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

**Reserved on : 29.04.2016/04.05.2016 /**

**05.05.16/11.05.16/12.05.2016**

**Pronounced on: 13<sup>th</sup> May, 2016**

1. MAC.APP. 554/2010

CHETAN MALHOTRA

..... Appellant

Through

Mr. Jasmeet Singh, Ms. Nishta Kishore and Mr. Srivats Kaushal, Advs.

versus

LALA RAM

..... Respondent

Through

Mr. Sudhanshu Tomar and Mr. S A Khan, Advs. for R-1 & 2

Mr. P R Sikka and Mr. Amit Sikka, Advs. for R-3

Mr. G K Kaushik, Adv. for R-4

2. MAC.APP. 226/2010

UNITED INDIA INSURANCE CO LTD

..... Appellant

Through

Mr. P R Sikka and Mr. Amit Sikka, Advs.

versus

LALA RAM & ORS

..... Respondents

Through

Mr. Sudhanshu Tomar and Mr. S A Khan, Advs. for R-1 & 2

Mr. G K Kaushik, Adv. for R-2

3. MAC.APP. 580/2007

SUMER SINGH CHAUHAN ..... Appellant

Through: Mr. O P Mannie, Adv.

versus

PANKAJ KUMAR AND ORS .... Respondents

Through: Mr. Pradeep Gaur, Adv. for R-3

4. MAC.APP. 1106/2013

ORIENTAL INSURANCE CO LTD ..... Appellant

Through Mr. Ravi Sabharwal, Adv.

versus

RAKESH KUMAR & ORS .... Respondents

Through None

5. MAC.APP. 421/2015 & CM No.9165/2015

ARJUN SINGH & ANR ..... Appellants

Through Mr. Om Prakash Gupta, Adv.

versus

RAGHUKUL BHUSHAN BAKSHI & ANR (NATIONAL  
INSURANCE COMPANY LTD) ..... Respondents

Through Ms. Neerja Sachdeva, Adv. for  
R-2

6. MAC.APP. 1288/2012 & CM Nos.21029/2012 & 1059/2014

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through Ms. Neerja Sachdeva, Adv.

versus

SUNITA DEVI & ORS. .... Respondents

Through Mr. O P Mannie, Adv. for R-1  
& 2

7. MAC.APP. 881/2015

SUNITA DEVI & ANR ..... Appellants

Through Mr. O P Mannie, Adv.

versus

ORINETAL INSURANCE COMPANY LTD  
& ORS. .... Respondents

Through Ms. Neerja Sachdeva, Adv.

8. MAC.APP. 1079/2013

SH PRAMOD KUMAR GOND @ PRAMOD  
& ANR ..... Appellants

Through Mr. O P Mannie, Adv.

versus

SH AMIT @ TITU & ORS ..... Respondents

Through Ms. Suman Bagga, Adv. with  
Mr. Pankaj Gupta, Adv. for R-3

9. MAC.APP. 1187/2014

VIDHYA & ANR ..... Appellants

Through Mr. Anshuman Bal, Adv.

versus

NATIONAL INSURANCE COMPANY LTD  
& ORS.

.... Respondents

Through Ms. Neerja Sachdeva, Adv. for  
R-1

10. MAC.APP. 729/2013

THE NEW INDIA ASSURANCE CO. LTD. .... Appellant

Through Mr. Pankaj Seth, Adv.

versus

HARI & ORS. .... Respondents

Through Mr. S K Vashishta, Adv. for R-1

11. MAC.APP. 250/2013

NATIONAL INSURANCE CO. LTD. .... Appellant

Through Mr.L.K. Tyagi, Adv.

versus

KIRAN DEVI & ORS. .... Respondents

Through Ms. Rupika Singh for  
Mr. Navneet Goyal, Adv. for R-  
1 & 2

12. MAC.APP. 510/2014

NEW INDIA ASSURANCE CO. LTD. .... Appellant

Through: Mr. Ravinder Singh and  
Ms. Raveesha Gupta, Advocates

versus

LAL CHAND & ORS. .... Respondents

Through: Mr. Binay Kumar, Adv. for R-1  
& R-2

13. MAC.APP. 100/2013

SHAKILA BANO AND ORS. .... Appellants

Through: Mr. Anshuman Bal, Adv.

versus

THE NEW INDIA ASSURANCE CO. LTD.  
AND ORS. .... Respondents

Through: Mr. Sameer Nandwani, Adv. for  
R-1.

14. MAC.APP. 564/2014 and CM No.10489/2014

THE NEW INDIA ASSURANCE CO. LTD. .... Appellant

Through Mr. S N Parashar, Adv. for  
Mr. J P N Shahi, Adv.

versus

SEEMA GARG & ORS. .... Respondents

Through Mr. Anshuman Bal, Adv. for R-  
1 & 2

15. MAC.APP. 956/2014  
SONIYA JOSHI & ANR

..... Appellant  
Through: Mr. S N Parashar, Adv.

versus

SARAVJIT @ SONU & ORS (THE NATIONAL  
INSURANCE COMPANY LTD) ..... Respondents  
Through: Ms. Rakhi Dubey, Adv. for R-3

16. MAC.APP. 175/2014

SHRIRAM GENERAL INSURANCE CO LTD .....Appellant  
Through: Mr. P. Acharya, Advocate

versus

ZEENAT FATIMA & ORS ....Respondents  
Through: Mr. Nitin Yadav, Adv. for R-1 & 2

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

**JUDGMENT**

**R.K.GAUBA, J:**

1. These sixteen appeals give rise to common questions of law concerning the method of calculation of compensation in accident claim cases involving deaths of children in motor vehicular accidents and hence have been taken up for being decided together by this common judgment.

### FACTUAL MATRIX

2. The background facts leading to these appeals in each case may be taken note of at the outset in chronological order.

**Case 'A' : MAC Appeal Nos. 226/2010 & 554/2010**  
*(In re: death of three months' old child Rama Kant)*

3. These appeals arise out of the judgment dated 16.01.2009 of motor accident claims tribunal (the tribunal) in accident claim case (Suit No. 518/1993, re-numbered as 1345/2000) instituted on 03.07.1993. The claim case had been presented by Lala Ram and Ram Sakhi (the claimants), parents of three months' old child named Rama Kant who had died in the accident that occurred on 17.03.1993 involving rash driving of Maruti Van bearing No. DL 2CB 2882 (the offending vehicle), admittedly insured against third party risk with United India Insurance Company Ltd. (appellant in MAC Appeal No. 226/2010). The tribunal, after inquiry, by the impugned judgment upheld the case of the claimants that the accident had occurred due to negligent driving of the said offending vehicle by Sunil (first respondent before the tribunal). The offending vehicle concededly was registered in the name of M/s Grahxmi Leasing Company Pvt. Ltd. (second respondent before the tribunal), it admittedly having given it on lease for use to Chetan Malhotra (appellant in MAC Appeal No. 554/2010), he having been impleaded as fourth respondent before the tribunal. It awarded compensation in the sum of ₹ 3,75,000/- on account of death of the child with interest at 7.5% per annum from the

date of filing of the petition till realization, and is doing so following the method of calculation of compensation adopted by the Supreme Court in *R.K. Malik vs. Kiran Pal 2009 (14) SCC 1* and decision of a learned Single Judge of this Court in *National Insurance Company Ltd. vs. Farzana 2009 ACJ 2763*.

4. The insurance company by its appeal (MAC Appeal No. 226/2010) questions the calculation of compensation on the ground that the deceased child being only three months old, the award of compensation of ₹ 3,75,000/- was unduly high since there can be no parallel drawn with the awards rendered in the case of *R.K. Malik* (supra).

5. This case also involves plea of the insurer about breach of terms and conditions of the insurance policy. This aspect shall need elaboration and consideration at an appropriate stage in this judgment.

**Case 'B' : MAC Appeal No. 580/2007**

*(in re: death of seven years' old child Yash Chouhan)*

6. The motor vehicular accident which is subject matter of this appeal occurred on 02.09.2002 involving a two wheeler scooter bearing registration no.DL-4S-8067 (scooter) driven by Sumer Singh Chouhan (father of the deceased child) and Tempo bearing registration no.DDL-4716 (tempo) statedly driven negligently. Besides the deceased child, his parents Sumer Singh Chouhan and Pushpa (claimants) were also travelling on the scooter with another child. The



tribunal by judgment dated 01.05.2007 (which also governed two other cases relating to injuries suffered by the parents of the child), held both the scooter driver and tempo driver guilty of negligence. Contributory negligence on the part of Sumer Singh Chouhan was assessed at 30%. The tribunal awarded ₹2,25,000/- as compensation for death of the child, with interest at the rate of 7% p.a. in favour of the claimants directing the insurer to pay to the extent of 70% though granting it recovery rights against the owner on account of finding about breach of terms and conditions of the insurance policy. In assessing the compensation, it referred to the judgments of the Supreme Court in *Lata Wadhwa Vs. State of Bihar and Ors*, 2001 ACJ 1735 and *Manju Devi and Ors. Vs. Musafir Paswan & Ors.*, 2005 ACJ 99. By the appeal at hand, the claimants seek enhancement in the compensation also challenging the finding on contributory negligence.

**Case 'C' : MAC Appeal No. 250/2013**

*(In re: death of eleven years' old child Mukesh)*

7. This appeal arises out of judgment dated 14-01-2013 of the tribunal in accident claim case (suit no. 933/2008/2007), instituted on 08-10-2007 by Kiran Devi and Ganesh Prasad (claimants), the first and second respondents in the appeal, seeking compensation on account of death of their eleven years' old son Mukesh in motor vehicular accident that had occurred on 24-09-2007 involving negligent driving of truck bearing no. HR 55F 4841 (the offending

vehicle), admittedly insured against third party risk for the period in question with the National Insurance Co. Ltd. (insurer). The tribunal, by the impugned judgment, upheld the case about negligent driving and fastened the liability against the insurer to pay compensation in the sum of ₹ 12,11,400/- with interest at 7.5% per annum from the date of filing of the petition, calculating it after assuming the potential income of the deceased at ₹ 10,800/- per month, relying upon the judgment of a learned Single Judge of this court in *United India Insurance Co. Ltd. Vs. Kanwar Lal* (MAC Appl. 385/2007 decided on 27-04-2012) which, in turn, was primarily based on the judgment of the Supreme Court in *Municipal Corporation of Delhi Vs. Uphaar Tragedy Victims Association* (2011)14 SCC 481. The tribunal calculated loss of dependency by deducting 50% towards personal & living expenses and applying the multiplier of 18, having regard to the age of the deceased, also adding ₹ 25,000/- towards loss of love & affection and ₹ 10,000/- each towards funeral charges and loss of estate.

