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

Date of Decision: 19.12.2014

+ **MAC.APP. 994/2014**

NATIONAL INSURANCE CO LTD

..... Appellant

Through

Mr. Rakesh Tikku, Sr. Advocate with
Ms. Manjusha Wadhwa and Ms. Arpan
Wadhawan, Advocates

versus

PRABHATI DEVI & ORS

..... Respondents

Through

Mr. Sukhbir Singh and Mr. Nishant
Singh, Advocates for R-7/Jagjit Singh

+ **MAC.APP. 995/2014**

NATIONAL INSURANCE CO LTD

..... Appellant

Through

Mr. Rakesh Tikku, Sr. Advocate with
Ms. Manjusha Wadhwa and Ms. Arpan
Wadhawan, Advocates

versus

PREETI MEHRA & ORS

..... Respondent

Through

Mr. Y.N. Singh, Advocate for R-1
Mr. Sukhbir Singh and Mr. Nishant
Singh, Advocates for R-5

+ **MAC.APP. 999/2014**

NATIONAL INSURANCE CO LTD

..... Appellant

Through

Mr. Rakesh Tikku, Sr. Advocate with
Ms. Manjusha Wadhwa and Ms. Arpan
Wadhawan, Advocates

versus

DEVINDER SINGH & ORS

..... Respondent

Through

Mr. Neeraj Chaudhari, Advocate for R-
1/Devinder Singh
Mr. Sukhbir Singh and Mr. Nishant
Singh, Advocates for R-2/Jagjit Singh

- + **MAC.APP. 1001/2014**
 NATIONAL INSURANCE CO LTD Appellant
 Through Mr. Rakesh Tikku, Sr. Advocate with
 Ms. Manjusha Wadhwa and Ms. Arpan
 Wadhawan, Advocates
- versus
 SATPRAKASH & ORS Respondent
 Through Ms.Suman Negi and Mr.Sikha Singh,
 Advocates for Mr.Gurmit Singh Hans,
 Advocate for R-1
 Mr.Sukhbir Singh and Mr.Nishant
 Singh, Advocates for R-3/Jagjit Singh
- + **MAC.APP. 1002/2014**
 NATIONAL INSURANCE CO LTD Appellant
 Through Mr. Rakesh Tikku, Sr. Advocate with
 Ms. Manjusha Wadhwa and Ms. Arpan
 Wadhawan, Advocates
- versus
 PRAMOD KUMAR & ORS Respondent
 Through Ms.Suman Negi and Mr.Sikha Singh,
 Advocates for Mr.Gurmit Singh Hans,
 Advocate for R-1
 Mr.Sukhbir Singh and Mr.Nishant
 Singh, Advocates for R-3/Jagjit Singh
- + **MAC.APP. 1003/2014**
 NATIONAL INSURANCE CO LTD Appellant
 Through Mr. Rakesh Tikku, Sr. Advocate with
 Ms. Manjusha Wadhwa and Ms. Arpan
 Wadhawan, Advocates
- versus
 PARITOSH BISWAS & ORS Respondent
 Through Mr.Y.N.Singh, Advocate for R-1
 Mr.Sukhbir Singh and Mr.Nishant
 Singh, Advocates for R-3/Jagjit Singh

- + **MAC.APP. 1004/2014**
 NATIONAL INSURANCE CO LTD Appellant
 Through Mr. Rakesh Tikku, Sr. Advocate with
 Ms. Manjusha Wadhwa and Ms. Arpan
 Wadhawan, Advocates
 versus
 HEMANT KOCHAR & ORS Respondent
 Through Mr. Neeraj Chaudhari, Advocate for R-1
 Mr. Sukhbir Singh and Mr. Nishant
 Singh, Advocates for R-2/Jagjit Singh
- + **MAC.APP. 1005/2014**
 NATIONAL INSURANCE CO LTD Appellant
 Through Mr. Rakesh Tikku, Sr. Advocate with
 Ms. Manjusha Wadhwa and Ms. Arpan
 Wadhawan, Advocates
 versus
 SHASHI CHANDEL & ORS Respondent
 Through Mr. Y.N. Singh, Advocate for R-1
 Mr. Sukhbir Singh and Mr. Nishant
 Singh, Advocates for R-6/Jagjit Singh
- + **MAC.APP. 1006/2014**
 NATIONAL INSURANCE CO LTD Appellant
 Through Mr. Rakesh Tikku, Sr. Advocate with
 Ms. Manjusha Wadhwa and Ms. Arpan
 Wadhawan, Advocates
 versus
 LAKHBIR SINGH KHALSA & ORS Respondent
 Through Ms. Suman Negi and Mr. Sikha Singh,
 Advocates for Mr. Gurmit Singh Hans,
 Advocate for R-1/Lakhbir Singh
 Mr. Sukhbir Singh and Mr. Nishant
 Singh, Advocates for R-3/Jagjit Singh

+ **MAC.APP. 1007/2014**

NATIONAL INSURANCE CO LTD

..... Appellant

Through

Mr. Rakesh Tikku, Sr. Advocate with
Ms. Manjusha Wadhwa and Ms. Arpan
Wadhawan, Advocates

versus

UNION OF INDIA & ORS

..... Respondent

Through

Mr. Sukhbir Singh and
Mr. Nishant Singh, Advocates for
R-3/Jagjit Singh

+ **MAC.APP. 1008/2014**

NATIONAL INSURANCE CO LTD

..... Appellant

Through

Mr. Rakesh Tikku, Sr. Advocate with
Ms. Manjusha Wadhwa and Ms. Arpan
Wadhawan, Advocates

versus

SITARAM SAH & ORS

..... Respondent

Through

Mr. Sukhbir Singh and Mr. Nishant
Singh, Advocates for R-7/Jagjit Singh

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. These 11 appeals are filed by the appellant Insurance Company seeking to impugn the common award passed on 18.07.2014.
2. The brief facts which led to the filing of these 11 claim petitions are that on 21.02.2010 at around 11.15 PM Laxmi Singh Bhati, Devender Singh Bara, Hemant Kochhar, Deepak Mehra, Paritosh Biswas, SI Lakhbir Singh Khalsa, Ct. Satprakash, Ct. Pramod and Ravinder Kumar were going in a Swaraj Majda. When they reached BRT Corridor near Krishi Vihar, G.K-I, the offending bus driven by the driver Balwant Kumar in a rash and negligent

manner took a sudden right turn and jumped the divider and hit the Swaraj Majda causing grievous/fatal injuries to its occupants. The offending bus also caused fatal injuries to scooter and motorcycle riders moving on the road. On account of the accident Deepak Mehra, driver Ravinder Kumar and two other riding on the motorcycle died due to injuries.

