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NOTE: The Cases in the Reference Material have been edited in order to highlight some issues for discussion in the programme. Please read the full judgment for conclusive opinion.

I

Role of Motor Accidents Claims Tribunal

(2013)15SCC45

Puttamma v. K.L. Narayana Reddy

Hon'ble Judges/Coram: G.S. Singhvi and Sudhansu Jyoti Mukhopadhaya, JJ.

Application of Structured Formula and Multiplier

In absence of any specific reason and evidence on record, Tribunal or Court should not apply split multiplier in routine course and should apply multiplier as per decision of Supreme Court in case of ***Sarla Verma v. Delhi Transport Corporation***, (2009) 6 SCC 121.

Concept of Payment of Just Compensation in India

According to the English Law compensation/damages were payable according to the proportionate loss whereas in India compensation is payable which appears to the Tribunal to be just is payable. The approach of the Courts according to the English law and according to the Indian Law have to be distinct and separate. Indian Law recognizes just compensation whereas English law required compensation proportionate to the loss suffered. English courts have been calculating loss of money as a bargain as to how much monetary loss has been caused to the claimant, as a result the death of bread earner/deceased. The English Law being different, English judges were having different approach towards the grant of compensation to the deceased's family.

In India, we have a different culture. Here, every parent thinks that it is his moral and legal duty to give fullest education to his children. Parents think that marriage of their children is their responsibility and even providing a house to their children and grand children is their responsibility. The concept of culture and family life is totally distinct from the culture and family life in England and in other foreign countries. Here, parents not only educate the children but spend huge amounts or at least sufficient amounts on the marriages of their children, on their education, for their housing needs and in majority of cases in return they are looked after in old ages. Most of the people work even after their retirement to support their children. The longevity of life in India has increase at least upto 69 years; in many cases, peoples live longer than that. The salaries and cost of things increase rapidly. At a glance, between every 9-10 years they double.

Though the method of multiplier is one of the best methods in providing compensation while choosing the multiplier the court/tribunal has to take into consideration the rising inflation, increasing salaries and increasing cost of living. Therefore, we have to determine just compensation keeping in view the Indian background, the Indian culture, the Indian legal background, and the socio-cultural circumstances existing in India.

Non-applicability of Schedule II of the Motor Vehicles Act, 1988 & need for amendment

The Second Schedule of the Motor Vehicles Act as enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living, current rate of inflation and the increased life expectancy. The central Government has failed to amend the Second Schedule for 19 years in spite of repeated observations of the Supreme Court. Hence, directions are issued to the Central Government to amend Schedule II Table keeping in view the present cost of living, subjection to amendment of Schedule II as proposed or may be made by the Parliament. Till such amendment is made in cases where application is made under Section 163A, the Supreme Court directed that for death of children upto the age of 5 years, the claimants shall be entitled to fixed compensation of Rs. 1 lakh and for death of persons more than 5 years of age, the claimants shall be entitled to fixed compensation of Rs. 1,5 Lakhs or the amount as may be determined in terms of Schedule II, whichever is higher. Such amount is to be paid if any application is filed under Section 163A of the Act, 1988.

2016(1)SCALE133

Malati Sardar Vs. National Insurance Company Limited and Ors.

Hon'ble Judges/Coram: Anil R. Dave and A.K. Goel, JJ.

Brief Facts of the Case

The deceased Diganta Sardar, aged 26 years, a school teacher, unmarried son of the Appellant was hit by Bus insured with the Respondent company at Hoogly, in the State of West Bengal and died. He was travelling on motor cycle of his colleague as a pillion rider. The Appellant filed an application under Section 166 of the Motor Vehicles Act, 1988 ("the Act") for compensation before the Tribunal at Kolkata. Rash and negligent driving by the driver of the bus having been established, the Tribunal, applying the multiplier of 13 on account of age of the Appellant being 47 years, and taking into account the income of the deceased and other relevant factors, fixed compensation of Rs. 16,12,200 with interest at the rate of 6% p.a. from the date of filing of claim petition vide its Award dated 7th February, 2012. The Respondent company preferred an appeal before the High Court against award passed by Tribunal on the only ground of lack of territorial jurisdiction of the Tribunal. The objection of the Respondent was that the accident took place at Hoogly and the claimant resided at Hoogly. Office of the Respondent being at Kolkata did not attract jurisdiction of the Kolkata Tribunal. The High Court upheld the objection of the Respondent and allowed the appeal of the Respondent company and directed refund of the amount deposited/paid, if any, to the Respondent company.

Decision of the Supreme Court

In the face of judgment of this Court in ***Mantoo Sarkar* v. *Oriental Insurance Co. Limited*** (2009) 2 SCC 244, the High Court was not justified in setting aside the award of the Tribunal

in absence of any failure of justice even if there was merit in the plea of lack of territorial jurisdiction. Moreover, the fact remained that the insurance company which was the main contesting Respondent had its business at Kolkata.

The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hyper technical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting parties in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. The High Court failed to notice the provision of Section 21 of Code of Civil Procedure.

II

Disability in MACT Cases

2014(2)SCALE257

G. Dhanasekar Vs. M.D., Metropolitan Transport Corporation Ltd.

Hon'ble Judges/Coram: S.J. Mukhopadhaya and Kurian Joseph, JJ.

Brief Facts of the Case

The Appellant, driver by profession and operating a tourist taxi himself, met with a motor accident on 05.09.2008. While driving the Tata Sumo car, a bus operated by the Respondent, came from the opposite direction and dashed against the car. The Appellant suffered fracture on right leg and right arm. According to the doctor, on account of the injuries suffered by the Appellant and the operations undergone by him to fix a thick plate in the tibia bone with five screws, the Appellant will not be in a position to bend his right knee beyond 90 degrees. There is shortening of the leg by one centimeter on account of nerve injury. He would be limping while walking. He cannot lift weight over 3 kilograms. His right hand movement is restricted to 25 degrees. He will not be able to drive two wheelers and he can drive four wheelers with difficulty. The Tribunal awarded a total compensation of Rs. 4,50,000/-. The Tribunal found that the Appellant has contributed to the accident and, hence, the liability of the Respondent was fixed at 50%. In appeal before the High Court, it was held that the contributory negligence on the part of the Appellant is only 30%. The compensation was also refixed to an amount of Rs. 3,20,000/-. Thus, the Appellant was held entitled to Rs. 2,24,000/- with interest @ 7.5% per annum.

Decision of the Supreme Court

Contributory Negligence.

The Tribunal, having referred to the entire evidence, held that the bus came in a rash and negligent manner and dashed against the car. Hence it is concluded that negligence on the part of the driver of the bus is the root cause of the accident. It is strange that having arrived at such finding regarding negligence on the part of the driver of the bus, the Tribunal proceeded further and held that both the vehicles came in a rash and negligent manner with high speed and dashed against each other. Hence it is concluded that contributory negligence is fixed on the driver of both vehicles and negligence on the part of the drivers of both vehicles is the root cause of the accident and they are equally responsible for the accident. Unfortunately, despite specific ground taken before the High Court, this aspect of the matter was not considered properly. Having entered a finding that the negligence on the part of the driver of the bus was the root cause of the accident and it was the bus which dashed against the car, another finding on contributory negligence is unsustainable. Unfortunately, without proper appreciation of the evidence, the High Court has fixed 30% negligence on the part of the Appellant, which we find it difficult to sustain. Therefore, in the light of evidence available in this case, we restore the first finding of the Tribunal that the negligence on the part of the bus driver is the root cause of the accident.

Whether an accident victim is entitled to get compensation for functional disability? If so, what is the method for computation of compensation?

As far as compensation for functional disability is concerned, it has to be borne in mind that the principle cannot be uniformly applied. It would depend on the impact caused by the injury on the victim's profession/career. To what extent the career of the victim has been affected, thereby his regular income is reduced or dried up will depend on the facts and circumstances of each case. There may be even situations where the physical disability does not involve any functional disability at all.

The Appellant is a driver operating a tourist taxi. On account of the physical disability referred to above, it needs no elaborate discussion to hold that he would not be in a position to continue his avocation at the same rate, or in the same manner as before. He was aged 46 years at the time of accident. Therefore, we are of the view that it is a case where the Appellant should be given just and reasonable compensation for his functional disability as his income has been affected. The court has to make a fair assessment on the impact of disability on the professional functions of the victim. In this case, the victim is not totally disabled to engage in driving. At the same time, it has to be seen that he cannot continue his career as earlier. In such circumstances, the percentage of physical disability can be safely taken as the extent of functional disability. In the assessment of the doctor, it is 35%. Since the Appellant is compensated for functional disablement, he will not be entitled to any other compensation on account of physical disability or loss of earning capacity, etc. However, he is entitled to reimbursement towards medical expenses, etc. The Tribunal has fixed income of Rs. 10,000/-. There is no serious dispute on this aspect. The Appellant is entitled to compensation as computed below:

Sl. No.	HEADS	CALCULATION
(i)	Annual Income = Rs.10,000 x 12 =	**Rs.1,20,000/-**
(ii)	After deducting 1/3rd of the total income for personal expenses, the balance will be = [Rs.1,20,000/- - Rs.40,000/-] =	**Rs.80,000/-**
(iii)	Add 30% towards increase in future income, as per **Sarla Verma and Rajesh and Others** cases (supra) =	**Rs.1,04,000/-**
(iv)	Compensation after multiplier of 13 is applied = [Rs.1,04,000/- **x** 13] =	**Rs.13,52,000/-**
(v)	Applying the 35% functional disability, the appellant will be entitled to the compensation of 35% of Rs.13,52,000/- =	**Rs.4,73,200/-**
(vi)	Reimbursement towards medical expenses =	**Rs.60,000/-**
(vii)	Amount towards extra nourishment, etc.	**Rs.10,000/-**
(viii)	Damages to the vehicle (as awarded by the High Court) =	**Rs.10,000/-**
(ix)	Amount towards actual loss of earning during the period of hospitalization and thereafter during the period of rest =	**Rs.40,000/-**
(x)	Amount towards pain and sufferings =	**Rs.10,000/-**
(xi)	Amount towards expenses on attendant =	**Rs.10,000/-**
	TOTAL COMPENSATION AWARDED [(v)+(vi)+(vii)+(viii)+(ix)+(x)+(xi)]	**Rs.6,13,200/-**

The amount of total compensation awarded shall carry interest @ 7% per annum from the date of filing the petition before the Motor Accident Claims Tribunal till realization.

(2014)2SCC735

Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company

Hon'ble Judges/Coram: S.J. Mukhopadhaya and V. Gopala Gowda, JJ.

Brief Facts of the Case

All the three Appellants/claimants in the appeals herein were proceeding on the left side of the road by pushing the motorcycle since it was punctured. When the Appellants/claimants came near the Coper Petrol Pump, opposite to Jai Hind Hotel, a tractor came from the opposite direction on its right side in rash and negligent manner and dashed into the motor cycle and the Appellants/claimants. This resulted in all the Appellants/claimants sustaining grievous injuries.

The Tribunal awarded different awards in the three different appeals which had been heard together by the High Court of Karnataka. Since the injuries suffered by the three Appellants are different, we are inclined to decide upon the appeals individually.

The appeals therefore, are confined to determining whether the quantum of compensation which was enhanced by the High Court from that of the Tribunal is just and proper or whether it requires further enhancement in the interest of justice.

Civil Appeal @ MFA 1131/2011 (MVC No. 149/2010)

It is evident from the material and legal evidence produced on record that the Appellant/claimant in this appeal had sustained injuries to lower end of right femur and his right leg was amputated. Further, he had sustained injury over his left upper arm. PW-4 Dr. Rajesh had stated in his evidence that the Appellant/claimant had suffered disability of 24% to upper limb and 85% to lower limb. The Tribunal, however, had considered the disability of the Appellant/claimant caused to whole body at 30%. The High Court however, taking into consideration the amputation of the right leg of the Appellant/claimant, determined the disability at 65% without assigning any proper reason for coming to this conclusion. Therefore, we intend to assign our reasons to hold that the High Court has erred in concluding the disability at 65%.

Further, the Appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the whole-sale market or the

farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the Appellant/claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the Appellant/claimant is still capable to fend for his livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income.

The Appellant/claimant in his appeal further claimed that he had been earning Rs. 10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs. 3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income.

There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the Appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs. 6,500/- per month. Further, it is evident from the material evidence on record that the Appellant/claimant was 24 years old at the time of occurrence of the accident. It is also established on record that he was earning his livelihood by vending vegetables. Considering that the Appellant/claimant was self employed and was 24 years of age, we hold that he is entitled to 50% increment in the future prospect of income based upon the principle laid down in the ***Santosh Devi v. National Insurance Co. Limited*** (2012) 6 SCC 421case.

Applying the principle of ***Sarla Verma v. DTC*** (2009) 6 SCC 121 in the present case, we hold that the High Court was correct in applying the multiplier of 18 and we uphold the same for the purpose for calculating the amount of compensation to which the Appellant/claimant is entitled to. With respect to the medical expenses incurred by the Appellant/claimant, he has produced medical bills and incidental charges bills marked as Exs. P-25 to P-201 and prescriptions at Exs. P-202 to P-217 on the basis of which the Tribunal awarded a compensation of Rs. 60,000/- under the head. However, considering that the Appellant might have to change his artificial leg from time to time, we shall allot an amount of Rs. 1,00,000/- under the head of medical cost and incidental expenses to include future medical costs.

Thus, the total amount which is awarded under the head of 'loss of future income' including the 50% increment in the future, works out to be Rs. 17,90,100/- [(Rs. 65,00/- x 85/100 + 50/100 x 85/100 x Rs. 6,500/-) x 12 x 18]. Further, along with compensation under conventional heads, the Appellant/claimant is also entitled to the cost of litigation as per the legal principle laid down by this Court in the case of ***Balram Prasad v. Kunal Saha*** Civil Appeal No. 2867 of 2012. Therefore, under this head, we find it just and proper to allow Rs.

25,000/-. Hence, the Appellant/claimant is entitled to the compensation under the following heads:

Towards cost of artificial leg	₹50,000/-
Towards pain and suffering	₹75,000/-
Towards loss of marriage prospectus	₹50,000/-
Towards loss of amenities	₹75,000/-
Towards medical and incidental cost	₹1,00,000/-
Towards cost of litigation	₹25,000/-

Also, by relying upon the principle laid down by this Court in the case of ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*** AIR 2012 SC 100, we find it just and proper to allow interest at the rate of 9% per annum. Hence, the total amount of claim the Appellant/claimant becomes entitled to is Rs. 21,65,100/- with interest @ 9% per annum from the date of application till the date of payment.

Civil Appeal @ MFA 1132/2011 (MVC No. 147/2010)

PW-4 Dr. Rajesh had stated in his evidence that the Appellant/claimant has suffered from permanent disability of 69% to lower limb. The High Court has taken his functional disability at 25%. However, while determining the disability of the claimants in motor accidents cases, this Court might be sensitive about the functional disability involved and the nature of the occupation, particularly, if the occupation involves manual labour. Therefore, we hold that the High Court erred in determining the functional disability of the Appellant in the present appeal on the lower side. Since, the Appellant/claimant in the present appeal is also a vegetable vendor like the Appellant/claimant in Civil Appeal @ MFA 1131/2011, we take his monthly income at Rs. 6,500/- on average and for the reasons recorded in that appeal, we determine the functional disability of the Appellant/claimant in the present appeal at 35%. Considering his age, and based on the legal principle laid down by this Court in the cases mentioned supra, we hold his increment on future income at 50% and the multiplier at 18. Therefore, he is entitled to Rs. 7,37,100/- [(Rs. 6,500 x 35/100 + 50/100 x 35/100 x Rs. 6,500) x 12 x18] under the head of 'loss of future income'.

The amount awarded by the Tribunal and the High Court under other conventional heads have not been disputed by the Appellant/claimant by producing contrary evidence. Therefore, the amount awarded under those heads shall remain constant. Based on the reasoning given by us in the earlier appeal, the Appellant/claimant is also entitled to the cost of litigation at Rs. 25,000/-. Hence, the Appellant/claimant is entitled to compensation under the following heads:

Towards pain and suffering	₹60,000/-
Towards medical and incidental charges	₹1,00,000/-
Towards loss of amenities	₹40,000/-
Towards future medical expenses	₹15,000/-
Towards cost of litigation	₹25,000/-

Therefore, the Appellant/claimant is entitled to a total sum of Rs. 9,77,100/- with interest @ 9% per annum based on the principle laid down by this Court mentioned supra.

Civil Appeal @ MFA 1133/2011 (MVC No. 148/2010)

PW-4 Dr. Rajesh has stated in his evidence that the claimant has suffered 22% permanent disability to upper limb and 29% to lower limb. The High Court has calculated the functional disability to 13%. We are inclined to hold that the High Court has erred in ascertaining the functional disability to such a low percentage considering that the Appellant/claimant earns his livelihood through manual labour. It is evident from the material evidence produced on record that the Appellant/claimant has suffered from comminuted fracture in the accident as a result of which he will not be able to bend, stretch or rotate his right hand. He will also not be able to lift heavy material which is so essential to carry on with his business to earn his livelihood. Therefore, we are inclined to observe that the Appellant/claimant suffers from a functional disability to the extent of 85%.

Further, the Appellant/claimant has claimed that he has been earning Rs. 5,000/- p.m. by working as a cleaner of the lorry. The Tribunal assessed his monthly income at Rs. 3000/-. The High Court, considering his age and his profession as a cleaner, assessed his income at Rs. 3500/-. However, based on the Karnataka State Minimum Wages Rule 2012-2013, the Appellant/claimant is entitled to Rs. 4246/- per month. Since, no written record of his income could be produced before the Court, we take his income, as per Revised Minimum Wages Rule at Rs. 4246/- rounding it off as Rs. 4300/- per month. Further, an amount of Rs. 700/- can be added as daily barter charges. Therefore, his monthly income amounts to Rs. 5000/-. Further, considering that the Appellant/claimant was 22 years of age, the multiplier applicable to his age group is 18 and also based on the legal principle laid down by this Court in various cases, we hold that he is entitled to 50% increment in future loss of income. Therefore, he is entitled to an amount at Rs. 13,77,000/- [(Rs. 5000 x 85/100 + 50/100 x 85/100 x Rs. 5,000) x 12 x 18].

It is pertinent to note that the Appellant/claimant in this appeal has produced medical bills for Rs. 8000/-. He was treated as an inpatient for 15 days in a private hospital. Therefore, considering the same, the High Court has awarded a sum of 15000/- under the head of medical and incidental expenses. However, considering the fact that the Appellant/claimant was also required to have conveyance, nourishment and attendant charges for proper recovery

of health, we increase the compensation under this head to Rs. 50,000/-. Further, considering the fracture sustained by the Appellant/claimant and the evidence produced by the doctor, another Rs. 5000/- awarded by the High Court towards future expenses is upheld by us. Further, towards loss of amenities, the Tribunal has awarded Rs. 10,000/-. However, considering the disability stated by the doctor and the amount of discomfort and unhappiness he has to undergo in the future life, the High Court has awarded Rs. 20,000/- under this head. We intend to observe that the amount awarded by the High Court under this head is very meager and inadequate considering the age and the amount of disability. Therefore, under this head, we award a sum of Rs. 50,000/-.

Apart from this, based on the reasoning we have already provided above for the two other Appellants/claimants, the Appellant/claimant in this appeal, is also entitled to compensation under the following heads:

Towards pain and suffering	₹60,000/-
Towards medical and incidental expenses	₹50,000/-
Towards loss of amenities	₹50,000/-
Towards future expenses	₹5,000/-
Towards cost of litigation	₹25,000/-

Therefore, the Appellant/claimant in this appeal is entitled to a total amount of Rs. 15,67,000/- with an interest of 9% per annum from the date of application till the date of payment.

Contributory Negligence

On the matter of extent of contribution to the accident, it is held by the Tribunal that the Appellants/claimants herein should have taken utmost care while moving on the highway. Looking at the spot of the accident, the Tribunal concluded that the Appellants/claimants were moving on the middle of the road which led to the accident. Therefore, the Tribunal concluded that though the tractor has been charge sheeted under Sections 279 and 338 of Indian Penal Code, but given the facts and circumstances of the case, the Appellants/claimants also contributed to the accident to the extent of 25%. The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the Appellants/claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the Appellants/claimants in the accident is not proved by the Respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside.

III

Third Party Insurance in MACT Cases

(2014)9SCC341

Hanumanagouda Vs. United India Insurance Co. Ltd. and Ors. etc.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and Shiva Kirti Singh, JJ.

Brief Facts of the Case

Due to accident involving a goods vehicle and a lorry, two persons died and others received injuries. In respect to the claim filed by dependents and legal representatives of deceased Hanumanth which included his widow and three minor children, the Tribunal allowed their claim and held them entitled for compensation of Rs. 2,55,000/- from the owner-cum-driver of the lorry, the Appellant and also from Respondent-Insurance Company as they were held responsible jointly and severally. The claim was allowed with 6% interest from the date of claim petition till its realization with costs fixed at Rs. 200/-.

The High Court in appeal held that the Award was bad in law because the deceased was in a clerical cadre working as a Gumasthe accompanying the goods in transit for the purpose of delivery and as such he could not be covered by the clause under which premium was paid for covering the risk of the persons employed in connection with the operation of loading and unloading of the goods.

Decision of the Supreme Court

Whether the clause IMT 17 for which premium was paid to the insurer in respect of the concerned lorry will cover the deceased Hanumanth or not.

The High Court has clearly fallen in error in holding that the insurer is not liable in respect of death of Hanumanth. The clause-"persons employed in connection with the operation" is clearly over and above the coverage provided by the policy to "persons employed in connection with loading/unloading of motor vehicle". As Gumasthe, the deceased was accompanying the goods in transit for the purpose of delivery of goods. This has been accepted by the High Court. Obviously, as Gumasthe the deceased would be covered by the expression "persons employed in connection with operation of motor vehicle" The operation of the aforesaid clause has wrongly been restricted and limited only to persons employed in connection with loading/unloading of the motor vehicle.

In view of the aforesaid error committed by the High Court, the order under appeal is set aside and the order of the Tribunal is restored. As a result, the Respondent-Insurance Company will be bound by the Award made by the Tribunal for paying compensation to the claimants for the death of Hanumath as per orders of the Tribunal. The dues of compensation along with due interest should be deposited by the Respondent Insurance Company within eight weeks with the Tribunal which will permit the claimants to withdraw the amount as per order of the Tribunal.

2015(2)SCALE481

Praveenbhai S. Khambhayata Vs **United India Insurance Company Ltd. and Ors.**

Hon'ble Judges/Coram: V. Gopala Gowda and R. Banumathi, JJ.