8. The insurer, by this appeal, questions the above mentioned award contending that the tribunal has fallen in serious error by assuming the potential income at such high rate, without any basis, only on the oral word that the mother “desired” the deceased son to eventually become an engineer and further by applying the multiplier chosen on the basis of age of the deceased.

**Case 'D' : MAC Appeal No. 510/2014**

(In re: death of 17 years' old child Mohit)

9. The appeal by the New India Assurance Co. Ltd. (insurer) assails judgment dated 07.04.2014 of the tribunal in the accident claim case (suit no.53/11/2008) which was instituted on 19.12.2008 by Lal Chand and Chandrawati (claimants), the first and second respondents in the appeal, seeking compensation for death of their 17 years' old son Mohit in a motor vehicular accident that had occurred on 27.08.2008 involving a bus bearing registration no.DL-1PB-4611 (offending vehicle), concededly insured against third party risk with the appellant. The tribunal upheld the case about negligent driving and awarded compensation in the sum of ₹6,56,646/- with interest at the rate of 9% p.a. from the date of filing of the petition till realization, which includes ₹25,000/- each towards funeral expenses and loss of love and affection, ₹10,000/- for loss of love & affection and ₹10,000/- for loss to estate, besides ₹5,96,646/- computed as dependency loss on the basis of minimum wages (i.e. ₹3683/-) for unskilled worker which was enhanced by element of future prospects of increase to the extent of 50% and after deduction of one half towards personal and living expenses capitalized by multiplier of 18.

10. The insurer argues that in case of death of a child, this was not a correct method of calculating compensation and that the ruling in *R K Malik* (supra) should have been followed.

**Case 'E' : MAC Appeal No. 1106/2013**

*(In re: death of four years' old child Vishal)*

11. This appeal is directed against the judgment dated 16.09.2013 of the tribunal in accident claim case (MACP No. 135/2009), instituted on 02.06.2009 by Rakesh Kumar and Poonam (claimants), the first and second respondent in the appeal, seeking compensation for the death of their four years old son named Master Vishal in a motor vehicular accident that had occurred on 21.02.2009, involving maruti car bearing No. DL 3CN 4662 (offending vehicle) which was admittedly insured against third party risk with Oriental Insurance Company Ltd. (the insurer). By the impugned judgment, the tribunal upheld the case of the claimants that the accident had occurred due to negligent driving of the said offending vehicle by its owner Zile Singh (first respondent before the tribunal). It awarded compensation in the sum of Rs. 7,50,000/- with interest @ 7.5 per annum from the date of filing of the petition till realization, referring to the method of compensation adopted by Supreme Court in *Uphaar Tragedy (supra)*, assuming the income of the deceased child at minimum wages (₹ 6249) per month and capitalizing it with the multiplier of 15, after deducting 1/3<sup>rd</sup> towards personal and living expenses.

12. The insurer by its appeal (MAC Appeal No. 1106/2013) questions the above-said computation on the ground that minimum wages could not have been adopted in the case of a child aged only 4 years and deduction towards personal & living expenses should have

been made to the extent of 50% as is normally done in cases of deaths of bachelors, particularly in view of dicta in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

**Case 'F' : MAC Appeal Nos. 1288/2012 & 881/2015**  
(*In re: death of sixteen years' old Seema Kumari*)

13. These appeals seek to assail the judgment dated 07.09.2012 of the tribunal in accident claim case (case no. 718/2009), instituted by Sunita Devi and Hare Krishna Thakur (appellants in MAC Appeal No. 881/2015), the parents of Seema Kumari, an unmarried girl aged 16 years, who died in a motor vehicular accident that occurred on 18.03.2009 on account of negligent driving of Tempo Tata 407 bearing registration No. DL 1LE 1899 (the offending vehicle), admittedly insured against third party risk for the period in question with Oriental Insurance Company Ltd. (appellant in MAC Appeal No. 1288/2012). The tribunal, by the impugned judgment, upheld the case of the claimants that the accident had occurred due to negligent driving of the offending vehicle by its driver Vikas (first respondent before the tribunal). It awarded compensation in the sum of Rs. 5,93, 216/- with interest @ 9% per annum from the date of filing of the petition till realization; the amount including Rs. 6,000/- towards medical expenses incurred besides Rs. 10,000/- on account of funeral and miscellaneous expenses and Rs. 25,000/- towards loss of love & affection in view of the judgments of Supreme Court in *Sunil Sharma*

*v. Bachitar Singh*, (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Ltd.*, ( 2009 ) 17 SCC 627, with loss of dependency calculated at Rs. 5,52,216/- worked out on the monthly minimum wages (Rs. 4382/-) of the unskilled workers taken as per the judgment of this court in *Ramehar & Ors. v. Vinod Kumar & Ors.* (2009) ACJ 452 with addition of future prospects of increase to the extent of 50%, having deducted 50% towards personal & living expenses while relying upon the Supreme Court judgments in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (6) SCC 421 and capitalizing it with the multiplier of 14 on the basis of age of the claimant mother (44 years old) in view of *dicta* in *Amrit Bhanu Shali & Ors. v. National Insurance Co. Ltd.*, (2012) 11 SCC 738.

14. The claimants by their appeal (MAC appeal No. 881/2015) submit that the non-pecuniary heads of damages have not been properly taken care of.

**Case 'G' : MAC Appeal No.175/2014**

*(In re: death of seventeen years' old child Hussain Haider)*

15. The appeal presented by the insurance company which has been fastened with the liability to pay the compensation assails the judgment of the tribunal pronounced on 31.10.2013 whereby compensation in the sum of Rs.12,02,075/- was awarded in favour of the claimants (first and second respondents), parents of the deceased

child, on account of the death in a motor vehicular accident that occurred on 17.07.2010 involving tempo bearing registration no.UP-81AB-9028 (offending vehicle) in negligent manner, the said vehicle admittedly being insured against third party risk with the appellant. The amount of compensation awarded includes Rs.4,88,248/- towards medical expenses, the compensation towards loss of dependency and other non-pecuniary heads being in the sum of Rs.7,13,827/-. It was conceded at the time of hearing that the child was born on 02.05.1993 and thus at the time of his death on 17.07.2010, he was a little over 17 years in age. The tribunal calculated the loss of dependency assuming the income of the deceased at Rs.6,448/- adopting the minimum wages of a matriculate and applying the multiplier of 13, going by the age of the mother (46 years).

16. The appellant questions the award as inflated, submitting that the method adopted is not in accord with principles to be followed in such cases.

**Case 'H' : MAC Appeal No. 729/2013**  
*(In re: death of three years' old Varsha)*

17. This appeal assails judgment dated 23.05.2013 of the tribunal whereby the accident claim case (No.65/11) of Hari and Jayanti (claimants), instituted on 11.03.2011, was decided and compensation in the sum of Rs. 3,75,000/- with interest @ 9% per annum from the date of filing of the petition till realization was awarded in their favour

on account of death of their three years' old daughter Varsha in motor vehicular accident that had occurred on 09.08.2010 involving negligent driving of motor vehicle described as HP 12 C 1930 (offending vehicle), admittedly insured for the period in question with New India Assurance Company Ltd. (appellant) which was called upon to satisfy the award. The tribunal made the said award following the method of computation adopted in *R.K.Malik (supra)*.

18. The insurer in its appeal questions the above said computation on the grounds that the award is not in accord with the view taken in *R.K.Malik (supra)* as no deduction has been made towards personal & living expenses.

**Case 'I' : MAC Appeal No. 421/2015**  
(*In re: death of fourteen years' old Raju*)

19. This appeal relates to a motor vehicular accident that occurred on 09.04.2011 involving negligent driving of a tempo bearing registration no.DL-1LD-3812 admittedly insured against third party risk with National Insurance Company Ltd. The tribunal by judgment dated 09.12.2014 awarded compensation in the sum of ₹3,75,000/- with interest at the rate of 9% p.a. with effect from 02.08.2011 in favour of the parents (claimants ) of the child, who are in appeal seeking enhancement, the grievance being that the compensation is inadequate.

**Case 'J' : MAC Appeal No.100/2013**  
(*In re: death of seventeen years' old Mohd. Asif*)



20. The motor vehicular accident in this case occurred on 14.05.2011. Though the claim petition filed on 20.05.2011 stated that the deceased was 18 years' old, it having been proved that his year of birth was 1994, it is now conceded that he was a little over 17 years old on the relevant date. The tribunal awarded ₹4,20,000/- as compensation with interest at the rate of 7.5% p.a. applying the multiplier of 18 on the notional income of ₹15,000/- p.a. as specified in the second schedule to the M.V. Act, adding the non-pecuniary damages in terms of *R.K. Malik* (supra). The parents (claimants) are in appeal seeking enhancement.

**Case 'K' : MAC Appeal No.564/2014**

(In re: death of 10 years' old child Rishabh Garg)

21. The claimants in this case are also parents. The accident had occurred on 30.06.2011 involving negligent driving of a motor vehicle bearing registration no.DL-1LE-8152 (offending vehicle) which was admittedly insured against third party risk with third respondent (insurer). The tribunal has awarded with interest at the rate of 9% p.a. ₹7,32,047/- which includes ₹5,33,520/- calculated as loss of dependency on the basis of assumed income of ₹3,952/-, it being the minimum wages on which 50% was added towards future prospects and the multiplier of 15 applied, this in addition to ₹1,00,000/- towards loss of love & affection, ₹10,000/- towards loss of estate and ₹25,000/- towards funeral expenses, besides medical expenses at

₹63,527/-. The insurance company challenges the award on the ground it is not in accord with *R.K. Malik* (supra).

**Case 'L' : MAC Appeal No.956/2014**

(In re: death of eleven years' old child Master Gautam Joshi)

22. On 02.10.2011, a motor vehicular accident took place involving negligent driving of a vehicle bearing registration as DL-1YB 6781 admittedly insured against third party risk with the National Insurance Company Ltd. (third respondent) for the period in question, resulting in death of eleven years old Gautam Joshi. His parents (appellants) had instituted an accident claim case (suit no.38/12/12) on 14.12.2011 impleading the insurer, driver and owner of the offending vehicle as respondents. By judgment dated 31.05.2014, the tribunal upheld the case about the death having occurred due to negligent driving, the said finding having attained finality. The tribunal awarded compensation in the sum of Rs.3,75,000/- primarily following the view taken in the case of *Farzana* (supra).