3. Eleven different claim petitions were filed. The appellant Insurance Company seeks to impugn the award on two different heads. The first issue raised which is common to all the appeals is that the appellant Insurance Company has no liability to compensate the claimants as there is a breach of the insurance policy inasmuch as the driver of the offending bus Balwant Kumar did not have a driving license to drive the bus. Apart from this contention which is common to all the appeals, the quantum of compensation awarded by the Tribunal to each of the claimants has also been challenged in the different appeals respectively on the ground that the compensation awarded is on the higher side.

4. I will first deal with the issue of liability of the appellant Insurance Company to pay and the contention that the driver Balwant Kumar did not have a driving license or the alternative plea that the driving license produced in the course of proceedings before the Tribunal is fake.

5. Learned senior counsel appearing for the appellant submits that there are contradictory documents on record which clearly show that the driving license relied upon by Balwant Kumar and the owner of the offending bus is fake. Reliance is firstly placed on the reply sent by the owner of the offending vehicle in response to a notice received from the police wherein he has said that the helper of the vehicle Balwant Kumar @ Balwant Chand had stolen the

vehicle and caused the accident and that the said Balwant Kumar @ Balwant Chand is a helper. Reliance is also placed on the Accident Information Report prepared by the police which also relies upon the report from the Transport Authority, Agra stating that the license in question of the driver, Balwant Kumar, namely, license No. 10630/AG/06 is issued in the name of someone else. Reliance is also placed on the evidence of R3W1_Sh.Anand Swaroop, Senior Assistant RTO Office, Agra (wrongly stated to be Shahdara).

6. It is pointed out that in view of the above evidence, initially the police filed a chargesheet against the driver under Section 3/181 of the M.V.Act on the ground that he did not have an effective driving license. However the court of the MM directed the IO to make an enquiry regarding the driving license produced by driver. The IO on verification found the license to be valid and consequently the MM on 18.08.2010 dropped the proceedings for offences under Sections 3/181 and 5/180 of the M.V. Act.

7. It is urged that it appears that the owner of the offending vehicle has manipulated documents and records in the RTO Office, Agra and has generated a false report from there which seems to indicate that the license No.10630/AG/06 is valid. In this context, it is also pointed out that CW-1, Sh. K.K. Tiwari, Senior Assistant, RTO Office, Agra, the Court Witness has given a different picture altogether claiming that the license is issued in the name of Balwant Kumar. It is urged that the matter be remanded back to the Tribunal for appropriate re-consideration as there is a clear forgery by the driver and the owner who have manipulated the documents in connivance with some officials of RTO to forge the driving license which at the initial stages of investigation were not made available to the police.

8. I may look at the merits of the said contention of the learned counsel for the appellant. The accident has taken place on 21.02.2010. It appears that the police has issued a notice to the owner, (Ex.R3W1/4). The owner has replied stating that Sh.Rakesh Kumar is the permanent driver of the bus and at about 9.30 p.m. the helper Balwant Kumar had stolen the vehicle and committed the accident near Sadiq Nagar.

9. A notice was also sent under Section 91/160 Cr.P.C. to Balwant Kumar (Ex.R3/W1/2). Balwant Kumar has replied (Ex.R3/W1/3) stating that he has no driving license and earlier he was telling a lie that he is having a license.

10. The Accident Information Report also contains an endorsement issued by the RTO Agra dated 11.01.2013 which states that driving license No.10630/AG/06 was issued on 08.09.2006 in the name of one Sh.Vijay Singh.

11. The appellant had summoned the concerned official from RTO Office, Agra. R3W1 appeared but states that as per the summoned record the driving license No.10630/A/06 is in the name of Sh.Vijay Singh. He also confirms that the license is not issued in the name of Balwant Chand. He further states that the previous driving license No.10629/A/06 was issued in the name of Sh.Shambu. In cross-examination by the owner, he denies that driving license No.10630/AG/06 was issued by RTO Agra. The appellant Insurance Company has also on 22.06.2011 made an application under RTI Act, 2005 for information pertaining to the license No.10630/AUG/06 issued to Balwant Singh. In reply the RTO has pointed out that no information regarding the concerned license No.10630/AUG/06 can be supplied as a departmental enquiry is pending. It appears that an appeal has been filed against the said order on 08.11.2011 but no decision has been taken.

12. There is contradictory evidence on record. The RTO has on 08.07.2010 confirmed to the police that license No.10630/AG/06 dated 26.05.2006 has been issued in the name of Sh.Balwant Chand. The police requested for dropping the charge under Sections 3/181 and 5/180 of the M.V.Act based on this communication.

13. A close perusal of the evidence of R3W1 shows that he appears to be confused with license numbers 10630/A/06 and 10630/AG/06. His testimony relates to the license number with series 'A' and not with the series 'AG'.