Brief Facts of the Case

Respondents 2-4/claimants, who are the father, mother and wife of the deceased, Ramesh Lalmani Yadav filed a claim petition before Commissioner for Workmen's Compensation/Labour Court, Rajkot, claiming compensation for the death of deceased Ramesh Lalmani Yadav in the course of his employment. Deceased Ramesh Lalmani Yadav was working as a cleaner in the employment of the Appellant and Respondent No. 5. In the afternoon at about 12.30 p.m., deceased was filling water in the radiator of the vehicle when suddenly the bonnet of the vehicle fell down on the head of the deceased, as a result of which he fell down and died. Stating that Ramesh Lalmani Yadav died in the course of his employment, Respondents No. 2 to 4 filed the claim petition claiming compensation of Rs. 4,15,093/- and that Appellant and Respondent No. 1-Insurance Company are liable to pay the compensation of Rs. 4,15,093/-.

The Labour Court/Commissioner held that the insurance policy produced before him was in respect of the vehicle GJ-3V-7785 which was not involved in the vehicular accident and therefore Insurance Company-first Respondent is not liable to pay the compensation. However, the learned Commissioner held that the Appellant and Respondent No. 5 being the owner of the vehicle, were jointly and severally liable to pay the compensation of Rs. 3,25,365/- along with 10% penalty and annual interest at the rate of 6%.

The High Court dismissed the appeal filed by the Appellant observing that since vehicle No. GJ-3V-7785 was not involved in the accident and that only vehicle No. GJ-3U-5391 was involved and since the deceased was employed as a cleaner was only in vehicle No. GJ-3V-7785, the insurance company is not liable to indemnify the Appellant for the accident caused by the vehicle bearing No. GJ-3U-5391.

Decision of the Supreme Court

The point falling for consideration is that even if the vehicle No. GJ-3U-5391 had a valid insurance policy, whether the first Respondent-insurance company is liable to indemnify the owner of the vehicle for death of a person who was employed by him in another vehicle. Insofar as vehicle dumper No. GJ-3U-5391, admittedly deceased-Ramesh Lalmani Yadav was not an employee and he was only a third party.

Considering the facts of the case, both the vehicles were parked in the same space and it can be safely stated that the deceased cleaner was filling the water in the radiator of vehicle No. GJ-3U-5391 only on the direction of the employer and thus the cleaner was working in the course of employment.

Both the vehicles were insured with the first Respondent-insurance company and the owner being one and the same and since the deceased being the cleaner and the claimants hailing from the lowest strata of society, in our considered view, in exercise of our extra-ordinary jurisdiction Under Article 142 of the Constitution of India, it is appropriate to direct the first Respondent-insurance company to indemnify the Appellant for the death of deceased.

In a situation of this nature for doing complete justice between the parties, this Court has always exercised the jurisdiction Under Article 142 of the Constitution of India. In *Oriental Insurance Co. Ltd.* v. *Brij Mohan and Ors.* (2007) 7 SCC 56, this Court has exercised extraordinary jurisdiction under Article 142 of the Constitution of India so as to direct that the award may be satisfied by the Appellant but it would be entitled to realise the same from the owner of the tractor and the trolley where for it would not be necessary for it to initiate any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act. It is well settled that in a situation of this nature this Court in exercise of its jurisdiction Under Article 142 of the Constitution of India read with Article 136 thereof can issue suit directions for doing complete justice to the parties.

Labour Court awarded compensation of Rs. 3,25,365/- along with 10% penalty and 6% interest per annum. As per Section 4-A(3)(a) of the Workmen's Compensation Act, where any employer commits default in paying the compensation due under the Act within one month from the date it fell due, the Commissioner shall direct the employer to pay simple interest thereon at the rate of 12% per annum or at such higher rate not exceeding maximum of the lending rates of any scheduled bank as may be specified by the Central Government. As per Section 4-A(3)(b), in addition to the amount of arrears and the interest thereon, the Commissioner shall direct the employer to pay further sum not exceeding 50% of such amount by way of penalty. The legal representatives of the deceased employee are thus entitled to the statutory interest at the rate of 12% and penalty not exceeding 50% of the amount of compensation.

Having regard to the passage of time and in the interest of justice, in our considered view, statutory rate of penalty i.e. 15% is to be ordered in addition to the statutory interest payable at the rate of 12% per annum.

2014(14)SCC243

Sanjeev Kumar Samrat v. National Insurance Co. Ltd

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Dipak Misra, JJ.

Ambit and coverage of Statutory Third-Party Insurance

The insurance company is not under statutory obligation to cover all kinds of employees of the insurer but only employees employed or engaged by the employer as per the policy. The

categories of employees which have been enumerated in clauses (a), (b) and (c) of proviso (i) to Section 147(1) of the Act are the driver of the vehicle, or the conductor of the vehicle if it is a public service vehicle or in examining tickets, if it is goods carriage, being carried on the vehicle, but not obliged to cover other categories of employees.

Where a death or bodily injury to any person gives rise to a claim under the Motor vehicles Act and the Workman's Compensation Act, 1923 ('1923 Act'), the said person is entitled to compensation under either of the Acts, but not under both.

The liability of the insurer for compensation to the workman in respect of personal injury or death caused by an accident arising out of or in the course of his employment in respect of the said covered category of employees is limited to the extent of the liability that arises under the 1923 Act. On a contextual reading of the provision, schematic analysis of the Act and the 1923 Act, the statuory policy only covers the employees of the insured, either employed or engaged by him in a goods carriage. It does not cover any other kind of employee and therefore, someone who travels not being an authorized agent in place of the owner of the goods, and claims to be an employee of the owner of the goods, cannot be covered by the statuory policy. Therefore, the insurer would not be liable to indemnify the insured owner of the vehicle for the death of employees of the hirer.

2014(1)SCC680

United India Insurance Company Ltd. v. Sunil Kumar

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Arjan Kumar Sikri, JJ.

The claim petition was filed under Section 163-A of the Motor Vehicles Act, which was resisted by the Insurance Company contending that the same is not maintainable since the injured himself was driving the vehicle and that no disability certificate was produced.
A Two-Judge Bench of this Court in ***National Insurance Co. Limited v. Sinitha and Ors.*** (2012) 2 SCC 356 examined the scope of Section 163-A of the Motor Vehicles Act and took the view that Section 163-A of the Act has been founded under "fault liability principle". Referring to another judgment of a co-equal Bench in ***Oriental Insurance Co. Ltd. v. Hansrajbhai v. Kodala*** (2001) 5 SCC 175, the learned Judges took the view that while determining whether Section 163-A of the Motor Vehicles Act, 1988 is governed by the fault or the no-fault liability principle, Sections 140(3) and (4) are relevant. The Bench noticed under Section 140(3), the burden of pleading and establishing whether or not wrongful act, neglect or default was committed by the person (for or on whose behalf) compensation is claimed under Section 140, would not rest on the shoulders of the claimant. The Court also noticed that Section 140(4) of the Motor Vehicles Act further reveals that a claim for compensation under Section 140 of the Act cannot be defeated because of any of the fault grounds (wrongful act, neglect or default).

The Division Bench in Sinitha's case (supra), then took the view that under Section 140 of the Act so also under Section 163-A of the Act, it is not essential for a claimant seeking compensation to plead or establish that the accident out of which the claim arises suffers from wrongful act or neglect or default of the offending vehicle. The Court also concluded that, on a conjoint reading of Sections 140 and 163-A, the legislative intent is that a claim for compensation raised under Section 163-A of the Act need not be based on pleadings or proof at the hands of the claimants showing absence of wrongful act, being neglect or default, but the Bench concluded that it is not sufficient to determine whether the provision falls under the fault liability principle. The Court held that to decide whether the provision is governed by the fault liability principle, the converse has to be established i.e. whether a claim raised thereunder can be defeated by the party concerned (the owner or the insurance company) by pleading and proving wrongful act, neglect or default. Interpreting Section 163-A of the Act, the Judges in ***Sinitha's*** case (supra) held that it is open to the owner or the insurance company, as the case may be, to defeat a claim under Section 163-A of the Act by pleading and establishing through cogent evidence a fault ground (wrongful act or neglect or default). The Court concluded that Section 163A of the Act is founded under the fault liability principle.

The Supreme Court in the present case opined that the reasoning expressed by the Two-Judge Bench in ***Sinitha's*** case (supra) could not be accepted. In the view of the Supreme Court the principle laid down in ***Hansrajbhai v. Kodala***'s case (supra) has not been properly appreciated or applied by the Bench.

The Supreme Court referred to the decision of a Three-Judge Bench of the Supreme Court in ***Deepal Girishbhai Soni and Ors. v. United India Insurance Co. Ltd., Baroda*** (2004) 5 SCC 385 wherein it was held that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other, as statutorily provided and a claimant cannot pursue his remedies thereunder simultaneously. Furthermore, Section 163-A was introduced in the Act by way of a social security scheme and is a Code by itself. Section 140 of the Act deals with interim compensation but by inserting Section 163-A, the Parliament intended to provide for making of an award consisting of a pre-determined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. Section 163-A has an overriding effect and provides for special provisions as to payment of compensation on structured formula basis. The Court also held that the scheme of the provisions of Section 163-A and Section 166 are distinct and separate in nature. In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.

The Court was of the view that the above-mentioned Three-Judge Bench judgment in ***Deepal Girishbhai Soni's*** case was not placed before the learned Judges who decided the **Sinitha**'s case.

In **Sinitha**'s case (supra), one of the factors which weighed with the learned Judges was the absence of a similar provision like Sub-section (4) of Section 140 in Section 163-A which, according to the learned Judges, has been intentionally and purposefully done by the legislature. We find it difficult to accept that view. The Supreme Court opined that the such an interpretation would defeat the very purpose and object of Section 163-A would be defeated and render the provision otiose and a claimant would prefer to make a claim under Section 140, rather than under Section 163-A of the Act by exercising option under Section 163-B of the Act. If a claim under Section 140, is raised because of Section 140(4), such a claim would not be defeated by the owner of the vehicle or the insurance company, as the case may be, and the claimant may get a fixed sum prescribed under Section 140(2). Sub-section (4) of Section 140 has been introduced by the legislature since claim under Section 140 would be followed by Section 166. So far as Section 163-A is concerned, claim is restricted on the basis of pre-determined formula, unlike in the case of application under Section 166.

The Supreme Court held that the liability to make compensation under Section 163-A is on the principle of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under Section 163-A. Section 163-A does not make any provision for apportionment of the liability. If the owner of the vehicle or the insurance company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or claimant, naturally it would defeat the very object and purpose of Section 163-A of the Act. Legislature never wanted the claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the insurance company or the owner, as the case may be, shall be liable to pay the compensation, which is a statutory obligation.

The Court expressed its inability to agree with the reasoning of the Two-Judge Bench in **Sinitha**'s case and placed the matter before the learned Chief Justice of India for referring the matter to a larger Bench for a correct interpretation of the scope of Section 163-A of the Motor Vehicles Act, 1988, as well as the points No. (iii) to (v) referred to in ***Shila Datta***'s case.

(2002)7SCC456

National Insurance Co. Ltd., Chandigarh v. Nicolletta Rohtagi

Hon'ble Judges/Coram: V.N. Khare, Shivaraj V. Patil and Ashok Bhan, JJ.

The question that arose for consideration in this case was that where an insured has not preferred an appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as '1988 Act') against an award given by the Motor Accidents Claims Tribunal (hereinafter referred to as 'Tribunal'), whether it would be open to the insurer to prefer an appeal against the award by the Tribunal questioning the quantum of the compensation, as well as finding as regards the negligence of the offending vehicle.

The Supreme Court held that the language employed in enacting sub-section (2) of Section 149 of the Motor Vehicles Act, 1988, appears to be plain and simple and there is no ambiguity in it. It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on grounds enumerated in the sub-section, namely, sub-section (2) of Section 149 of 1988 Act, and no other ground is available to him. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach of any other conditions of the policy which do not find place in sub-section (2) of Section 149 of 1988 Act. If an insurer is permitted to contest the claim on other grounds, it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for.

The expression manner employed in sub-section (7) of Section 149 is very relevant which means an insurer can avoid its liability only in accordance with what has been provided for in sub-section (2) of Section 149. It, therefore, shows that the insurer can avoid its liability only on the statutory defences expressly provided in sub-section (2) of Section 149 of 1988 Act.

Accordingly the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of 1988 Act and not more and for that reason, if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds.

However, where conditions precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to Section 172 of the 1988 Act, the same would go contrary to the scheme and object of the Act.

The main object of enacting Chapter XI of 1988 Act was to protect the interest of the victims of motor vehicle accidents and it is for that reason, the insurance of all motor vehicles has been made statutorily compulsory. Compulsory insurance of motor vehicle was not to promote the business interest of insurer engaged in the business of insurance. Provisions embodied either in 1939 or 1988 Act have been purposely enacted to protect the interest of travelling public or those using road from the risk attendant upon the user of motor vehicles on the roads. If law would have provided for compensation to dependents of victims of motor vehicle accident, that would not have been sufficient unless there is a guarantee that compensation awarded to an injured or dependent of the victims of motor accident shall be recoverable from person held liable for the consequences of the accident.

In a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further the Tribunal does not implead the insurance company to contest the claim, in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits, in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected, the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is so longer res integra that fraud vitiates the entire proceeding and in such cases, it is open to an insurer to apply to the Tribunal for rectification of award.

Therefore, even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle.

2013(16)SCC711

Josphine James v. United India Insurance Company Ltd.

Hon'ble Judges/Coram: G.S. Singhvi and V. Gopala Gowda, JJ.

The Tribunal, being a fact finding authority, on the basis of proper appreciation of pleadings and legal evidence on record, has held that the Appellant is entitled to compensation of Rs. 9,65,000 by accepting the evidence of the Appellant regarding monthly income of the deceased at Rs. 5,000 which was being earned by the deceased and was sent to his mother-the Appellant and her three daughters for their maintenance. The loss of dependency determined at Rs. 9,00,000 by taking multiplier of 15, is in conformity with the judgment of this Court in the case of ***Baby Radhika Gupta v. Oriental Insurance Co. Ltd.*** *[(2009)17SCC627]*. Further, the Tribunal, by applying the principle laid down in the case ***Kerala State Road Transport Corporation v. Susamma Thomas*** *[(1994)2SCC176]*, has awarded Rs. 15,000 towards funeral expenses and Rs. 50,000 for loss of love and affection. Under the heading of pecuniary damages, a sum of Rs. 3,42,000 is awarded towards the damage caused to the car of the Appellant in the accident. In total, a sum of Rs. 13,07,000 is awarded as compensation in favour of the Appellant.

The Insurance Company has challenged the correctness of the judgment of the Tribunal before the High Court by filing an appeal. The same was partly allowed by reducing the monthly contribution given by the deceased son to his mother at Rs. 3750 for her

maintenance holding that the mother would not be entitled to more than 50% of the income of the deceased. The sisters of the deceased did not join the Appellant as claimants. Hence, the High Court held that no compensation could be awarded to them. Therefore, the High Court awarded a compensation of Rs. 6,75,000 by applying a multiplier of 15 to the multiplicand.

The said order was reviewed by the High Court at the instance of the Appellant in view of the aforesaid decision on the question of maintainability of the appeal of the Insurance Company. The High Court, in the review petition, has further reduced the compensation to Rs. 4,20,000 from Rs. 6,75,000 which was earlier awarded by it. This approach is contrary to the facts and law laid down by this Court.

Decision of the Supreme Court

The High Court, in reducing the quantum of compensation under the heading of loss of dependency of the Appellant, was required to follow the decision rendered by three judge Bench of this Court in ***National Insurance Co. v. Nicolletta Rohtagi*** *[(2002)7SCC456]* and earlier decisions wherein this Court after interpreting Section 170(b) of the M.V. Act, has rightly held that in the absence of permission obtained by the Insurance Company from the Tribunal to avail the defence of the insured, it is not permitted to contest the case on merits. The aforesaid legal principle is applicable to the fact situation in view of the three judge bench decision referred to supra though the correctness of the aforesaid decision is referred to larger bench. This important aspect of the matter has been overlooked by the High Court while passing the impugned judgment and the said approach is contrary to law laid down by the Supreme Court.

Therefore, the impugned judgment passed by the High Court reducing the compensation to 4,20,000 under the heading of loss of dependency by deducting 50% from the monthly income of the deceased of Rs. 5,000 and applying 14 multiplier, is factually and legally incorrect. The High Court has erroneously arrived at this amount by applying the principle of law laid down in ***Sarla Verma v. Delhi Transport Corporation*** *[(2009)6SCC121]* instead of applying the principle laid down in ***Baby Radhika Gupta's*** case (supra) regarding the multiplier applied to the fact situation and also contrary to the law applicable regarding the maintainability of appeal of the Insurance Company on the question of quantum of compensation' in the absence of permission to be obtained by it from the Tribunal under Section 170(b) of the M.V. Act.

(2012)2SCC356

National Insurance Company Ltd. v. Sinitha

Hon'ble Judges/Coram: A.K. Ganguly and J.S. Khehar, JJ.

Whether Ss. 140(4) and 163-A of the Motor Vehicles Act, 1988 are governed by Fault Liability Principle or No-Fault Liability Principle

Where the claimant, in order to establish his right to claim compensation (under a particular provision), has to establish that the same does not arise out of "wrongful act" or "neglect" or "default", the said provision will be deemed to fall under the "fault" liability principle. So also, where a claim for compensation can be defeated on account of any of the aforesaid considerations on the basis of a "fault" ground, the same would also fall under the "fault" liability principle. On the contrary, if under a provision, a claimant does not have to establish, that his claim does not arise out of "wrongful act" or "neglect" or "default"; and conversely, the claim cannot be defeated on account of any of the aforesaid considerations; then most certainly, the provision in question will fall under the "no-fault" liability principle.

There can be no doubt, therefore, that the compensation claimed under Section 140 is governed by the "no-fault" liability principle. The presence of Sub-section (4) in Section 140, and the absence of a similar provision in Section 163A, in our view, leaves no room for any doubt, that the only object of the Legislature in doing so was, that the legislature desired to afford liberty to the defense to defeat a claim for compensation raised under Section 163A of the Act, by pleading and establishing "wrongful act", "neglect" or "default".

Thus, it is open to a concerned party (owner or insurer) to defeat a claim raised under Section 163A of the Act, by pleading and establishing anyone of the three "faults", namely, "wrongful act", "neglect" or "default". But there is no plausible logic for providing an additional negative bar precluding the defense from defeating a claim for compensation in Section 140 of the Act, and in avoiding to include a similar negative bar in Section 163A of the Act. The object for incorporating Sub-section (2) in Section 163A of the Act is, that the burden of pleading and establishing proof of "wrongful act", "neglect" or "default" would not rest on the shoulders of the claimant. The absence of a provision similar to Sub-section (4) of Section 140 of the Act from Section 163A of the Act, is for shifting the onus of proof on the grounds of "wrongful act", "neglect" or "default" onto the shoulders of the defense (owner or the insurance company). A claim which can be defeated on the basis of any of the aforesaid considerations, regulated under the "fault" liability principle. Hence, it can be concluded that Section 163A of the Act is founded on the "fault" liability principle.

Section 140 of the Act was included in the original enactment under chapter X. As against the aforesaid, Section 163A of the Act was inserted therein with effect from 14.11.1994 by way of an amendment. Had it been the intention of the legislature to provide for another provision (besides Section 140 of the Act), under the "no-fault" liability principle, it would have rationally added the same under Chapter X of the Act. Only because it was not meant to fall within the ambit of the title of Chapter X of the Act "Liability Without Fault in Certain Cases", it was purposefully and designedly not included thereunder.

It is abundantly clear that Section 163A, introduced a different scheme for expeditious determination of accident claims. Section 163A of the Act, catered to shortening the length of

litigation, by introducing a scheme regulated by a pre-structured formula to evaluate compensation. It provided for some short-cuts, as for instance, only proof of age and income, need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact that claims made under Section 163A can result in substantial compensation. When taken together the liability may be huge. It is difficult to accept, that the legislature would fasten such a prodigious liability under the "no-fault" liability principle, without reference to the "fault" grounds. When compensation is high, it is legitimate that the insurance company is not fastened with liability when the offending vehicle suffered a "fault" ("wrongful act", "neglect", or "defect") under a valid Act only policy. Even the instant process of reasoning, leads to the inference, that Section 163A of the Act is founded under the "fault" liability principle.

Furthermore, in the course of determination including the inferences and conclusions drawn from the judgment of this Court in Oriental Insurance Company Limited v. Hansrajbhai V. Kodala (supra), as also, the statutory provisions dealt with by this Court in its aforesaid determination, the Supreme Court opined that that there is no basis for inferring that Section 163A of the Act is founded under the "no-fault" liability principle. On a conjoint reading of Sections 140 and 163A, the legislative intent is clear, namely, that a claim for compensation raised under Section 163A of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". To decide whether a provision is governed by the "fault" liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving "wrongful act", "neglect" or "default".

It is open to the owner or insurance company, as the case may be, to defeat a claim under Section 163A of the Act by pleading and establishing through cogent evidence a "fault" ground ("wrongful act" or "neglect" or "default"). It is, therefore, doubtless, that Section 163A of the Act is founded under the "fault" liability principle.

In the facts of the present case, the Supreme Court observed that the Tribunal in holding, that the rider Shijo was responsible for the accident, had placed reliance on copies of the first information report, post mortem certificate, scene mahazor, report of inspection of vehicle, inquest report and final report. Neither of these can constitute proof of "negligence" at the hands of Shijo. Even if he was responsible for the accident, because the motorcycle being ridden by Shijo had admittedly struck against a large late rite stone lying on the tar road. But then, it cannot be overlooked that the solitary witness who had appeared before the Tribunal had deposed, that this has happened because the rider of the motorcycle had given way to a bus coming from the opposite side. Had he not done so there may have been a head-on collusion. In furtherance of the conclusion drawn by the court that in a claim raised under Section 163A of the Act, the claimants have neither to plead nor to establish negligence, and that negligence can be established by the owner or the insurance company to defeat a claim under Section 163A of the Act, the Supreme Court was of the view that it was imperative for

the Petitioner-Insurance Company to have pleaded negligence, and to have established the same through cogent evidence. In the absence of evidence to contradict the aforesaid factual position, it is not possible for us to conclude, that Shijo was "negligent" at the time when the accident occurred. In the absence of pleading or evidence it is not possible to conclude that the inverse onus, which has been placed on the shoulders of the Petitioner under Section 163A of the Act to establish negligence, has been discharged by it.

Whether the Victim can be Treated as a Third Party.

The deceased Shijo was the owner of the vehicle. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable. According to the Learned Counsel for the Petitioner, since the rider of the vehicle involved in the accident was Shijo himself, he would stand in the shoes of the owner, and as such, no claim for compensation can be raised in an accident caused by him, under Section 163A of the Act.