23. By the appeal at hand, the claimants seek enhancement of the compensation.

**Case 'M' : MAC Appeal No. 1187/2014**

(In re: death of fourteen years' old Bhanu @ Bhanu Kataria)

**Case 'N' : MAC Appeal No. 1079/2013**

(In re: death of four years' old Kumari Lajo @ Sanjana)

24. The motor vehicular accidents in the cases from which these appeals arise had occurred on 02.05.2012 and 04.02.2013 respectively.

The offending vehicle in the case of death of Bhanu @ Bhanu Kataria was bus bearing No. DL 1PB 7483, again admittedly insured against third party risk with National Insurance Company Ltd. The death of Kumari Lajo had occurred in a motor vehicular accident involving car bearing No. DL 4C 7061, admittedly insured against third party risk with Reliance General Insurance Company Ltd. In these cases, the tribunal (by judgments dated 29.09.2014 and 29.07.2013) has awarded compensation in the sum of Rs. 3,75,000/- each with interest (@ 9% per annum in the first case and @ 7.5 % in the second case) with effect from the date(s) of filing of the petitions (15.05.2012 and 22.02.2013 respectively) till realization, in favour of the parents (the claimants) of the respective child.

25. The claimants in both cases have come up with these appeals seeking enhancement, their grievances essentially being that the awards made following the formula adopted in *R.K.Malik (supra)* have resulted in inadequate compensation.

### THE ISSUE

26. The awards made in the above mentioned fourteen cases may be seen at a glance in the tabular form as under, to facilitate a comparative scrutiny :-

| Case                                       | Date of accident (Death) | Age of deceased child | Compensation awarded by tribunal (₹) | Date of award by tribunal |
|--------------------------------------------|--------------------------|-----------------------|--------------------------------------|---------------------------|
| A.                                         | 17.03.1993               | 3 months              | 3,75,000/-                           | 16.01.2009                |
| B.                                         | 02.09.2002               | 7 years               | 2,25,000/-                           | 01.05.2007                |
| C.                                         | 24.09.2007               | 11 years              | 12,11,400/-                          | 14.01.2013                |
| D.                                         | 27.08.2008               | 17 years              | 6,56,646/-                           | 07.04.2014                |
| E.                                         | 21.02.2009               | 4 years               | 7,50,000/-                           | 16.09.2013                |
| F.                                         | 18.03.2009               | 16 years              | 5,87,216/- *                         | 07.09.2012                |
| G.                                         | 17.07.2010               | 17 years              | 7,13,827/-*                          | 31.10.2013                |
| H.                                         | 09.08.2010               | 3 years               | 3,75,000/-                           | 23.05.2013                |
| I.                                         | 09.04.2011               | 14 years              | 3,75,000/-                           | 09.12.2014                |
| J.                                         | 14.05.2011               | 17 years              | 4,20,000/-                           | 13.12.2012                |
| K.                                         | 30.06.2011               | 10 years              | 6,68,520/-*                          | 26.04.2014                |
| L.                                         | 02.10.2011               | 11 years              | 3,75,000/-                           | 31.05.2014                |
| M.                                         | 02.05.2012               | 14 years              | 3,75,000/-                           | 29.09.2014                |
| N.                                         | 04.02.2013               | 4 years               | 3,75,000/-                           | 29.07.2013                |
| * excluding medical expenses also awarded. |                          |                       |                                      |                           |

27. The above table graphically demonstrates not only divergence of opinion but also inconsistencies in approach. The incongruity is vivid. A case of death of three months' old child in March 1993 has been treated at par with death of a child aged 4 years in February 2013 as also that deaths of children of 14 years' age in April 2011 and May 2012 respectively, each receiving same amount of money. In sharp contrast, death of 11 years old in September 2007 has resulted in an award of more than 3 times as compared to a death of a 14 years old child, five years later in May 2012. The lack of uniformity in approach stems perhaps from variance in the awards in precedents that

have been followed. The principles which were adopted in *R.K. Malik* (supra) concerning an accident that had occurred in 1997 were adopted by this court in *Farzana* (supra) against the backdrop of cause of action that had arisen three years later in 2000 but the said precedent has been followed even for purposes of accident of later years virtually till date.

28. The question which falls for consideration of this court thus concerns the appropriate formula to be adopted for computation of just compensation in the case of death of children such that there is no disparity.

#### PRECEDENTS

29. It has been observed elsewhere, and it bears repetition to note in the present context, that India is one of the several countries with an unduly high rate of road accidents resulting in death, injury or damage, giving rise to claims for compensation brought before the tribunals by the victims or their next of kin. The law on the subject of compensation has been codified by inclusion of necessary provisions in the MV Act, including on the principle of fault liability (under Section 166). The decision to make an appropriate award of compensation in each case is entrusted in the hands of the tribunal. Whilst a simplified procedure for award of compensation “on structured formula basis” was introduced by insertion of Section 163A,

by amending Act no.54 of 1994 (w.e.f. 14.11.1994) wherein it is restricted and controlled by the method indicated in the Second Schedule, in claim cases arising out of fault-liability principle, the legislative guidance through the provision contained in Section 168 is simply that the tribunal is expected to determine such amount of compensation as appears to it to be “just”.

30. The structured formula contained in Section 163A, enforced through the prescription in second schedule has been found to be full of errors or defects and, consequently, adversely commented upon in a number of cases by the Supreme Court [*UPSRTC Vs. Trilok Chandra* (1996) 4 SCC 362; *Oriental Insurance Co. Ltd. Vs. Hansrajhai v. Kodala* (2001) 5 SCC 175; *Sarla Verma v. DTC* (2009) 6 SCC 121; *Puttamma v. K.L. Narayana Reddy* (2013) 15 SCC 45]. The said special provision was inserted in 1994 with the cap of ₹40,000/- on the income to be considered for calculating the loss of dependency (or income) in fatal accident cases. Though by sub-section (3), the legislature empowered the Central Government to amend the second schedule by notification from time to time “*keeping in view the cost of living*”, the said authorization has not resulted in any amendment being brought about to revise the annual income, even after elapse of more than two decades; regrettably so, particularly because the court has reminded the Government of its obligation in this regard a number of

times [*e.g. see Puttamma Vs. K.L. Narayana Reddy (2013) 15 SCC 45*].

31. Because of the strait-jacketed formula given by Section 163A, and perhaps more on account of erosion in the real value of money over the period, resort to the simplified structured formula seems to have fallen in disuse, except in cases relating to extremely poor sections of the society. Even a cursory comparison of the awards available under Section 163A with those handed down in cases under Section 166 on fault-liability principle reveals that the compensation received in the former in the present times cannot qualify, by any stretch of reasoning, as “*just*” compensation.

32. It has been noted *ad nauseam* in judgments after judgments that the approach of the tribunals and courts in determining the amount of compensation which is “*just*” has not only been not uniform or consistent but also beset by considerable variations most of the time due to adoption of divergent methods of calculation or on account of subjectivity. In *Nagappa v. Gurdayal Singh* 2003 (2) SCC 274, the Supreme Court ruled that the main guiding principle for determining the compensation is that it “*must be just*” and further that it “*must be reasonable*”. As observed in *UP State Road Transport Corporation v. Trilok Chandra* (1996) 4 SCC 362 compensation awarded in such cases has primarily two elements; the pecuniary loss to the estate of the deceased resulting from the accident and the pecuniary loss sustained by members of his family on account of his death, in

addition to the conventional awards under non-pecuniary heads of damages (e.g. loss of consortium, loss of love & affection, funeral expenses etc.). In *Gobald Motor Service Ltd. v. R. M. K. Veluswami* AIR 1962 SC 1, the court quoted with approval the views of House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) AC 601 that “*the damages are to be based on the reasonable expectation of pecuniary benefit or benefits reduceable to money value*”. But, as stated in *General Manager, Kerala, State Road Transport Corporation v. Susamma Thomas* (1994) 2 SCC 176, “*much of the calculation necessarily remains in the realm of hypothesis*” and since there are “*so often many imponderables*”, the Court must try to assess, as best as it can, the loss suffered against the “*overall picture*” that only matters.

33. In *Susamma Thomas* (supra), the court ruled that in fatal accident action, the measure of damages is the pecuniary loss suffered or likely to be suffered by each dependent as a result of the death and that :

“9. *The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life*



*expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.”*

34. Taking note of the evolving jurisprudence on the subject, in *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121, which was affirmed by a bench of three Hon’ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, the Supreme Court held thus :

*“16. ... “Just compensation” is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.*

*17. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation...”*

35. Whilst there can be no two opinions about the harsh reality that no amount of compensation can restore, eliminate or ameliorate the loss suffered on account of death (or injury with lasting effect), the endeavour by such award is to repair the damage done so as to restore the victim (which includes the dependents) to the extent possible to the pre-accidental position. This is why the pecuniary damages are meant to take care of the prospective pecuniary loss of future income and the non-pecuniary damages to compensate, to an extent, for pain & suffering, loss of love, companionship, expectation of life etc. Pertinently, the following passage from Lord Halsbury's law of England (4<sup>th</sup> Edition, Vol. 12, page 446-447) was quoted with approval in *R K Malik* (supra) (para 18):

*“1147. Non-pecuniary loss: the pattern.—Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award.*

*The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases.”*

36. The Supreme Court observed in *R.K. Malik* (supra), thus :

*22. It is extremely difficult to quantify the non-pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy.*

*23. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualised and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness, etc., which is sometimes described as compensation paid for “loss of expectation of life”.*

37. While the law on the issue of calculation of loss of dependency in the case of death of bread winner of the family is more or less settled – except perhaps for the category of those who are “self-employed” or engaged in gainful employment at “a fixed salary”, the issue concerning which is presently under reference before a larger Bench of the Supreme Court [*National Insurance Company Ltd.*

*V. Pushpa & Ors.* (2015) 9 SCC 166] – the view taken and the method adopted for computation of compensation in case of death of children appears to be still not uniform or consistent, clearly for the reason the factors that go into calculations in such cases suffer from even greater uncertainties and imponderables. Lord Atkinson – as quoted in *R.K. Malik* (supra) (para 13) – observed in *Taff Vale Railway Co. v. Jenkins* 1913 AC 1 : (1911-13) All ER Rep 160 (HL), as under :