14. The Tribunal reserved the order after arguments on 28.11.2013. On 1.05.2014, thereafter on account of confusing evidence from RTO Agra the matter was listed for clarification and the Tribunal noted the confusion about the two series of driving licenses, namely, the series of 'A' with series of 'AG'. The Tribunal issued court notice to RTO, Agra Transport Authority to send some responsible official along with record of driving license of the two series, namely of driving license bearing No.10630/AG/06 and driving license No. 10630/A/06. In response to the said order dated 01.05.2014, Sh.K.K.Tiwari, Senior Assistant, RTO Office, Agra, U.P. appeared on 22.05.2014 with summoned record. In his evidence, he states that license No.10630/AG/06 is in the name of Balwant Chand while license No.10630/A/06 is in the name of Sh.Vijay Singh. In his cross-examination, he confirms that the register bearing series of 'A' is No. 28 but the register number is not mentioned in the register containing license No. 10625/AG/06-10635/AG/06.

15. In the light of the above evidence, the Tribunal notes that once the official of RTO with original register proved the license of the driver before the Tribunal, then that would be the primary evidence which would be relied upon

by the Tribunal given the summary procedure adopted by the Tribunal. The Tribunal declined to adjudicate upon the veracity of the register which was produced by the concerned officials from the RTO, Agra and held that the appellant would be necessarily liable to indemnify the owner on account of the recovery rights.

16. In the light of the above clarification given by the court witness-CW1, in my opinion given the limited nature of scope of enquiry before the Tribunal, the evidence clearly shows that the license in question, namely, 10630/AG/06 appears to have been issued in the name of Mr. Balwant Kumar.

17. I may note that the Supreme Court in the case of *New India Assurance Co. Limited v. Anita* order dated 6th January, 2010 in *SLP (Civil) No. 35537/2009* held as follows:

“We may also observe that a Tribunal constituted under the Act is not a regular Court and it is required to decide applications filed for compensation by adopting a summary procedure consistent with the rules of nature justice (Section 168 and 169 of the Act). By virtue of Section 169, the Tribunal is clothed with the powers of Civil Court for the purpose of taking evidence on oath, enforcing the attendance of witnesses and compelling the discovery and production of documents and material objects but there is nothing in the Act from which it can be inferred that the Tribunal is bound by the technical rules of evidence. Therefore, the Tribunal cannot be faulted for having allowed the parties to lead secondary evidence. Rather, that was the only course available to the Tribunal for doing justice to the parties because the original file was lost in 1994 and the case had to be decided on the basis of reconstructed file.”

18. In the light of the above legal position and the fact as elaborated above, it is clear that given the limited scope of enquiry by the Tribunal, the

preponderance of evidence, namely, the order of the MM discharging the driver of offences under Section 3/181 of the M.V.Act and the testimony of CW-1, the court witness, unequivocally show that the driving license subsequently produced by the driver is valid. No doubt there are certain confusing and contradictory evidence on record. The Tribunal has taken care of the said aspect and has noted that the contentions raised by the appellant would necessarily involve adjudication on the veracity of the register of 'AG' series which can only be done in criminal investigation. The Tribunal also noted that a detailed police investigation is required with regard to the driving license filed by the owner and driver before the MM and hence, in these facts that the Tribunal granted liberty to the Insurance Company to initiate criminal prosecution against driver & owner and the officials of RTO, Agra, U.P. It was however clarified that in case the owner and the driver of the offending vehicle are found guilty of forgery or fabrication of license, the appellant Insurance Company would be entitled to recover the present award amount from the owner and the driver of the offending vehicle.

19. In the light of the liberty granted, in my opinion there are no reasons to interfere with the findings recorded by the Tribunal on this count.

20. I may also at this stage note the evidence of the owner /Jagjit Singh. The owner Jagjit Singh in his affidavit by way of evidence states that the driver of the offending vehicle had a valid driving license to drive. He further states that he had taken all precaution before appointment of the said driver inasmuch as he had seen his driving license and he had appointed him as a driver after being satisfied in respect of his driving skills. The relevant part of his affidavit reads as follows:-

“4. I say that the respondent no.2 i.e. the driver of the bus bearing no.DL-1 PB-7601, has valid driving license to drive the said vehicle Ex.R-1W1/1. The deponent had taken all the precautions before appointment of the said driver/respondent no.1. The deponent has also seen the driving license, held by the said driver/respondent No.2. The deponent had appointed the respondent No.2 as driver after being satisfied in respect of the driving of the respondent No.2.”

21. He has in his cross-examination denied that he ever gave any statement to the police at the time of the accident. He clarifies that the statement was given by Sh.Rakesh Chand. He further states that he has not written any reply to the police. He denies that he has forged the license. He reiterates that Balwant Chand is not the helper and he denies that there was no occasion to test his driving skills or receive his driving license.

22. The evidence of R2W1 Jagjit Singh clearly shows that he appears to have taken all precaution expected out of an owner when engaging a driver to drive his vehicle. He cannot be expected to go to the concerned RTO office and check the veracity of the driving license. The driver was in his employment for the last two and half year. It is also on record that the reply to the notice of the police was not given by Sh.Jagjit Singh but by Sh. Rakesh Chand.

23. In the light of the above evidence of RW-1, even otherwise in my opinion, the appellant Insurance Company has not been able to show that the owner of the offending vehicle was guilty of negligence or not having taken any due care and caution.

24. Reference may be had to the judgment of the Supreme Court in the case of *United India Insurance Company Ltd. vs. Lehru and Ors., 2003 ACJ 611 (MANU/SC/0219/2003)* wherein para 20 the Supreme Court held as follows:-

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving license. If the driver produces a driving license which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not.....”

25. Similarly the Three-Judge Bench of the Supreme Court in the case of *National Insurance Company vs. Swaran Singh. & Ors, (2004)3 SCC 297* noticed the earlier judgment of the Supreme Court in the case of *United India Insurance Company Ltd. vs. Lehu and Ors. (surpa)* and held as follows:-

“92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehu's case (supra), the matter has been considered at some details. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or the owners be absolved from any liability whatsoever. We would be dealing in some details with this aspect of the matter a little later.”