It would be essential for the Petitioner to establish, that the victim having occupied the shoes of the owner, cannot be treated as the third party. Only factual details brought on record through reliable evidence, can discharge the aforesaid onus. In order to establish the relationship between the Shijo and the owner, the Petitioner-Insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. The Petitioner has failed to discharge the onus which rested on its shoulders. Since the relationship between the Shijo and the owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, it is not possible for us to conclude, that Shijo while riding the motorcycle on the fateful day, was an agent, employee or representative of the owner. It was open to the Petitioner to defeat the claim for compensation raised by the Respondents by establishing, that the rider Shijo represented the owner, and as such, was not a third party, in terms of the judgment rendered by this Court in Oriental Insurance Company Limited case (supra). The Petitioner failed to discharge the said onus.

MANU/SC/1509/2015

Fahim Ahmad and Ors. Vs United India Insurance Company Ltd. and Ors.

Hon'ble Judges/Coram: P. Sathasivam, Ranjan Gogoi and N.V. Ramana, JJ.

Who is liable to pay the amount of compensation awarded by the Motor Accident Claims Tribunal in a case of death of person in an accident involving a tractor carrying sand in breach of the conditions of the insurance policy.

Brief Facts of the Case

The Appellants-claimants claimed compensation of Rs 5,00,000 and averred that the deceased was 49 years' old having monthly income of Rs 4,600 (Rs. 3,600 from mason work and Rs. 1,000 from selling of milk of 2-3 buffaloes). The Tribunal assessed the annual income of the deceased at Rs. 24,000 and applying the multiplier of 13, awarded the compensation of Rs. 3,12,000 with interest. However, the Tribunal held the Insurance Company liable to pay the said compensation because the tractor was insured with it as per rule at the time of the accident. The High Court in appeal held that the amount of compensation so awarded by the Tribunal shall be paid by the insurance company, but it shall have a right to recover the same from the owner of the offending tractor as there was breach of condition of the insurance policy. This was so held because at the time of the accident, the tractor was carrying sand.

Decision of the Supreme Court

Although the plea of breach of the conditions of policy was raised before the Tribunal, yet neither any issue was framed nor any evidence led to prove the same. In our opinion, it was mandatory for Respondent No. 1-Insurance Company not only to plead the said breach, but also substantiate the same by adducing positive evidence in respect of the same. In the absence of any such evidence, it cannot be presumed that there was breach of the conditions of policy. Thus, there was no reason to fasten the said liability of payment of the amount of compensation awarded by the Tribunal on the Appellants herein.

We may also notice that this Court in ***National Insurance Company Ltd. v. V. Chinnamma and Ors.*** [*JT 2004 (7) SC 167*], held that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes, but the same itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. Thus, a tractor fitted with a trailer may or may not answer the definition of 'goods carriage' contained in Section 2(14) of the said Act. In view of above, we are of the view that, in the facts and circumstances of the case, the High Court was not justified in transferring the burden of paying the amount of compensation from the Insurance Company to the Appellants herein.

(2015)3SCC679

HDFC Bank Ltd. Vs. Kumari Reshma

Hon'ble Judges/Coram: Dipak Misra, Rohinton Fali Nariman and U.U. Lalit, JJ.

Brief Facts

The claimant was going on a scooter and at that time the Motor Cycle belonging to 2nd Respondent and driven by the Respondent No. 3 herein, in a rash and negligent manner dashed against the scooter as a consequence of which she sustained a fracture in the right

hand supracondylar fracture and humerus bone fracture and certain other injuries. She availed treatment at various hospitals as she had to undergo an operation and thereafter advised to take physiotherapy regularly. Keeping in view, the injuries suffered and the amount she had spent in availing the treatment, she filed a claim petition putting forth the claim for Rs. 4,50,000/-. The tribunal as stated earlier awarded a sum of Rs. 1,75,000/- with 6% interest and opined that all the non-applicants to the claim petition were jointly and severally liable to pay the compensation amount. The High Court has dismissed the appeal preferred by the Appellant herein and allowed the appeal of the claimants by enhancing the awarded sum to Rs. 3 lacs opining that the said amount would be just and equitable compensation for the injuries sustained by her. The High Court also dismissed the review petition No. 619/2013 vide order dated 13.05.2014 preferred by the Appellant herein.

Decision of the Supreme Court

In the present case, as the facts have been unfurled, the Appellant bank had financed the owner for purchase of the vehicle and the owner had entered into a hypothecation agreement with the bank. The borrower had the initial obligation to insure the vehicle, but without insurance he plied the vehicle on the road and the accident took place. Had the vehicle been insured, the insurance company would have been liable and not the owner. There is no cavil over the fact that the vehicle was subject of an agreement of hypothecation and was in possession and control under the Respondent No. 2. The High Court has proceeded both in the main judgment as well as in the review that the financier steps into the shoes of the owner. Reliance placed on ***Mohan Benefit Pvt. Ltd. v. Kachraji Rayamalji and Ors.*** (1997) 9 SCC 103, in our considered opinion, was inappropriate because in the instant case all the documents were filed by the bank. In the said case, two-Judge Bench of this Court had doubted the relationship between the Appellant and the Respondent therein from the hire-purchase agreement. Be that as it may, the said case rested on its own facts. The decision in ***Rajasthan State Road Transport Corporation v. Kailash Nath Kothari and Ors.*** (1997) 7 SCC 481, the Court fastened the liability on the Corporation regard being had to the definition of the 'owner' who was in control and possession of the vehicle. Similar to the effect is the judgment in ***National Insurance Co. Ltd. v. Deepa Devi and Ors.*** (2008) 1 SCC 414. Be it stated, in the said case the Court ruled that the State shall be liable to pay the amount of compensation to the claimant and not the registered owner of the vehicle and the insurance company. In the case of ***Godavari Finance Co. v. Degala Satyanarayanamma and Ors.*** (2008) 5 SCC 107, the learned Judges distinguished the ratio in ***Deepa Devi*** (supra) on the ground that it hinged on its special facts and fastened the liability on the insurer. In ***Uttar Pradesh State Road Transport Corporation v. Kulsum and Ors.*** (2011) 8 SCC 142, the principle stated in ***Kailash Nath Kothari*** (supra) was distinguished and taking note of the fact that at the relevant time, the vehicle in question was insured with it and the policy was very much in force and hence, the insurer was liable to indemnify the owner.

On a careful analysis of the principles stated in the foregoing cases, it is found that there is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasise, if the vehicle is insured, the

insurer is bound to indemnify unless there is violation of the terms of the policy under which the insurer can seek exoneration.

In ***Purnya Kala Devi*** (supra), a three-Judge Bench has categorically held that the person in control and possession of the vehicle under an agreement of hypothecation should be construed as the owner and not alone the registered owner and thereafter the Court has adverted to the legislative intention, and ruled that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control. There is reference to Section 146 of the Act that no person shall use or cause or allow any other person to use a motor vehicle in a public place without insurance as that is the mandatory statutory requirement under the 1988 Act.

In the instant case, the predecessor-in-interest of the Appellant, Centurion Bank, was the registered owner along with Respondent No. 2. The Respondent No. 2 was in control and possession of the vehicle. He had taken the vehicle from the dealer without paying the full premium to the insurance company and thereby getting the vehicle insured. The High Court has erroneously opined that the financier had the responsibility to get the vehicle insured, if the borrower failed to insure it. The said term in the hypothecation agreement does not convey that the Appellant financier had become the owner and was in control and possession of the vehicle. It was the absolute fault of the Respondent No. 2 to take the vehicle from the dealer without full payment of the insurance. Nothing has been brought on record that this fact was known to the Appellant financier or it was done in collusion with the financier. When the intention of the legislature is quite clear to the effect, a registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control and there is evidence on record that the Respondent No. 2, without the insurance plied the vehicle in violation of the statutory provision contained in Section 146 of the 1988 Act, the High Court could not have mulcted the liability on the financier. The appreciation by the learned Single Judge in appeal, both in fact and law, is wholly unsustainable.

In view of the aforesaid premises, we allow the appeals and hold that the liability to satisfy the award is that of the owner, the Respondent No. 2 herein and not that of the financier and accordingly that part of the direction in the award is set aside

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(2015)2SCC186

Kulwant SinghVs. Oriental Insurance Company Ltd.

Hon'ble Judges/Coram: V. Gopala Gowda and A.K. Goel, JJ.

The question raised for consideration is whether the Insurance Company is entitled to recovery rights on the ground of breach of conditions of insurance policy when the driver possesses valid driving licence for driving light vehicle but fails to obtain endorsement for driving goods vehicle. In the instant case the vehicle was insured with the Insurance

Company and the driver was having valid driving licence. The vehicle involved in the road accident was 'light goods vehicle'. The Insurance Company preferred an appeal before the High Court with the plea that it was entitled to recovery rights as the driving licence was for driving 'light motor vehicle'. It could not be equated with 'light goods vehicle'.

We find the judgments relied upon cover the issue in favour of the Appellants. In ***National Insurance Co. Ltd.*** v. ***Annappa Irappa Nesaria Alias Nesearagi and Ors.*** (2008) 3 SCC 464, this Court referred to the provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and the rules prescribing the forms for the licence, i.e. Rule 14 and Form No. 4. It was concluded:

> ***20.*** *From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.*

In ***Iyyapan*** v. ***United India Insurance Co. Limited and Anr.*** (2013) 7 SCC 62, the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:

> ***18.*** *In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment (Civil Misc. Appeal No. 1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside.*

No contrary view has been brought to our notice. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.

2015(12)SCALE52

Managing Director, K.S.R.T.C. and Ors. Vs. New India Assurance Company Ltd. and Ors.

Hon'ble Judges/Coram: H.L. Dattu, C.J.I. and Arun Mishra, J.

Brief Facts

The facts giving rise to Civil Appeal reflect that the accident in question was caused by the bus which was driven under the control of KSRTC. The bus was owned by Respondent No. 2, insured by the New India Assurance Company Ltd. An agreement was entered into between the KSRTC and owner, Respondent No. 2. The MACT allowed the claim petition preferred by the claimants and awarded a sum of Rs. 4,09,000/- with interest @ 6% p.a.

In view of the agreement between KSRTC and the owner of the bus, the liability was fastened upon the owner and the insurer of the vehicle jointly and severally to make the payment of compensation, not on KSRTC. Aggrieved thereby, the insurer preferred an appeal before the High Court. The same has been allowed by the impugned judgment and order. The High Court has allowed the appeal filed by the insurer and held that the liability to make the payment of compensation is that of KSRTC alone. Aggrieved thereby, the KSRTC has come up in the appeal before this Court.

In the other Civil Appeal, the bus was plied similarly on hire agreement by the KSRTC. The Claims Tribunal has fastened the liability jointly and severally upon the KSRTC and upon Internal Security Fund, Bangalore. Aggrieved thereby, the appeal was preferred in the High Court and the same has been dismissed. Hence, Civil Appeal has been filed in this Court.

Decision of the Supreme Court

The High Court has held that actual control of the bus was with the KSRTC and the driver was driving the bus under its control. There is no liability of the registered owner as such insurer cannot be saddled with liability to indemnify. Hence, the registered owner and the insurer have been exonerated. The KSRTC has been fastened with the liability. In Court's opinion, decision of High Court is not sustainable. The provisions contained in the Act are clear. No vehicle can be driven without insurance as provided in Section 147 whereas Clause 14 of lease agreement between KSRTC and the owner clearly stipulate that it shall be the liability of the owner to provide the comprehensive insurance covers for all kind of accidental risks to the passengers, other persons/property. The provisions of said clause of the agreement are not shown to be opposed to any provision in the Contract Act or any of the provisions contained under the Act of 1988. Hiring of public service vehicles is not prohibited under any of the provisions of the aforesaid laws. It could not be said to be inconsistent user by KSRTC. The agreement is not shown to be illegal in any manner whatsoever nor shown to be opposed to the public policy.

The policy of insurance is contractual obligation between the insured and the insurer. It has not been shown that while entering into the aforesaid agreement of lease for hiring the buses, any of the provisions contained in the insurance policy has been violated. It has not been shown that owner could not have given bus on hire as per any provision of policy. It was the

liability of the registered owner to provide the bus regularly, to employ a driver, to make the payment of salary to the driver and the driver should be duly licenced and not disqualified as provided in the agreement though buses were to be plied on the routes as specified by the KSRTC and hiring charges were required to be paid to the registered owner. In the absence of any stipulation prohibiting such an arrangement in the insurance policy, the Court found that in view of agreement of lease the registered owner has owned the liability to pay. The insurer cannot also escape the liability.

Apart from that what is provided Under Section 157 of the Act of 1988 is that the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. Even if there is a transfer of the vehicle by sale, the insurer cannot escape the liability as there is deemed transfer of the certificate of insurance. In the instant case it is not complete transfer of the vehicle it has been given on hire for which there is no prohibition and no condition/policy of insurance as shown to prohibit plying of vehicle on hire. The vehicle was not used for inconsistent purpose. Thus, in the absence of any legal prohibition and any violation of terms and conditions of the policy, more so, in view of the provisions of Section 157 of the Act of 1988, the Court was of considered opinion that the insurer cannot escape the liability. The Court then came to the question of contractual liability under Second proviso to Section 147(1). Reading provisions of Section 147 with Section 157 together, leaves no room for any doubt that there is deemed transfer of policy in case of transfer of vehicle. Hence, liability of insurer continues notwithstanding the contract of transfer of vehicle, such contractual liability cannot be said to be excluded by virtue of second proviso to Section 147(1) of Act of 1988... In Court's view, an agreement for lease on hire cannot be said to be contract envisaged for exclusion under contractual liability in second proviso to Section 147(1) of the Act of 1988. The High Court has erred in holding otherwise.

The KSRTC can also be treated as owner for the purposes of Section 2(30) of the Act of 1988 plying the buses under lease agreement. The insurance company admittedly has insured the vehicle and taken the requisite premium and it is not a case set up by the insurer that intimation was not given to the insurance company of the hiring arrangement. Even if the intimation had not been given, in our opinion, the insurer cannot escape the liability to indemnify as in the case of hiring of vehicle intimation is not required to be given. It is only in the case of complete transfer of the vehicle when change of registration particulars are required Under Section 157 of the Act, an intimation has to be given by the transferee for effecting necessary changes in the policy. Even otherwise, that would be a ministerial act and the insurer cannot escape the liability for that reason.

In the instant cases also there are certain clauses referred to above which indicate that if the KSRTC has to make the payment, it can recover the same from the owner out of the amount payable by it or from the amount payable by the insurer to the owner. On the strength of decision in Rajasthan State Road Transport Corporation v. Kailash Nath Kothari and Ors., the KSRTC being in actual control of the vehicle would also be liable to make the compensation, however, in our opinion it can recover the amount from the registered owner or insurer, as the

case may be. In fact of the case, vis-a-vis, the claimants' liability would be joint and several upon the KSRTC, registered owner and the insurer.

In view of the aforesaid discussion, the Court held that registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and the KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer.

(2014)9SCC324

Narinder Singh Vs. New India Assurance Company Ltd.

Hon'ble Judges/Coram: M. Yusuf Eqbal and Pinaki Chandra Ghose, JJ.

Brief Facts of the Case

Petitioner-complainant had purchased a Mahindra Pick UP BS-II 4WD vehicle and got it insured with Respondent No. 1-M/s. New India Assurance Company Ltd. for the period 12.12.2005 to 11.12.2006. The vehicle was temporarily registered for one month period, which expired on 11.1.2006. However, on 2.2.2006, the vehicle met with an accident and got damaged. The complainant lodged FIR and informed about it to the Respondent-Company, which appointed a surveyor and Assessed the loss at Rs. 2,60,845/- on repair basis. The insurance claim was, however, repudiated by the opposite party on the ground that the person Rajeev Hetta, who was driving the vehicle at the time of the accident, did not possess a valid and effective driving licence and also the vehicle had not been registered after the expiry of the temporary registration. Consequently, the Appellant filed a consumer complaint before the District Forum.

The District Forum allowed the complaint and directed the Respondent-Company to indemnify the complainant to the extent of 75% of 4,30,037/- along with interest at the rate of 9% per annum thereon with effect from the date of filing of the complaint. The State Commission allowed the appeal of the Company and dismissing the complaint of the Complainant due to which the appeal preferred by the Appellant-complainant was dismissed as infructuous. The appeal to the National Commission was also dismissed.

Decision of the Supreme Court

The only issue for consideration is, as to whether the National Commission is correct in law in holding that the Appellant is not entitled to claim compensation for damages in respect of the vehicle when admittedly the vehicle was being driven on the date of accident without any valid registration as contemplated under the provisions of Section 39 and Section 43 of Motor Vehicles Act. A bare perusal of Section 39 shows that no person shall drive the motor vehicle

in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month.

Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11.1.2006 and the alleged accident took place on 2.2.2006 when the vehicle was without any registration. Nothing has been brought on record by the Appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the Appellant, owner of the vehicle either applied for permanent registration as contemplated Under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable Under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract. In the aforesaid premises, we do not find any infirmity in the order passed by the State Commission and the National Commission.

(2004)8SCC553

Dhanraj Vs. New India Assurance Co. Ltd. and Anr.

Hon'ble Judges/Coram: S.N. Variava and A.K. Mathur, JJ.

Brief Facts of the Case

On 26th August 2000, the Appellant along with certain other persons was traveling in his own Jeep. Around 6.30 A.M. the Jeep met with an accident. In the accident, the Appellant as well as the other passengers received injuries. The Motor Accident Claims Tribunal (MACT) held the Driver of the Jeep responsible for the accident. In the Claim Petition filed by the Petitioner, the Motor Accident Claims Tribunal directed the driver and the Insurance Company to pay compensation to the Petitioner. The Insurance Company filed an Appeal. That Appeal has been allowed by the impugned Judgment. It has been held that as the Petitioner was the owner of the vehicle the Insurance Company is not liable to pay him any compensation.

Decision of the Supreme Court

The question that arises is whether a comprehensive Policy would cover the risk of injury to the owner of the vehicle also.

An insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of

the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

In the case of ***Oriental Insurance Co. Ltd.*** v. ***Sunita Rathi and Ors.*** AIR1997SC4228 it has been held that the liability of an Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the Insurance Company has no liability also.

In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989/- paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance. We, therefore, see no infirmity in the Judgment of the High Court.

(2007)3SCC700

National Insurance Co. Ltd. Vs. Laxmi Narain Dhut

Hon'ble Judges/Coram: Dr. Arijit Pasayat and S.H. Kapadia, JJ.

The appeals are preferred by Insurance Companies against the Judgments of various High Courts as well as the National Consumer Redressal Forum. It is contended by the Appellants that the decision is Swaran Singh's case [(2004) 3 S.C.C. 297] is not applicable to cases where third parties are not involved. Therefore it was contended that in such cases the logic of the insurer making the payment and later recovering it from the insured did not apply. On the other hand it was contended by the Respondents that there is no difference between claims regarding own damage and third party claims. It was also contended that the statute being a beneficial legislation, called for an interpretation in favour of the insured. The learned Judges traced the history and evolution of the law on motor vehicle insurance in India and highlighting the need for a purposive interpretation accepted the contentions raised by the Appellants and held the dictum laid down in Swaran Singh's case to be applicable only with regard to third party claims.

Decision of the Supreme Court

A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relatable to third parties are created only by fiction of Sections 147 and 149 of the Act. It is also to be noted that the terms of the policy have to be construed as it is and there is no scope for adding or subtracting something. However liberally the policy may be construed, such liberalism

cannot be extended to permit substitution of words which are not intended. (See ***United India Insurance Co. Ltd. V Harchand Rai Chandan Lal*** (2004)8SCC644 and ***Polymat India (P) Ltd. v. National Insurance Company Ltd. and Ors.*** AIR2005SC286 . In Swaran Singh's case (supra) the following situations were noted:

(i) the driver had a license but it was fake;

(ii) the driver had no license at all;

(iii) the driver originally had a valid license but it had expired as on the date of the accident and had not been renewed;

(iv) the license was for a class of vehicles other than that which was the insured vehicle;

(v) the license was a learner's license.

Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company. But it has to be decided by an other forum i.e. forum created under the Consumer Protection Act, 1985 (in short the 'CP Act'). Before the Tribunal, there were essentially three parties i.e. the insurer, insured and the claimants. On the contrary, before the consumer forums there were two parties i.e. owner of the vehicle and the insurer. The claimant does not come in to the picture. Therefore, these are cases where there is no third party involved. According to learned Counsel for the appellants, in such cases the logic i.e. let the insurer pay and recover from the insured company does not apply. As noted above, there is no contractual relation between the third party and the insurer. Because of the statutory intervention in terms of Section 149, the same becomes operative in essence and Section 149 provides complete insulation.

In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake license has to be considered differently in respect of third party and in respect of own damage claims.

"Golden Rule" of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to 'rule of legislative intent'. The world over, the principle of interpretation according to the legislative intent is accepted to be more logical. When the law to be applied in a given case prescribes interpretation of statute, the Court has to ascertain the facts and then interpret the law to apply to such facts. Interpretation cannot be in a vacuum or in relation to hypothetical facts. It is the function of the legislature to say what shall be the law and it is only the Court to say what the law is.

A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See ***District Mining Officer and Ors. v. Tata Iron & Steel Co. and Anr.*** (2001)7SCC358).

It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside.

More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the Courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of U.S. Supreme Court in an article titled as Some Reflections on the Reading of Statutes (47 Columbia Law Reports 527), observed that, "legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose".

The inevitable conclusion therefore is that the decision in Swaran Singh's case (supra) has no application to own damage cases. The effect of fake license has to be considered in the light of what has been stated by this Court in ***New India Assurance Co., Shimla v. Kamla and Ors.*** [2001]2SCR797 . Once the license is a fake one the renewal cannot take away the effect of fake license. It was observed in Kamla's case (supra) as follows:

In view of the above analysis the following situations emerge:

1. The decision in ***Swaran Singh's*** case (supra) has no application to cases other than third party risks.

2. Where originally the license was a fake one, renewal cannot cure the inherent fatality.

3 In case of third party risks the insurer has to indemnify the amount and if so advised to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

(2007)9SCC263

Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Ors.

Hon'ble Judges/Coram: S.B. Sinha and Markandey Katju, JJ.

Brief Facts of the Case

This appeal is directed against judgment and order passed by the Gauhati High Court 3 whereby and whereunder the appeal preferred by the appellant herein was dismissed. The deceased was the owner of an insured vehicle a maruti van. While he was driving the said vehicle, allegedly, in order to save a goat which was running across the road, the steering of the vehicle failed and it dashed with a tree on the road side. He suffered injuries. He later on succumbed thereto. On the aforementioned premise a claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed.

The Claims Tribunal held that the vehicle being insured and an additional premium for the death of the driver or conductor having been paid, the liability was covered by the Insurance Policy.In the appeal preferred by the appellant before the High Court, however, the contention of the respondents herein that in view of the decision of this Court in ***National insurance Co. Ltd. Chandigarh v. Nicolletta Rohtagi and Ors.*** [2002]SUPP2SCR456 , the appeal was not maintainable, was accepted. Before us a short question has been raised by the learned Counsel appearing on behalf of the appellant stating that in view of Section 147 of the Motor Vehicles Act, 1988, the jurisdiction of the Tribunal was confined to a third party claim and, thus, the impugned judgment cannot be sustained.

