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

Date of Decision: 28th April, 2016

+ **MAC.APP. 147/2007**

NATIONAL INSURANCE CO. LTD. Appellant

versus

HARBHAJAN KAUR AND ORS. Respondents

+ **MAC.APP. 303/2015**

THE HIND SAMACHAR LTD. (DELHI UNIT) Appellant

versus

NATIONAL INSURANCE CO. LTD. Respondent

+ **MAC.APP. 148/2007**

NATIONAL INSURANCE CO. LTD. Appellant

versus

BALDESH KAUR AND ORS. Respondents

+ **MAC.APP. 304/2015**

THE HIND SAMACHAR LTD. (DELHI UNIT) Appellant

versus

NATIONAL INSURANCE CO. LTD. Respondent

+ **MAC.APP. 149/2007**

NATIONAL INSURANCE CO. LTD. Appellant

versus

BALJINDER SINGH AND ORS. Respondents

+

MAC.APP. 306/2015

THE HIND SAMACHAR LTD. (DELHI UNIT) Appellant

versus

NATIONAL INSURANCE CO. LTD. Respondent

+

MAC.APP. 150/2007

NATIONAL INSURANCE CO. LTD. Appellant

versus

SARWAN SINGH BAGRY AND ORS. Respondents

+

MAC.APP. 310/2015

THE HIND SAMACHAR LTD. (DELHI UNIT) Appellant

versus

NATIONAL INSURANCE CO. LTD. Respondent

+

MAC.APP. 151/2007

NATIONAL INSURANCE CO. LTD. Appellant

versus

BALJINDER SINGH AND ORS. Respondents

+

MAC.APP. 307/2015

THE HIND SAMACHAR LTD. (DELHI UNIT) Appellant

versus

NATIONAL INSURANCE CO. LTD. Respondent

- + **MAC.APP. 152/2007**
NATIONAL INSURANCE CO. LTD. Appellant
versus
GURDIAL KAUR BAGRY AND ORS. Respondents
- + **MAC.APP. 311/2015**
THE HIND SAMACHAR LTD. (DELHI UNIT) Appellant
versus
NATIONAL INSURANCE CO. LTD. Respondents
- + **MAC.APP. 153/2007**
NATIONAL INSURANCE CO. LTD. Appellant
versus
BALJINDER SINGH AND ORS. Respondents
- + **MAC.APP. 309/2015**
THE HIND SAMACHAR LTD. Appellant
versus
NATIONAL INSURANCE CO. LTD. Respondent
- + **MAC.APP. 154/2007**
NATIONAL INSURANCE CO. LTD. Appellant
versus
AMARJEET KAUR alias PIARO AND ORS. Respondents
- + **MAC.APP. 305/2015**
THE HIND SAMACHAR LTD. (DELHI UNIT) Appellant

versus

NATIONAL INSURANCE CO. LTD. Respondent

+ **MAC.APP. 156/2007**

NATIONAL INSURANCE CO. LTD. Appellant

versus

SARWAN SINGH BAGRY AND ORS. Respondents

+ **MAC.APP. 308/2015**

THE HIND SAMACHAR LTD. (DELHI UNIT) Appellant

versus

NATIONAL INSURANCE CO. LTD. Respondent

+ **MAC.APP. 163/2007**

NATIONAL INSURANCE CO. LTD. Appellant

versus

SARWAN SINGH BAGRY AND ORS. Respondents

+ **MAC.APP. 302/2015**

THE HIND SAMACHAR LTD. (DELHI UNIT) Appellant

versus

NATIONAL INSURANCE CO. LTD. Respondent

+ **MAC.APP. 272/2007**

SWARAN SINGH BAGRY & ORS. Appellants

versus

MALKIAT SINGH AND ORS. Respondents

- + **MAC.APP. 273/2007**
AMARJET KAUR & ORS. Appellants
Versus
MALKIAT SINGH AND ORS. Respondents
- + **MAC.APP. 277/2007**
SWARAN SINGH BAGRY & ORS. Appellants
versus
MALKIAT SINGH AND ORS. Respondents
- + **MAC.APP. 278/2007**
SWARAN SINGH BAGRY & ORS. Appellants
versus
MALKIAT SINGH AND ORS. Respondents
- + **MAC.APP. 279/2007**
BALJINDER SINGH & ORS. Appellants
versus
MALKIAT SINGH AND ORS. Respondents
- + **MAC.APP. 280/2007**
HARBHAJAN KAUR & ANR. Appellants
versus
MALKIAT SINGH AND ORS. Respondent