26. Thereafter in para 110 the Supreme Court quoted as follows:-

“110 The summary of our findings to the various issues as raised in these petitions are as follows:-

- (i) ...
- (ii) ...
- (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.
- (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.
- (v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case."

27. In the light of the above legal position, there are no reasons to disagree with the findings recorded by the Tribunal. The said contention of the appellant is rejected.

28. There is no merit in the contention of the learned senior counsel for the
MAC.APP.994/2014 & other connected matters

appellant that the matter be remanded back to the Tribunal to permit the appellant to lead additional evidence or to take appropriate steps to get to the root of the matter. Firstly, this exercise has already been done by the Tribunal as is clear from the order of the Tribunal dated 01.05.2014. After having reserved the matter for arguments, the Tribunal summoned the RTO, Agra Transport Authority with the directions to send a responsible officer to bring the record of the concerned driving license, namely, 10630/AG/06 and 10630/A/06. It was pursuant to the said order that CW-1 appeared on 22.05.2014 and clarified the position.

29. However, another fact is also noteworthy. On 06.12.2012 the Tribunal rejected the application moved by the appellant Insurance Company for summoning of the witness. The Tribunal noted that the appellant has already undertaken nine opportunities and that the present was the 10th opportunity for respondent evidence. No explanation was given for not taking steps and hence the respondent evidence was closed on the said date. Against the order dated 06.12.2012 the appellant filed CM(M) No.95/2013 before this High Court. This court vide order dated 23.01.2013 set aside the order dated 06.12.2012 and directed consolidation of the cases and also directed the appellant to conclude the evidence on two dates. It was in these facts and circumstances that the appellants were permitted to lead evidence. Thereafter on 19.04.2014 when the judgment was reserved, the appellant had moved another application for taking on record certified copies of some evidence. The Tribunal allowed the said application of the appellant Insurance Company.

30. In the light of the above fact, it is clear that more than adequate opportunities had been granted to the appellant to lead its evidence. The request
MAC.APP.994/2014 & other connected matters

to remand the matter back to the tribunal is clearly without merit.

31. I will deal with the other contentions of the learned senior counsel for the appellant regarding the computing of the compensation as award by the Tribunal.

MAC Appeal No.994/2014

32. This appeal pertains to the deceased Sunder Lal. The Tribunal noted that the deceased is 46 years old. The Tribunal as per salary slip of the Income Tax Department noted his income as Rs.15093/- per month. He was working as a notice server in the Income Tax Department. The Tribunal assessed his income as Rs.15,093/-. The Tribunal noted that he has six dependants, hence 1/4th was deducted on the assessed income towards personal and living expenses of the deceased. The assessed income was enhanced by 20% on account of future prospect. The loss of dependency was calculated at Rs.11,95,645/-. The total compensation was awarded as follows:-

S.No.	Description	Amount
1.	Loss of Dependency	Rs.22,95,646/-
2.	Loss of Love and Affection	Rs.1,00,000/-
3.	Funeral expenses	Rs.25,000/-
4.	Loss of estate	Rs.10,000/-
	Total	Rs.24,30,646/-

33. Learned senior counsel appearing for the appellant has impugned the said decision stating that firstly nobody from the Income Tax Department was summoned to substantiate the income of the deceased. Challenge is also laid

to the enhancement of income on account of future prospect, to the non-pecuniary compensation award and to the rate of interest award at the rate of 9% p.a.

34. As far as the issue of future prospect is concerned In case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.***(2013) 9 SCC 54, the Supreme Court held that in the case of self employed or those on fixed wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

35. In the case of ***Smt.Savita vs. Bindar Singh & Ors.***, (2014) 4 SCC 505, the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of ***V.Mekala vs. M.Malathi & Anr.***, 2014 ACJ 1441, the Supreme Court in the case of injury to a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

36. Further, this court in the case of ***ICICI Lombard General Insurance Company vs. Angrej Singh & Ors.*** in MAC APP. 846/2011 in judgment dated 30.09.2013 had gone into this issue and had noted the judgments of the Supreme Court in the case of ***Smt.Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.*** (2009) 6 SCC 121, ***Reshma Kumari & Ors. vs. Madan Mohan & Anr.*** 2013 ACJ 1253 and other judgments and concluded that the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.***, (*supra*) has held that the future prospects should be given to persons who are self-employed or on fixed wages. This court further held that there is no conflict in the legal position as set out in the judgments of ***Reshma Kumari & Ors. vs. Madan Mohan & Anr(supra)*** and ***Rajesh & Ors. vs. Rajbir Singh & Ors.***

(supra).

37. I may further note that this court in MAC APP.761/2012 ***Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.*** vide judgment dated 02.04.2014 had in a case where the deceased was 24 years old added 50% to the income towards future prospects for computing loss of dependency based on the judgment of the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.****(supra)*. Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No.5612/2014 was dismissed by the Supreme Court on 10.10.2014.

38. In view of the above, there are no reasons to differ with the reasoning of the award granting 50% increase on account of future prospects.

39. On non-pecuniary heads the Tribunal has awarded Rs.1,00,000/- for love and affection and Rs.25,000/- for funeral expenses and Rs.10,000/- for loss of estate. This is in accordance with the judgment of the Hon'ble Supreme Court ***Rajesh & Ors. vs. Rajbir Singh & Ors.*** 2013 *(supra)*. Reference may be had to the judgment of the Supreme Court in the case of ***Kala Devi vs. Bhagwan Dass Chauhan***, 2014 (12) Scale 513 and ***Anjani Singh & Ors. vs. Salauddin & Ors.***, JT 2014 (7) SC 183.

