to accept the version as given by the four witnesses mentioned earlier that the accident was caused on account of the sudden application of brakes by the driver of the truck in the middle of the road.

10. It may be noticed that the accident took place at 4.30 A.M. It was the duty of the truck driver not to apply the brakes while he was driving the truck at a very fast speed. It cannot be said that there was any negligence on the part of the driver of the Tata Sumo Car."

196. In this view of the matter, it cannot be said that there was any contributory negligence on the part of deceased Daya Ram. The driver and owner of the offending truck No.UP-78T-9758 and the Appellant were rightly held liable to pay the compensation.
197. As far as quantum of compensation is concerned, the deceased's salary was claimed to be ₹ 5,000/- per month. The same was disbelieved as no documentary evidence was placed on record.

The deceased's driving licence to drive LMV (taxi) was, however proved during the inquiry before the Claims Tribunal.

198. Gopal, the deceased's father filed his Affidavit Ex.P-10 by way of his examination-in-chief and testified that the deceased was working as a driver with M/s. Sonu Tours & Travels and was getting a salary of ₹ 5,000/- per month. In the absence of any documentary evidence with regard to the deceased's employment with M/s. Sonu Tours & Travels, the Claims Tribunal rightly declined to believe Gopal's evidence with regard to the deceased's employment, yet the factum of the deceased's working as a driver was not disputed. This coupled with the fact that the deceased was driving the Tata Sumo at the time of the accident and possessed a licence to drive taxi was sufficient to conclude that the deceased was a professional driver. His income in the year 2006 should have been taken at least ₹ 150/- per day or ₹ 4500/- per month. The Claims Tribunal erred in awarding compensation on assuming the salary to be ₹ 5542/- per month although, the salary was claimed to be only ₹ 5,000/- per month. The loss of dependency on the income of ₹ 4500/- per month would come to ₹ 6,12,000/- ($4500/- \times \frac{2}{3} \times 12 \times 17$).
199. On adding notional sum of ₹ 25,000/- towards loss of love and affection and ₹ 10,000/- each towards loss of Consortium, loss of Estate and funeral Expenses, the overall compensation comes to ₹ 6,67,000/-.

200. The compensation payable is reduced from ₹ 7,93,780/- to ₹ 6,67,000/-.
201. The excess amount of ₹1,26,780/- alongwith proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
202. The Appeal is allowed in above terms.

MAC. APP. No.40/2011

203. The Appeal is for reduction of compensation of ₹ 8,13,952/- for the death of Kamla who was aged 32 years on the date of the accident. During inquiry before the Claims Tribunal it was claimed that the deceased was B.A. (Hons.) and was working with M/s. Fast Track India and was getting a salary of ₹ 6,000/- per month.
204. Respondent Sunil Kumar appeared as PW-4 and proved the Certificate Ex.P-14 regarding deceased's qualification and the Salary Certificate Ex.P-13 in the absence of any witness from the deceased's employer, the same was not believed by the Claims Tribunal. The Claims Tribunal took the minimum wages of a Graduate i.e. ₹ 4031/-, added 50% towards the inflation and computed the loss of dependency on the income of ₹ 6046/- amounting to ₹ 7,73,952/-.
205. Following contentions are raised on behalf of the Appellant:-

- (i) The Tata Sumo vehicle No.DL-6CA-8077 was being driven by the deceased in a rash and negligent manner. He himself was responsible or in any case contributed to the accident and the Insured or the Appellant Insurance Company was not liable to pay any compensation.
- (ii) The compensation awarded on the basis of wages of a skilled worker and making addition of 50% in minimum wages was not permissible. Thus, the compensation awarded was exorbitant or excessive.

206. The Claim Petition bearing Suit No.281/2006 out of which the present Appeal arises was tried along with five Claim Petitions including Claim Petition bearing Suit No.289/2006, 280/2006, 282/2006 and 288/2006.