Presence : Mr. Pankaj Seth & Shoumik Mazumdar, Advs. for National Insurance Company Ltd.
Mr. Rajinder Gulati & Mr. Anurag Bindal, Advs. for claimants
Mr. Amit Dhupar and Mr. Angad Mehta, Advs. for The Hind Samachar Ltd. (Delhi Unit)
Mr. Amish Tandon and Mr. Mayank Grover, Advs. for R-1 in MAC.APP.No.152/2007

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. These twenty six appeals arise out of a common judgment rendered on 27.11.2006 by the motor accident claims tribunal (the tribunal) whereby twelve accident claim petitions, each preferred under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) were adjudicated upon. The claim petitions sought compensation on account of death or injuries suffered by various persons in a motor vehicular accident that had occurred at about 0245 hours on 26.01.1993 in the area of junction of Rohtak Road and Ring road which is popularly known as Peeragarhi crossing, it involving collision between two motor vehicles, one described as Matador bearing registration no.PB-08F-4581 (the matador) and the other Tata-407 bearing registration no.PB-08E-1958 (hereinafter referred to variously as Tata-407 or the offending vehicle). The matador was driven by Kulvir Singh and was carrying a number of persons including Major Singh Bagry, Nirmal Singh, Harvinder @ Harjinder Kaur, Trilochan Singh Bagry, Balbir Singh, Mewa Singh, Bakshish Kaur, Baljinder Singh and a child named Master Gurjit Singh, besides one Mangat Ram. While Mangat Ram and one Baljinder

Singh survived with some injuries, all others including Kulvir Singh, the matador driver, perished in the consequence. It may be added here that though the claim case of Mangat Ram was also decided simultaneously by the tribunal, the award in the said case has not been challenged by any appeal by any side.

2. It is admitted case on all sides that both the motor vehicles, namely, Matador and Tata-407 (the offending vehicle) were insured against third party risk at the relevant point of time with National Insurance Company Ltd. (the insurer). Though the tribunal eventually concluded by judgment dated 27.11.2006, that there was contributory negligence on the part of drivers on both sides, given the fact that the two vehicles involved are covered by third party risk insurance policy issued by the same insurer, apportionment of the liability amongst the two sets of drivers (owners/insurers) is not of much consequence as the liability has eventually fallen on the same insurance company (National Insurance Company Ltd.).

3. It was proved during inquiry before the tribunal that the offending vehicle (Tata-407) is registered in the name of The Hind Samachar Ltd. (owner) and was driven at the relevant of time by Malkiat Singh (driver), a person engaged by the registered owner of the vehicle for such purposes. During the inquiry, the insurer had taken the plea that there was a breach of terms and conditions of the insurance policy for the reason the driver was not holding a valid or effective driving license. This contention was considered by the tribunal but rejected. Though the insurance company led evidence to prove that the driving license on which the driver and owner would rely was a fake document and the owner and driver on the other hand

relied on evidence adduced to show facts to contrary, the tribunal eventually rejected the plea of the insurer for exoneration on the reasoning that the insurer had failed to come up with positive evidence showing the fact that driver was holding a fake driving license was within the knowledge of the owner.

4. The facts concerning the ten claim cases with which these appeals are concerned, may be taken note of, briefly, at this stage.

5. Kulvir Singh, the driver of the Matador was aged 24 years, a bachelor, compensation having been claimed by his parents, aged 60 and 70 years at the relevant point of time, the case having been registered as MACT case no.164/2006. The father of Kulvir Singh died during the pendency of the appeal and, thus, the claim is being prosecuted by the surviving claimant (the mother) only. The tribunal concluded that the deceased Kulvir Singh was earning ₹1500/- per month and deducted one third of the income towards personal and living expenses and on that basis calculated the loss of dependency (by applying multiplier of 5) and awarded the total compensation in the sum of ₹85,000/- which included ₹10,000/- towards funeral expenses and loss of love and affection and conveyance in the sum of ₹5,000/-.