40. Regarding computation of income, the Tribunal has relied upon the salary slip of the deceased Ex.PW1/3 issued by the Office of Commissioner Income Tax-I and the pay slip was for the month of February, 2010. It show the gross salary of Rs.15093/-. This is tendered in evidence by PW1 Smt. Prabhati Devi. There is no cross examination done by PW1 when she has tendered the evidence. Hence there is no merit in the contention of the appellant in this appeal and is accordingly dismissed.

MAC No.995/2014

41. This appeal pertains to the deceased Deepak Mehra. The Tribunal noted that the deceased on the date of accident was working in the office of BSF. He was 33 years old. The Tribunal noted that he was working as a Deputy Commandant and getting a salary of Rs.39,851/- after deduction of income tax. Net salary was assessed at Rs.36,692/-. The Tribunal noted that the deceased was survived by four dependents. 50% was added for future prospect. 1/4th deduction was made for personal and living expenses of the deceased and for loss of dependency Rs.79,25,472/-. The total compensation has assessed as under:-

S.No.	Description	Amount
1.	Loss of Dependency	Rs.79,25,472/-
2.	Loss of love and affection	Rs.1,00,000/-
3.	Funeral expenses	Rs.25,000/-
4.	Loss of consortium	Rs.1,00,000/-
5.	Loss of Estate	Rs.10,000/-
	Total	Rs.81,60,472/-

42. Learned counsel appearing for the appellant submits that the salary has not been proved by the appropriate officer of the BSF. It is further stated that the deceased was 40 years old. As per post-mortem report the Tribunal has taken his age as 33 years. Issues of future prospect and non-pecuniary damages are also challenged.

43. Issue of future prospect and non-pecuniary damages are already been

dealt with above and is rejected. As per computation of salary the Tribunal has relied upon the salary slip of the deceased Ex. PW1/O which shows gross pay as Rs.39851/-. The salary slip is for the month of February, 2010. This is exhibited by PW1 Ms. Preeti Mehra in her affidavit by way of evidence. There is no cross examination done on the issue of her income. She however, confirms that the net salary is Rs.28,775/-/. However, perusal of Ex. PW1/O shows that there were various deduction being made including a sum of Rs.7500/- as GPF deduction which would in any case a part of income of the deceased.

44. As far as the age of the deceased is concerned, PW1 has exhibited Ex. PW1/P which gives the date of birth of deceased as 03.04.1977. Hence he was around 33 years age as on the date of accident. I do not disagree with the finding of the Tribunal in this regard. There is no merit in the said contention of the appellant. The appeal is accordingly dismissed.

MAC.APP.999/2014

46. This appeal pertains to the injured Devender Singh. The Tribunal noted that at the time of the accident the injured was working as a Deputy commandant in BSF and earning a gross pay of Rs.68,000/- per month. The Tribunal noted that the injured suffered grievous fracture injuries but did not find to have any permanent disability. The injured as stated was advised bed rest for six months. The compensation as awarded by the Tribunal to the injured is as follows:

S.No.	Description	Amount
1.	Medical expenses	Rs.10,000/-
2.	Pain & suffering	Rs.75,000/-
3.	Special diet, attendant &	Rs.1,00,000/-

	Conveyance	
4.	Loss of leaves/income during treatment	Rs.1,00,000/-
5.	Loss of future income	Rs.2,00,000/-
	Total	Rs.4,85,000/-

47. Learned counsel appearing for the appellant impugns the awarded amount stating that the loss of income suffered has not been duly proved as it is not proved if any leave has been taken by the injured. The learned counsel also contends that the Tribunal has wrongly granted compensation for loss of future earning and also the compensation towards special diet, attendant & conveyance charges.

48. As far as the issue of loss of income is concerned, according to the Discharge summary placed on record as Ex.PW1/E1 it is stated that the injured was admitted in AIIMS Trauma Centre on 22.02.2010, thereafter operated on 25.02.2010 and discharged on 28.02.2010. As noted by the Tribunal the claimant remained under treatment. The OPD cards are filed. Further, medical certificate placed on record as Ex.PW1/E9 issued from AIIMS Trauma Centre shows that petitioner was advised six months bed rest. Fitness certificate Ex.PW1/K dated 13.09.2010 issued by AIIMS Trauma Centre certifies petitioner fit to join duty from 13.09.2010. The Tribunal noted that that the claimant suffered grievous injuries and was found to be under bed rest from 21.02.2010 till 13.09.2010. The Tribunal thus stated that it can be presumed that the injured must have suffered loss of leave during the accident. Hence, the lump sum amount of Rs.1,00,000/- is granted towards loss of leave/income during treatment by the Tribunal.

49. Thus, after looking into the evidence on record and noting that the injured remained under treatment for around 7 months, I do not find any error in the amount awarded for loss of leaves granted to the injured.

50. Further, regarding the contention of loss of future earnings, it is noted that the petitioner was medically downgraded by two stages and this down gradation affected his promotion. As per the evidence on record of the injured, it is stated that the accident has proved detrimental to his future services and promotion. He has further stated that he is downgraded by two stages and will suffer financial loss of Rs.30,000/- per month as he will remain in the pay scale of PB-III. The Tribunal in this regard noted that keeping in view the nature of injuries, it can be inferred that the claimant must have suffered some promotional aspects. I do not find any error in the compensation awarded by the Tribunal under this head.

51. Further, I do not find any error in the grant of compensation under the head of special diet, attendant and conveyance charges keeping in view the injuries suffered by the claimant and the fact that he was under treatment for around 7 months.