*“11. ... In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.”*

38. As held by the Supreme Court in *R K Malik* (supra), compensation for loss of dependency, by its very nature, is awarded for prospective or future loss and, therefore, it cannot be allowed to be argued that death of a child who is “*still studying and not working*” does not result in any pecuniary loss. But, the challenge before the tribunals and courts in determining “*just and reasonable*” compensation in such cases stems from the fact that there is virtually no evidence of actual loss of earnings of the deceased child. In *R K Mailk* (supra), the court noted:

*“25. That being the position, the crucial problem arises with regard to the quantification of such compensation.*

*The injury inflicted by deprivation of the life of a child is extremely difficult to quantify. In view of the uncertainties and contingencies of human life, what would be an appropriate figure, an adequate solatium is difficult to specify. The courts have therefore used the expression “standard compensation” and “conventional amount/sum” to get over the difficulty that arises in quantifying a figure as the same ensures consistency and uniformity in awarding compensations.”*

39. The case reported as *Lata Wadhwa v. State of Bihar* (2001) 8 SCC 197 also involved claims for compensation on account of death of children, though in a fire incident that had occurred on 03.03.1989 within the factory premises of Tata Iron and Steel Company (TISCO) at Jamshedpur. It had been found, upon inquiry, to be an occurrence resulting from negligence on the part of the organizers. The children who had died were put in two categories; first in the age group of 5 to 10 years old and, the other, in age group of 10 to 15 years old, all being children of TISCO employees. While dealing with the contentions raised against the claims, the Supreme Court held:

*“In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child’s lifetime, but this will not necessarily bar the parents’ claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation*

*of pecuniary advantage is always a mixed question of fact and law. In case of a bright and healthy boy, his performance in the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety child and bad student.”*

40. Taking note of the facts that the environment from which the children were brought, their parents being reasonably well placed, the court in *Lata Wadhwa* proceeded to award compensation in the sum of ₹2 lakhs for the children in the first category and ₹4.10 lakhs for the children in the second category, awards in both being inclusive of ₹50,000/- each under the conventional figure of non-pecuniary damages. Noticeably, in the second category (all students of class 6 to 10), the loss of estate was worked out with the multiplier of 15 on the assumption that such children having assurance of employment in TISCO, would have contributed to the family income in the sum of ₹24,000/- per annum.

41. The case reported as *New India Assurance Co. Ltd. Vs. Satender and Ors.*, AIR 2007 SCC 324 involved death of a 9 year old child in an accident on 07.05.2002. The Supreme Court, by judgment dated 08.11.2006, declined to approve the compensation awarded in the sum of ₹4,45,000/- that had been upheld by the High Court which amount included ₹3,40,000/- as financial loss calculated on the basis of notional income of ₹30,000/- with multiplier of 17, reducing it to ₹1,80,000/-, observing as under :-

*“..12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death, nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation..”*

42. On 18.11.1997, a bus ferrying children to school had gone out of control of its driver and fell into Yamuna river in an incident that has come to be known as Wazirabad school bus tragedy. Twenty nine children died in the said accident. Accident claim cases were brought by their parents invoking the special provision contained in Section 163-A of MV Act. The tribunal divided them into three categories; first, those aged less than 10 years; second, those in the age group of 10 to 15 years; and the third, those in the age group of 15 to 18 years. The second schedule to the MV Act which applies in cases under Section 163-A prescribes the notional income of “non-earning persons” in such cases to be assumed as ₹15,000/- per annum. It also requires (by the first foot note) that for calculating the amount of compensation in fatal accident claims a deduction to the extent of 1/3<sup>rd</sup> be made in consideration of expenses which the victim would have

incurred towards maintaining himself had he been alive. Thus, the tribunal took the loss of earnings (on which loss to estate was to be compensated) at ₹10,000/- per annum. In the case of the third category (age group of 15 to 18 years), the multiplier of 16 was applied while in the second category (10 to 15 years), the multiplier of 15 was applied. It appears that in the first category (children less than 10 years in age), the multiplier of 10 was adopted. The tribunal proceeded to add ₹5,000/- each towards funeral and last rites. Thus, the total compensation awarded by the tribunal in the three categories was ₹1,05,000/- (for children less than 10 years), ₹1,55,000/- (for children in the age group of 10 to 15 years) and ₹1,65,000/- (for children in the age group of 15 to 18 years).

43. The claimants, feeling dissatisfied, took out appeals before this Court which were decided by a learned single Judge by judgment dated 17.05.2006, reported as *R K Malik & Ors. v. Kiran Pal & Ors.* [III (2006) ACC 261, 2007 ACJ 2010, (2006) ILR 1 Delhi 866]. It appears that the focus of challenge against the awards granted by the tribunal in the appeals before this Court was primarily on the non-pecuniary damages. The learned single Judge noted the lump-sum award of ₹50,000/- as the conventional figure for payment of non-pecuniary damages made in the cases of death of children in *Lata Wadhwa* (supra) and held as under :

*“The decision in the case of Lata Wadhwa (supra) relates to a fire accident in 1989 and therefore this*



*figure of conventional compensation has to be adequately enhanced to compensate for inflation and declining value/purchasing power of the Rupee. As per notified cost of inflation index issued by the Govt. of India under Section 48 of the Income tax Act, 1961 with base year as 1981-82 (= 100), the index was 172 in 1989-90 and 331 in the financial year 1997-98. If we go by the said figures the corresponding value of Rs.50,000/- in 1989 would be Rs. 97,000/- (approx.) in 1997. Taking the figure awarded in Lata Wadhwa's case and keeping in view the "just compensation" as awarded in several other cases mentioned above and also applying the principle of moderation, I feel that in all cases a uniform sum of Rs.75,000/- should be awarded towards non-pecuniary compensation as conventional compensation or in other words compensation for loss of expectancy of life and pain and suffering etc. suffered by the victims due to the death. Thus the compensation payable to the appellants gets enhanced by Rs.75,000/- in all the cases. The appellants for the sake of uniformity will also be entitled to Rs.1000/- towards loss of books wherever the same has not been awarded by the ld. tribunal. I may however add a word of caution that the above "conventional amount" may not be applicable in cases of death of adults and this aspect has not been examined by me."*

44. It is the above decision of the learned single Judge of this Court which was under challenge before the Supreme Court leading to the judgment dated 15.05.2009 reported as *R K Malik v. Kiran Pal* (2009) 14 SCC 1 (supra). The question of computation of loss to the estate with reference to the notional income of non-earning persons specified in the second schedule to MV Act, referable to Section 163A, having

been raised before the Supreme Court, while holding that “*deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible*” even when “*compensation is payable under Section 166 read with Section 168 of the Act*”, the court ruled that the notional income mentioned in the second schedule and the multiplier specified therein “*can form the basis for the pecuniary compensation for the loss of dependency*” in the said cases. While affirming the calculation of pecuniary compensation by the tribunal and the High Court, the Supreme Court made the following observations which are of utmost relevance to the issues raised before this Court in the present matters :

*17. We must point out here that the learned counsel for the appellants had argued that the notional sum of Rs 15,000 should be enhanced and increased as the legislature has not amended the Second Schedule and the same continues to be in existence since it was enacted on 14-11-1994. We are not examining and going into this aspect as the accident had taken place in the present case nearly three years after the enactment of the Second Schedule. The time difference between the date of the enactment and the date of accident is not substantial.*

45. Need one remind oneself about the passage from Lord Halsbury’s law of England quoted earlier, *albeit* in the context of non-pecuniary damages, that fall in the value of money necessitates “*continuing*” and “*periodic reassessments*” of such awards.

46. In *R K Malik* (supra), the Supreme Court enhanced the compensation awarded by this Court by another sum of ₹75,000/- in each case describing it as “*compensation for the future prospects of the children*”, interestingly clarifying that this represented “*roughly half of the amount given on account of pecuniary damages*” taking note, *inter alia*, of the fact that the deceased children had been shown by evidence to have been performing well in studies and that but for the tragedy, they would have had a “*good and bright*” future which aspect could not be overlooked, referring in this context to the decisions in *Susamma Thomas* (supra), *Lata Wadhwa* (supra) and *Sarla Dixit (Smt) v. Balwant Yadav* (1996) 3 SCC 179.

47. It may be mentioned here that in certain later decisions, the Supreme Court has commended taking into account the “*good career prospects*” of children who have been brilliant in studies for notionally determining their future income for calculation of compensation, particularly for those in the age group of 15 to 18 years. For illustration, one may refer to *V. Mekala v. M. Malathi & Anr.* (2014) 11 SCC 178.

48. The case of *Uphaar tragedy* (supra) arose out of a fire incident that occurred on 13.06.1997 in a cinema hall where 59 persons had perished, they including some aged 20 years or less. The issue of compensation arising out of claims based on fault liability was finally decided by the Supreme Court by judgment dated 13.10.2011. This Court had earlier awarded compensation assuming the income of those

who were sitting in the balcony class (where rate of admission was higher) as those belonging to a strata of society where the monthly income could not be less than ₹15,000/-. Adopting the multiplier of 15 in all such cases where the deceased persons were more than 20 years, after deducting 1/3<sup>rd</sup> for personal expenses, this Court had granted compensation in the sum of ₹18 lakhs per such person. For those below 20 years, the Court had reduced the said amount by ₹3 lakhs and awarded compensation at flat rate of ₹15 lakhs. The Supreme Court found the assumption of income on the basis of class of seat where the deceased persons were sitting in the cinema hall to be improper. Observing that it was “*unsafe to use a high income as the determinative factor*”, the claims having arisen in a public law remedy, the Court reduced the compensation in the case of persons aged 20 years or more to the sum of ₹10 lakhs and for those below 20 years in sum of ₹7.5 lakhs, granting liberty to those seeking more compensation on the basis of higher income to approach the Registrar General of this Court with their applications for summary inquiry to be conducted to determine the compensation in each case.

49. Reference has also been made, in the course of arguments, to the decision of the Supreme Court in *Manju Devi Vs. Musafir Paswan*, VII (2005) SLT 257. It was an appeal arising out of claim due to death of a thirteen years’ old boy in a motor vehicular accident that had occurred on 02-07-1998. The matter was decided by the Supreme Court on 31-03-2003. The tribunal had awarded a lump-sum amount of ₹ 90,000/-

which had been upheld by the High Court. The Supreme Court increased the award to ₹ 2,25,000/- applying the notional income of non-earning person (₹ 15,000/-), as specified in the Second Schedule of MV Act and adopting the multiplier of 15.