6. In the case of death of Harvinder Kaur @ Harjinder Kaur (registered as MACT case no.158/2006, the tribunal found that she was 26 years old married women, the claim petition having been offered by husband, minor daughter and parents. The tribunal concluded her income in the sum of ₹3000/- per month and after deducting one third towards personal and living

expenses and applying multiplier of 18, awarded compensation in the sum of ₹4,67,000/- which includes ₹10,000/- each towards funeral expenses and loss of love and affection and loss of consortium, besides ₹5,000/- towards conveyance.

7. In the case arising out of death of Balbir Singh (registered as MACT case no.165/2006), the tribunal concluded that he was 30 years old person, the claim having been brought by his wife, two minor daughters and parents. It was held that he was self employed working as carpenter and on that basis, minimum wages of ₹1328/- payable to a skilled worker during the relevant time was adopted as the notional income. After deduction of one third towards personal and living expenses, the multiplier of 17 was applied and the total compensation in the sum of ₹2,16,000/- was awarded which includes ₹10,000/- each towards funeral expenses and loss of love & affection and loss of consortium, besides ₹5,000/- towards conveyance.

8. The claim case on account of death of Master Gurjit Singh (registered as MACT case no.161/2006) presented by his parents resulted in an award of ₹75,000/- only with finding that the deceased child 2-1/2 years old at the relevant point of time.

9. Five of the other deceased persons viz. Major Singh Bagry, Nirmal Singh, Trilochan Singh, Bakshish Kaur and Mewa Singh were stated to be non-resident Indians who had come from abroad. It was stated that all of them were settled in Canada working for gain.

10. The claim petition on account of death of Major Singh Bagry (registered as MACT case no.163/2006), resulted in award of ₹67,61,000/-.

This was inclusive of non-pecuniary damages of ₹10,000/- towards funeral expenses and loss of love & affection and loss of consortium and ₹5,000/- towards conveyance, besides loss of dependency which was worked out on the conclusion that his income would be equivalent to Canadian dollars 28,898 per annum from which one third was deducted towards personal and living expenses and multiplier of 14 was applied on the basis of finding that he was 31 years old at the relevant point of time.

11. The claim arising out of death of Nirmal Singh (registered as MACT case no.167/2006) resulted in award of ₹4,64,000/- which includes ₹10,000/- each towards funeral expenses and loss of love & affection, ₹5,000/- towards conveyance. Noticeably, the claim in this case was filed by three brothers of the deceased, he being described as a bachelor. The tribunal found the age of the deceased at the relevant point of time was 43 years and his income was held to be Canadian dollars 5869.03 per annum, but the loss of dependency was found to be Canadian dollars 1467.25 per annum.

12. In the claim case arising out of death of Trilochan Singh, (registered as MACT case no.166/2006), the award of ₹75,91,000/- was granted to his wife and two minor children, the said award including ₹10,000/- each towards funeral expenses and loss of love & affection and loss of consortium, besides conveyance in the sum of ₹5,000/-. The loss of dependency was worked out in the said case on the basis of conclusions that the deceased was 36 years at the relevant of time and his income was in the sum of Canadian dollars 34963.26 per annum from which one third was deducted towards personal and living expenses and the multiplier of 13 was applied.

13. In the case arising out of death of Smt. Bakshish Kaur (registered as MACT case no.159/2006), the tribunal awarded compensation in the sum of ₹4,51,000/- in favour of her three sons with the finding that she was 70 years old and her income was Canadian dollars 6831.52 per annum, from which one half (1/2) was deducted towards personal & living expenses and multiplier of 5 was applied.

14. In the claim case arising out of death of Mewa Singh (registered as MACT case no.168/2006), the tribunal awarded compensation in the sum of ₹4,65,000/- which included ₹10,000/- each towards funeral expenses and loss of love & affection and ₹5,000/- towards conveyance. The claim in that case was also awarded in favour of three sons of the deceased. The tribunal found that the deceased was 83 years old and his income was Canadian dollars 6920.26 per annum from which one half (1/2) was deducted towards personal & living expenses and multiplier of 5 was applied.

15. It may be mentioned here that in the above mentioned five claims arising out of death of Canadian residents, the tribunal having assessed and reached the conclusion about the income was earned in Canadian dollars applied the conversion rate for computation of loss of dependency in Indian currency with reference to exchange rate of ₹24.937 per Canadian dollars, as on 26.01.1993, the date of accident/cause of action. The learned counsel for the claimants in these appeals and the learned counsel for one of the respondents (claimants in MAC appeal no.152/2007) fairly conceded that the finding on the exchange rate returned by the tribunal is correct.