207. I have already held above that there was no negligence on the part of the driver of the Tata Sumo. Even if, it is assumed (as far as this case is concerned), that there was some negligence on the part of Tata Sumo's driver, it was not a case of contributory negligence. While disposing of connected MAC APP.36/2011 titled '*New India Assurance Company Limited v. Rimjhim Ispat Ltd. & Ors*'. and MAC APP.41/2011 titled '*New India Assurance Company Limited v. Rimjhim Ispat Ltd. & Ors.*', this Court held as under:-

"11. Otherwise also even if it is assumed that there was some negligence on the part of the Tata Sumo Driver it was not a case of contributory negligence but of the

composite negligence and the claimants were entitled to sue all or any of the wrong doer to claim compensation. In T.O. Anthony v. Karvarnani, (2008) 3 SCC 748, which is relied on by the Appellants it was held as under: -

“6. ‘Composite negligence’ refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.”

12. Thus although I have already held earlier that there was negligence on the part of the truck driver and he was responsible for causing the accident, even if it is assumed that there was some negligence on the part of the Tata Sumo driver it does not affect the claim petition filed by the claimants. In case of composite negligence a victim can sue all or any of the tortfeasors to claim

compensation for the wrongful act of the joint tortfeasors.”

208. As far as deceased's income is concerned, even if it is assumed that the deceased was a housewife and was to be granted compensation on the basis of the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, MAC.APP. 590/2011, decided on 30th January, 2012 the same would be more than the compensation awarded by the Claims Tribunal. In *Master Manmeet Singh (supra)*, this Court noticed the 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.”

209. Thus, taking the deceased Kamla's salary of a Graduate of ₹ 4031/-, adding 25% on the principles stated above, the loss of dependency of a gratuitous services rendered by deceased Kamla would come to ₹ 9,67,440/- (4031/- + 25% x 12 x 16).

210. The compensation payable would be more than 8,13,952/- as awarded by the Claims Tribunal. Consequently, the Appeal is devoid of merit; the same is accordingly dismissed.

MAC.APP. 39/2011

211. This is another Appeal connected with MAC APP.38/2011 and 40/2011.

212. The Appellant New India Assurance Company Limited seeks reduction of compensation of ₹ 4,29,168/- awarded for the death

of Usha Bhatt, an unmarried girl aged about 22 years.

213. Sidhi Devi, the deceased's mother filed a Petition claiming compensation of ₹ 10,00,000/-.
214. During inquiry before the Claims Tribunal, it was claimed that the deceased was working in ICICI Bank, Mayur Vihar and was getting a salary of ₹ 5,000/- per month. No documentary evidence was produced by the Respondent (the Claimant) nor any witness from the ICICI Bank, Mayur Vihar was summoned to testify that the deceased was employed there. Factum of deceased's employment was disputed in cross-examination of the Respondent Sidhi Devi. The Claims Tribunal, in the absence of any evidence with regard to the deceased's employment, strangely increased the deceased's income to ₹ 6046/- per month (as against claim of ₹ 5,000/-) to compute the loss of dependency as ₹ 3,99,168/-.
215. Following contentions are raised on behalf of the Appellant:-
 - (i) The Tata Sumo vehicle No.DL-6CA-8077 was being driven by the deceased in a rash and negligent manner. He himself was responsible or in any case contributed to the accident and the Insured or the Appellant Insurance Company was not liable to pay any compensation.
 - (ii) The compensation awarded on the basis of wages of a Graduate and making addition of 50% in minimum wages

was not permissible. Thus, the compensation awarded was exorbitant or excessive.

216. The first contention is covered by my observations in MAC APP.38/2011 and 40/2011 above.
217. As far as quantum of compensation is concerned, there is no evidence that the deceased was a Graduate. Rather, the Respondent (the Claimant) proved the Senior Secondary School Certificate and the Identification Card Ex.P-4 that she was a student of School of Open Learning.
218. I have already held above that addition on account of inflation cannot be given. The Respondent (the Claimant) was entitled to compensation on the basis of the minimum wages of a Matriculate. The loss of dependency come to ₹ 2,45,454/- (3719/- x 1/2 x 12 x 11).
219. On adding notional sum of ₹ 25,000/- towards loss of love and affection and ₹ 10,000/- each towards loss of Estate and funeral Expenses, the overall compensation comes to ₹ 2,90,454/-.
220. The compensation payable is reduced from ₹ 4,29,168/- to ₹ 2,90,454/-.
221. The excess amount of ₹1,38,714/- alongwith proportionate interest and the interest accrued if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

222. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MARCH 19, 2012
vk/pst