50. *Kaushalya Devi Vs. Karan Arora, 2007 11 SCC 120* is yet another case relied upon by the insurance companies. It arose out of death of a minor (fourteen years' old boy), the claim having been preferred under section 166 of MV Act by his parents, the accident having occurred on 05-02-1997. The tribunal awarded the amount of rupees one lakh with interest and the appeal preferred by the claimant was dismissed by the High Court. The Supreme Court upheld the said decision and dismissed the claim of the claimant for further enhancement, observing thus:

*“There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents.”*

51. The case of *National Insurance Co. Ltd. Vs. Farzana* (supra) is a judgment rendered on 14-07-2009 by a learned Single Judge of this court. As noted earlier, this decision had been followed by the tribunals in some of the cases from which these appeals arise. In *Farzana*, the person who had died was seven years' old son of the claimant parents, in an accident that had occurred on 10-05-2000. The tribunal had awarded compensation in the sum of ₹ 3,62,500/- on the basis of notional annual income of ₹ 22,500/- which had been capitalized by multiplier of 15. The learned Single Judge referred to the decisions of the Supreme Court, *inter-alia*, in *Manju Devi* (supra) and *R.K. Malik* (supra) and in that light found the tribunal to be in error. It was held that the notional income of ₹ 15,000/- per annum only should have been adopted and the multiplier of 15 applied. The learned Single Judge capitalized the annual income and, thus, worked out the loss of dependency at ₹ 2,25,000/- and added ₹ 75,000/- awarded by this Court besides ₹ 75,000/- awarded further by the Supreme Court in the matter of *R.K. Malik* (supra) to grant ₹ 3,75,000/- as compensation.

52. As pointed out by the learned counsel for the insurance companies, in working out the compensation in *Farzana* (supra) the learned Single Judge omitted to make deductions on account of personal and living expenses, as had been done in the case of *R.K. Malik* (supra), without elaborating the reasons for such departure which, consequently, is assumed to be inadvertent.

53. The decision in *Farzana* (supra) seems to have been followed by another learned Single Judge of this court in a number of other similarly placed matters of claims arising out of death of children of young age, some of such decisions including *Anita Devi Vs. New India Assurance Co. Ltd. & Ors* (MAC.APP.No.460/2009 decided on 02.05.2012); *National Insurance Company Ltd. Vs. Raj Prakash & Ors.* (MAC.APP.No.492/2008 decided on 02.11.2012) and *HDFC ERGO General Insurance Company Ltd. Vs. Bablu Sahni & Ors.* (MAC.APP.No.1038/2012 decided on 22.04.2015). In each of these cases the awards were granted in the sum of ₹ 3,75,000/-. Noticeably, in *Bablu Sahni* (supra), the insurer had referred to the decision of Supreme Court in *Kaushalya Devi* (supra) to claim reduction of compensation to rupees one lakh. The learned Single Judge, however, rejected the said submission and decided to follow the precedent of *Farzana* (supra) observing that the death in the case before the court had occurred on 03-06-2011 whereas in *Kaushalya Devi* (supra), the cause of action related to 1997.

54. The argument of erosion of real value of money on account of inflationary trends apart, that the notional income of ₹ 15,000/- per annum, as specified in the Second Schedule to MV Act, has become obsolete and cannot be a valid benchmark, was one consideration on which the decision of Supreme Court in case reported as *Kishan Gopal Vs. Lala*, 2014 (1) SCC 244 turned. In that case, the son of the claimants, aged ten years, had died in an accident that had occurred on

19-07-1992. The Supreme Court declined to adopt the income specified in the Second Schedule to MV Act and after assuming the notional income as ₹ 30,000/- granted the compensation in the sum of ₹ 4,50,000/- on account of loss of dependency besides ₹ 50,000/- under the conventional head.

### ANALYSIS

55. The method of assessment in *Lata Wadhwa* (supra) was followed, with improvement, *albeit* for calculating non-pecuniary damages, in *R.K. Malik* (supra). What is pertinent to note, however, is that the court drew a distinction qua senior age-group (those studying in 6<sup>th</sup> to 10<sup>th</sup> standards) and assumed income higher than that of notional income, having regard to the prospects of their employability in future. The view taken in *Kaushalya Devi* (supra) wherein the lumpsum award of ₹1 Lakh only was upheld in the case of death of a 14 years' old boy on 05.02.1997, need not be followed as binding precedent in view of the dicta of the Supreme Court in *R.K. Malik* (supra). The view taken in *Satender* (supra) also must be kept aside as the judgment in *R.K. Malik* (supra) would prevail over it. The award granted in *Uphaar Tragedy* (supra) may not be used as a precedent for the reasons what was granted by the Supreme Court in a case arising out of public law remedy was only tentative, the final computation having been left to further inquiry, in the peculiar facts and circumstances of that case. The case of *Manju Devi* (supra) essentially



followed the same line as taken in *R.K. Malik (supra)*. The difficulty with the ruling in *Kishan Gopal (supra)* is that though the cause of action had arisen in July 1992, the Supreme Court while rendering the final decision on 26.08.2013, made the computation by assuming the notional income at twice the rate of the one given in Second Schedule on account of elapse of time not referring to the earlier decision in *R.K. Malik (supra)*, the prime take away from the said judgment, however, being the acknowledgement that the notional income fixed by the legislature in 1994 would not hold good in the face of drastic reduction in rupee value over the years.

56. The court faces the challenge of determining “just compensation”, in each such case. The issue needs to be addressed, *inter alia*, in the context of considerations in the nature of future prospects and inflationary trends affecting the loss of real value of money. In *Sarla Verma (supra)*, a bench of two Hon’ble Judges of the Supreme Court standardized the method of calculation of the factor of future prospects to be taken into account but kept the category of those who were “*self employed*” or working on a “*fixed salary*” out of its purview. The decision in *Sarla Verma* was upheld by a bench of three Hon’ble Judges of the Supreme Court in *Reshma Kumari v. Madan Mohan (supra)*. A divergent view was taken on this subject by another bench of three Hon’ble Judges in *Rajesh v. Rajbir (supra)*, approving certain observations in judgment in another case reported as *Santosh*

*Devi v. National Insurance Co. Ltd.* (2012) 6 SCC 421. Though the question of permissibility of “*future prospects*” to be considered in the two above mentioned categories (“*self employed*” or those on “*fixed salary*”) is still at large, it having been referred to a larger bench, certain observations in *Santosh Devi* (supra) are germane to the questions raised before this Court and thus, need to be quoted. In *Santosh Devi* (supra) the Supreme Court said thus :

*“11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socio-economic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people.*

*...*

*15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.”*

57. There can be no two opinions about the fact that in case of children there can hardly ever be a clear proof of pecuniary loss resulting from death. Persons of age below 18 years, are not expected to be, and are most of the time not, engaged in any activity earning

livelihood. At the same time, it cannot be said that no pecuniary loss accrues due to their death. The calculation of loss to the estate, to be awarded as pecuniary damages, is more in the realm of speculation than based on any actual data. In these circumstances, the most appropriate course is to go by the notional income of non-earning persons for which provision was made by the legislature in the Second Schedule appended to the M.V. Act with reference to Section 163-A. That bench-mark was adopted by the tribunal in the case leading to the judgment of Supreme Court in *R.K. Malik (supra)* wherein the approach was upheld. In these circumstances, the law can be taken as generally well settled that the pecuniary damages in cases of death of children have to be computed with reference to the notional income specified in Second Schedule appended to the M.V. Act. As in *Lata Wadhwa (surpa)*, however, the prospects of employability in future of children in higher age-group necessitate that they are kept at different footing, ideally at least on the bench-mark of minimum wages with room for considering even higher prospective income in case irrefutable evidence is brought forth of exceptionally bright academic record or training in special talent or skill. Of course, the non-pecuniary damages as awarded by the High Court, on which Supreme Court later made further improvement in *R.K. Malik (supra)*, would also need to be added in proper ratio in the final award.

58. But it cannot be ignored that what was specified by the legislature in Second Schedule as the notional income in November 1994 cannot continue to hold good even after elapse of more than two decades. The value of money stands eroded on account of the effect of inflation. What was the value of ₹15,000/- in November 1994 would in comparison be a pittance in the present times. Same would hold good for the non-pecuniary damages that were awarded in *R.K. Malik (supra)* in relation to an accident of 1997. Noticeably, a similar contention about erosion of value of money was urged before the Supreme Court in *R.K. Malik (supra)* but the said argument was not accepted for the reason only three years had passed by after the insertion of the Second Schedule to the M.V. Act. The said view cannot be taken now as 22 years have gone by.

59. As commended by Halsbury in the passage quoted earlier, the fall in the value of money must lead to periodic reassessment of damages. This is what was the theme of discourse in *Santosh Devi (supra)* and in a later decision in *Puttamma (supra)*. In *Puttamma (supra)*, the Supreme Court called upon the State to explain inaction on its part in the context of authorization given to the Central Government by Section 163-A (3) to make improvements on account of “cost of living”. The response of the State and the view taken by the court on the subject may be gleaned from the following extracts :-

*“53. Considering the current trend of inflation, cost of foodgrains and all other items, Mr P.P. Malhotra, Senior Advocate, Amicus Curiae submitted that for just compensation the multiplier should be enhanced to 24-25 years. Further, according to him, while calculating the compensation, the amount payable towards dependency should be increased as the life expectancy is up to 70-75 years and secondly, after 10 years of earning capacity it should be doubled in view of escalation of cost of living and progressive increase in the income. Keeping in view the cost of living, the Central Government is required to amend the Second Schedule [See Section 163-A(3)]. The Second Schedule was enacted by Act 54 of 1994 w.e.f. 14-11-1994. Now more than 19 years have passed but no amendment has been made. While the cost of living has gone up manifolds.*

*54. In view of findings recorded above, we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.*

*55. A Letter dated 5-12-2012 issued by the Joint Secretary, Ministry of Road Transport and Highways, New Delhi has been brought to our notice by Mr P.P. Malhotra. Giving reference to the present case therein, the officer has informed that the Motor Vehicles (Amendment) Bill, 2012, inter alia, to amend Section 163-A of the Motor Vehicles Act, 1988 was passed by the Rajya Sabha on 8-5-2012. The said Bill proposes to substitute Section 163-A(3) of the Act by empowering the Central Government to revise the amount or the multiplier specified in the Second Schedule after every three years and furthermore, the Bill also seeks to substitute the Second Schedule so as to provide that for death of non-earning persons, a fixed compensation of Rs*

*1,00,000 for children up to 5 years of age and Rs 1,50,000 for persons more than 5 years of age. It is informed that though the Bill has been passed by the Rajya Sabha it is still pending consideration before the Lok Sabha for its approval.*

*X X X X*

*57. From the proposed Bill we find that there is a proposal to change the multiplier applicable for different age groups; it does not contemplate schedule structure of compensation. The factors to be considered for working out compensation are (a) age of the victim, (b) multiplier, (c) annual income up to Rs 1,00,000 (the maximum annual income for calculation of compensation will be deemed to be Rs 1,00,000 even if the income exceeds Rs. 1,00,000). Separate provisions have been made for grievous injury and non-grievous injury, etc.*

*58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs 1,00,000 (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs 1,50,000 (Rupees*

*one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act.”*

60. The decision in *Puttamma* (supra) was rendered on 09.12.2013. More than 2 years and 4 months have gone by and the amendment to the law is yet to see the light of the day. Noticeably, the amounts of fixed compensation indicated by the court in (paragraph 58 of) the judgment in *Puttamma* (supra) quoted above are unduly low when compared to the dispensation in *R.K. Malik* (supra). The court, however, made it clear that if higher compensation could be determined in terms of Second Schedule, the same shall be awarded.