16. The claim case of Baljinder Singh arising out of injuries (registered as MACT case no.169/2006) resulted in award of ₹20,000/-. The said amount included ₹2000/- towards loss of income ₹4900/- towards medical expenses, ₹5,000/- each towards conveyance and special diet and pain & suffering and ₹3100/- towards loss of amenities and life. Admittedly, Baljinder Singh was 26 years old at the relevant point of time working as a driver. The tribunal concluded that he had remained under treatment as indoor patient for about 20 days for the injuries suffered in the right eye, forehead and face. Though it was claimed that he had suffered loss of sight in the right eye, the tribunal was not satisfied and held that he had suffered no major injuries.

17. The insurance company, and the owner of the offending vehicle, have challenged the awards in all above mentioned ten claim cases by their respective appeals. The claimants in the petitions arising out of deaths of Kulvir Singh, Nirmal Singh, Master Gurjit Singh, Balbir Singh, Bakshish Kaur and Mewa Singh have also come up with their appeals seeking enhancement of the compensation. Each of these appeals is contested by the opposite parties.

18. The contention of the insurance company in its ten appeals primarily is that its plea about breach of terms and conditions of the insurance policy was wrongly rejected. It argues that the driving license purportedly issued by the licensing authority, Gurdaspur was a fake document and that owner also having joined the driver in contest with the plea that the said license was a genuine one, it could not have been exonerated on the reasoning set out in the impugned judgment. The insurance company thus submits that though it is liable to satisfy the third party claims, it deserves to be granted

recovery rights against the owner/insured. It also challenges the computation of compensation in the cases of the five Canadian residents on the ground that the loss of dependency has been over assessed.

19. The owner of the offending vehicle by its appeals questions the awards in the above mentioned cases on the grounds that the loss of dependency has not been properly computed, in some cases its plea being that the deduction towards personal and living expenses should have been more than what has been factored in. It also questions the claimant's plea about dependency in some of these cases.

20. In the six appeals filed by respective claimants, the submission essentially is that the element of future prospects of increase in the income has not been considered and the non-pecuniary damages besides rate of interest applied are unduly low.

21. Arguments have been heard at length and, with the assistance of learned counsel on all sides, records have been perused.

22. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a

larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.*, (2015) 9 SCC 166.

23. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*) decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are “self-employed” or engaged in gainful employment at a “fixed salary” is clarified by a larger bench of the Supreme Court.

24. Since in all above mentioned cases, there is concededly no proof of any regular income, not the least any proof showing progressive rise in income wherever supported by some documentary evidence, element of future prospects cannot be factored in. This plea of the claimants, therefore, must be rejected.

25. As regards the non-pecuniary damages, in the claim case arising out of death in a motor vehicular accident, in the matter of *Madhu Marwaha & Anr. vs. Dal Chand & Anr.*, FAO 102/2001 decided by this court on 01.02.2016, the case having arisen out of a motor vehicular accident that had occurred on 17.05.1989, this court awarded ₹50,000/- each on account of loss of consortium and loss of love & affection and ₹10,000/- each towards funeral expenses and loss of estate. Having regard to the meager amount awarded under these non-pecuniary heads of damages in the cases at hand,

there is merit in the submission that the view taken in *Madhu Marwaha* (supra) be followed here.

MAC APPEAL Nos. 149/2007, 279/2007 & 306/2015
(In re: Claim on account of death of master Gurjit Singh)

26. Master Gurjit Singh was only 2-1/2 years at the time of death. The tribunal has awarded amount of ₹75,000/- in the lump sum. The case is closer home to the one arising in the matter leading to the judgment of the Supreme Court reported as *R K Malik & Anr. v. Kiran Pal & Ors.* (2009) 14 SCC 1. In the said case, ₹1,05,000/- had been awarded by the tribunal in case of death of children less than 10 years. The High Court in appeal having added an amount of ₹75,000/-, which was further enhanced by another sum of ₹75,000/- by the Supreme Court, the compensation was awarded in the total sum of ₹2,55,000/-. The learned counsel for the claimant presses in aid judgment in *R. K. Malik* (supra) seeking similar award in this case.