Decision of the Supreme Court

The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident The accident did not involve motor

vehicle other than the one which he was driving, the question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable. Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise.

In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4989 paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading" Own damage", the words 'premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.

The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle, if that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case. In that view of the matter, the impugned judgment cannot be sustained.

IV

Evidentiary Issues in Motor Accident Cases

2014(1)SCALE765

Lachoo Ram and Ors. Vs. Himachal Road Transport Corpn. & Anr.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and Shiva Kirti Singh, JJ.

Brief Facts of the Case

The deceased Dalip Singh lost his life immediately after the accident as a result of rash and negligent driving of a bus belonging to the Corporation driven by Lachoo Ram Respondent No. 2. The Appellants are claimants. They are aggrieved by the judgment and order under appeal whereby the High Court reversed the findings given by the Motor Accident Claims Tribunal (II) and has set aside the Award dated 30.11.1998 whereby the Appellants were allowed compensation of Rs. 2,74,000/- including the interim compensation, if already awarded to them along with interest at the rate of 12% p.a. from the date of the claim petition. The claim for compensation was resisted on both the grounds - One, that the bus was not involved in the accident and second, that the accident did not take place due to rash and negligent driving of Respondent No. 2.

The main criticism of the High Court judgment is on the ground that the case should have been decided on the basis of preponderance of probabilities as was done by the Tribunal whereas High Court has required a much higher degree of proof as if it was dealing with a criminal trial. The order under appeal has also been criticized on the ground that reasonings are perverse and that the High Court failed to keep in view the apparent incorrectness of the defence plea which was of total denial of the case of the claimants that the bus of the Respondent was involved in the accident with the motor cycle of the deceased and the deceased died due to such accident. The judgment of the High Court is further in criticism on the ground that the Court has not given due weightage to the fact that the bus and its driver were detained almost immediately after the occurrence and FIR was also registered against the driver.

Decision of the Supreme Court

The evidence and the materials as discussed by the Tribunal and the High Court lead to the conclusion that if the principle of preponderance of probabilities is applied, the Tribunal was right in giving a finding that the motor cycle of the deceased and the bus were involved in the accident. Even the High Court has not totally overruled that possibility as is clear from the observation in the second paragraph of its judgment on page 10 of the paper book in the following words:

> However, even if it is held that there was some collision the negligence is that of the motor cyclist himself since he could not and should not have tried to overtake the bus on the red light. The road at the red light is extremely narrow and from a standing position to suddenly try to overtake the bus is asking for trouble.

Although the High Court has given a tentative view, as noted above, for the reasons that there were some witnesses present near the place of occurrence and they have claimed that the accident was between the motor cycle and the bus and FIR was filed soon after the occurrence against the driver, we have no hesitation in accepting the submission that on this issue the High Court should have accepted the finding of the Tribunal, specially in view of its own observation noted above.

But simply the involvement of the bus in the accident cannot make the Respondent liable to pay compensation unless it can be held on the basis of materials on record that the accident was caused by rash and negligent act of the driver-Respondent No. 2. On this issue, on comparing the reasons given by the Tribunal while discussing the issue No. 1 and those given by the High Court on pages 10 and 11 of the paper book, we find the reasons given by the High Court to be much more cogent and acceptable in coming to the conclusion noted above. Since the bus was standing at the red light and on being asked, soon after starting from the traffic signal it stopped within 100 to 150 yards, it has rightly been reasoned that the bus could not have started on a high speed. The road at the place of the accident was admittedly very narrow and PW.2, who has been found reliable by the Tribunal as well as by the High Court and was present on the spot, has not claimed that the bus driver had given a signal to the deceased motor cyclist to overtake him. This witness could not see the actual accident because at that time the motorcyclist, in an effort to overtake the bus had gone on its right side and was not visible and therefore he could only hear the sound of crash. It is not the case of any witnesses that the bus driver took any sudden turn while proceeding forward from the traffic signal or that he swerved the bus to the right side. In the facts of the case it is not found possible to accept the contention on behalf of the Appellants/claimants that the accident was on account of rash or negligent driving by the driver-the Respondent No. 2. In that view of the matter it is not found possible to give any relief to the Appellants.

2014(5)SCALE184

M.K. Gopinathan Vs. J. Krishna and Ors.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and N.V. Ramana, JJ.

Brief Facts of the Case

The case of the Appellant is that he was employed in Malaysia as a Tool & Die Engineer. He had come to his native town in Kerala to attend his sister's wedding. when the Appellant was traveling in a jeep, a bus coming from the opposite direction rammed into the jeep resulting in five deaths and the Appellant suffered severe injuries, namely a crush injury on his upper right arm which had to be amputated. The Appellant was treated as an in-patient in the hospital for 42 days and during which time four surgeries were conducted on him.

The Appellant filed claim petition before the Motor Accident Claims Tribunal claiming Rs. 75,00,000/- as compensation. The Tribunal noticed that the Appellant is permanently disabled to an extent of 70% due to the injuries sustained by him in the accident. In the absence of any authentic, reliable and acceptable proof produced by the Appellant to show his monthly income, the Tribunal considering the fact that the Appellant is a qualified Engineer, and having regard to the Schedule to the Workmen's Compensation Act, fixed his monthly income notionally at Rs. 3,000/- and considering his age at the time of accident, which is 34, applied the multiplier 17. The Tribunal awarded compensation to the Appellant to a tune of Rs. 5,15,700/- in all, with interest thereon.

The Division Bench of the High Court, reassessed the entire case and opined that the Tribunal ought to have reasonably assessed the monthly salary which the Appellant was getting at the time of accident. However, taking into consideration, the totality of the facts and circumstances of the case, the High Court fixed the monthly income of the Appellant at Rs. 5,000/- p.m., instead of Rs. 3,000/- fixed by the Tribunal, and enhanced the compensation from Rs. 5,15,700/-, as awarded by the Tribunal, to Rs. 8,43,500/-, which is inclusive of Rs. 4,200/- awarded towards extra nourishment.

Decision of the Supreme Court

The only issue that arises for consideration is whether the compensation payable to the Appellant has to be computed based on the assertion made by him that at the time of accident, he was working as Tool and Die Engineer in a company in Malaysia and drawing Rs. 50,000/- p.m.?

The Appellant, before the Tribunal to prove his monthly income as Rs. 50,000/- and in support of his claim for compensation, except examining himself as P.W. 4, did not examine any person. In the circumstances, taking into consideration the undisputed fact of his qualification, and particularly his working in overseas Company, we feel just and reasonable to consider his monthly income as Rs. 8,000/-.

Accordingly, taking the monthly salary of the Appellant as Rs. 8,000/-, the compensation payable to him has to be computed. Apart from that, we enhance the amounts payable to the Appellant under different other heads in the manner following:

1. Loss of earnings (Rs.8,000/- x 6) minus Rs.18,000/-	Rs. 30,000/- more
2. Loss of amenities (Rs.30,000/- minus Rs.10,000/-)	Rs. 20,000/- more
3. Compensation for reduction In earning capacity (Rs. 8,000/- x 12 x 17 x 70/100) Minus Rs. 4,28,400/- i.e. (Rs. 11,42,400 – Rs.4,28,400/-)	Rs. 7,14,000/- more
4. Extra nourishment	Rs. 20,000/-
5. Bills for payment to doctors	Rs. 6,000/-
Total	**Rs. 7,90,000/- more**

(2009)13SCC530

Bimla Devi v. Himachal Road Transport Corporation

Hon'ble Judges/Coram: S.B. Sinha and P. Sathasivam, JJ.

“The factum of accident, thus, being denied and disputed; one of the issues framed by learned Tribunal on the claim application filed by the appellants herein for grant of compensation in terms of Section 166 of the Motor Vehicles Act, 1988 was:

Whether Sh. Jawala Ram died on 11.2.1997 near Dharampur, due to rash and negligent of Bus No. HP-14-3596 by respondent No. 2 and negligent conduct of respondent No. 3 as alleged?

The driver and conductor of the bus admitted their presence at the scene of occurrence. Vijay Kumar (RW1) alleged that he had seen the dead body wrapped in a blanket behind the bus when he was still to start the bus. The Tribunal did not find his statement to be reliable. Bhawani Dutt (RW2) did not support the version of the respondent as he stated that the driver and conductor of the bus had gone to the police station and the people gathered there stated that someone had been lying dead. He, according to the Tribunal, also could not deny positively that the accident had not taken place because of the use of the bus in question.

It is difficult to believe that the Police Officers would fabricate a case against the respondents. The learned Tribunal opined:

Therefore, keeping in view the statement of PW, Dharam Pal, the death of Jawala Ram because of injuries, the presence of the Bus of the respondents and place and time of the occurrence and the other circumstances of the case, I am convinced that the death of Jawala Ram took place after being hit by the Bus when it was being reversed in backward directions. Once, it is so held, the respondents, driver and conductor shall have to be held negligent in reversing the bus in backward directions without blowing horn or whistle or giving indication to the persons standing there. Had the driver and conductor of the bus taken care to blow horn or to forewarn the persons standing there before reversing the bus, Jawala Ram, who was stated to be standing behind the bus would not have been crushed. Consequently, it is held that Jawala Ram had died because of the injuries sustained by him in the course of Bus accident because of rashness and negligence of the respondents, driver and conductor of the Bus.

The said issue, on the basis of the aforementioned findings, was decided in favour of the appellant.

On an appeal preferred therefrom by the respondents before the High Court, however, the said finding of fact was reversed by it, inter alia, opining:

In the post mortem report there is no details of any such crush injuries of tyre marks in fact the thorax and abdomen region have been found by and large normal. Even to the muscle

bones and joints there are no serious injuries. The main injury is to the head only. It is not the case of the claimants that only the head of the deceased was crushed under the tyres. Therefore, the version of the claimants is difficult to believe.

The High Court furthermore held that the deceased might have died in some accident and the Police officials wrongly lodged the first information report against the driver of the bus.

While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post mortem report vis-`a-vis the averments made in a claim petition.

The deceased was a Constable. Death took place near a police station. The post mortem report clearly suggests that the deceased died of a brain injury. The place of accident is not far from the police station. It is, therefore, difficult to believe the story of the driver of the bus that he slept in the bus and in the morning found a dead body wrapped in a blanket. If the death of a constable has taken place earlier, it is wholly unlikely that his dead body in a small town like Dharampur would remain undetected throughout the night particularly when it was lying at a bus stand and near a police station. In such an event, the court can presume that the police officers themselves should have taken possession of the dead body.

The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondent Nos. 2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos. 2 and 3.

In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.

The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly.

(2011)3SCC646

Kusum Lata v. Satbir

Hon'ble Judges/Coram: G.S. Singhvi and A.K. Ganguly, JJ.

In this case the claim for compensation filed by the Appellants was concurrently denied both by the Motor Accident Claims Tribunal (for short, 'the Tribunal') as also by the High Court. The material facts of the case are that on 12th January, 2005 while Surender Kumar, the victim, was going on foot, he was hit by a vehicle from behind as the vehicle was driven rashly and negligently and was also in a high speed. The victim sustained several injuries and was rushed to the hospital and was declared dead. After the said incident the Appellants, namely, Kusum Lata, wife of the victim and three of his children, two are minor daughters and one is a minor son, filed a claim petition.

When the matter came up before the Tribunal, the Tribunal in its award dated 14.6.2006 framed three issues for adjudication. Of those three issues, since the Tribunal came to a finding against the Appellants on the first issue, the other findings of the Tribunal in the second and third issue were, according to Tribunal, of no avail to the Appellants. On the first issue the Tribunal came to a finding that the involvement of the offending vehicle being tempo No. HR-34-8010 has not been proved and since on this issue the Tribunal's finding went against the Appellants, no compensation was awarded. On an appeal filed against the said award, the High Court by the impugned judgment dated 21.5.2010 also affirmed the finding of the Tribunal.

The main reason why both the Tribunal and the High Court reached their respective findings that vehicle No. HR-34-8010 was not involved in the accident are primarily because of the fact that in the FIR which was lodged by one Ashok Kumar, brother of the victim, neither the number of the vehicle nor the name of the driver was mentioned.

This Court is unable to appreciate the aforesaid approach of the Tribunal and the High Court. This Court is of the opinion that when a person is seeing that his brother, being knocked down by a speeding vehicle, was suffering in pain and was in need of immediate medical attention, that person is obviously under a traumatic condition. His first attempt will be to take his brother to a hospital or to a doctor. It is but natural for such a person not to be conscious of the presence of any person in the vicinity especially when Dheeraj did not stop at the spot after the accident and gave a chase to the offending vehicle. Under such mental

strain if the brother of the victim forgot to take down the number of the offending vehicle it was also not unnatural.

There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar. The so-called reason that as the name of Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

Reference in this connection may be made to the decision of this Court in ***Bimla Devi and Ors.*** *v.* ***Himachal Road Transport Corporation and Ors.*** (2009) 13 SCC 530, in which the relevant observation on this point has been made and which is very pertinent and is quoted below:

In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

In respect of the finding reached by the Tribunal on the assessment of compensation, this Court finds that the Tribunal has used the multiplier of 16, even though the age of the deceased has been determined to be 29. We find that the Tribunal erred by applying the multiplier of 16. However, considering the age of the victim, the multiplier of 17 should be applied in view of the decision of this Court in ***Sarla Verma (Smt) and Ors. v. Delhi Transport Corporation and Anr.*** reported in (2009) 6 SCC 121, and the chart at page 139. It is not in dispute that in the instant case the claim for compensation has been filed under Section 166 of the Motor Vehicles Act. This Court finds that if the multiplier of 17 is applied then the amount comes to Rs. 3,93,428.45 apart from the amount of funeral expenses and the amount granted for loss of consortium. Taking all these together the amount comes to a little more than four lacs of rupees.

The Court, however, in exercise of its power under Article 142 and considering the number of claimants, of which three are minor children, is of the opinion that for doing complete justice in the case and by taking a broad and comprehensive view of the matter, an amount of Rs. 6 lacs including the amounts of consortium and funeral expenses would meet the ends of justice. The Court, therefore, grants a compensation of Rs. 6 lacs considering the fact that the victim was the sole wage earner in the family and he left behind three minor children and a widow. The said amount is to be paid along with interest @ 7% from the date of presentation of the claim petition till the date of actual payment.

In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the principles laid down by a three-Judge Bench of this Court in the case of ***National Insurance Company Limited*** *v.* ***Swaran Singh and Ors.*** reported in (2004) 3 SCC 297.

The appeal is, therefore, allowed. The judgments of the Tribunal and the High Court are set aside. The insurance company is to pay the aforesaid amount in the form of a bank draft in the name of Appellant No. 1 with interest as aforesaid within a period of six weeks from date and deposit the same in the Tribunal. This direction should be strictly complied with by the Insurance Company.

(2011)11SCC635

Parmeshwari v. Amir Chand

Hon'ble Judges/Coram: G.S. Singhvi and A.K. Ganguly, JJ.

The Appellant is impugning herein the judgment and order of the High Court of Punjab and Haryana dated 8th October, 2009 -in FAO No. 2484 of 2009. An appeal was filed before the High Court by the owner of the scooter, Amir Chand, against an award passed by the Motor Accident Claims Tribunal, Fast Track Court, Hisar, awarding to the Appellant, compensation of Rs. 1,36,547 along with 9% interest.

The contention of the owner of the scooter, before the High Court, was that the accident and his involvement in it was not proved and the claim petition should have been dismissed. The High Court ultimately upheld the appeal of the owner and set aside the findings of the Tribunal.

Unfortunately, this Court finds that the said well considered decision of the Tribunal was set aside by the High Court, inter alia, on the ground that even though complaint was forwarded to SSP Hisar and was further forwarded to SSP Hanumangarh but none from the office of SSP, Hanumangarh came to prove the complaint. The filing of the complaint by the Appellant is not disputed as it appears from the evidence of PW.3-Satbir Singh, who is the Assistant Complaint Clerk in the office of Superintendent of Police, Hisar. If the filing of the complaint is not disputed, the decision of the Tribunal cannot be reversed on the ground that nobody came from the office of SSP to prove the complaint. The official procedure in matters of proceeding with the complaint is not within the control of the Appellant, who is an ordinary village woman. She is not coming from the upper echelon of society. The general apathy of the administration in dealing with complaints lodged by ordinary citizens is far too well known to be overlooked by High Court. In this regard the perception of the High Court in disbelieving the complaint betrays a lack of sensitized approach to the plight of a victim in a motor accident claim case.

The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh-PW.1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the Appellant but as a good citizen, Umed Singh extended his help to the Appellant by helping her to reach the Doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself.

We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitized enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. **The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.* (2009) 13 SCC 530 are very pertinent.**

In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

This Court, therefore, is unable to sustain the judgment given by the High Court and quashes the same and restores that of the Tribunal.

(2014)14SCC142

Purnya Kala Devi Vs. State of Assam and Anr.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and N.V. Ramana, JJ.

Brief Facts of the Case

Appellant's/claimant's husband died in road accident by speeding bus belonging to registered owner which was not insured and was under requisition of State Government at relevant time. Contention of appellant was that at relevant time, offending vehicle was under requisition of State Government and hence under provisions of Assam Requisition and Control of Vehicles Act, 1968. The Tribunal directed the registered owner to pay a sum of Rs. 1,41,400/- with interest at the rate of 9% per annum to the Appellant/claimant and absolved Respondent Nos. 1 and 2 herein from any liability. The High Court enhanced the compensation by Rs. 50,000/- , it was held that the State Government cannot be held liable for paying compensation to the

Appellant under the Motor Vehicles Act, 1988 (for short "the 1988 Act") because the liability to pay compensation under the said Act is upon the registered owner, insurer or driver of the vehicle or all or any of them.

Discussion:

It is not in dispute that on 14.02.1993, the SDO, Udalguri requisitioned a Bus belonging to Md. Abdul Salam under the Assam Act. While under requisition, on 16.02.1993, the Bus involved in an accident and killed the husband of the Appellant at 10.15 a.m. At that time, the vehicle was not insured.

The Appellant/claimant claimed compensation of Rs. 2,00,000/- against the owner of the vehicle, i.e., Md. Abdul Salam as well as the State of Assam-Respondent No. 1 herein. The registered owner filed the reply contending that Respondent No. 1 was liable to pay compensation. The SDO, Udalguri, Respondent No. 2 herein, filed written statement before the Tribunal alleging that the vehicle was released on the date of accident at 10.30 a.m. Though it was stated that the vehicle was released on the same date at 10.30 a.m., the State or its officers failed to place and substantiate the same by placing any material.

Section 5(1) of the Assam Act provides that a vehicle may be released from requisition after service of notice in writing on the owner to take delivery of the vehicle on or with such date and from such place or from such person as may be specified therein and with effect from such date no liability for compensation shall lie with the officer or authority. In spite of our repeated questions, learned Counsel for the State of Assam has brought to our notice only the above-quoted plea taken by the SDO (C) and has not placed any material, such as notice in writing served on the owner, to prove that the delivery of vehicle was effected on such date and time in terms of Section 5(1) of the Assam Act.

Though the above point was pressed into service, the High Court, without adverting to Section 5 of the Assam Act, merely on the basis of the definition of "owner" as contained in Section 2(30) of the 1988 Act, mulcted the award payable by the owner of the vehicle. The High Court failed to appreciate that at the relevant time the offending vehicle was under the requisition of Respondent No. 1-State of Assam under the provisions of the Assam Act. Therefore, Respondent No. 1 was squarely covered under the definition of "owner" as contained in Section 2(30) of the 1988 Act. The High Court failed to appreciate the underlying legislative intention in including in the definition of "owner" a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-purchase agreement to the effect that a person in control and possession of the vehicle should be construed as the "owner" and not alone the registered owner. The High Court further failed to appreciate the legislative intention that the registered owner of the vehicle should not be held liable if the vehicle was not in his possession and control. The High Court also failed to appreciate that Section 146 of the 1988 Act requires that no person shall use or cause or allow any other person to use a motor vehicle in a public place without an insurance policy meeting the requirements of Chapter XI of the 1988 Act and the State

Government has violated the statutory provisions of the 1988 Act. The Tribunal also erred in accepting the allegation of Respondent No. 2 that the vehicle was released on the date of the accident at 10.30 a.m. and the accident occurred at 10.30 a.m. without any evidence even though in the claim petition, it was stated that the accident had occurred at 10.15 a.m.

In the light of what is stated above, we accept the stand taken by the Appellant and hold that the Appellant/claimant is entitled to receive a sum of Rs. 1,94,400/- as fixed by the High Court with interest at the rate of 9% per annum from the date of claim petition till the date of deposit and the same is payable by the State of Assam.

2015(2)SCALE646

S. Perumal Vs. K. Ambika and Ors.

Hon'ble Judges/Coram: V. Gopala Gowda and R. Banumathi, JJ.

Brief Facts of the Case

In an accident involving a lorry which was driven in a rash and negligent manner the Appellant sustained injuries. The Appellant filed an application before the Motor Accident Claims Tribunal, claiming compensation of Rs. 5,00,000 for the injuries sustained by him in the alleged accident. The tribunal upon consideration of the rival contentions, vide order dated 9.09.2011 awarded compensation of Rs. 25,300 alongwith interest at the rate of 7.5% per annum. The Appellant being dissatisfied with the amount of compensation, approached the High Court of Judicature at Madras. The High Court refused to interfere with the findings of the tribunal on the ground that the Appellant has suffered only simple injuries.

Contention of the Appellant is that at the time of the accident he was working as a labourer in a Poultry Farm and was earning Rs. 6,000 per month. The accident has caused multiple rib fractures to the Appellant which has severely affected Appellant's ability to work in the Poultry Farm or to do any physical work. Thus, Appellant has contended that he has sustained permanent disabling injury and therefore the learned tribunal erred in relying on self-contradictory testimony of Dr. Balaji (RW-1) of Vinayaga Mission Hospital, Salem, who has prepared the wound certificate (Ex. X4) on the basis of case sheet (Ex. X3) to the effect that the Appellant has suffered only two simple injuries.

Decision of the Supreme Court

The tribunal discarded radiologist report of VMKVM College and Hospital on the ground that the claimant had not pleaded in his claim petition about the treatment in VMKVM College. Thus, Appellant did not specifically plead that he was treated in VMKVM College and Hospital. However, in our considered view, it can not be taken as a ground to discard the radiologist report of VMKVM College and Hospital. Rather, this seems to be the

inadvertence while drafting the claim petition, as confusion is likely to happen, when admittedly both the hospitals are under the same management i.e. Vinayaga Mission. The primary evidence of PWs 1 and 2 and Radiology report ought not to have been discarded in the absence of any cogent evidence led by the Respondent stating that they are false. Thus, the Appellant duly discharged his initial burden of proof and after that it was upon the Respondents to lead further evidence.