61. The legislature and the executive have not lived up to the assurance held out by Section 163-A (3) of the M.V. Act. The value of money having gone down substantially over the last more than 22 years, the amount of compensation cannot remain frozen. The Court cannot remain a helpless spectator, indefinitely awaiting initiative by the legislature [*Vishakha Vs. State of Rajasthan*, (1997) 6 SCC 241]. As observed by Supreme Court in *M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd.*: 1993 Supp (2) SCC 433 :

“...Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to

redress grievances according to what is perceived to be principles of justice, equity and good conscience.”

62. The tribunals and courts will have to break free from the groove or strait-jacket of the stale, outdated and obsolete prescription of the second schedule to M.V. Act. Time has come, and it is the obligation of this court to do so, to bring the benchmark in Second Schedule to M.V. Act upto date, in the present matters for purposes of award of compensation in the case of death of children so as to make it “*just*” and “*reasonable*”. The issue is about the proper mode of achieving this objective.

63. As noted above, the learned single Judge of this court, sitting in appeal over the judgments of the tribunal in the case of *R.K. Malik* (supra) while assessing the non-pecuniary damages had improved upon what was granted in *Lata Wadhwa* (supra) in relation to an accident of 1989 by applying the cost of inflation index notified by the Government of India under Section 48 of the Income Tax Act, 1961. The computation thus made was eventually approved by the Supreme Court, though with further addition towards future prospects. This holds the key to the predicament faced.

64. A similar route was taken by another single bench of this Court in a case for compensation arising out of an incident of terrorism in *Kamla Devi v. Govt. of NCT of Delhi* 2005 ACJ 216 (Delhi): 114 (2004) DLT 57, wherein the value of the conventional sum awarded in



*Lata Wadhwa* (supra) was improved upon by applying the consumer price index for industrial workers [CPI (IW)]. The view in *Kamla Devi* (supra) was followed in a number of subsequent decisions of this Court in cases reported as *Ashwani Gupta v. Government of India & Ors.* 117 (2005) DLT 112; *Tasleema v. State (NCT of Delhi) & Ors.* ILR (2009) 6 Del 486 : (2009) 161 DLT 660 (DB); *Nagrik Sangarsh Samiti & Ors. v. Union of India & Ors.* ILR (2010) 4 Del 293 : 2012 ACJ 1548; *Swarn Singh v. Union of India* 2010 SCC Online Del 1190 and *Ashok Sharma & Ors. v. Union of India & Ors.* ILR (2008) 1 Del 96 : 2009 ACJ 1063.

65. Having regard to the fluctuating trends in CPI (IW), this court finds the Cost Inflation Index (CII) determined and notified by the Ministry of Finance in Government of India under Section 48 of Income Tax Act, 1961 for each financial year, to be a better method to off-set the effect of inflation on the real value of money. This approach, if followed, would ensure that there is no inconsistency in the awards of compensation in cases of death of children. [*R.K.Malik* (supra) and *Balram Prasad v. Kumar Saha* (2014) 1 SCC 384]. Since the amount which requires to be subjected to correction was determined by decision in *R.K.Malik* wherein cause of action had arisen on 10.11.1997, the financial year 1997-98 is taken as the “base year”.

66. For ready reference, the rates of Cost Inflation Index (CII) notified by the government till date, to the extent necessary, are reproduced in the table given below :

| <b>Financial Year</b>  | <b>CII</b> | <b>Financial Year</b> | <b>CII</b> |
|------------------------|------------|-----------------------|------------|
| <b>Before 1/4/1981</b> | <b>100</b> | 2004-05               | 480        |
| 1981-82                | 100        | 2005-06               | 497        |
| 1982-1983              | 109        | 2006-07               | 519        |
| X X X                  | X X X      | 2007-08               | 551        |
| 1997-98                | 331        | 2008-09               | 582        |
| 1998-99                | 351        | 2009-10               | 632        |
| 1999-2000              | 389        | 2010-11               | 711        |
| 2000-01                | 406        | 2011-12               | 785        |
| 2001-02                | 426        | 2012-13               | 852        |
| 2002-03                | 447        | 2013-14               | 939        |
| 2003-04                | 463        | 2014-15               | 1024       |
|                        |            | 2015-16               | 1081       |

### CONCLUSIONS

67. In the considered view of this Court, the cases for compensation on account of death of children in motor vehicular accident cases ought to be dealt with by considering the claim towards pecuniary damages (towards loss to estate), in accordance with the age-group wise categories as in *R.K.Malik* (supra); the first category being of children less than 10 years' in age, the second category being of children more than 10 years' and up to 15 years' in age, and the third category of children more than 15 years' but not having attained the

age of majority (18 years). The children in the third category would ordinarily be of such age group as is generally receiving formal school education or those that are (being) imparted special training so as to be equipped with requisite skills to be gainfully employed in a variety of trades. They are after all nearing adulthood and thus, on the threshold of becoming self-reliant. In such cases, the prospects of their employability and earnings in future or present, based on evidence adduced about their academic track record or training in special talents or skills, would need to be borne in mind. As in *Lata Wadhwa* (supra), the claim for pecuniary damages arising out of death of children of this age group cannot be at par with the lower age groups falling in the first and second category. Therefore, the pecuniary loss to estate due to their death would deserve to be worked out by applying a higher multiplier on the notional income (of non-earning persons) unless, of course, case is properly made out for higher considerations. Noticeably, in *Sarla Verma* (supra) the Supreme Court specified the multiplier of 18 for cases where the deceased was in the age-group of 15 years' to 20 years' old. For the first and second category, however, the multiplier of 10 and 15 respectively, as used in *R.K. Malik* (supra), would hold good.

68. Since in the claims arising out of death of children, generally speaking, (non-earning hands), the income is to be notionally assumed on the basis of the second schedule to the MV Act, the general practice

of deduction of one-half (50%) towards personal & living expenses, as applied in case of bachelors above the age of 18 years would be unfair. Pertinently, the notional income specified for non-earning persons in the second schedule is very low as compared to the rates of minimum wages. Therefore, the deduction of one-third ( $1/3^{\text{rd}}$ ) on this account, as provided by the first note below the second schedule would only be appropriate.

69. The award of compensation must necessarily take into account non-pecuniary damages. In *R.K. Malik* (supra), ₹75,000/- awarded by this Court as the “*conventional compensation*” was enhanced by the Supreme Court by further similar amount (₹75,000/-) as the “*compensation for future prospects*”. For the reasons set out earlier, in the context of pecuniary loss to estate, the composite sum of non-pecuniary damages of ₹1,50,000/- [as awarded in *R.K. Malik* (supra)] would deservedly be added, but with suitable correction so as to ensure that the deficiency in the real value of money is made good. As noted (in para 46) earlier, the Supreme Court justified the addition of ₹75,000/- towards compensation for “*future prospects*” by noting that the said amount was “*roughly half of the amount given on account of pecuniary damages*”. Since the court had also upheld the award of similar sum (₹75,000/-) by this court as “*conventional compensation*”, both amounts of non-pecuniary damages, put together, account for roughly an amount equivalent to the sum computed as pecuniary loss

to estate. Thus, this court is of the view that a composite sum equal to the amount computed as pecuniary loss to estate may be added as non-pecuniary damages (inclusive of conventional compensation and for future prospects), in such cases as at hand to arrive at the appropriate figure of '*just compensation*'.

70. It has been noticed by this Court that the tribunals have been assessing the compensation and awarding it to the last rupee, at times even in the fraction of a rupee, not bothering to follow the practice of rounding off. Awards in at least two of the cases from which the appeals at hand arise provide ready illustration. This seems to be not correct. It must be added here that human misery cannot be calculated with such mathematical precision. Even otherwise for convenience of accounting, it is desirable that the amount of award is rounded off to the nearest (if not next) thousands of rupees.

71. Subject to all other requisite conditions being fulfilled, for the foregoing reasons, in order to bring about consistency and uniformity in approach to the issue, it is held that claims for compensation on account of death of children shall be determined as follows :

- (i). Till such time as the law is amended by the legislature, or the Central Government notifies the amendment to the Second Schedule in exercise of the enabling power vested in it by Section 163-A (3) of the

Motor Vehicles Act, 1988, and except in cases wherein the prospects of employability and earnings (in future or present) of the deceased child are proved by cogent and irrefutable evidence, this having regard, *inter alia*, to the academic record or training in special talents or skills, for computing the pecuniary damages on account of the loss to estate, the notional income of non-earning persons (₹15000/- p.a.) as specified in the Second Schedule (brought in force from 14.11.1994), shall be assumed to be the income of the deceased child, and taken into account after it is inflation-corrected with the help of Cost Inflation Index (CII) as notified by the Government of India from year to year under Section 48 of the Income Tax Act, 1961, by applying the formula indicated hereinafter.