27. Given the law laid down in *R. K. Malik* (supra) and the fact that the accident in this case had occurred in January 1993, the award in this case is increased to ₹2,55,000/-.

MAC Appeal nos.147/2007, 280/2007 and 303/2015
(In re: Claim arising out of death of Kulvir Singh)

28. During inquiry, the claimants in this case had claimed that the deceased was also earning ₹1,000/- p.m. from agriculture, in addition to ₹1500/- p.m. towards wages as driver. The tribunal noted that there was no evidence led. It is pointed out by the counsel for the insurer and owner that

this income was not even pleaded in the first place. In these circumstances, the claim for loss of dependency to be worked out on the additional income of ₹1,000/- cannot be accepted.

29. It is pointed out by the counsel for the insurer and the owner that the deduction has been made to the extent of $\frac{1}{3}^{\text{rd}}$ in this case where the deceased was a bachelor and the claimants were parents. Per the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the contention of these parties has to be accepted. The income having been assessed in the sum of ₹1500/- p.m., the monthly loss of dependency comes to ₹750/- only.

30. The multiplier of 5 invoked by the tribunal was erroneous. Having regard to the age of the parents (that is, 60 and 70 years respectively), the loss of dependency has to be calculated on the multiplier of 7. Thus the total loss of dependency comes to $(750/- \times 12 \times 7)$ ₹63,000/-.

31. In view of the conclusions reached earlier, the non-pecuniary damages are increased to ₹50,000/- towards loss of love and affection and ₹10,000/- each for funeral expenses and loss of estate, retaining ₹5,000/- towards conveyance. Thus the total compensation payable in the case comes to $(63,000+75,000/-)$ ₹1,38,000/-.

32. The award in this case is accordingly increased.

MAC Appeal nos.150/2007, 272/2007 and 310/2015
(in re: Claim arising out of death of Nirmal Singh)

33. It was claimed before the tribunal by pleadings and evidence that deceased Nirmal Singh never married on account of his devotion towards his

brothers and parents. This, as pointed out by the counsel for the owner of the offending vehicle, was factually a wrong statement. The income tax returns (ITRs) for the assessment years 1991 and 1992, which were relied upon as proof of earnings, show that the deceased was a divorcee.

34. The tribunal concluded that the deceased was 43 years old and the family dependent upon him included his parents who also had died in the same accident. The claim petition was prosecuted by his three brothers.

35. The tribunal held, after analysis of ITRs 1991-92, that the income on which loss of dependency deserved to be worked out would come to Canadian dollars 2,934.51 per annum. From this, one-half (1/2) was deducted towards personal & living expenses on the assumption that deceased was a bachelor. This being factually wrong, the calculation has to be made afresh.

36. Given the fact that the claim has been pressed by three brothers, who would have inherited the agricultural lands from which the income was derived by the deceased, only 1/3rd of the net income calculated by the tribunal would deserve to be accepted as loss of annual dependency.

37. The tribunal adopted the multiplier of 12, noting that the deceased was aged 37 years. This assumption was incorrect. In the petition, the age of the deceased was mentioned as 40 years. While making a statement on 17.02.1997 the eldest brother Sarwan Singh claimed the age of the deceased to be 36 years. The age of the other claimants was not disclosed or ascertained.

38. The learned counsel for the claimants, however, now fairly concedes that the age of the eldest brother Sarwan Singh on the date of accident was about 57 years, the age of the younger brothers being a few years less. Therefore, the multiplier of 9 is to be applied.

39. Thus, the loss of dependency in this case is calculated as $(2934.51 \div 3 \times 9)$ Canadian dollars 8803.53. Upon conversion, by applying the exchange rate of 24.937, the loss of dependency in Indian currency comes to (8803.53×24.937) Rs.2,19,533.63, rounded off to Rs.2,20,000/-. Upon non-pecuniary damages in the sum of Rs.50,000/- towards loss of love & affection, Rs.10,000/- each towards funeral expenses and loss to estate being added besides conveyance of Rs.5,000/-, the total compensation payable in the case of death of Nirmal Singh comes to $(2,20,000 + 75,000)$ Rs.2,95,000/-.