In our view, tribunal and the High Court were not right in brushing aside the evidence of PW-3 and Ex. P6 (disability certificate). Tribunal and High Court have committed an error in holding that the claimant has sustained only simple injuries. In exercise of jurisdiction Under Article 136 of the Constitution, though this Court would not normally re-appreciate the facts and evidence, however, when the courts below erred in ignoring material evidence, this Court can always re-appreciate the evidence in order to render justice to the parties. The injured claimant is to be compensated for his permanent disability and also for loss of earning due to his inability, the whole idea is to put claimant in the same position as he was prior to the accident.

In our view, the principles laid down in ***Arvind Kumar Mishra v. New India Assurance Co. Ltd.*** 2010 ACJ 2867 (SC) and ***Raj Kumar v. Ajay Kumar*** 2011 ACJ 1 (SC), must be followed by all the tribunal and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

We shall now consider the question as to what is just and reasonable compensation to be awarded to the claimant. The claimant was a poultry labourer, he would have earned not less than Rs. 4,500 per month. Considering the nature of occupation of the claimant and the 25% disability, in our considered view, lumpsum compensation of Rs. 2,00,000 towards loss of future earnings, on account of permanent disability, Rs. 13,500 (Rs. 4,500 x 3) is awarded for the loss of earning during the period of treatment. Considering the nature of treatment and the medical bills (Exp. 5), for which an amount of Rs. 1,00,000 is awarded towards medical expenses; Rs. 50,000 is awarded towards pain and sufferings; Rs. 10,000 is awarded for transport charges and Rs. 10,000 is awarded for attendant charges; Rs. 10,000 is awarded towards extra nourishment and Rs. 50,000 is awarded towards loss of amenities.

The compensation of Rs. 25,300 awarded to the claimant is enhanced to Rs. 4,43,500 payable with interest at the rate of 9% from the date of the claim petition.

Yerramma Vs. G. Krishnamurthy

Hon'ble Judges/Coram: Dipak Misra and V. Gopala Gowda, JJ.

Brief Facts of the Case

The deceased Gavisiddappa was proceeding on a motor cycle when the State Road Transport Corporation bus which was going ahead of him took a right turn to enter the bus depot without giving the right turn indication. The motor cycle of Gavisiddappa collided with the bus while the bus was taking a right turn. Due to the impact caused by this collision of the bus with the motorcycle, the deceased sustained fatal injuries and succumbed to the same while on the way to the hospital. 3. At the time of the accident, the deceased was working as an ASI in the Kudithini Police Station and was drawing a salary of Rs. 26,000/- per month. The deceased was the only earning member of the family for their livelihood.

The Appellants herein, the wife, 3 minor children and the mother of the deceased Gavisiddappa, filed a Claim Petition against the Respondents before the MACT The Tribunal calculated the compensation amount under all heads at Rs. 21,30,632/-. The Tribunal also apportioned the contributory negligence at 25% on the part of the deceased and 75% on the driver of the Respondent-Corporation. Thus, after 25% deduction from the amount of the total compensation, the Tribunal awarded an amount of Rs. 15,97,974/- payable by the Respondents to the Appellants.

The High Court was of the view that the net income of the deceased at the time of his death was Rs. 21,168/- per month. As the claimants were 5 in number, the High Court held that Rs. 5292/- i.e. $1/4^{th}$ of the income had to be deducted towards personal expenses of the deceased (as per ***Sarla Verma and Ors.*** *v.* ***Delhi Transport Corporation and Anr.*** (2009)6 SCC 121). Therefore, the remaining amount comes to Rs. 15,876/- per month. The High Court applied the multiplier of 11 and re-determined the loss of dependency of the Appellants at Rs. 20,95,632/- as the age of the deceased at the time of his death was 53 years. It further awarded a sum of Rs. 45,000/- towards conventional heads i.e. loss of consortium, loss of estate, loss of love and affection, and transportation of the dead body. Thus, the total compensation amount was determined by the High Court at Rs. 21,40,632/-. The High Court has affirmed the apportionment of contributory negligence as determined by the Tribunal and accordingly, deducted 25% from the above compensation. A final amount of Rs. 16,05,474/- was awarded to the Appellants by the High Court as against Rs. 15,97,974/- awarded by the Tribunal. Thus, the High Court partly allowed the appeal by enhancing the compensation by a sum of Rs. 7,500/-.

Decision of the Supreme Court

We are of the view that the collision between the motor vehicles occurred when the Respondent-Corporation bus was turning to its right side without showing the turn indicator to enter the bus depot. The driver of the offending vehicle of the Respondent-Corporation bus

was negligent by not giving the right turn indicator and causing the accident. The driver of the Respondent-Corporation bus should have been aware of the fact that he was driving the heavy passenger motor vehicle, and that it was necessary for him to take extra care & caution of the other vehicles on the road while taking the turn to enter the depot. Had the driver of the offending vehicle taken sufficient caution and care, slowed down and allowed reasonable provision for other vehicles on the left side of the road to pass smoothly, the accident could have been averted. Hence, we are of the view that the Tribunal and the High Court have erred in the apportionment of negligence at 25% on the part of the deceased and 75% on the part of the driver of the Respondent-Corporation bus without evidence adduced in this regard by the Respondent. But on the other hand, legal evidence produced on record by the Appellants in this case would show that the accident was caused on account of the negligence on the part of the driver of the offending vehicle of the Respondent-Corporation. Therefore, the erroneous finding recorded by the Tribunal & concurring with the same by the High Court on the question of contributory negligence of the deceased is liable to be set aside. Accordingly, we set aside the same as it is not only erroneous but contrary to law laid down by this Court in the case of ***Juju Kuruvila*** (Supra).

In our considered view, since the deceased at the time of his death was approximately 53 years of age, therefore, as per law laid down by this Court in the ***Sarla Verma*** case (supra), 30% of actual salary for future prospects of the deceased cannot be taken for the purpose of awarding compensation under loss of dependency in favour of the Appellants. Further, with regard to gross annual income of the deceased, to determine the loss of dependency of the Appellants, we refer to the case of ***National Insurance Company Ltd.*** *v.* ***Indira Srivastava*** (2008) 2 SCC 763.

We are of the view, that on the facts and circumstances of this case, the net salary of the deceased taken by the Tribunal and the High Court for determination of loss of dependency is erroneous as it is not in accordance with the principles laid down by this Court in this regard. Therefore the same is liable to be set aside as it has to be properly determined by taking gross income of the deceased. It is clear that the gross income of the deceased at the time of his death as per his salary slip was Rs. 26,000/- per month. Therefore, we are of the view that a just and reasonable compensation under the head of loss of dependency has not been determined by the courts below. Thus, the impugned judgment and order of the High Court is vitiated both on account of erroneous finding and error in law. The gross salary drawn by the deceased at the time of his death was Rs. 26,000/- per month. The High Court and the Tribunal have taken the net salary at Rs. 21,168/- per month, thereby the Courts below have erred in making deductions from the gross salary of the deceased towards P.T. of Rs. 200/- and other statutory deductions and therefore, arriving at Rs. 21,168/- per month as the net salary of the deceased is erroneous in law. Therefore, we are of the view that both the Tribunal and the High Court have erred in not following the rules laid down by this Court in ***Indira Srivastava's*** in not taking gross income of the deceased to determine the loss of dependency.

The gross salary drawn by the deceased at the time of his death as per salary slip produced on record was Rs. 26,000/- per month and after deducting 10% towards income tax, net income comes to Rs. 23,400/- per month. Thus, the annual income of the deceased would be Rs. 2,80,800/-. Deducting 1/4th of this amount towards his personal expenses by applying the principle as laid down by this Court in ***Sarla Verma*** case (supra), the balance amount comes to Rs. 2,10,600/- [(2,80,800/- -Rs. 70,200/- (1/4th of Rs. 2,80,800/-)]. Therefore, the loss of dependency of the Appellants by applying the appropriate multiplier of 11, according to the rules laid down by this Court in the Sarla Verma comes to Rs. 23,16,600/- (Rs. 2,10,600/- X 11).

Further, the High Court has erred in not following the rules as laid down by this Court in awarding compensation under other conventional heads as mentioned hereunder. We are of the view that the Appellants are entitled to Rs. 1,00,000/- for loss of consortium, Rs. 1,00,000/- for loss of love and affection as per the rule laid down by this Court in ***Rajesh and Ors.*** *v.* ***Rajbir Singh and Ors.*** (2013) 9 SCC 54, Rs. 10,000/- for funeral expenses as per the rules laid down by this Court in ***Amrit Bhanu Shali and Ors.*** *v.* ***National Insurance Company Ltd. and Ors.*** (2012) 11 SCC 738 and Rs. 1,00,000/- for loss of estate.

The computation made by both the Tribunal and the High Court after deducting the amount out of the compensation under the head of loss of dependency towards contributory negligence and not taking gross income of the deceased as laid down by this Court in ***Indira Srivastava's*** case (supra) has rendered the determination of the compensation under the head of loss of dependency bad in law. Further, the quantification of compensation from all other heads as indicated in the preceding paragraph by us as both the Tribunal and the High Court have erred in not following rule laid down by this Court on this aspect in the catena of cases referred to supra. Therefore, we set aside the same and award the compensation as per the calculations made in the penultimate paragraph of this judgment.

As regards to awarding of interest on the compensation, the courts below have erred in awarding only 6% interest p.a. on the compensation awarded instead of 9% p.a. by applying the decision of this Court in ***Municipal Corporation of Delhi*** *v.* ***Association of Victims of Uphaar Tragedy*** (2011) 14 SCC 481. Therefore, we have to award the interest @9% p.a. on the compensation determined in this appeal. In the result, the Appellants shall be entitled to compensation under the following heads:

Loss of Life	Rs.23,16,600/-
Funeral Expenses	Rs. 10,000/-
Loss of love and affection	Rs. 1,00,000/-
Loss of estate	Rs. 1,00,000/-
Loss of consortium	Rs. 1,00,000/-
Total :	**Rs.26,26,600/-**

Thus, the total compensation payable to the Appellants by the Respondent-Transport Corporation will be Rs. 26,26,600/- with interest @ 9% from the date of filing of the application till the date of payment.

V

Computation of Compensation in Injury Cases

(2015)2SCC180

Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma

Hon'ble Judges/Coram: V. Gopala Gowda and A.K. Goel, JJ.

Brief Facts of the Case

The claimant-Appellant who is the father of the deceased filed a claim petition before the Motor Accidents Claims Tribunal claiming Rs. 28,73,000/- as compensation. The Tribunal ascertained the future income of the deceased at Rs. 18,000/- per month. 1/3rd of the monthly income was deducted towards personal expenses. Therefore, Rs. 12,000/- per month (Rs. 1,44,000/- p.a.) was calculated for the loss of dependency to the parents of the deceased. Since the age of the deceased at the time of his death was 19 years, on applying the appropriate multiplier of 16, the total compensation towards loss of dependency was arrived at Rs. 23,04,000/-. A sum of Rs. 15,000/- was awarded towards love and affection and Rs. 5,000/- towards funeral expenses and thus a total compensation of Rs. 23,24,000/- was arrived at by the Tribunal. The Tribunal apportioned contributory negligence at 20% on the part of the deceased and 80% on the driver of the offending truck and thus, after making 20% deduction towards contributory negligence on the part of the deceased the Tribunal awarded an amount of Rs. 18,59,200/- with interest at the rate of 9% per annum to the Appellant.

The High Court in appeal affirmed the future income of the deceased at Rs. 18,000/- per month as determined by the Tribunal and deducted 50% towards personal expenses. It further held that the Tribunal had erred in considering the age of the deceased at the time of his death rather than the age of the parents for determination of multiplier, since they are the claimants in the case on hand, as per the guidelines laid down in ***Sarla Verma and Ors.*** *v.* ***Delhi Transport Corporation and Anr.*** (2009)6 SCC 121. Therefore, by applying the appropriate multiplier of 13, the High Court determined the loss of dependency at Rs. 14,04,000/- as against Rs. 23,04,000/- as considered by the Tribunal. After examining the facts, evidence produced on record and circumstances of the case, the High Court was of the view that the contributory negligence on the part of the deceased was higher than 20%, however, it affirmed the contributory negligence as determined by the Tribunal. Therefore, after 20% deduction towards contributory negligence and addition towards other heads, the High Court, by its impugned judgment and order awarded a compensation under all heads of Rs. 11,39,200/- with 9% interest per annum. Aggrieved by the same, the Appellant has filed these appeals.

Decision of the Supreme Court

The deceased was 19 years old and was pursuing his medical degree with good marks at the time of the accident. The Tribunal and the High Court have not taken into proper consideration that the deceased was a student of medicine at the time of the accident while determining his future income. The courts below have wrongly ascertained the future income

of the deceased at only Rs. 18,000/- per month, which in our view is too less for a medical graduate these days. Therefore, the courts below have failed in following the principles laid down by this Court in this aspect in the above case. The deceased was a diligent and outstanding student of medicine who could have pursued his M.D. after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs. 25,000/- p.m. i.e. Rs. 3,00,000/- p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per ***Oriental Insurance Company Ltd.*** *v.* ***Deo Patodi and Ors.*** (2009)13 SCC 123, and applying the appropriate multiplier of 13, keeping in mind the age of the parent of the deceased, as per the guidelines laid down in ***Sarla Verma*** case (supra), we arrive at a total loss of dependency at Rs. 26,00,000/- [(Rs. 3,00,000/- minus 1/3 X Rs. 3,00,000/-)X 13].

Further, the Tribunal and the High Court have erred in not following the principles laid down by this Court in ***M. Mansoor and Anr.*** *v.* ***United India Insurance Co. Ltd.*** 2013 (12) SCALE 324 in awarding a meagre sum of just Rs. 15,000/- under the heads of loss of love and affection. Accordingly, we award Rs. 1,00,000/- to the Appellant towards the same.

With regard to the apportionment made by the Tribunal and the High Court, we are of the view, after considering the facts, evidence produced on record and circumstances of the case on hand, that there was no negligence on the part of the deceased. The courts below have failed to examine the facts of the case on hand with respect to the opinion of this Court given in ***Juju Kuruvila and Ors.*** *v.* ***Kunjujamma Mohan and Ors.*** (2013)9 SCC 166

From the evidence produced on record, the two-wheeler of the deceased was dragged up to a stretch of about 20-25 feet on the road after the collision with the offending truck. We are of the considered view, that to be able to create this kind of enormous effect on the two-wheeler of the deceased, the offending truck must have been travelling at a fairly high speed and that its driver did not have sufficient control over his vehicle. The driver of the offending truck should have been aware that he was driving the heavy motor vehicle and taken sufficient caution. We do not see any direct evidence that shows negligence on the part of the deceased that led to the accident. Therefore, as per the principles laid down by this Court in the case referred to above in this aspect, the contributory negligence apportioned by the courts below on the part of the deceased is set aside.

The Tribunal and the High Court have further failed in awarding only Rs. 5,000/- towards funeral expenses instead of Rs. 25,000/- according to the principles laid down by this Court in ***Rajesh and Ors.*** *v.* ***Rajbir Singh and Ors*** (2013) 9 SCC 54 Hence, we award Rs. 25,000/- towards the same.

In the result, the Appellant shall be entitled to compensation under the following heads:

1.	Loss of dependency	Rs.26,00,000/-
2.	Loss of love and affection	Rs.1,00,000/-
3.	Funeral expenses	Rs.25,000/-
	TOTAL	**Rs.27,25,000/-**

Thus, the total compensation payable to the Appellant by the Respondent-Insurance Company will be Rs. 27,25,000/- with interest at the rate of 9% p.a. from the date of filing of the application till the date of payment.

(2014)10SCC789

Basappa Vs. T. Ramesh

Hon'ble Judges/Coram: Jasti Chelameswar and A.K. Sikri, JJ.

Brief Facts of the Case

The Appellant was injured in a road accident with a bus being driven in a high speed and in rash and negligent manner as to endanger human life. The Appellant underwent treatment in various hospitals but could not be completely cured and has suffered permanent disability of 58% to the whole body. The Appellant filed the claim petition Under Section 166 of Motor Vehicle Act claiming compensation of Rs. 15,00,000/-.

The MACT recorded a categorical and definite finding to the effect that the accident in question was caused due to the rash and negligent act of the driver. The Tribunal, thus, allowed the petition but awarded a compensation of Rs. 93,800/- with interest at the rate of 6% p.a. from the date of accident till the date of realisation. Different heads under which the said compensation was awarded, thereby arriving at a aforesaid figure of Rs. 93,800/- are as under:

1.	Pain and sufferings	:	10,000/-
2.	Medical expenses	:	35,000/-
3.	Loss of future income	:	46,800/-
4.	Loss of amenities, diet, nutrition and attendant charges	:	2,000/-
	Total	:	**93,800/-**

The High Court in appeal has enhanced the compensation to Rs. 2,59,500/- The breakup of compensation awarded by the High Court under different heads is as follows:

1.	Pain and suffering	:	25,000/-
2.	Incidental expenses	:	10,000/-
3.	Medical expenses	:	35,000/-
4.	Loss of income during laid up period	:	12,000/-
5.	Loss of amenities	:	20,000/-
6.	Loss of future income	:	1,57,500/-
	Total	:	**2,59,500**/-

Decision of the Supreme Court

The Appellant has sustained grievous injuries in his head and all over the face. As per the testimony of the doctor (PW-3), CT Brain reveals acute subdural left front temporal hemorrhagic with midline shift and mass effect. The doctor examined the Appellant as late as on 11.02.2009 and found that the Appellant's medical condition of on and off headache, giddiness and vertigo impaired memory, altered speed and imbalance while walking continuous to persist. He had operative scar left side of scalp (head) motor aphasia and positive Romberg's. The Courts below have also accepted the fact that the Appellant is suffering from permanent disability of 58% to the whole body. Having regard to the aforesaid injuries suffered by the Appellant in the said accident and the number of days for which the Appellant was treated and underwent physical and mental pain and suffering, the High Court enhanced the compensation under this head from Rs. 10,000/-, as awarded by the Tribunal, to Rs. 25,000/-. In so far as reimbursement of medical expenses is concerned, it is maintained at Rs. 35,000/- inasmuch as that is the actual amount spent by the Appellant, which is evident from the medical bills produced by him. However, considering that the Appellant was indoor patient in a private hospital for more than 10 days, Rs. 10,000/- is awarded for incidental expenses such as conveyance, nourishment and attendant charges. As regards loss of income during laid up period, the amount of Rs. 12,000/- has been awarded on the ground that the Appellant had been earning Rs. 125/- per day i.e. Rs. 3,750/- per month and as he was under treatment and rest for about three months, loss of income was to the tune of Rs. 12,000.

The Appellant was working at the building construction sites. Such a work requires good health and extreme fitness as it is a strenuous task which involves lot of physical activities. The Appellant has suffered permanent disability of 58% to the whole body. It has also come on record he suffers from general weakness and is not capable of doing heavy work. He is even unable to walk and stand for a long time. For this reason, we have already mentioned that his functional disability is to be taken at 85%.

For the purposes of calculating the compensation, the formula contained in Note (5) of the Second Schedule to the Motor Vehicle Act, 1988 is to be applied which is as under:

> 5. *Disability in non-fatal accidents*.- The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.

Plus either of the following:

(a) In case of permanent total disablement the amount payable shall be arrived at by *multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation,* or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under Item (a) above.

Injuries deemed to result in permanent total disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule I under the Workmen's Compensation Act, 1923.

Applying the aforesaid formula, loss of future income would work out to Rs. 5,35,500/- (Rs. 3,750/- x 85% x 12 x 14). Similarly, for pain and suffering, the amount of Rs. 25,000/- awarded by the High Court appears to be on lower side. We increase this amount to Rs. 60,000/-.

We are also of the view that the Appellant should get interest at the rate of 9% per annum from the date of claim petition till the payment having regard to the ratio of the judgment in the case of ***Municipal Corporation of Delhi, Delhi*** v. ***Uphaar Tragedy Victims Association and Ors.*** (2011) 14 SCC 481. In this manner, the total compensation which would be payable to the Appellant comes to Rs. 6,72,000/- as against Rs. 2,59,500/-, awarded by the High Court.

(2014)9SCC241

Civil Appeal Nos. 8215-8216 of 2009

Decided On: 23.04.2014

Dinesh Singh Vs. Bajaj Allianz General Insurance Co. Ltd.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and N.V. Ramana, JJ.

Brief Facts of the Case

The Appellant is B.E. Degree holder in Metallurgy. He is aged 24 years and was working as Quality Engineer in Hospet Steels Ltd. The appellant sustained grievous and fracture injuries

to the knee and also left hand in an accident and his left leg was amputated. He is still under treatment and presently walking with the assistance of an artificial limb. The MACT awarded in all Rs. 30,60,160/- as compensation to the Appellant under different heads. The High Court in appeal reduced the compensation awarded by the Tribunal from Rs. 30,60,160/- to Rs. 6,32,000/-.

Decision of the Supreme Court

The Appellant has resigned as Quality Engineer from Hospet Steels Ltd and took up desk job in Industrial Development Bank of India because of his permanent disability. The Appellant, who is an Engineer by profession, cannot take up such profession, which requires moving from one place to other place. Therefore, the reasoning of the High Court that the Appellant has not suffered any financial loss because of permanent disability having regard to the fact that subsequently he took up employment in Industrial Development Bank of India as Grade-B Officer, cannot be sustained. Once the permanent disability is fixed, taking into consideration, its impact on the employment/profession of the claimant, the compensation has to be awarded. Since the disability suffered by the Appellant, which is fixed at 60% and which is permanent in nature, impacted his employment and future prospects, we are of the considered opinion that the Tribunal has rightly determined the compensation Rs. 12,840/- x 12 x 17 = Rs. 26,19,360/- towards loss of future earnings, and taking into consideration the 60% permanent disability suffered by the Appellant, awarded him the actual compensation under the head 'loss of future earnings' at Rs. 15,71,616/- by rounding off the same to Rs. 15,72,000/-.

Considering the fact that loss of limb causes lot of pain to any living being, we are of the considered opinion that compensation payable to the Appellant under the head 'pain and agony', should be reasonable. The Tribunal has awarded Rs. 70,000/-, and we feel it appropriate to enhance by another Rs. 50,000/-, and upon such enhancement, the Appellant would be entitled to Rs. 1,20,000/- under the head 'pain and agony'. Therefore, we hold that the High Court erred in reducing the compensation payable to the Appellant under the head "pain and agony'.

The compensation payable to the Appellant under the heads 'loss of amenities' and 'loss of marriage prospects', also requires enhancement. The Tribunal has awarded Rs. 2,50,000/- under the head 'loss of amenities'. We feel it appropriate to enhance the same by another Rs. 1,00,000/-. Upon such enhancement, the Appellant would be entitled to Rs. 3,50,000/- under the head 'loss of amenities of life.