(ii) For inflation-correction, the financial year of 1997-1998 shall be treated as the “base year” and the value of the notional income relevant to the date of cause of action shall be computed in the following manner :-

$$\text{₹ 15,000/-} \times A \div 331$$

*[wherein the figure of ‘₹15,000/-’ represents the notional income specified in the second schedule requiring inflation-correction; ‘A’ represents the CII for the financial year in which the cause of action arose (i.e. the accident / death occurred); and the figure of ‘331’ represents the CII for the ‘base year’]*

(iii). After arriving at an appropriate figure of the present equivalent value of the notional income (i.e. inflation-corrected amount), it shall be rounded off to a figure in next thousands of rupees.

(iv). The amount of notional income thus calculated shall be reduced to two-third, the deduction to the extent of one-third being towards personal & living expenses of the deceased, the balance taken as the annual loss to estate (hereinafter also referred to as “the multiplicand”).

(v). For assessment of the pecuniary damages on account of the death of children upto the age of 10 years, the loss to estate shall be calculated, capitalizing the multiplicand, by applying the multiplier of ten (10).

(vi). For children of the age-group of more than 10 years upto 15 years, the loss to estate shall be calculated by applying the multiplier of fifteen (15).

(vii). For children of the age-group of more than 15 years but less than 18 years, the loss to estate shall be calculated by applying the multiplier of eighteen (18).

(viii). After the pecuniary loss to estate has been worked out in the manner indicated above, an amount equivalent to the amount thus computed shall be added to it as the composite non-pecuniary damages taking care of not only

the conventional heads but also towards future prospects as awarded in *R.K. Malik v. Kiran Pal* (2009) 14 SCC 1.

(ix). The final sum thus arrived at, appropriately rounded off, if so required to the nearest (if not next) thousands of rupees, shall be awarded as compensation for the death of the child.

72. The ruling in *National Insurance Company Ltd. v. Farzana* (2009 ACJ 2763) was rendered by a learned single Judge of this Court on 14.07.2009. Though it had built upon the dispensation in *R.K. Malik* (supra), given the effect of inflation elaborately discussed above, it has outlived its utility for cases relating to later years. At the same time, it must be noted, that the view in *Farzana* (supra) has governed the field till date, inasmuch as it has been followed by other single benches of this Court as also by tribunals in various cases. Given the modified method of calculation as is being determined by this judgment, it is possible that in some of the earlier decided cases, the compensation computed on revised lines may fall below the amount of ₹3,75,000/- computed in *Farzana* (supra). Since the awards in such earlier decided cases were granted with reference to the ratio in *Farzana* (supra), it will not be fair to order any modification in cases that relate to the period on or after 10.05.2000 (the date of cause of action in *Farzana*) so as to reduce the awards below the said amount of ₹3,75,000/-, particularly as some of such awards may already have been satisfied, including on account of interim orders of this Court.



73. Thus, in cases founded on cause of action arising on or after 10.05.2000, the amount of compensation shall not in any case be less than ₹3,75,000/- which was awarded in the case of *National Insurance Co. Ltd. v. Farzana* (2009 ACJ 2763).

74. Case-wise decisions taken hereinafter shall provide necessary illustrations for applying the above-directed method of computation.

### CASE-WISE DECISIONS

#### **Case 'A' : MAC Appeal Nos. 226/2010 & 554/2010** (*In re: death of three months' old child Rama Kant*)

75. Since the deceased child Rama Kant was only three months' old, there is no question of any higher considerations. The death having occurred on 17.03.1993, the ruling in *R.K.Malik* (supra) is the precedent which is nearest home. In this view, the total compensation that deserves to be awarded in this case is ₹1,05,000/- towards pecuniary loss to estate along with ₹1,50,000/- towards non-pecuniary damages. Thus, the total sum of ₹2,55,000/-. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

76. The award is modified accordingly.

77. By order dated 15.04.2010, the insurance company had been directed to deposit the entire awarded amount with interest within the period specified. Out of such deposit, ₹1,80,000/- was released in terms of order dated 14.03.2013. The balance lying in fixed deposit receipt with UCO Bank, Delhi High Court branch shall be released in terms of this judgment in favour of the claimants for which the Registrar General shall take appropriate steps. The excess in deposit shall be refunded to the insurance company.

78. It may also be added here that in this case, the insurer had also pleaded breach of terms and conditions of the insurance policy on the contention that the registered owner had handed over the offending vehicle for use to Chetan Malhotra (appellant in MAC Appeal No. 554/2010) without any intimation to it (insurer) and further for the reason the driver (Sunil) was not holding a valid or effective driving licence. Both these contentions, however, did not find favour with the tribunal. It rejected the plea about breach on account of vehicle having been given on lease without intimation on the reasoning that the liability to indemnify also stood transferred, referring in this context to *Richi Ram & Anr. vs. Sukhrainia & Ors. (2003) ACC 368 (SC) 2003 (1) SCR 872*. The plea regarding driving license was rejected with observation that the insurer had failed to adduce any evidence in such regard. Though in the operative part (para 25) of its judgment, the tribunal directed the insurer to pay the awarded compensation, Chetan

Malhotra by his appeal (MAC Appeal No. 554/2010) has taken exception to the observation in the opening line in the said very para of the impugned judgment holding the liability of the insurer “*to be joint and several with other respondents*”.

79. Since no breach of terms and conditions of the insurance policy was proved, though Chetan Malhotra (owner) is held vicariously liable, no responsibility to pay can be fastened on him as the insurer is bound to indemnify. With this clarification, no further direction is required on the appeal of Chetan Malhotra.

**Case ‘B’ : MAC Appeal No. 580/2007**

*(in re: death of seven years’ old child Yash Chouhan)*

80. There is no evidence about the academic record of the child. The death had occurred on 02.09.2002 and therefore, the CII for the financial year 2002-2003 (i.e. 447) would apply. As the age of the deceased child was 10 years, calculation has to be made on the multiplier of 10. The inflation-corrected notional income comes to ( $\text{₹}15,000 \times 447 / 331$ ) ₹20,256/-, rounded off to ₹21,000/-. After deducting  $1/3^{\text{rd}}$ , and applying the multiplier of 10, the pecuniary loss to estate is computed as ( $\text{₹}21,000 \times 2/3 \times 10$ ) ₹1,40,000/-. Adding a similar account towards composite non-pecuniary damages, the total compensation works out to ₹2,80,000/-. However, in view of the decision in paragraph 73 (supra), the amount of compensation awarded in this case shall be ₹3,75,000/-. As in the preceding case, the rate of interest is increased to 9% p.a.

81. The connected appeals (MACA Nos.581/2007 and 582/2007) arising out of awards for injuries suffered by Sumer Singh Chouhan and Pushpa had also challenged the finding on contributory negligence returned by the impugned judgment which was common to the three claim cases. By judgment passed on 11.05.2016, the said two other appeals were decided by this court setting aside the finding on contributory negligence and deduction from the compensation on such account. The said finding shall apply to the present case as well. Therefore, the insurance company shall be liable to deposit the requisite amount including on account of increase in the compensation and rate of interest, without any deduction, with the tribunal within 30 days, making it available to be released to the claimants. For removal of doubts, it is clarified that the recovery rights granted by the tribunal shall inure to the insurer even in respect of the enhanced portion of the award.

**Case 'C' : MAC Appeal No. 250/2013**  
*(In re: death of eleven years' old child Mukesh)*

82. There is no case for any higher consideration. The death had occurred on 24.09.2007 and therefore, the CII for the financial year 2007-2008 (i.e. 551) would apply. As the age of the deceased child was 11 years, the multiplier of 15 would be appropriate. The inflation-corrected notional income thus comes to (₹15,000/- x 551/331) ₹24,969/-, rounded off to ₹ 25,000/-. After deducting 1/3<sup>rd</sup> and on the multiplier of 15, the pecuniary loss to estate is computed as (₹25,000/-

$\times \frac{2}{3} \times 15$ ) ₹2,49,999/- rounded off to ₹2,50,000/-. Adding the similar amount towards composite non-pecuniary damages, the total compensation payable in this case comes to ₹5,00,000/-. Following the reasons set out in the context of the preceding cases, the rate of interest is increased to 9% p.a.

83. By order dated 15.03.2013, the insurer had been directed to deposit 80% of the awarded amount with accrued interest with the Registrar General and on such deposit, 40% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch. The Registrar General shall calculate the amount payable to the claimants in this case in terms of the modified award and release the same, refunding the excess to the insurer.

**Case 'D' : MAC Appeal No. 510/2014**

(In re: death of 17 years' old child Mohit)

84. Again, there is no case for any higher consideration than the notional income. The death occurred on 27.08.2008. Therefore, the CII for financial year 2008-09 (i.e. 582) would apply. Consequently, the inflation-corrected notional income works out as ( ₹ 15,000  $\times$  582 / 331) ₹26,375/- rounded off to ₹27,000/-. The deceased child was 17 year old and, thus the multiplier of 18 applies. After deducting  $\frac{1}{3}$ <sup>rd</sup> towards personal and living expenses, the pecuniary loss to estate is computed as (₹27,000  $\times$   $\frac{2}{3}$   $\times$  18) ₹3,24,000/-. Upon an equivalent amount being added towards composite non-pecuniary damages, the

total compensation payable in the case is calculated as (₹3,24,000/- x 2) ₹6,48,000/-. Needless to add, it shall carry interest as levied (9%) by the tribunal.

85. The award is reduced accordingly.

86. In terms of order dated 04.07.2014, the insurance company had deposited the entire awarded amount with interest with the Registrar General who was permitted to release 50%, the rest being kept in fixed deposit receipt with UCO Bank, Delhi High Court branch. The Registrar General shall calculate the amount payable to the claimants in this case in terms of the modified award and release the same, refunding the excess to the insurer.

**Case 'E' : MAC Appeal No. 1106/2013**

*(In re: death of four years' old child Vishal)*

87. The deceased child was not even in the school going age-group. The death had occurred on 21.02.2009 and therefore, the CII for financial year 2008-09 (i.e. 582) would apply. The inflation-corrected notional income is computed as  $(15000 \times 582 / 331)$  ₹26,375/- rounded off to ₹27,000/-. Since the age of the child at the time of death was only four years, the multiplier of 10 applies. After deducting  $1/3^{\text{rd}}$  towards personal and living expenses, the pecuniary loss to estate is computed as  $(₹27,000 \times 2 / 3 \times 10)$  ₹180,000/-. Adding an equivalent sum towards non-composite pecuniary damages, the total

compensation in the case comes to (₹180,000/- x 2) ₹3,60,000/-. But, in view of the decision in paragraph 73 (supra), the amount of compensation is reduced to ₹3,75,000/-. Following the dispensation in earlier cases, the rate of interest is increased to 9% per annum.