40. The award in this case is accordingly reduced.

MAC.APP.Nos.154/2007, 273/2007 and 305/2015
(In re: Claim arising out of death of Balbir Singh)

41. The deceased Balbir Singh was aged 30 years and the dependent family members included wife, two minor daughters and parents. Having regard to the number of dependents, the deduction towards personal & living expenses to the extent of $1/3^{\text{rd}}$, as done by the tribunal, was wrong. Following the dicta in *Sarla Verma* (supra), deduction is reduced to $1/4^{\text{th}}$. In absence of proper proof of earnings, the tribunal adopted ₹1,328/- minimum wages as the notional income. Thus, the loss of dependency comes to $(1,328 \times 3 \div 4)$ ₹996/- per month. On the multiplier of 17, which was

rightly applied by the tribunal, the total loss of dependency comes to $(996 \times 12 \times 17)$ ₹2,03,184/- rounded off to ₹2,05,000/-.

42. Adding the non-pecuniary damages as awardable in terms of the conclusions reached earlier, besides conveyance of ₹5,000/-, the total compensation payable in the case comes to $(2,05,000 + 1,25,000)$ ₹3,30,000/-.

43. The compensation is enhanced accordingly.

MAC.APP.Nos.156/2007, 277/2007 and 308/2015
(In re: Claim arising out of death of Bakshish Kaur)

44. The claimants relied upon income tax return (Ex.PW5/5) for the assessment year 1991-92 which reflect the date of birth to be 01.06.1914. The learned counsel for the claimants fairly concedes that the age of Bakshish Kaur at the time of death was 79 years. Thus, the multiplier of 5 was correctly applied. The tribunal found her income to be Canadian dollars 6831.52 per annum. It proceeded to hold that she would have been spending half of income on herself and rest for the family. The claim petition was brought by her three surviving sons. It cannot be forgotten that the family at the time of her death included her husband (Mewa Singh, who also died in the same accident). In these circumstances, the share on which loss of dependency can be claimed by the three sons would be $\frac{3}{4}^{\text{th}}$ of the half of annual income.

45. Therefore, the loss of dependency is calculated as $(6831.52 \div 2 \times 3 \div 4 \times 5)$ Canadian dollars 12,809.10. The said amount upon conversion into Indian currency at the aforementioned exchange rate may be computed as $(12,809.10 \times 24.937)$ ₹3,19,421/- rounded off to ₹3,20,000/-.

46. Adding the non-pecuniary damages towards loss of love & affection, loss of estate and funeral expenses as per conclusions reached earlier and ₹5,000/- towards conveyance as assessed by the tribunal, the total compensation in the case of death of Bakshish Kaur comes to (3,20,000 + 75,000) ₹3,95,000/-.

47. Thus, the compensation in this case is accordingly reduced.

MAC.APP.Nos.163/2007, 278/2007 and 302/2015
(In re: Claim arising out of death of Sardar Mewa Singh)

48. It is fairly conceded by the counsel for the claimants that deceased Mewa Singh was 83 years old and his income was assessed by the tribunal as Canadian dollars 6920.26. The claim is again brought by three surviving sons. The wife Bakshish Kaur having also died in the same accident, as in the case of claim on account of her death, the surviving sons who are claimants may at best claim $\frac{3}{4}^{\text{th}}$ of the half of annual income of Mewa Singh as loss of dependency.

49. Therefore, the loss of dependency is calculated as $(6920.26 \div 2 \times 3 \div 4)$ Canadian dollars 2,595 per annum. On the multiplier of 5, the total loss of dependency comes to $(2,595 \times 5)$ Canadian dollars 12,975. The same being converted into Indian currency at the aforementioned exchange rate, the loss of dependency comes to $(12,975 \times 24.937)$ ₹3,23,558/- rounded off to ₹3,25,000/-.

50. Adding ₹75,000/- towards the non-pecuniary damages as in the case of Bakshish Kaur, the total compensation in the case works out to $(3,25,000 + 75,000)$ ₹4,00,000.

51. Thus, the compensation in this case is accordingly reduced.

MAC.APP.Nos.152/2007 and 311/2015
(In re: Claim arising out of death of Trilochan Singh)

52. By these appeals the quantum of compensation awarded in this case is challenged by the owner and the insurer. The tribunal found the age of the deceased to be 36 years. This finding is not challenged. It is noted that the tribunal had applied the multiplier of 13. This was erroneous. Per the dicta in *Sarla Verma* (supra), the multiplier of 15 would apply.