The Tribunal awarded Rs. 50,000/- towards 'loss of marriage prospects'. We feel it appropriate to enhance the same by another Rs. 50,000/-, and on such enhancement, the Appellant would be entitled to Rs. 1,00,000/- under the head 'loss of marriage prospects.'

Considering the fact that the Appellant still requires treatment and has to change his artificial limb as and when required, we are of the considered opinion that the compensation under the

said head needs enhancement, and accordingly, we enhance the same by another Rs. 50,000/-. The Appellant therefore, would be entitled to Rs. 5,50,000/-.

In view of the evidence produced by the Appellant that he has spent about Rs. 3,10,000/- towards medical expenditure, including conveyance and attendance fee, for the period he was under treatment, we are of the opinion that the same needs to be granted, and accordingly, we grant the same as awarded by the Tribunal, and find fault with the High Court in reducing the same. Thus, in all, we hold that the Appellant is entitled to compensation of Rs. 33,10,160/- as under:

1.	Pain and Agony	Rs.1,20,000/-
2.	Medical expenditure, including conveyance, attendant fee etc (During the period of treatment	Rs.3,10,000/-
3.	Loss of income during hospitalization/treatment	Rs.3,08,160/-
4.	Loss of future income	Rs.15,72,000/-
5.	Loss of happiness and loss of amenities	Rs.3,50,000/-
6.	Loss of marriage prospects	Rs.1,00,000/-
7.	Future medical expenses	Rs.5,50,000/-
IN TOTAL		**Rs. 33,10,160/-**

The above compensation amount shall carry interest @ 6% p.a. from the date of filing of the petition before the Tribunal till the date of payment.

2015(2)SCALE580

New India Assurance Company Ltd. Vs. Sukanta Kumar Behera and Ors.

Hon'ble Judges/Coram: Ranjan Gogoi and Arun Mishra, JJ.

Brief Facts of the Case

The Appellant was working as Senior Medical Officer in Bhilai Steel Plant. He met with an accident and ultimately due to permanent disability incurred by him, his services were terminated He incurred 60% permanent disability owing to various injuries sustained in the accident. The Claims Tribunal had awarded compensation of Rs. 4,01,414/-. In Appeal the High Court of Orissa awarded compensation of Rs. 55,00,000/- to the Respondent for the injuries sustained and permanent disability incurred by him in the accident

Decision of the Supreme Court

The question to be considered is whether the High Court is justified in awarding compensation of Rs. 55,00,000/- without any discussion and computation. The approach of the High Court cannot be said to be justified in such cases of injury. It is necessary to make computation of compensation to be awarded on account of pecuniary and non-pecuniary heads.

As per Dr. R.K. Pandey, the claimant Dr. Sukanta Kumar Behera sustained injuries resulting into 60% permanent disability. He was admitted in various hospitals as indoor patient. several surgeries were performed, besides bone grafting in left leg and removal of implanted right femur due to infection and discharging sinus. The amount spent by him at Vellore CMC Hospital towards treatment and medical expenditure was reimbursed to the extent of Rs. 10,72,013/-. In future, treatment of left ankle, foot drop and right hip replacement surgery may also be required. It is also apparent that due to removal of large part of intestine the claimant will have to remain on special diet and his digestion capacity has been declined to a great extent due to abdominal surgery for rest of his life. It is also apparent that he had also suffered grievous injuries resulting into 60% permanent disability besides one inch shortening of right limb.

The insurer company has contended that claimant was getting Rs. 23,000/- per month at the time of accident. It appears that he was getting non-practitioner allowance also in addition to the salary. It would be appropriate to take his salary at Rs. 25,000/- per month. Considering the fact that 60% permanent disability has been incurred and considering over all injuries caused, there is a loss of working capacity to the said extent. Monthly loss of earning capacity comes to Rs. 15,000/-. Multiplier of 16 is applicable at the age of 36 years. Expenditure must have been incurred in 8 days when claimant was treated in Shanti Hospital when surgery of right leg was performed and two plates were inserted which we quantify at Rs. 20,000/-. There was loss of earning during course of treatment which has been determined by the Claims Tribunal and medical expenditure in SCB Medical College and Hospital, Cuttack comes to Rs. 66,566/-. Compensation for pain and suffering, expenditure on attendant and on special diet has also to be awarded. The compensation after deducting medical reimbursement already received, is awarded in the following manner:

Description	**Amount (Rs.)**
For loss of earning capacity due to permanent disability (Rs.15,000 x 12 x 16)	28,80,000/-
Loss of salary during treatment in the year 2001-2002	2,14,848/-
Expenditure incurred in SCB Medical College & Hospital, Cuttack	66,566/-
Expenditure incurred in Shanti Hospital	20,000/-
Physical pain and sufferings	2,00,000/-
Expenditure incurred on attendant for 9 months during treatment	90,000/-
Special diet	28,500/-
Grand Total:	34,99,914/-
	rounded off 35,00,000/-

Accordingly, the appeal is allowed in part. Compensation amount of Rs. 35,00,000/- (Rupees Thirty Five lacs only) is awarded to the claimant along with interest at the rate of 6% per annum with effect from the date of filing of claim petition.

(2015)2SCC(LS)427

Jakir Hussein Vs. Sabir and Ors.

Hon'ble Judges/Coram: V. Gopala Gowda and R. Banumathi, JJ.

Brief Facts of the Case

The appellant was injured in an accident wherein the tractor driven by the Respondent was driven in a rash and negligent manner collided with the tempo driven by the Appellant. Due to the impact of the accident, the Appellant sustained grievous injuries. The right arm of the Appellant had severe compound fractures preventing him from performing his regular work as a driver hereafter. At the time of the said accident, the Appellant was earning Rs. 4,500 per month by working as a driver.

The Motor Accident Claims Tribunal determined the permanent disability suffered by the Appellant on account of the motor vehicle accident at 30% and his monthly income was taken at Rs. 3,000 for the purpose of assessing annual income of the Appellant to compute his loss of future earnings. On the basis of the annual income, his future loss of income due to permanent disability suffered by him was estimated at Rs. 1,72,800 and loss of income at Rs. 51,000. Medical expenses was estimated at Rs. 1,80,000/-. The total compensation of Rs. 4,38,000 with an interest at the rate of 7% p.a. was awarded to the Appellant by the Tribunal as against a claim of Rs. 8,80,000 made by him.

The High Court in appeal opined that the income of Appellant has been taken on the lower side by the Tribunal and determined the same at Rs. 4,000 per month. The High Court after re-determination of the compensation held that the Appellant is entitled to an enhancement of Rs. 1,77,200 towards permanent disability and addition of Rs. 5,000 towards pain and suffering. In addition to that amount, a sum of Rs. 20,000 was awarded towards medical expenses. The High Court has further awarded Rs. 40,000 towards medical expenses during the pendency of the appeal. Further, it has awarded interest at the rate of 8% p.a. on the enhanced compensation. Being unsatisfied with the enhanced compensation by the High Court, the Appellant filed this appeal.

Decision of the Supreme Court

After careful examination of the facts and legal evidence on record, it is not in dispute that the Appellant was working as a driver at the time of the accident and no doubt, he could be earning Rs. 4,500 per month. As per the notification issued by the State Government of

Madhya Pradesh Under Section 3 of the Minimum Wages Act, 1948, a person employed as a driver earns Rs. 128 per day, however the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per State Government Notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view that it would be just and reasonable to consider the Appellant's daily wage at Rs. 150 per day (Rs. 4,500 per month i.e. Rs. 54,000 per annum) as he was a driver of the motor vehicle which is a skilled job. Further, the Tribunal has wrongly determined the loss of income during the course of his treatment at Rs. 51,000 for a period of one year and five months. We have to enhance the same to Rs. 76,500 (Rs. 4,500 X 17 months).

Further, with respect to the permanent disablement suffered by the Appellant, the doctor who has treated the appellant stated that the Appellant has one long injury from his arm up to the wrist. Due to this injury, the doctor has stated that the Appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment taken by him. The doctor further stated in his evidence that the Appellant got delayed joined fracture in the humerus bone of his right hand with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalised for 10 days. The Appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the Appellant was completely crushed and deformed. In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55% respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the Appellant at 55%. However, it is important to consider the relevant fact namely that the Appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the Appellant since he will never be able to work as a driver again. The contention of the Respondent Insurance Company that the Appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs. 54,000 per annum. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in the case of ***Sarla Verma and Ors.*** *v.* ***Delhi Transport Corporation and Anr.*** (2009) 6 SCC 121, the total loss of future earnings of the Appellant will be at Rs. 54,000 X 16 = Rs. 8,64,000/-.

From the facts, circumstances and evidence on record it is clear that a cost of Rs. 2,00,000 was incurred during medical treatment of the Appellant. Keeping in mind his medical condition and future medical needs and requirements, we further award Rs. 2,00,000 towards future medical treatment & incidental expenses in favour of the Appellant.

Therefore, as per the principles laid down in the case of ***Rekha Jain and Anr.*** *v.* ***National Insurance Co. Ltd.*** (2013) 8 SCC 389,and considering the suffering undergone by the Appellant herein, and it will persist in future also and therefore, we are of the view to grant Rs. 1,50,000 towards the pain, suffering and trauma which will be undergone by the Appellant throughout his life. Further, as he is not in a position to move freely, we additionally award Rs. 1,50,000 towards loss of amenities & enjoyment of life and happiness. We further award an amount of Rs. 20,000 towards special diet, Rs. 40,000 towards attendant expenses during the period of treatment and Rs. 20,000 towards transportation. Since, the claim of the Appellant has been pending for several years before the courts, we are of the view to award a sum of Rs. 40,000 towards costs incurred during pendency of the appeal.

As regards the rate of interest to be awarded on the compensation awarded in this appeal, we are of the view that the Tribunal and the High Court have erred in granting interest rate at only 7% p.a. and 8% p.a. respectively on the total compensation amount instead of 9% p.a. by applying the decision of this Court in ***Municipal Corporation of Delhi*** *v.* ***Association of Victims of Uphaar Tragedy*** (2011) 14 SCC 481, Accordingly, we award the interest @9% p.a. on the compensation determined in the present appeal. In the result, the Appellant shall be entitled to the compensation figured out in the following table under different heads:

SL.No	Particulars	Amount of compensation
1.	Loss of future income due to disability	Rs.8,64,000/-
2.	Loss of income during period of treatment	Rs.76,500/-
3.	Pain and suffering	Rs.1,50,000/-
4.	Medical Expenses	Rs.2,00,000/-
5.	Attendant charges during the period of treatment for 17 months	Rs.40,000/-
6.	Transportation charges during the period of treatment	Rs.20,000/-
7.	Special diet and nutrition as advised by the doctor during the period of treatment	Rs.20,000/-
8.	Permanent Disability/ loss of amenities, happiness and enjoyment of life	Rs.1,50,000/-
9.	Future medical expenses	Rs.2,00,000/-
10.	Expenses during pendency of appeal	Rs.40,000/-
	TOTAL	**Rs.17,60,500/-**

Thus, the total compensation payable to the Appellant by the Respondent Insurance Company will be Rs. 17,60,500 as per amount awarded against different heads mentioned above in the table with interest @ 9% p.a. on the compensation awarded by this Court from the date of filing of the claim petition till the date of payment.

(2015)9SCC273

Khenyei Vs. New India Assurance Co. Ltd. and Ors.

Hon'ble Judges/Coram: H.L. Dattu, C.J.I., S.A. Bobde and Arun Mishra, JJ.

Whether it is open to a claimant to recover entire compensation from one of the joint tort feasors, particularly when in accident caused by composite negligence of drivers of trailor-truck and bus has been found to 2/3rd and 1/3rd extent respectively.

In the instant cases the injuries were sustained by the claimants when two vehicles-bus and trailor-truck collided with each other. The New India Assurance Company Ltd. is admittedly the insurer of the bus. However, on the basis of additional evidence adduced the High Court has come to the conclusion that the New India Assurance Company Ltd. is not the insurer of the trailor-truck, hence is not liable to satisfy 2/3rd of the award.

Decision of the Supreme Court

It is a case of composite negligence where injuries have been caused to the claimants by combined wrongful act of joint tort feasors. In a case of accident caused by negligence of joint tort feasors, all the persons who aid or counsel or direct or join in committal of a wrongful act, are liable. In such case, the liability is always joint and several. The extent of negligence of joint tort feasors in such a case is immaterial for satisfaction of the claim of the Plaintiff/claimant and need not be determined by the court. However, in case all the joint tort feasors are before the court, it may determine the extent of their liability for the purpose of adjusting inter-se equities between them at appropriate stage. The liability of each and every joint tort feasor vis-`-vis to Plaintiff/claimant cannot be bifurcated as it is joint and several liability. In the case of composite negligence, apportionment of compensation between tort feasors for making payment to the Plaintiff is not permissible as the Plaintiff/claimant has the right to recover the entire amount from the easiest targets/solvent Defendant.

A Full Bench in KSRTC v. Arun @ Aravind (supra) while answering aforesaid questions has observed that it was a case of composite negligence and the liability of tort feasors was joint and several. Hence, even if there is non-impleadment of one of tort feasors, the claimant was entitled to full compensation quantified by the Tribunal. A Full Bench of Madhya Pradesh High Court in Smt. Sushila Bhadoriya and Ors. v. M.P. State Road Transport Corporation and Anr. [MANU/MP/0451/2004 : 2005 (1) MPLJ 372] has also laid down that in case of composite negligence, the liability is joint and several and it is open to implead the driver, owner and the insurer one of the vehicles to recover the whole amount from one of the joint tort feasors. As to apportionment also, it has been observed that both the vehicles will be jointly and severally liable to pay the compensation. Once the negligence and compensation is determined, it is not permissible to apportion the compensation between the two as it is difficult to determine the apportionment in the absence of the drivers of both the vehicles appearing in the witness box. Therefore, there cannot be apportionment of the claim between

the joint tort feasors. In our opinion, the law laid down by the Madhya Pradesh High Court in Smt. Sushila Bhadoriya (supra) is also in tune with the decisions of the High Court of Karnataka in Ganesh (supra) and Arun @ Aravind (supra). However, at the same time, suffice it to clarify that even if all the joint tort feasors are impleaded and both the drivers have entered the witness box and the tribunal or the court is able to determine the extent of negligence of each of the driver that is for the purpose of inter se liability between the joint tort feasors but their liability would remain joint and several so as to satisfy the Plaintiff/claimant.

The Supreme Court held -

1. In the case of composite negligence, Plaintiff/claimant is entitled to sue both or any one of the joint tort feasors and to recover the entire compensation as liability of joint tort feasors is joint and several.
2. In the case of composite negligence, apportionment of compensation between two tort feasors vis-`-vis the Plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.
3. In case all the joint tort feasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the Plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tort feasor can recover the amount from the other in the execution proceedings.
4. It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the other joint tort feasor in independent proceedings after passing of the decree or award.

(2014)9SCC234

M.D. Jacob Vs. United India Insurance Ltd. and Anr.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and Shiva Kirti Singh, JJ.

Brief Facts of the Case

The Appellant was a victim of road accident on 27th July, 1997. On account of several serious injuries including amputation of complete left hand, severe injuries in head, dislocation of bones in hip and both knees and severe injuries in foot, the Doctor assessed his disability at

100%. The Appellant preferred a claim petition before the Motor Accidents Claims Tribunal at Chennai and sought compensation of Rs. 26,00,000/- (rupees twenty six lacs). The Claims Tribunal allowed a claim for Rs. 14,20,000. The claim allowed on different heads includes:

(i) Loss of income for one year as Rs. 60,000/-;
(ii) Special diet and transportation-Rs. 50,000/-
(iii) Medical expenses-Rs. 50,000/-
(iv) Pain and suffering-Rs. 2,00,000/-
(v) Permanent disability-Rs. 4,00,000/-
(vi) Loss of future earning-Rs. 6,60,000/-

The High Court, while maintaining the Award under the first three heads, reduced the amount of Rs. 2,00,000/- for pain and suffering to Rs. 1,00,000/-, Rs. 4,00,000/- for permanent disability to Rs. 3,00,000/- and Rs. 6,60,000/- as loss of future earning to Rs. 3,96,000/-. As a result of aforesaid reduction, the Appellant has been held entitled only to Rs. 9,56,000/- in place of Rs. 14,20,000/-.

Decision of the Supreme Court

The Tribunal has discussed all the available materials in detail for coming to a cogent and well-reasoned finding for calculating the loss of future earning on the basis of monthly income of Rs. 5,000/- whereas the High Court reduced the monthly income to Rs. 3,000/- without specifying any reasons for reversing the finding of the Tribunal. The Tribunal considered oral evidence of the claimant as well as documents such as Ext. P.4 and Ext. P.5 showing that the applicant had experience of working as Electrician and was employed as such. In the light of all the relevant materials the Tribunal assessed the earning capacity of the Appellant as Rs. 5,000/- p.m. and accordingly allowed a sum of Rs. 60,000/- as loss of earning capacity for a period of one year and by adopting the multiplier of 11 allowed Rs. 6,60,000/- as loss of future earning.

The High Court did not interfere with the multiplier and as indicated above, without good reasons treated the monthly income of the Appellant to be Rs. 3,000/- in place of Rs. 5,000/-. Inexplicably the High court has retained loss of income for one year to be Rs. 60,000/- which is possible only if the monthly income is accepted to be Rs. 5,000/-. There is no reason assigned even for reducing the compensation of Rs. 2,00,000/- for pain and suffering to Rs. 1,00,000/- and of Rs. 4,00,000/- for permanent disability to Rs. 3,00,000/-.

Considering that the Appellant had suffered 100% disability the learned Tribunal was quite justified in allowing Rs. 14,20,000/- as total compensation on the basis of monthly income of Rs. 5,000/-. The judgment of the High Court under appeal is therefore set aside and the judgment and order of the Tribunal is restored.

Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd.

Hon'ble Judges/Coram: Gyan Sudha Misra and Kurian Joseph, JJ.

Compensation under Sections 166 and 168 in case of child victim aged 12 years.

It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Ors.*** (1995)1SCC551, while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come. **While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs. 15,000 per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.**

Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs. 3 lakhs; upto 60%, Rs. 4 lakhs; upto 90%, Rs. 5 lakhs and above 90%, it should be Rs. 6 lakhs. For permanent disability upto 10%, it should be Re. 1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The Appellant, hence, would be entitled to get the compensation as follows-

Head	Compensation Amount (in Rupees)
Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomforts etc. and loss of amenities in life on account of permanent disability.	3,00,000
Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization.	25,000
Medical and incidental expenses during the period of hospitalization for 58 days.	25,000
Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment.	25,000
Total	**3,75,000**

(2014)3SCC590

Pawan Kumar and Anr. etc. Vs. Harkishan Dass Mohan Lal and Ors.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and Shiva Kirti Singh, JJ.

The Appellants were the claimants in the proceedings instituted for award of compensation under the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). They are aggrieved by the decision of the High Court of Punjab and Haryana at Chandigarh in F.A.O. Nos. 695, 407 and 408 of 1995 dated 05.07.2006 by which, though their claim for compensation has been upheld, the liability to pay the same has been apportioned between the drivers/owners of the two vehicles involved in the motor accident. The Appellants contend that as they were third parties to the claim, the High Court ought to have made the drivers/owners of the vehicles jointly and severally liable to pay compensation in view of their composite negligence instead of apportioning their liability by invoking the principle of contributory negligence.

Decision of the Supreme Court

The distinction between the principles of composite and contributory negligence has been dealt with in Winfield and Jolowicz on Tort (Chapter 21) (15th Edition, 1998). It would be appropriate to notice the following passage from the said work:

> *WHERE two or more people by their independent breaches of duty to the Plaintiff cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the Plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the Plaintiff is entitled to sue all or any of them for the full amount*

of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the Plaintiff's advantage to show that that he has suffered the same, indivisible harm at the hands of a number of Defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one Defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractive from the point of view of the solvent Defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.

...

The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous....

Where the Plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the Plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the Plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. The above principle has been explained in ***T.O. Anthony*** (supra) followed in ***K. Hemlatha and Ors.*** (supra). Paras 6 and 7 of ***T.O. Anthony*** (supra) which are relevant may be extracted hereinbelow:

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

> *7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the Appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.*

In the present case, neither the driver/owner nor the insurer has filed any appeal or cross objection against the findings of the High Court that both the vehicles were responsible for the accident. In the absence of any challenge to the aforesaid part of the order of the High Court, we ought to proceed in the matter by accepting the said finding of the High Court. From the discussions that have preceded, it is clear that the High Court was not correct in apportioning the liability for the accident between drivers/owners of the two vehicles. We, accordingly, hold that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to the claimants to enforce the award against both or any of them.

2015(10)SCALE377

Rajasthan State Road Transport Corporation Vs. Alexix Sonier and Ors.

Hon'ble Judges/Coram: Ranjan Gogoi and R.K. Agrawal, JJ.

Brief Facts of the Case

On 8.1.1988, Respondent, an American citizen, was struck by Appellant's bus which was being driven rashly and negligently at a very high speed. Respondent suffered several injuries, including injuries to the head. He was taken to a hospital in Jaipur and was later shifted to one in Ahmedabad. He was discharged from the hospital at Ahmedabad on 22.04.1988 and shifted by air to the United States of America, where he received medical treatment as well. Subsequently, a claim petition was filed, claiming a total sum of Rs. 2,02,36,000 as compensation along with interest at the rate of 18 per cent per annum from the date of filing of the claim petition. All the claims were in Indian Rupees and included amount spent for treatment in the USA and cost of keeping employing an attendant to look after the Respondent. The Tribunal determined that the accident had occurred on account of negligence of the driver of the Appellant. It determined a total figure of Rs. 1,25,15,002 for

compensation and awarded interest at the rate of six per cent per annum from the date of presentation of the claim petition. It deducted sums paid to the two Commissioners who were appointed for recording of evidence. However, it awarded an amount of US$125,348.01 for expenses towards medical expenditure in the USA.

Appellant and Respondent appealed to the High Court, which upheld the finding that the driver of the bus of the Appellant was negligent in driving rashly and this was not a case of contributory negligence. It held that reliance could be placed on statements recorded by the Commissioner, as the Appellant had raised no objections regarding the same before the Tribunal. It deleted the amount of US$ 125,348.01 under the head of 'special damages' awarded by the Tribunal on the ground that there was no way for courts in India to verify the fact whether the amount would be paid to the concerned Medi-Cal department in the USA by Respondent; moreover, there was no averment in the claim petition regarding reimbursement of the amount spent by the Medi-Cal Programme. The High Court declined enhancement of the amount awarded by the Tribunal. Hence, the present appeals.