88. By order dated 03.12.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General, out of which 60% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch. The Registrar General shall calculate the amount payable to the claimants in this case in terms of the modified award and release the same, refunding the excess to the insurer. If excess has been released, the same shall be liable to be refunded.

**Case 'F' : MAC Appeal Nos. 1288/2012 & 881/2015**  
*(In re: death of sixteen years' old Seema Kumari)*

89. The death occurred on 18.03.2009 which would fall within the financial year 2008-2009 in which view the same CII (582) as in the preceding case would apply. The deceased child was 16 years old, and therefore, the multiplier of 18 applies. The inflation-corrected notional income is computed as (₹15,000/- x 582 / 331) ₹26,375/-, rounded off to ₹27,000/-. After deducting 1/3<sup>rd</sup> towards personal and living expenses, the pecuniary loss to estate thus works out at (₹27,000 x 2 / 3 x 18) ₹3,24,000/-. Adding an equivalent amount towards composite non-pecuniary damages and ₹6,000/- towards medical

expenses, the total compensation payable in this case would be (₹3,24,000/- x 2 + 6,000/-) ₹6,54,000/-. It shall carry interest as levied (9%) by the tribunal.

90. By order dated 08.12.2012 in MACA 1288/2012, the insurance company had been directed to deposit 75% of the awarded amount with the tribunal within the period specified whereupon such deposited amount was directed to be kept in fixed deposit receipt. The amount thus deposited shall now be released to the claimants. The insurance company shall deposit balance of its liability in terms of the modified award with the tribunal within 30 days for being released to the claimants.

**Case 'G' : MAC Appeal No.175/2014**

*(In re: death of seventeen years' old child Hussain Haider)*

91. Since the death occurred on 17.07.2010, the CII for the financial year 2010-2011 would apply (i.e. 711). Therefore, the notional income comes to (Rs.15,000/- x 711/331) Rs.32,220/-, rounded off to Rs.33,000/-. After deducting 1/3<sup>rd</sup> towards personal and living expenses and applying the multiplier of 18, the pecuniary loss to estate comes to (Rs.33,000 x 2/3 x 18) Rs.3,96,000/-. Adding an equivalent amount towards composite non-pecuniary damages and Rs.4,88,248/- incurred as medical expenses, the total compensation in the case comes to Rs.12,80,248/-, rounded off to Rs.12,81,000/-. Thus, the



compensation is accordingly enhanced. It shall carry interest as levied by the tribunal. The balance lying in deposit made by the insurer in terms of the interim order shall be released to the claimants. The insurer shall deposit the balance of its liability under the modified award with the tribunal within 30 days of this judgment making it available to be released to the claimants.

**Case 'H' : MAC Appeal No. 729/2013**  
*(In re: death of three years' old Varsha)*

92. The death had occurred on 09.08.2010. Therefore, the CII for the financial year 2010-2011 (i.e. 711) would apply. The deceased child was only 3 years old. Thus, the computation is to be made on the multiplier of 10. The notional income after inflation-correction comes to ( ₹15,000/- x 711 / 331) ₹32,220/-, rounded off to ₹33,000/-. After deducting 1/3<sup>rd</sup> towards personal and living expenses, the pecuniary loss to estate is calculated as (₹33,000 x 2/3 x 10) ₹2,20,000/-. Adding similar amount towards composite non-pecuniary damages, the total compensation in the case is calculated as ₹4,40,000/-. It shall carry interest as levied (9%) in the impugned judgment. The award is modified accordingly.

93. By order dated 12.08.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest which was directed to be held by the Registrar General in terms of the award. As per the application (CM No.14658/2014) moved, the first

respondent Hari (i.e. the father of the deceased child) died on 10.04.2013. Though his father (Achoo) was substituted in his place, given the background facts, no portion of the amount deserves to be granted to him. The entire awarded amount shall, thus, be released in favour of the second respondent Jayanti (mother of the deceased child). The Registrar General shall take necessary steps in this regard. The insurance company will deposit the balance of its liability under the modified award with the tribunal within 30 days of this judgment making it available for it to be released to the said claimant.

**Case 'I' : MAC Appeal No. 421/2015**  
*(In re: death of fourteen years' old Raju)*

94. The cause of action arose on 09.04.2011. Thus, CII for the financial year 2011-12 (i.e. 785) would be invoked. The inflation-corrected income comes to  $(₹15,000 \times 785 / 331)$  ₹35,574/-, rounded off to ₹36,000/-. After deducting  $1/3^{\text{rd}}$  towards personal and living expenses, the annual pecuniary loss to estate comes to  $(₹36,000/- \times 2 / 3)$  ₹24,000/-. As the age of the deceased was 14 years, the multiplier of 15 applies. Therefore, the total pecuniary loss to estate is calculated as  $(₹24,000/- \times 15)$  ₹3,60,000/-. Adding an identical sum towards composite non-pecuniary damages, the total compensation in the case is calculated as  $(₹3,60,000/- \times 2)$  ₹7,20,000/-. It shall carry interest as levied (9%) by the tribunal. The award is modified accordingly.

**Case 'J' : MAC Appeal No.100/2013**

*(In re: death of seventeen years' old Mohd. Asif)*

95. The death having occurred on 14.05.2011, the calculations with regard to the annual loss to estate would be same as in the preceding case (i.e. ₹24,000/-). Since the deceased was 17 years old, the multiplier of 18 would apply. Therefore, the total pecuniary loss to estate is calculated as (₹24,000/- x 18) ₹4,32,000/-. Adding an equivalent amount towards composite non-pecuniary damages, the total compensation payable in this case comes to (₹4,32,000/- x 2) ₹8,64,000/-. As in the earlier cases, the rate of interest is increased to 9% p.a. The award is modified accordingly. The insurer is directed to deposit the requisite amount under the modified award within 30 days. The tribunal shall release it accordingly to the claimants.

**Case 'K' : MAC Appeal No.564/2014**

*(In re: death of 10 years' old child Rishabh Garg)*

96. The accident having occurred on 30.06.2011, again in the financial year 2011-2012, the calculations of annual pecuniary loss to estate remain the same as in the preceding two cases. The child in question was 10 years old and, therefore, the multiplier of 10 would apply. In this view, the total pecuniary loss to estate comes to (₹24,000/- x 10) ₹2,40,000/-. Adding similar amount towards composite non-pecuniary damages, and the medical expenses in the

sum of ₹63,527/-, the compensation in this case is computed as (₹2,40,000/- x 2 + 63,527/-) ₹5,43,527/-, rounded off to ₹5,44,000/-.

97. The insurance company had been directed by order dated 23.07.2014, to deposit the entire awarded amount with interest with the Registrar General within the period specified and from such deposit ₹4,00,000/- was released in equal proportions to the two claimants, the balance kept in appropriate fixed deposit. The Registrar General shall now calculate the amount payable to the claimants under the modified award and release the balance to them, refunding the excess to the insurance company.

**Case 'L' : MAC Appeal No.956/2014**

(In re: death of eleven years' old child Master Gautam Joshi)

98. The death occurred on 02.10.2011 and therefore, the CII for the financial year 2011-2012 (i.e. 785) would apply. The notional income comes to Rs.15,000 x 785 / 331 = Rs.35,575/- rounded off to Rs.36,000/-. Since the age of the deceased child was 11 years, the multiplier of 15 applies. Deducting 1/3<sup>rd</sup> towards personal and living expenses, the total pecuniary loss to estate is computed as (Rs.36,000 x 2/3 x 15) Rs.3,60,000/-. Adding similar amount towards composite non-pecuniary damages, the total compensation in the case comes to Rs.7,20,000/-. The compensation is enhanced accordingly. Following the view taken in the cases decided above, the rate of interest is enhanced to 9% p.a. from the date of the petition till realization. The

insurer is directed to deposit the requisite amount under the enhanced award and on account of increased rate of interest with the tribunal within 30 days so that it can be released forthwith to the claimants.

**Case 'M' : MAC Appeal No. 1187/2014**

*(In re: death of fourteen years' old Bhanu @ Bhanu Kataria)*

99. The death in this case had occurred on 02.05.2012. Therefore, the CII for the financial year 2012-2013 (i.e. 852) would apply. The inflation-corrected notional income comes to ( $\text{₹}15,000/- \times 852 / 331$ )  $\text{₹}38,610/-$ , rounded off to  $\text{₹}39,000/-$ . After deduction towards personal and living expenses, and on the multiplier of 15, the age of the deceased being 14 years, the total pecuniary loss to estate is calculated as ( $\text{₹}39,000/- \times 2/3 \times 15$ )  $\text{₹}3,90,000/-$ . Adding similar amount on account of composite non-pecuniary damages, the total compensation in this case works out to ( $\text{₹}3,90,000/- \times 2$ )  $\text{₹}7,80,000/-$ . It shall carry interest at the rate of 9% p.a. as levied by the tribunal. The award is modified accordingly. The insurance company shall make the requisite deposit with the tribunal within 30 days for it to be released to the claimants.

**Case 'N' : MAC Appeal No. 1079/2013**

*(In re: death of four years' old Kumari Lajo @ Sanjana)*

100. The death occurred on 04.02.2013, again in the financial year 2012-2013, and therefore, the notional annual income would be same as in the preceding case (i.e.  $\text{₹}39,000/-$ ). However, since the deceased

child was 4 years old, the multiplier of 10 would apply. After deducting 1/3<sup>rd</sup> towards personal and living expenses, the pecuniary loss to estate is calculated as (₹39,000/- x 2 / 3 x 10) ₹2,60,000/-. Adding similar amount towards composite non-pecuniary damages, the total compensation in this case calculated as (₹2,60,000/- x 2) ₹5,20,000/-. Following the directions in the earlier cases, the award in this case shall also carry interest at the rate of 9% p.a.

101. The insurance company shall be obliged to deposit the requisite amount with the tribunal within 30 days for it to be released to the claimants.

102. The statutory amounts, if deposited, in above appeals, shall be refunded after the Registry has recorded satisfaction that the directions have been complied with.

103. The appeals and the pending applications stand disposed of in above terms.

104. It is directed that a copy of this judgment shall be circulated to the presiding officers of Motor Accident Claims Tribunals of Delhi for information.

**R.K. GAUBA**  
**(JUDGE)**

**MAY 13, 2016**  
nk/VLD/yg