52. The appeal is accordingly dismissed.

MAC.APP.1001/2014

53. This appeal is filed regarding the injuries sustained by Sh.Satya Prakash. The claimant was Sub-Inspector in BSF and was earning about Rs.21,284/- per month. The Tribunal noted that he suffered grievous injuries on head, ribs and multiple injuries on other parts of the body. He was not found to have any disability. The Tribunal awarded the following as compensation:

S.No.	Description	Amount
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1.	Medical expenses	Rs.10,000/-
2.	Pain & suffering	Rs.50,000/-
3.	Special diet, attendant & Conveyance	Rs.30,000/-
4.	Loss of leaves/income during treatment	Rs.50,000/-
	Total	Rs.1,40,000/-

54. Learned counsel for the appellant regarding compensation contends that the injured has not proved taking any leave on account of the said accident. The learned counsel also states that the Tribunal has wrongly granted compensation under the heads of Pain & suffering, Medical expenses and compensation for special diet, attendant & conveyance charges.

55. As per the MLC placed on record as PW1/1, the injured is found to have suffered grievous injuries. As noted by the Tribunal, the injured was treated conservatively and was discharged in stable condition after four days of hospitalisation. I do not find any error in the grant of a lump sum amount of Rs.10,000/- towards medical expenses keeping in view the nature of the injuries.

56. As far as the challenge to the compensation under the head of loss of leaves is concerned, the claimant in his evidence by way of affidavit has stated that he was unable to join his duty from the date of the accident till the filing of the present petition on 16.07.2010. Keeping in view the nature of the injuries, the Tribunal awarded a lump sum amount of Rs.50,000/-. I do not find any error in the compensation awarded by the Tribunal under this head.

57. I also do not find any error in the compensation awarded towards pain & suffering and for special diet, attendant & conveyance charges. There is no

merit in the contention of the appellant. The present appeal is dismissed.

MAC.APP. 1002/2014

58. This appeal pertains to the injured Sh.Pramod Kumar. He is stated to be a Sub-Inspector and earning Rs.17,000/- per month. The Tribunal noted that he suffered grievous injuries on head and legs but was not found to have any permanent disability. The following compensation was awarded by the Tribunal:

S.No.	Description	Amount
1.	Medical expenses	Rs.10,000/-
2.	Pain & suffering	Rs.75,000/-
3.	Special diet, attendant & Conveyance	Rs.45,000/-
4.	Loss of leaves/income during treatment	Rs.1,00,000/-
	Total	Rs.2,30,000/-

59. The learned counsel for the appellant contends that the Tribunal has erred in granting compensation under all the heads awarded.

60. On the compensation for medical expenses, a Perusal of the discharge summary shows that the injured was admitted in AIIMS Trauma Centre after the accident on 22.02.2010 and was discharged on 08.03.2010. Further the Tribunal noted that as per the record the claimant remained under treatment till 2012. Taking into consideration the nature of the injuries and the documents placed on record, the Tribunal granted a lump sum amount of Rs.10,000/- towards medical expenses. Considering the fact that the claimant was admitted in the Hospital for around 15 days, I do not find any error in the same.

61. Regarding the compensation for loss of leaves in his affidavit he has
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stated that he was unable to join his duty from the date of the accident till the filing of the claim petition. He further states that he did not get any salary for the period during which he was under treatment and also suffered promotional aspects. But in his cross-examination he states to be not claiming any compensation for loss of leaves and also states that he received increment as per 6th Pay Commission. The Tribunal concluded that though the injured did not appear to have suffered any loss of salary but keeping in view the nature of the injuries a lump sum amount of Rs.1,00,000/- was awarded. I do not find any error in the amount awarded by the Tribunal.

62. Regarding pain & sufferings and compensation towards special diet, conveyance and attendant charges the Tribunal noted that the claimant suffered grievous injuries in the said accident and remained under treatment for a long period of time. The Tribunal thus awarded the amount of Rs.75,000/- towards pain & sufferings and Rs.45,000/- towards diet, conveyance & attendant. In my opinion the compensation awarded is just and fair according to the injuries suffered.

63. The present appeal stands dismissed.

MAC.APP.1003/2014

64. This appeal pertains to the injuries suffered by Sh.Paritosh Biswas. The Tribunal noted that at the time of the accident he was working as Assistant Commandant in BSF and drawing a monthly salary of Rs.46,859/-. He is stated to have suffered lacerated wound injuries 4 cm over head and injuries were found to be dangerous in nature. Compensation granted is as follows:

S.No.	Description	Amount
1.	Medical expenses	Rs.10,000/-

2.	Pain & suffering	Rs.1,00,000/-
3.	Special diet, attendant & Conveyance	Rs.1,00,000/-
4.	Loss of leaves/income during treatment	Rs.1,00,000/-
5.	Loss of future potential earning	Rs.3,00,000/-
	Total	Rs.6,10,000/-

65. The learned counsel for the appellant contends the appeal stating that the Tribunal has erred in awarding Rs.3 lacs towards future loss of income and Rs.1,00,000/- for loss of leaves as the injured did not prove taking any leaves. Further, compensation under the head of special diet, attendant & conveyance charges, towards medical expenses and towards pain & suffering is also challenged.

66. Regarding the medical expenses awarded, the Tribunal noted that the injured was taken to AIIMS Trauma Centre after the accident. The MLC has been placed on record as Ex.PW1/A, which suggests that the claimant has suffered lacerated wound injuries 4 cm over head and injuries which are found to be dangerous in nature. The Tribunal noted that however during proceedings the injured was referred for examination of disability, but despite opportunities he did not appear for ascertainment of disability. The Tribunal further noted that though no medical bills have been placed on record but in view of the injuries the Tribunal has granted a sum of Rs.10,000/-. In his cross-examination, the claimant stated that he has been treated at Government as well as in Private hospitals. In my opinion, keeping in view the nature of injuries suffered and the MLC placed on record which state the injuries to be dangerous

in nature, I do not find any error in the award of a lump sum amount of Rs.10,000/-.

67. As regards the future loss of income, the Tribunal noted that the injured has stated that due to the accident his medical grade category has substantially downgraded which has affected his promotional prospects. The Tribunal held that though the injured has not corroborated the same with evidence but from the nature of injuries, the Tribunal inferred that the claimant must have suffered some promotional aspects and granted a lump sum amount of Rs.3 lacs. On perusal of the affidavit of the claimant, who deposed as PW1, he states that he was in Shape-I medical category and had the accident not occurred he would have been promoted to the rank of Director General. I do not find any infirmity in the order in this regard and the same is not interfered with.