Decision of the Supreme Court

So far as the question as to whether the accident in question which occurred on 08.01.1988 was a result of contributory negligence or the driver of the bus of the Corporation was driving rashly and speedily is concerned, we find that the driver of the bus had denied that any accident in fact had taken place, however, the site plan, which has been taken into consideration by the High Court, shows that the bus was driven at a sufficiently high speed and skid marks of the tyres of bus are about 32 ft. in length which were because of the speed of bus. The speed of the bus was quite high and at the relevant time it cannot be stopped immediately. The High Court has, therefore, correctly held that the bus was driven rashly and negligently and at a very fast speed. Therefore, the question of accident being a result of contributory negligence does not arise.

So far as the question regarding the amount of damages/award in respect of Medi-Cal, which has been deleted by the High Court is concerned, we are of the considered opinion that in the State of California, there is a Scheme under which persons who are not covered under any insurance scheme like claimant are extended medicare facilities for which no payment is to be made by such persons and only the amount received as reimbursement has to be handed over to the Medi-Cal Department. In the present case, we find that the Medi-Cal Department has already incurred expenses for the treatment of the claimant. It will be very difficult to keep a track, as observed by the High Court, as to whether the amount awarded under this head would be paid over to the Medi-Cal Department or not, and therefore, in our considered view, the High Court was justified in modifying the award of the Tribunal by disallowing US$ 125,348.01 under the category 'Special Damages' relating to the Medi-Cal.

However, we find that the claimant had claimed a sum of Rs. 10 lakhs for keeping an attendant for the entire life. Neither the Tribunal nor the High Court had given any amount

under the said head. We find that this Court, in the case of ***Sanjay Verma*** v. ***Haryana Roadways*** (2014) 3 SCC 210 has held that where any claim is made towards cost of attendant from the date of accident till he remains alive and it is also proved, then that claim is justified. In paragraph 22 of ***Sanjay Verma*** (supra) this Court has held as follows:

> *22. In the claim petition filed before the Motor Accidents Claims Tribunal the claimant has prayed for an amount of Rs. 2,00,000 being the cost of attendant from the date of accident till he remains alive. The claimant in his deposition had stated that "he needs one person to be with him all the time". The aforesaid statement of the claimant is duly supported by the evidence of PW 1 who has described the medical condition of the claimant in detail. From the aforesaid materials, we are satisfied that the claim made on this count is justified and the amount of Rs. 2,00,000 claimed by the claimant under the aforesaid head should be awarded in full. We order accordingly.*

Following the principles laid down by this Court in ***Sanjay Verma*** (supra) reproduced above, we accordingly hold that the claimant is entitled for a sum of Rs. 10 lakhs plus interest at the rate of 6 % per annum from the date of presentation of the claim petition till the date of actual payment towards expenses to be incurred for keeping an attendant for the rest of his life to look after him.

We further find that even though the claimant had not claimed any amount in US dollars in the claim petition and the entire claim was in the Indian currency, the amount awarded by the Tribunal in respect of some of the items under head 'Special Damages' has been given in terms of US dollars and the exchange rate has been applied at the rate of 14 per US dollar. This has been done on the specific finding that the claimant himself had claimed exchange rate of Rs. 14 per US dollar. Even though this Court in the case of ***United India Insurance Company Ltd. and Ors.*** v. ***Patricia Jean Mahajan and Ors.*** (2002) 6 SCC 281 has held that there would be three relevant dates for the purpose, viz., the date on which the amount became payable, the date of the filing of the suit and the date of the judgment and it would be fairer to both the parties to take the latest of these dates, namely, the date of passing of the decree as the relevant date for applying the conversion rate. Yet, where the prayer for passing a decree is indicated in rupees, there would not be any dispute regarding what rate of conversion to be applied. As in the present case, we find from the claim petition that claimant had claimed the amount only in Indian rupees and there is no specific mention of US dollars, there is no question of applying any exchange rate. The Tribunal, while awarding compensation under the head 'Special Damages' in terms of US dollars when converted into Indian rupees, we find that the amount comes much less than the amount claimed by the claimant in the claim petition. Therefore, there is no question of any further reduction in the said amount.

Sanjay Kumar Vs. Ashok Kumar and Anr.

Hon'ble Judges/Coram: S.J. Mukhopadhaya and V. Gopala Gowda, JJ.

Brief Facts of the Case

The Appellant received injuries in a roadside accident due to the rash and negligent driving of the offending vehicle. The Appellant remained under treatment from 26.10.2005 to 10.12.2005 and due to injuries sustained, his right leg above the knee had to be amputated.

The Tribunal held that the accident took place due to the rash and negligent driving of the offending vehicle as a result of which the Appellant sustained injuries and awarded pecuniary as well as non-pecuniary damages. The compensation was calculated by assigning minimum wages at Rs. 3166/- per month, of which loss of earning capacity was calculated at 70% which comes to Rs. 2216/- per month, i.e. Rs. 26,592/- per annum. Multiplier of 16 was taken. A lump sum compensation of Rs. 8000/- was given to the Appellant under the head of 'medical expenses'. Hence, the total pecuniary compensation given was 4,33,472/-. A sum of Rs. 50,000/- was given as non-pecuniary damages on account of mental pain and agony and loss of future enjoyment of life suffered by him. Thus, a total compensation of Rs. 4,83,472/- was awarded to the Appellant with interest @ 7% per annum from the date of filing of the petition till the date of realization. Both the Respondents were held to be jointly and severally liable to pay the compensation but Respondent No. 2 being the insurer was held to have the primary obligation to pay compensation on behalf of the insured and was directed to deposit the award amount within one month from the date of the order.

The High Court enhanced the compensation to Rs. 6,35,808/- by awarding Rs. 5,42,808/- under the head 'loss of future earning capacity' by taking a multiplier of 18. Further, Rs. 25,000/- as conveyance charges and Rs. 10,000/- as Attendant charges were also awarded. The compensation of Rs. 50,000/- awarded under the head 'Mental pain and agony' and Rs. 8,000/- for medical bills as awarded by the Tribunal was maintained as it is. Therefore, the High Court awarded a sum of Rs. 1,52,336/- over and above the compensation awarded by the Tribunal at the same rate of interest i.e. 7% per annum and the Respondent No. 2 was directed to pay this enhanced amount with interest in favour of the Appellant within four weeks from the date of receipt of copy of the order.

Decision of the Supreme Court

In our considered view, the Appellant is entitled to be awarded compensation based on the wages for a skilled worker, as he is an embroiderer and the same cannot be considered as an unskilled work. The minimum wages in Delhi for a skilled worker as on 01.08.2005 was Rs. 3589.90/- per month. The Appellant has claimed that he was earning Rs. 4,500/- per month from his work as an embroiderer. We will accept his claim as it is not practical to expect a worker in the unorganized sector to provide documentary evidence of his monthly income as per decision of this Court in the case of ***Ramachandrappa*** *v.* ***Manager, Royal Sundaram***

Alliance Insurance Co. Limited MANU/SC/0926/2011 : (2011) 13 SCC 236. Thus, in the present case, a monthly income of Rs. 4,500/- as claimed by the Appellant for his work as an embroiderer is reflective of ground realities and is not exorbitant by any standard and in the interest of justice, we should accept his claim. Further, he was also not cross-examined on the aspect of the nature of his work as an embroiderer and both the Tribunal and the High Court have erred in holding that the Appellant's work was of an unskilled nature.

'Loss of future prospects' should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment in income. As per the case of ***Sarla Verma and Ors.*** *v.* ***Delhi Transport Corporation and Anr.*** (2009) 6 SCC 121, keeping in mind the young age of the Appellant, he is entitled to 50% of his income as future increase in income (Rs. 4,500/- + 2250/- = Rs. 6750/-). We will apply a multiplier of 18 as taken by the High Court in the impugned judgment and as per ***Sarla Verma's*** case (supra). The Appellant's permanent disability and loss of earning capacity was assessed at 70% and we will not interfere with that. Hence, the total amount of compensation due to loss of earning capacity along with future prospects in income will come to Rs. 10,20,600/- [Rs. 6,750 x 70/100 x 12 x 18].

The Appellant has further contended that he should be awarded compensation for loss of income suffered during the period of treatment i.e. 26.10.2005 to 10.12.2005. As the accident took place on 28.09.2005, this comes to a period of around 3 months. Keeping in view the principles espoused in the aforesaid judgment, we hereby award an amount of Rs. 13,500/- for this period (Rs. 4,500 x 3) taking the monthly income of Rs. 4,500/-, thus, bringing the total compensation under the broad head of loss of income to 10,34,100/-.

Now, we will assess the compensation awarded under the other heads. With respect to medical expenses, attendant charges and conveyance charges, as well as possible future medical costs, we will award a total sum of Rs. 75,000/- as he has suffered permanent disability due to amputation of his right leg. The Appellant will need assistance in order to travel and move around, and regular check-ups and will most likely use a crutch to walk, all of which will incur expenses. On the point of loss of marriage prospects, we feel that it is a major loss, keeping in mind the young age of the Appellant and the High Court has gravely erred in not awarding adequate compensation separately under this head and instead clubbed it under 'loss of future enjoyment of life' and 'pain and suffering'. We thereby award Rs. 75,000/- towards loss of marriage prospects. Further, as per the case of ***Govind Yadav*** *v.* ***New India Insurance Co. Ltd.*** (2011) 10 SCC 683, wherein the Appellant suffered amputation of the leg, this Court awarded a sum of 1,50,000/- towards 'pain and suffering' caused due to amputation of the leg. Therefore, towards 'mental agony and pain and suffering', we award a sum of Rs. 1,50,000/- as the Appellant has suffered tremendously due to the accident in terms of the pain and suffering involved in the amputation. Loss of a limb causes a profusion of distress and the Appellant has to deal with the same for the rest of his life. We feel it is justified to award the aforesaid amount under this head as he might have to deal with discrimination and stigma in society due to the fact that he is an amputee.

Further, it is necessary to award an amount under the head of 'loss of amenities' also as the Appellant will definitely deal with loss of future amenities as he has lost a leg due to the accident. The injury has permanently disabled the Appellant, thereby reducing his enjoyment of life and the full pursuit of all the activities he engaged in prior to the accident. We thereby award a sum of Rs. 1,00,000/- towards 'loss of amenities'. Along with the compensation under conventional heads, the Appellant is also entitled to costs of litigation as per the legal principle laid down in the case of ***Dr. Balram Prasad*** *v.* ***Dr. Kunal Saha and Ors.***(2013) 13 SCALE 1. Therefore, under this head, we find it just and proper to award Rs. 25,000/- towards costs of litigation.

Thus, the total compensation, the Appellant is entitled to is given hereunder:

Head of Compensation	**Amount**
Loss of income: Loss of earning capacity and future prospects of income + Loss of earnings during period of treatment	Rs. 10,20,600 + Rs. 13,500 = Rs. 10,34,100
Medical expenses, attendant and conveyance costs and future medical costs	Rs. 75,000
Loss of marriage prospects	Rs.75,000
Mental agony, pain and suffering	Rs.1,50,000
Loss of Amenities	Rs.1,00,000
Cost of Litigation	Rs.25,000
Total Compensation	**Rs.14,59,100**

Further, as per the case of ***Municipal Corporation of Delhi*** *v.* ***Uphaar Tragedy Victims Association and Ors.*** (2011) 14 SCC 481, we find it just and proper to increase the interest awarded from 7% to 9% per annum. Hence, the total compensation the Appellant is entitled to is Rs. 14,59,100/- along with 9% interest per annum from the date of the accident till the date of realization.

(2013)12SCC603

S. Manickam v. Metropolitan Transport Corporation Ltd.

Hon'ble Judges/Coram: P. Sathasivam and M. Yusuf Eqbal, JJ.

In this case, the Tribunal, after holding that the accident was caused due to the negligence of the driver of the bus belonging to the Transport Corporation, awarded a sum of Rs. 9,42,822 as total compensation by adopting the multiplier of 13 in terms of the second schedule to the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The compensation was reduced by the High Court in appeal to Rs. 6,72,822. The High Court placed reliance on a Full Bench decision of the same Court in ***Cholan Roadways Corporation Limited, Kumbakonam*** v. ***Ahmed Thambi and Ors.*** 2006 (4) CTC 433 wherein it was held that if the

injured is compensated for loss of earning and loss of earning capacity, compensation need not be awarded separately for permanent disability. Aggrieved by the reduction in the compensation amount, the Appellant has preferred the present appeals by way of special leave for enhancement of the compensation. The important question which arose for consideration in these appeals is whether compensation in a motor vehicle accident case is payable to a claimant for both heads, viz., loss of earning/earning capacity as well as permanent disability.

The Supreme Court, in ***Ramesh Chandra*** v. ***Randhir Singh and Ors.*** 1990(3)SCC723, has categorically held that compensation can be payable both for loss of earning as well as disability suffered by the claimant. In addition to the same, in ***B. Kothandapani*** v. ***Tamil Nadu State Transport Corporation Limited*** (2011)6SCC420, the Supreme Court after considering the Full Bench decision of the Madras High Court in ***Cholan Roadways (supra)***, disagreed with the said view and granted separate compensation under the head permanent disability even after grant of compensation under loss of earning/earning capacity. Following the ratio in ***B. Kothandapani (supra)*** in the subsequent decision, viz., ***K. Suresh*** v. ***New India Assurance Co. Ltd. and Anr.*** JT2012(10)SC484 separate amount for permanent disability was awarded apart from fixing compensation under the head 'loss of earning' or 'earning capacity'.

The Supreme Court opined that in matters of determination of compensation, particularly, under the Motor Vehicles Act, both the tribunals and the High Courts are statutorily charged with a responsibility of fixing a "just compensation". It is true that determination of "just compensation" cannot be equated to a bonanza. On the other hand, the concept of "just compensation" suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. The determination of quantum in motor accidents cases and compensation under the Workmen's Compensation Act, 1923 must be liberal since the law values life and limb in free country in generous scales. The adjudicating authority, while determining the quantum of compensation, has to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. While computing compensation, the approach of the tribunal or a court has to be broad based and sometimes it would involve some guesswork as there cannot be any precise formula to determine the quantum of compensation.

Keeping the above principles in mind, the Supreme Court held that the High Court had committed an error in setting aside the award amount of Rs. 1,00,000 under the head 'permanent disability' on the ground that substantial amount had been fixed under the head 'loss of earning' and 'loss of earning capacity'.

Considering the claimant’s age, avocation and the fact that he cannot do the same work as he was doing prior to the accident due to amputation of his right leg, we are of the view that the Tribunal is fully justified in fixing a sum of Rs. 1,00,000 towards 85% permanent disability.

The order of the High Court setting aside the compensation under the said head cannot be sustained. Accordingly, in addition to the amount determined by the High Court, we grant a sum of Rs. 1,00,000 as awarded by the Tribunal, towards 85% permanent disability.

Though multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power, depending on various factors such as nature and extent of disablement, avocation of the injured whether it would affect his or her employment or earning power, the loss of income or earnings may be ascertained by applying the same as provided under the second Schedule to the Act. The proper multiplier in terms of the Second Schedule is 13 which was rightly applied by the Tribunal. Accordingly, while modifying the quantum under the loss of earning capacity, namely, Rs. 3,20,000 as fixed by the High Court, we restore the amount to Rs. 4,00,000 as determined by the Tribunal.

(2014)3SCC210

Sanjay Verma Vs. Haryana Roadways

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and Shiva Kirti Singh, JJ.

Brief Facts of the Case

On 12.08.1998 the Appellant-claimant was travelling from Ambala to Kurukshetra in a bus belonging to the Haryana Roadways. On the way the driver of the bus lost control over the vehicle resulting in an accident in the course of which the claimant suffered multiple injuries. According to the claimant, apart from other injuries, he had suffered a fracture of the spinal cord resulting in paralysis of his whole body. In these circumstances the claimant filed an application before the Motor Accident Claim Tribunal claiming compensation of a total sum of Rs. 53,00,000/- under different heads.

The learned Tribunal by its Award held that the accident occurred due to the rash and negligent driving of the bus and that the claimant is entitled to compensation. The total amount due to the claimant was quantified at Rs. 3,00,000/- under the heads "Loss of Income", "reimbursement of medical expenses" and "pain and suffering". The learned Tribunal also awarded interest at the rate of 9% from the date of filing of the claim application till date of payment.

The High Court in appeal enhanced the compensation to Rs. 8,08,052/-. The High Court quantified the amount due to the claimant towards "loss of income" at Rs. 6,19,500/-; Rs. 1,38,552/- on account of "medical expenses" and an amount of Rs. 50,000/- "for future treatment" and "pain and suffering". The High Court, however, reduced the interest payable to 6% per annum from the date of the filing of the application.

Decision of the Supreme Court

It is also established by the materials on record that the age of the claimant at the time of the accident was 25 years and he was married. The age of his wife was 22 years and at the time of the accident the claimant had one son who was 1 1/2 years of age. Apart from the above, from the deposition of the claimant himself (PW-2) it transpires that after the accident he is not able to do any work and "one person is always needed to look after him".

The Appellant was a self employed person. Though he had claimed a monthly income of Rs. 5,000/-, the Income Tax Returns filed by him demonstrate that he had paid income tax on an annual income of Rs. 41,300/-. No fault, therefore, can be found in the order of the High Court which proceeds on the basis that the annual income of the claimant at the time of the accident was Rs. 41,300/-.

In ***Reshma Kumari and Ors.*** v. ***Madan Mohan and Anr.*** (2013) 9 SCC 65 (para 36) reiterated the view taken in ***Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr.*** (2009) 6 SCC 121 to the effect that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances. Though the expression "exceptional and extraordinary circumstances" is not capable of any precise definition, in ***Shakti Devi*** v. ***New India Insurance Co. Limited and Anr.*** (2010) 14 SCC 575 there is a practical application of the aforesaid principle. The near certainty of the regular employment of the deceased in a government department following the retirement of his father was held to be a valid ground to compute the loss of income by taking into account the possible future earnings. The said loss of income, accordingly, was quantified at double the amount that the deceased was earning at the time of his death.

Undoubtedly, the same principle will apply for determination of loss of income on account of an accident resulting in the total disability of the victim as in the present case. Therefore, taking into account the age of the claimant (25 years) and the fact that he had a steady income, as evidenced by the income-tax returns, we are of the view that an addition of 50% to the income that the claimant was earning at the time of the accident would be justified.

Insofar as the multiplier is concerned, as held in ***Sarla Verma*** (supra) (para 42) or as prescribed under the Second Schedule to the Act, the correct multiplier in the present case cannot be 15 as held by the High Court. We are of the view that the adoption of the multiplier of 17 would be appropriate. Accordingly, taking into account the addition to the income and the higher multiplier the total amount of compensation payable to the claimant under the head "loss of income" is Rs. 10,53,150/- (Rs. 41300 + Rs. 20650= Rs. 61,950 x 17).

In so far as the medical expenses is concerned as the awarded amount of Rs. 1,38,552/- has been found payable on the basis of the bills/vouchers etc. brought on record by the claimant we will have no occasion to cause any alteration of the amount of compensation payable under the head "medical expenses". Accordingly, the finding of the High Court in this regard is maintained.

This will bring us to the grievance of the Appellant-claimant with regard to award of compensation of Rs. 50,000/- under the head "future treatment" and "pain and suffering". In view of the decisions of this Court in ***Raj Kumar*** v. ***Ajay Kumar and Anr.*** (2011) 1 SCC 343 and ***Sanjay Batham*** v. ***Munnalal Parihar and Ors.*** (2011) 10 SCC 665 there can be no manner of doubt that the above two heads of compensation are distinct and different and cannot be clubbed together. We will, therefore, have to severe the two heads which have been clubbed together by the High Court.

In so far as "future treatment" is concerned we have no doubt that the claimant will be required to take treatment from time to time even to maintain the present condition of his health. In fact, the claimant in his deposition has stated that he is undergoing treatment at the Apollo Hospital at Delhi. Though it is not beyond our powers to award compensation beyond what has been claimed [***Nagappa v. Gurudayal Singh and Ors.*** (2003) 2 SCC 274], in the facts of the present case we are of the view that the grant of full compensation, as claimed in the claim petition i.e. Rs. 3,00,000/- under the head "future treatment", would meet the ends of justice. We, therefore, order accordingly.

The claimant had claimed an amount of Rs. 20,00,000/- under the head "pain and suffering and mental agony". Considering the injuries sustained by the claimant which had left him paralyzed for life and the evidence of PW-1 to the effect that the claimant is likely to suffer considerable pain throughout his life, we are of the view that the claimant should be awarded a further sum of Rs. 3,00,000/- on account of "pain and suffering". We must, however, acknowledge that monetary compensation for pain and suffering is at best a palliative, the correct dose of which, in the last analysis, will have to be determined on a case to case basis.

In the claim petition filed before the Motor Accident Claim Tribunal the claimant has prayed for an amount of Rs. 2,00,000/- being the cost of attendant from the date of accident till he remains alive. The claimant in his deposition had stated that "he needs one person to be with him all the time". The aforesaid statement of the claimant is duly supported by the evidence of PW-1 who has described the medical condition of the claimant in detail. From the aforesaid materials, we are satisfied that the claim made on this count is justified and the amount of Rs. 2,00,000/- claimed by the claimant under the aforesaid head should be awarded in full. We order accordingly.

In view of the discussions that have preceded, we hold that the claimant is entitled to enhanced compensation as set out in the table below:

Sl. No.	Head	Amt. as per High Court (in Rs.)	Amt. as per this Court (in Rs.)
(i)	Loss of Income	6,19,500.00	10,53,150.00
(ii)	Medical Expenses	1,38,552.00	1,38,552.00
(iii)	Future Treatment		3,00,000.00
		50,000.00	
(iv)	Pain and suffering and mental agony		
(v)	Cost of attendant from the date of accident till he remains alive		2,00,000.00
	Total=	**8,08,052.00**	**19,91,702.00**

In view of the enhancement made by us, we do not consider it necessary to modify the rate of interest awarded by the High Court i.e. 6% from the date of the application i.e. 24.08.1999 to the date of payment which will also be payable on the enhanced amount of compensation.

V

Computation of Compensation in Cases of Death

2013(15)SCC603

M. Mansoor v. United India Insurance Co. Ltd.

Hon'ble Judges/Coram: G.S. Singhvi and C. Nagappan, JJ.

The questions which arise for consideration are:

1. What should be the deduction for the "personal and living expenses" of the deceased Amjath Khan Arabu to decide the question of the contribution to the parents?
2. What is the proper selection of Multiplier for deciding the claim?

Admittedly, both the parents namely the Appellants herein have been held to be dependants to the deceased and therefore, the Tribunal held that they have the right to get the compensation. The Tribunal as well as the High Court made a deduction of l/3rd only towards personal and living expenses of the deceased. The deceased being a bachelor and the claimants being parents, the deduction of 50% has to be made as personal and living expenses as per the decision of this Court in ***Sarla Verma v. Delhi Transport Corporation [****(2009)6SCC121]*.

In the decision in Sarla Verma case (supra) this Court held that the multiplier to be used should be as mentioned in column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 24 years, the multiplier of 18 ought to have been applied. The Tribunal taking into consideration the age of the deceased wrongly applied the multiplier of 17 and the High Court committed a serious error by bringing it down to the multiplier of 12.