53. The claim was filed by the wife and two minor children. Therefore, the deduction on account of personal & living expenses was rightly done by the tribunal to the extent of 1/3rd. The claimants had relied upon ITRs 1991-92 (Ex.PW5/2). On the basis of the said documents, the tribunal held the income of the deceased as Canadian dollars 34,963.26. Upon deduction of 1/3rd towards personal & living expenses, the net annual loss of dependency was calculated as Canadian dollars 23,308.84.

54. On the multiplier of 15, the total loss of dependency comes to (23308.84 x 15) Canadian dollars 3,49,632.6. Upon conversion into Indian currency, the loss of dependency is calculated as (3,49,632.6 x 24.937) ₹87,18,788/- rounded off to ₹87,20,000/-. Adding the non-pecuniary damages towards loss of consortium, loss of love & affection, funeral expenses and loss of estate as per conclusions reached earlier, and ₹5,000/- towards conveyance charges, the compensation payable in the case of death of Trilochan Singh is computed as (87,20,000 + 1,25,000) ₹88,45,000/-.

55. The award is, thus, enhanced accordingly.

MAC.APP.Nos.148/2007 and 304/2015
(In re: Claim arising out of death of Major Singh Bagry)

56. The award of compensation in this case has been challenged by the owner and insurer.

57. The claimants (wife and three minor children) relied upon income tax return (Ex.PW4/2) for the financial year 1992. The tribunal accepted the said document as good proof of income to conclude that the deceased was earning Canadian dollars 28,898 per annum. The owner and insurer had argued before the tribunal that the ITR filed on 30.04.1993 could not be accepted as it had been submitted after the death and there was no proof of any earlier income. It was further pointed out that the document bears an endorsement to the effect that the revenue authorities in Canada had rejected the return. The tribunal, however, proceeded to accept the declaration, referring to the case of Trilochan Singh (as decided above) to assess that the income of the deceased could not have been less than what was declared, having regard to, *inter alia*, the fact that the family members four in number were dependent on him. In above facts and circumstances, this Court is not inclined to interfere in the calculation made by the tribunal. The loss of dependency calculated in Indian currency is ₹67,25,858/- rounded off to ₹67,30,000/- is accepted as the correct computation.

58. The non-pecuniary damages in the total sum of ₹1,25,000/- as in the case of Trilochan Singh are added and therefore, the compensation in the claim arising out of death of Major Singh Bagry is liable to be increased to (67,30,000 + 1,25,000) ₹68,55,000/-.

59. The award is enhanced accordingly.

MAC.APP.Nos.151/2007 and 307/2015
(In re: Claim arising out of injury to Baljinder Singh)

MAC.APP.Nos.153/2007 and 309/2015
(In re: Claim arising out of death of Harvinder Kaur)

60. These appeals have been filed by owner and insurer. It is submitted at the hearing by the learned counsel that the computation of assessment is not challenged.

Issue of interest

61. The tribunal while making the awards in all the above mentioned claims levied the interest of 7.5% per annum from the date of filing of the respective petition till realization (para 201 of the impugned judgment). The claimants seek enhancement of the rate of interest. In the considered view of this Court, the tribunal has given good reasons for applying the interest rate of 7.5% only. The claim petitions were filed in 1993 but the proceedings were protracted, the delay largely being attributed to the claimants. The tribunal was able to conclude the proceedings and render the final adjudication after elapse of 13 years. It has taken 9 years for these appeals to come to fruition and again the claimants will have to share part of the blame. In these circumstances, no case is made out for increase in the rate of interest.

Plea of insurer for recovery rights

62. The liability to pay compensation in above cases has been fastened by the tribunal on the insurer. It submits its readiness and willingness to satisfy

the awards insofar as third party claims are concerned but presses for recovery rights against the owner.

63. The tribunal found the drivers of both the vehicles to be guilty of composite negligence, the liability having been apportioned to the extent of 75% as against the driver of the offending vehicle. The recovery rights against the owner of the offending vehicle are pressed by the insurer to that extent only.