68. The Tribunal noted that it can be presumed that the injured must have suffered loss of leave due to the accident. The amount of Rs.1 lac awarded by the Tribunal is also not interfered with. Further, keeping into account the nature of injuries and the period of treatment undergone by the claimant, I do not find any error in the award under the head of pain & suffering and also towards special diet, attendant & conveyance.

69. The present appeal is thus dismissed.

MAC.APP.1004/2014

70. This pertains to injured Sh.Hemant Kochar. He suffered grievous injuries and was taken to AIIMS Trauma Centre after the accident. He also underwent an operation for the same in Max Hospital. The Tribunal noted that he has suffered 4% permanent disability towards right lower limb. It is noted that he was holding a rank of Second in Command and drawing a salary of Rs.64,412/-

per month. The compensation awarded is as follows:

S.No.	Description	Amount
1.	Medical expenses	Rs.79,450/-
2.	Pain & suffering	Rs.1,25,000/-
3.	Special diet, attendant & Conveyance	Rs.1,50,000/-
4.	Loss of leaves/income during treatment	Rs.1,00,000/-
5.	Loss of future potential earning	Rs.3,00,000/-
	Total	Rs.7,54,450/-

71. Learned counsel contends the amount awarded by the Tribunal towards all the heads is erroneous. For medical expenses, the counsel for the appellant states that only the medical expenses of Rs.54,450/- has been duly proved.

72. The Tribunal, on perusal of the MLC placed on record as PW1/L4 noted that the claimant has suffered grievous injuries in the said accident. Discharge Summary Ex.1/L1 of AIIMS Trauma Centre shows that the injured was admitted on 22.02.2010 and discharged on 12.03.2010. He was again admitted on 21.04.2010 and discharged on 03.05.2010. Discharge Summary PW1/L2 shows that he suffered infection in the right hip and was operated as well. He was also admitted in Max Hospital thereafter on 20.05.2010 for four days, where his injuries were evaluated. The claimant placed on record medical bills PW1/M1 to Ex.PW1/M29 for a sum of Rs.54,450/-. It is noted that he has suffered 4% permanent disability towards right lower limb as per the Disability certificate dated 06.05.2011 issued from Safdurjung Hospital. The injured also filed physiotherapy receipts placed on record as PW1/N1 to PW1/N4 totalling Rs.1,20,000/-. The Tribunal did not find the physiotherapy receipts to be

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credible but stated that the nature of injuries required physiotherapy and the claimant must have incurred large sum towards physiotherapy. Hence, total medical expenses including physiotherapy treatment expenses were awarded as Rs.79,450/-.

73. The claimant remained under treatment for almost six months, underwent an operation, was admitted to the Hospital time and again and had to undergo physiotherapy as well. He is suffering from 4% permanent physical disability which may prove detrimental to his future service and promotion as well. In view of the above, I do not find any infirmity in the compensation granted by the Tribunal. The appeal is dismissed.

MAC.APP.1005/2014

74. This appeal pertains to the death of Sh.Ravinder Kumar. The Tribunal noted that the deceased was working as a Constable at the time of the accident and was getting a salary of Rs.20,515/- per month. As the deceased was 39 years of age, the Tribunal granted future prospects of 50% and deducted 1/4th towards personal and living expenses. Applying the multiplier of 15, the loss of dependency was calculated at Rs.41,54,287/-. The compensation granted by the Tribunal is as follows:

S.No.	Description	Amount
1.	Loss of Dependency	Rs.41,54,288/-
2.	Loss of Love and Affection	Rs.1,00,000/-
3.	Funeral expenses	Rs.25,000/-
4.	Loss of consortium	Rs.1,00,000/-
5.	Loss of estate	Rs.10,000/-

	Total	Rs.43,89,288/-
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75. Learned counsel appearing for the appellant submits that the salary has not been proved by officer of BSF. He also contends that the Tribunal has erred in granting future prospects and also states that the Tribunal has wrongly granted compensation under non-pecuniary heads on the higher side.

76. The issue of future prospect and non-pecuniary damages being already dealt with above are rejected. On the issue of computation of salary, the Tribunal relied on the salary slip of the deceased placed on record as Ex.PW1/H. The salary slip has been exhibited by PW1, wife of the deceased. The Tribunal noted that the genuineness of the salary slip was not found disputed in the cross-examination of PW1. I do not disagree with the assessment of the income of the deceased by the Tribunal. The present appeal is thus dismissed.

MAC.APP.1006/2014

77. The appeal pertains to the injury of Lakhbeer Singh Khalsa. At the time of the accident he was working as a Sub Inspector in BSF. He was taken to AIIMS Trauma Centre after the accident and suffered simple injuries on his eyes as per the MLC Report. Nothing came on record to prove permanent injuries suffered by the claimant in his eye due to the accident and neither were any medical bills filed by the claimant. Therefore the Tribunal awarded a nominal amount for medical expenses. The compensation awarded is as follows:

S.No.	Description	Amount
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1.	Medical expenses	Rs.5000/-
2.	Pain & suffering	Rs.25,000/-
3.	Special diet & Conveyance	Rs.15,000/-
4.	Loss of leaves/income during treatment	Rs.25,000/-
5.	Total	Rs.70,000/-

78. Learned counsel appearing for the appellant challenges the compensation granted by the Tribunal under all the heads.

79. On perusal of the Discharge Summary Ex.PW1/5, the injured was first admitted in AIIMS on 23.02.2010 and discharged on 24.02.2010. He was again admitted in the eye department of AIIMS Hospital on 24.02.2010 and discharged on 25.02.2010. Though the injured has not placed any medical bills on record, the Tribunal granted an amount of Rs.5,000/- towards medical expenses. I do not find any error in the said amount.

80. On loss of leaves, the claimant in his affidavit states that he was working in BSF as Sub-Inspector and was unable to join his duty for three months. The Tribunal noted that the claimant has not filed any document to substantiate the same, but keeping in view the nature of the injuries, granted a lump sum amount of Rs.25,000/- towards loss of leaves. Further, the Tribunal keeping in view the nature of the injury and the trauma of the accident granted a sum of Rs.25,000/- and an amount of Rs.15,000/- for special diet and conveyance. I do not find any infirmity in the order in this regard and the same is not interfered with. The present appeal is thus dismissed.

MAC.APP.1007/2014

81. This appeal pertains to the damages caused on account of the vehicle Swaraj Mazda no. DL-IV-725 in the said accident caused due to the rash and negligent driving of Respondent no. 2, driver of the offending vehicle.

82. Learned counsel appearing for the appellant submits that the Tribunal has erred in not appreciating the fact that no evidence has been filed on record to prove the estimated cost of damage of Rs. 1,95,493/-.He also contends that the driver of Swaraj Mazda was negligent in driving therefore the insurance company of Swaraj Mazda shall be liable to pay for the compensation of the BSF vehicle.

83. On the issue of lack of evidence to prove the cost of damages, a perusal of the award shows that PW-1/Inspector Chandan Singh stated the vehicle was completely damaged in the accident. On perusal of the Mechanical Inspection Report, Ex.PW1/E, the Tribunal noted that the vehicle was found to be totally damaged. PW1 stated that the repairing cost of the vehicle as estimated by Indersons Motors Pvt Ltd is around Rs.1,95,493/- in this regard PW1 relied upon the summary of repair estimate Ex.PW1/H. The Tribunal further noted that the said vehicle was also inspected by the office of Commandant. Based on the affidavit placed on record and the documents relied upon, I see no reason to disagree with the finding of the Tribunal determining the authenticity of the estimated cost of Rs. 1,95,493/- for damages of the BSF Vehicle.

84. Coming to the issue of liability of the insurance company to pay compensation for the damages of the BSF vehicle. The contention by appellant company regarding the negligent driving of the deceased driver of BSF Vehicle is not made from the record. Appellant Company is rightly held liable to pay

compensation to the claimant/state.

85. I see no reason to disagree with the findings of the Tribunal regarding the liability of the Appellate insurance company to pay compensation for the damages of the BSF Vehicle. The present appeal is dismissed.

MAC.APP.1008/2014

86. This appeal pertains to the death of Sh.Sanjay Kumar. The Tribunal noted that the deceased was working as a sales man with Kunchal Store Pvt. Ltd. at the time of the accident and was getting a salary of Rs.10,000/- per month. As the deceased was less than 25 years of age and unmarried, the Tribunal granted future prospects of 50% and deducted 1/2 towards personal and living expenses. Applying the multiplier of 18, the loss of dependency was calculated at Rs.16,20,000/-. The compensation granted by the Tribunal is as follows:

S.No.	Description	Amount
1.	Loss of Dependency	Rs.16,20,000/-
2.	Loss of Love and Affection	Rs. 25,000/-
3.	Funeral expenses	Rs.25,000/-
4.	Loss of estate	Rs.10,000/-
	Total	Rs.16,80,000/-

87. Learned counsel appearing for the appellant submits that the salary has not been proved by claimants on record. He also contends that the Tribunal has erred in granting future prospects and erred in taking the multiplier based on the age of the deceased. Further, he also states that the Tribunal has wrongly granted compensation under non-pecuniary heads on the higher side.

88. The issue of future prospect and non-pecuniary heads being already dealt above are rejected. On the issue of computation of salary, the Tribunal relied on the statement of employer of the deceased PW2 Rumi Sachdeva Manager of Kunchal Store Pvt. Ltd. He stated that the deceased was drawing a salary of Rs.10,000/- per month. No material had come in the cross examination to disbelieve this fact. I do not disagree with the assessment of the income of the deceased by the Tribunal.

89. On the issue of the multiplier being used for the calculation of loss of dependency, reference may be had to the judgment of this Court in the case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.* MANU/DE/0715/2014; 2014 (142) DRJ 303**. This Court held that the multiplier has to be based on the age of the deceased. That was a case where the age of the deceased was 39 years.

90. This Court in the said case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.* (supra)** relied on the judgments of the Supreme Court in case of ***M. Mansoor vs. United India Insurance Co. Ltd.*, MANU/SC/1042** and the judgment of the Supreme Court in the case ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.* MANU/SC/0537/2012**. In ***Amrit Bhanu Shali* (supra)** the Supreme Court held as follows:-

“15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependants. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of the dependants has no nexus with the computation of compensation.”

91. ***M. Mansoor vs. United India Insurance Co. Ltd* (supra)** was a case where the deceased was a bachelor of 24 years of age and the Supreme Court
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held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants. Further, in the case of *Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors. (supra)* the deceased was a bachelor aged 26 years and the Court applied the multiplier of 17.

92. I may further note that in *Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.(supra)* where the deceased was 24 years the Tribunal had taken the multiplier of 13 considering the age of the mother of the deceased, as he was a bachelor. This court relying upon the earlier judgments of this Court in the case of *Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. (supra)* applied a multiplier of 18 based on the age of the deceased. Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No.5612/2014 was dismissed by the Supreme Court on 10.10.2014.

93. In view of the above, I do not find any error in the multiplier of 18 being used by the Tribunal for the calculation of loss of dependency.

94. Statutory amount deposited by the appellant at the time of filing the appeal be refunded to the appellant/insurance company.

95. All appeals are dismissed. All interim orders stand vacated.

JAYANT NATH, J

DECEMBER 19, 2014
rb/an/sh/nat