64. It is noted that the driver (Malkiat Singh) and the owner (Hind Samachar Ltd.) of the offending vehicle had together contested the claim cases, as also the plea of the insurance company about the breach of terms and conditions of the insurance policy. It is noted from the impugned judgment and the record of the tribunal that initially a driving licence (Ex.A2), purportedly issued by the licensing authority at Alwar, Rajasthan was relied upon. The said driving licence (bearing No.M-17415/87 dated 14.04.1987) had been handed over by the driver Malkiat Singh to the investigating police officer who had carried out investigation into first information report (FIR No.40/93) which had been registered by police station Paschim Vihar in respect of the motor vehicular accident that is the subject matter of these proceedings. The said driving license (Ex.A2) was seized by the investigating officer during the investigation into the said FIR formally vide seizure memo (Ex.A3).

65. During inquiry, however, it was found on the basis of evidence of Radheyshyam Yadav (R3W2), an official of the office of RTO Alwar that

the said document was not genuine. It appears that the owner and driver of the offending vehicle, apparently conscious of the said forgery, set up another driving license No.5288 dated 05.04.1991 purported to have been issued by District Transport office, Gurdaspur, Punjab. This driving licence (R1W1/1) was also subjected to inquiry. Rajjinder Singh (R3W3), an official of District Transport office, Gurdaspur appeared to affirm on oath that the said driving licence (R1W1/1) had not been issued by the said office in the name of the driver (Malkiat Singh). Noticeably, both the driver and owner made a concerted effort during the deposition of R3W3 to discredit his version, in an attempt to prove that the document was valid and effective and, therefore, deserved to be believed. The evidence of R3W3 showing facts to the contrary, however, merits acceptance. He is on record to state that no fee was deposited against the said driving licence in the name of Malkiat Singh, the fee in respect of licence No.5288 actually being relatable to an entry dated 21.08.1990 that pertained to another person named Om Prakash Sharma whose photograph had been replaced by some fabrication.

66. In above facts and circumstances, this Court does not appreciate the view taken by the tribunal. The owner has been given benefit of doubts on the reasoning that the insurance company has not come up with any positive evidence to show that the fabrication of the licence was within the knowledge of the owner. Had it been a case where the driver was resisting the claim on his own on the basis of such material, the approach of the tribunal could have been understood. Here, as noted above, the owner had joined the driver in setting up a case on the basis of document (Ex.R3W1/1) to show that a valid driving licence actually was held by Malkiat Singh. In

these circumstances, the collusion between the driver and owner is writ large on the record of the case.

67. Therefore, a case of breach of terms and conditions of the insurance policy issued by the insurer in respect of the offending vehicle has been made out and, consequently, the insurer in its above mentioned appeals is granted recovery rights. The same may be enforced by appropriate proceedings before the tribunal, *albeit* subject to satisfying the awards in respect of the third parties.

68. The insurance company submits through counsel that the amounts in terms of awards with proportionate interest in each of the above mentioned ten cases were deposited with the tribunal. Some amounts out of the said deposits have been released in terms of the interim orders passed by this Court, the balance having been kept with the tribunal in the form of fixed deposit receipts.

69. In claims arising out of the deaths of Nirmal Singh, Bakshish Kaur, Mewa Singh, the awards have been reduced. The tribunal is directed to calculate the amounts payable in terms of the modified awards and release the balance, if any, to the respective claimants in those cases, refunding the excess in deposits to the insurer. Conversely, if excess has been released, the claimants shall be obliged to return the same to the insurance company within 30 days. The tribunal shall take out appropriate proceedings in this regard.

70. The awards in claims arising out of deaths of Kulvir Singh, Major Singh Bagry, Trilochan Singh, Master Gurjeet Singh and Balbir Singh have

been increased. Therefore, the balance lying in deposits with the tribunal from out of the deposits made by the insurer shall be released forthwith to the claimants in terms of the impugned judgment. The insurer shall deposit the remainder of its liability under the modified awards by appropriate deposits with the tribunal within 30 days, making it available for being released to the claimants in each of the said cases.

71. In the claims arising out of death of Harvinder Kaur and injuries to Baljinder Singh, the awards granted by the tribunal stand maintained. Therefore, the balance lying with the tribunal from out of deposits made by the insurer shall also be released forthwith to the respective claimants in the said cases in terms of the impugned judgment.

72. Statutory deposits, if made in these appeals, shall be refunded, after the tribunal has recorded satisfaction of the third party claims and the recovery rights of the insurer as hereby granted.

73. The appeals stand disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 28, 2016
ssc/yg/VLD