Besides this amount the claimants are entitled to get Rs. 50,000 each towards the loss of affection of the son i.e. Rs. 1,00,000 and Rs. 10,000 on account of funeral and ritual expenses. Therefore, the total amount comes to Rs. 20,64,800 and the claimants are entitled to get the said amount of compensation instead of the amount awarded by the Tribunal and the High Court.

2013(16)SCC719

Sanobanu Nazirbhai Mirza v. Ahmedabad Municipal Transport Service

Hon'ble Judges/Coram: G.S. Singhvi and V. Gopala Gowda, JJ.

The approach of both the Tribunal as well as the High Court in taking notional income of the deceased at Rs. 15,000 per annum to which Rs. 30,000 was added and divided by 2 bringing it to a net yearly income of Rs. 22,500 which has been interfered with by the High Court by taking Rs. 15,000 as notional income on the basis of the IInd Schedule to the Section 163A of the M.V. Act is an erroneous approach to determine just and reasonable compensation in

favour of the legal representatives of the deceased who was the sole earning member of the family. It is an undisputed fact that the deceased was working as a polisher, which is a skilled job. This important aspect of the case of the Appellants was not taken into consideration by both the Tribunal as well as the High Court, thereby they have gravely erred by taking such low notional income of the deceased though there is evidence on record and the claim petition was filed Under Section 166 of the M.V. Act. The High Court taking Rs. 15,000 per annum as the notional income and deducting 1/5th towards personal expenses which would come to Rs. 12,000 is not only an erroneous approach of the High Court but is also vitiated in law. The finding of fact recorded by the Tribunal in the absence of any rebuttal evidence to show that the deceased was not working as a polisher and it is not a skilled work is also an erroneous finding for the reason that both the Tribunal and the High court have not assigned reason for not accepting the evidence on record with regard to the nature of work that was being performed by the deceased. The State Government in exercise of its statutory power Under Section 3 of the Minimum Wages Act, 1948 must issue a notification for fixing the wages of a polisher. Even in the absence of such a notification, both the Tribunal as well as the High Court should have at least taken the income of the deceased as Rs. 40,000 per annum as per the table provided in the IInd Schedule to Section 163A of the M.V. Act for the purpose of determining just, fair and reasonable compensation under the heading loss of dependency of the Appellants, though the said amount is applicable only to the claims under no fault liability. If 1/5th amount is deducted out of the above annual income the resultant multiplicand would be Rs. 32,000 per annum. Both the Tribunal and the High Court should have proceeded on the aforesaid basis and determined the compensation under the heading loss of dependency of the Appellants. In view of the aforesaid fact it would be just and proper to take a sum of Rs. 5000 as the monthly income of the deceased having regard to the nature of job that the deceased was performing as a polisher, which is a skilled job, wherein the annual income would come to Rs. 60,000.

The amount of Rs. 16,96,000 as calculated under the various heads of losses, should be awarded in favour of Appellants-claimants, though there is no specific mention regarding enhancing of compensation as in the appeal it has been basically requested by the Appellants to set aside the judgment and order passed by the High Court in the appeal filed by the Respondent. The legal principles of ***Nagappa v. Gurudayal Singh and Ors***. (2003) 2 SCC 274 at para 7, wherein with respect to the provisions of the M.V. Act, this Court has observed that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is that it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

In view of the aforesaid decision the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that

they are legally and legitimately entitled for the said claims. Accordingly compensation was awarded, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, the Supreme Court awarded just and reasonable compensation in favour of the Appellants as they filed application claiming compensation Under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the Respondent, just and reasonable compensation was determined to be a total sum of Rs. 16,96,000 with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the Appellants.

2014(6)SCALE55

Anjani Singh and Ors. Vs. Salauddin and Ors.

Hon'ble Judges/Coram: Gyan Sudha Misra and V. Gopala Gowda, JJ.

Brief Facts of the Case

The wife, children and parents of the deceased have filed a claim petition before the Motor Accident Claims Tribunal for Rs. 15,00,000/- as compensation for loss to estate of the deceased. The Tribunal held that, the deceased Sergeant Dalbir Singh died because of the accident which took place due to rash and negligent driving of Respondent No. 1 and awarded the Appellants Rs. 2,49,600/- as compensation. The Tribunal determined the dependency of Appellants as Rs. 31,000/- per annum and applied the multiplier of 8 since the deceased suffered death at the age of 35 and the age of superannuation in the Air Force is 45-50 years.

The High Court in appeal held that assessment of monthly income by the Tribunal as Rs. 4030/- is correct based on the examination of the salary certificate. The finding of the Tribunal leading to deduction of 1/3rd amount towards personal expenses was held to be erroneous. Hence, this finding was set aside and only 1/4th of the compensation was deducted towards personal expenses. The total dependency amount came up to Rs. 3,62,700/- by applying a multiplier of 10 and Rs. 2,500/- was awarded towards funeral expenses and Rs. 5,000 towards loss of consortium for the widow of the deceased. In total, a compensation of Rs. 3,70,200/- was awarded. Thus, the compensation was enhanced by Rs. 1,20,600/-, which carried an interest of 6% per annum from the date of filing of the claim till the date of payment.

The decision of the High Court was questioned by the Appellants on the ground that just and reasonable compensation was not awarded keeping in view the future prospects of income and further, correct multiplier method was not applied taking into consideration the age of the deceased at the time of death. Lastly, compensation under the conventional heads towards loss of love and affection towards the widow, children and parents of the deceased was also

not awarded. Hence, this appeal was filed by the Appellants seeking further enhancement of compensation.

Decision of the Supreme Court

The Appellants were held entitled to future prospects of income considered at the time of determination of compensation both by the Tribunal and High Court. The monthly salary of the deceased was taken as Rs. 4030/- by the Tribunal. The High Court, in view of the answer to the points raised by this Court and keeping in view the age of the deceased which was 35 years, has taken 50% of the monthly salary to arrive at the multiplicand. Therefore, towards future prospects at the rate of 50% with monthly income of Rs. 4030/- it would come to Rs. 2015/-, making the total monthly income to Rs. 6045/-. Out of Rs. 6045/-, one fourth i.e. Rs. 1511/- shall be deducted towards personal expenses of the deceased, as per the decision of this Court in ***Sarla Verma and Ors.*** *v.* ***Delhi Transport Corporation and Anr.*** (2009) 6 SCC 121 case, as the deceased has five dependents, thus the resultant figure would be Rs. 4534/- per month which after multiplying by 12 would come to Rs. 54,408/- as annual income.

The multiplier would be 16 as per the above case which would come to Rs. 8,70,528/- under the head of loss of dependency. We further award towards funeral expenses, a sum of Rs. 25,000/-, towards loss of love and affection of the children and the parents, a sum of Rs. 1,00,000/- and further, a sum of Rs. 1,00,000/- towards loss of consortium by the widow of the deceased, as per the legal principle laid down by this Court in the three judge bench decision in ***Rajesh and Ors.*** *v.* ***Rajbir Singh and Ors.*** (2013) 9 SCC 54 We also award a sum of Rs. 25,000/- for the cost of litigation as per the principle laid down by this Court in ***Balram Prasad*** *v.* ***Kunal Saha and Ors.*** (2014) 1 SCC 384 Therefore, the amount would come to Rs. 11,20,528/-. Further, the Tribunal has passed the award in the year 2000 and the Appellants have received Rs. 3,25,298/- on 22.7.2000 and Rs. 1,80,221/- on 9.3.2007. In total they have received Rs. 5,05,519/-. Now, they are entitled to the remaining amount, i.e. Rs. 6,15,009/-. This amount shall bear interest at the rate of 9% per annum following the decision of this Court in ***Municipal Corporation of Delhi, Delhi*** *v.* ***Uphaar Tragedy Victims Association and Ors.*** (2011) 14 SCC 481 from the date of application till the date of payment.

2015(4)SCALE329

Asha Verman and Ors. Vs. Maharaj Singh and Ors.

Hon'ble Judges/Coram: V. Gopala Gowda and C. Nagappan, JJ.

Facts of the Case

Jhabbu Verman, aged 35 years met with an accident when a truck which was driven rashly and negligently, collided with the back of his motorcycle. As a result of the same, Jhabbu

Verman fell towards his right and the wheel of the vehicle ran over his hands which lead to severe damage to his left hand. Due to the grievous injuries caused in the said accident, he remained under medical treatment and underwent an operation and plastic surgery twice on his chest and was advised for amputation of his left hand. However, due to the severity of injuries caused to him in the accident, Jhambu Verman died. A claim petition Under Section 166 of the Motor Vehicle Act, 1988 was filed before the Motor Accidents Claims Tribunal the wife, minor children and parents of the deceased.The Tribunal passed an Award dated 08.10.2007 by awarding a total compensation of Rs. 3,75,500 at an interest rate of 6.5% per annum to the Appellants. The High Court after examining the facts, circumstances and evidence on record enhanced the amount to a total compensation of Rs. 5,35,000 under all heads with interest at the rate of 8% per annum. The following is the breakup of compensation under various heads awarded by the High Court:

(i)	Loss of dependency	– Rs. 4,50,000/–
(ii)	Funeral Expenses	– Rs. 5,000/–
(iii)	Loss of estate	– Rs. 5,000/–
(iv)	Loss of consortium	– Rs. 5,000/–
(v)	Loss of love and affection	– Rs. 20,000/–
(vi)	Towards pecuniary Loss	– Rs. 50,000/–
	TOTAL	**– Rs. 5,35,000/–**

The Appellants filed a review petition before the High Court which was dismissed. The Appellants have challenged both the orders by filing special leave for enhancement of the compensation amount.

Decision of the Supreme Court

1. Calculation of Loss of Dependency

We are of the considered view that the courts below have erred in the calculation of loss of dependency by wrongly ascertaining the income of the deceased at the time of his death. It is clear that the deceased at the time of his death was working in the operation theatre as a technician in the permanent post at the Hospital and was earning Rs. 4,617 per month (rounded off to Rs. 4,600). On applying the principles as laid down in the case of ***Sarla Verma v. DTC*** *[(2009) 6 SCC 121]*, 50% of the salary must be added to the income of the deceased towards future prospects of income, which comes to Rs. 6,900 per month, i.e. Rs. 82,800 per annum. Deducting 1/4th for personal expenses and applying the appropriate multiplier taking into consideration the age of the deceased at the time of his death as per ***Sarla Verma*** (supra), the total loss of dependency comes to Rs. 9,93,600 [(Rs. 82,800 (-) 1/4 X Rs. 82,800/-) X 16].

2. Compensation for Medical Expenses Incurred

Rs. 1,40,000 was spent by the Appellant-wife for medical purposes of her husband (deceased) during the period of treatment before his death. Accordingly, we award an amount of Rs. 1,40,000 towards medical expenses incurred for the treatment of the deceased.

3. Compensation for Loss of Estate, Funeral Expenses and Loss of Consortium

Further, the High Court has erred in awarding only Rs. 5,000 each towards loss of estate, funeral expenses and loss of consortium. We award Rs. 1,00,000 towards loss of estate according to the principles laid down in the case of ***Kalpanaraj and Ors.*** v. ***Tamil Nadu State Transport Corporation*** [*2014 (5) SCALE 479*], Rs. 25,000 towards funeral expenses and Rs. 1,00,000 towards loss of consortium as per the principles laid down by this Court in the case of ***Rajesh and Ors.*** v. ***Rajbir Singh and Ors.*** *[(2013) 9 SCC 54.]*

4. Compensation for Loss of Affection

We award Rs. 1,00,000 each to the Appellant-children towards loss of love and affection due to the loss of their father as per the decision of this Court in the case of ***Juju Kuruvila and Ors.*** v. ***Kunjujamma Mohan and Ors.*** [(2013) 9 SCC 166]. Further, a sum of Rs. 50,000 is awarded to each of the Appellant-parents towards loss of love and affection of their deceased son as per the principles laid down by this Court in the case of ***M. Mansoor and Anr.*** v. ***United India Insurance Co. Ltd.*** [*2013 (12) SCALE 324*].

5. Rate of Interest

Further, the High Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the principles laid by this Court in the case of ***Municipal Corporation of Delhi*** v. ***Association of Victims of Uphaar Tragedy*** [*(2011) 14 SCC 481*]. We accordingly award an interest at the rate of 9% per annum on the compensation amount.

In the result, the Appellant shall be entitled to compensation under the following heads:

1.	Loss of dependency	Rs.9,93,600/-
2.	Loss of estate	Rs.1,00,000/-
3.	Loss of consortium	Rs.1,00,000/-
4.	Loss of love and affection to children	Rs.2,00,000/-
5.	Funeral expenses	Rs.25,000/-
6.	Medical expenses	Rs.1,40,000/-
7.	Loss of love and affection to parents	Rs.1,00,000/-
	TOTAL	**Rs. 16,58,600/-**

6. Division of the Compensation between the Appellants

Further, though all the Appellants are legally entitled for equal share of Rs. 1,98,720 (Rs. 9,93,600 divided by 5) each out of the compensation awarded towards loss of dependency,

however, by keeping in mind the age of the parents of the deceased and also the future educational requirements of the minor-children of the deceased, we are of the view that the parents of the deceased shall be entitled to 1 lakh each out of the total compensation amount awarded towards loss of dependency and the remaining part of their share (i.e. Rs. 98,720 each) shall be equally divided and added to the Appellant-minors' share of compensation.

Thus, the total compensation payable to the Appellants by the Respondent-Insurance Company will be Rs. 16,58,600 with interest at the rate of 9% p.a. from the date of filing of the application till the date of payment. The Respondent-Insurance Company is directed to deposit the sum payable to the Appellant-children with proportionate interest awarded by this Court in fixed deposit in any nationalised bank as per the preference of Appellant-No. 1/guardian till the Appellant Nos. 2 and 3 attain majority with the liberty to the mother/guardian to withdraw interest & such amounts for their education, development and welfare by filing the appropriate application before the Motor Accidents Claims Tribunal, Jabalpur. The Respondent-Insurance Company shall either pay the remaining compensation amount by way of demand-draft in favour of the Appellant Nos. 1, 4 and 5 or deposit the same with interest as awarded before the Motor Accidents Claims Tribunal, Jabalpur, after deducting the amount already paid to the Appellants, if any, within six weeks from the date of receipt of the copy of this judgment.

2015(4)SCALE390

Chanderi Devi and Ors. Vs. Jaspal Singh and Ors.

Hon'ble Judges/Coram: V. Gopala Gowda and C. Nagappan, JJ.

JUDGMENT

Brief Facts of the Case

Surinder Singh along with other persons was travelling in a car being driven by Jaspal Singh (Respondent No. 1) and owned by Karnail Singh (Respondent No. 2) which hit another car Surinder Singh-husband of Appellant No. 1 and father of Appellant No. 2 succumbed to his injuries. The Appellants filed a claim petition before the Tribunal, Sonepat claiming Rs. 1,00,00,000 as compensation on the ground that the deceased was 32 years of age at the time of his death, and he had been working as an Indian Cook in Moghul Tandoor Restaurant, Bruckenkopfstr, 1/2 Heidelberg, Germany and was earning Rs. 1,00,000 per month and that Rs. 1,00,000 was spent on his treatment, transportation and last rites. The Tribunal on consideration of the facts, circumstances and evidence on record, passed an award of Rs. 2,00,000 with an interest at the rate of 7.5% per annum. The High Court enhanced the compensation amount to Rs. 17,10,000.

Decision of the Supreme Court

1. Compensation for Loss of Dependency

The courts below have considered the evidence produced on record by the Appellants, particularly the passport, salary certificate, income-tax certificates and whether or not the deceased was employed in Germany at the time of the accident to ascertain the annual income of the deceased at the time of his death and the courts below found that the same cannot be assessed on the basis of the documents referred to above. The High Court found it to be just and reasonable to take the income of the deceased at the time of his death at Rs. 8,333 per month, which in our considered view is definitely on the lower side keeping in view that the deceased was employed as a cook in an Indian restaurant in Germany. At the same time, to consider the income of the deceased at Rs. 62,975 per month (i.e. 1145 Euros) as contended by the Appellants to calculate the loss of dependency of the Appellants would definitely be on the higher side. Hence, on considering the facts, circumstances of the case and plausibly estimating as to how much a cook of similar nature as the deceased would have earned in India in the year 2006, we are of the view that it would be just and reasonable for us to ascertain the income of the deceased at the time of his death at Rs. 15,000 per month. By adding 50% of the actual salary as provision for future prospects, the income of the deceased to be considered for calculation of loss of dependency is Rs. 22,500 per month i.e. Rs. 2,70,000 per annum. Deducting 10% towards income tax the net income comes to Rs. 2,43,000 per annum. Further, deducting 1/3rd towards personal expenses and applying the correct multiplier as per the legal principles laid down by this Court in the case of ***Sarla Verma*** v. ***Delhi Transport Corporation and Anr.*** [*(2009) 6 SCC 121*], the loss of dependency would come to Rs. 25,92,000 [(Rs. 2,43,000 (-) 1/3rd of Rs. 2,43,000/-) x 16].

2. **Compensation for Loss of Estate, Funeral Expenses and Loss of Consortium**

We award Rs. 1,00,000 towards loss of estate to the Appellant-wife as per the legal principles laid down by this Court in the case of ***Kalpanaraj and Ors.*** v. ***Tamil Nadu State Transport Corporation*** [*2014 (5) SCALE 479*], Rs. 25,000 towards funeral expenses and Rs. 1,00,000 towards loss of consortium to the Appellant-wife as per the principles laid down by this Court in the case of ***Rajesh and Ors.*** v. ***Rajbir Singh and Ors.*** [*(2013) 9 SCC 54*].

3. **Compensation for Loss of Love and Affection**

Further, an amount of Rs. 1,00,000 is awarded to the Appellant-minor towards loss of love and affection of her father (deceased) as per the decision of this Court in the case of ***Juju Kuruvila and Ors.*** v. ***Kunjujamma Mohan and Ors.*** MANU/SC/0615/2013 : (2013) 9 SCC 166.

In the result, the Appellants shall be entitled to compensation under the following heads:

1.	Loss of dependency	Rs.25,92,000/-
2.	Loss of estate	Rs.1,00,000/-
3.	Loss of consortium	Rs.1,00,000/-
4.	Loss of love and affection	Rs.1,00,000/-
5.	Funeral expenses	Rs.25,000/-
	TOTAL	**Rs. 29,17,000/-**

Further, an interest at the rate of 9% p.a. on the total amount of compensation awarded by this Court in this appeal as per the principles laid down by this Court in the case of ***Municipal Corporation of Delhi*** v. ***Association of Victims of Uphaar Tragedy*** [*(2011) 14 SCC 481*].

15. Accordingly, we allow this appeal and award an amount of Rs. 29,17,000 with interest @9% p.a. from the date of filing of the application till the date of payment. The Respondent-Insurance Company is directed to deposit the sum payable to the Appellant-minor with proportionate interest awarded by this Court in fixed deposit in any nationalised bank as per the preference of Appellant-No. 1/guardian till the Appellant No. 2 attains majority with the liberty to the Appellant No. 1/guardian to withdraw interest and such amount for her education, development and welfare by filing the appropriate application before the Motor Accidents Claims Tribunal. The Respondent-Insurance Company shall either pay the remaining amount of compensation with proportionate interest awarded by us by way of demand draft in favour of the Appellant No. 1 or deposit the same before the Motor Accidents Claims Tribunal, Sonepat after deducting the amount already paid to the Appellants, if any, within six weeks from the date of receipt of the copy of this judgment. No Costs.

2016(1)SCALE131

Gian Chand and Ors. Vs. Gurlabh Singh and Ors.

Hon'ble Judges/Coram: Kurian Joseph and Arun Mishra, JJ.

Determination of whether accident was caused due to rash and negligence on part of driver of offending vehicle - Whether claimants were entitled to higher compensation

Brief Facts of the Case

The claimants preferred petition under Section 166 of Motor Vehicles Act on account of death of Mulakh Raj, aged 25 years, who died in an accident involving Bus No. CH-01-G-5152. The deceased was the sole bread winner of the family, used to earn Rs. 4552 per month, was a Headmaster and in addition used to earn Rs. 1000 per month from agriculture.

The Motor Accidents Claims Tribunal came to the conclusion that accident was caused due to sudden breaking of belts of springs for which driver could not be said to be at fault. Under no fault liability a sum of Rs. 25,000 had been awarded to the claimants. The claim petition was dismissed. The High Court has affirmed the award hence the present appeal before us.

Decision of the Supreme Court

We are of the considered opinion that grave error of law has been committed while arriving at the findings as to the method and manner in which accident has taken place and as to rash and negligent driving of bus driver. There is reliable evidence adduced on behalf of the claimants that the bus was driven at high speed and it dashed firstly against the stationary tractor parked below the road and thereafter it dashed against the eucalyptus tree. The Transport Undertaking has taken totally different plea that the scooterists came from the opposite side and dashed against the driver's side of the bus which was the cause of accident. The driver has not taken the stand that any scooter was involved in the accident. The pleas taken by the driver as well as the Transport Undertaking are totally at variance. It is clear that they have not come to the tribunal with clean hands.

Even otherwise there is nothing to doubt the version of the claimants and their witnesses that the bus was driven rashly and negligently. Ram Kishan, PW-3, has clearly stated that the bus was driven rashly and it came from Nangal side and dashed the stationary tractor which was parked below the road, and thereafter the bus dashed eucalyptus tree. He has clearly stated that there were no pits around the place of occurrence. Whereas the driver Gurlabh Singh has stated that the bus jumped and owing to that belts of springs were broken, as such he lost control of the bus and it struck with the eucalyptus tree. A bare perusal of the FIR substantiates the plea of the claimants and not of the driver. Driver has not pleaded in reply that due to road condition the bus jumped all of a sudden, and has also suppressed the fact that the bus initially dashed a stationary tractor. Thus the version of the driver is not reliable.

When we come to the statement of the mechanic he has categorically stated that the belt of springs could have been broken in case brakes were suddenly applied. Thus it appears that the bus driver drove the bus rashly and negligently and initially dashed the stationary tractor and then a eucalyptus tree. In that process due to application of brakes belt of springs was broken. The plea of Transport Undertaking that a scooterist was involved in the accident is totally a false plea and is not supported by its driver. In the circumstances there is no escape from the conclusion that the bus was driven in a rash and negligent manner by its driver. Apart from that merely a mechanical failure is not enough to exonerate the Transport Undertaking from its liability in the absence of evidence being adduced that the vehicle was maintained properly.

Coming to the question of compensation to be awarded the claimants are the parents. Brothers could not be said to be dependent on the earning of the deceased. Considering the fact that the deceased was teaching in a school, in totality of facts and circumstances, it would be appropriate to award a lump sum compensation of Rs. 7,50,000/- to the parents along with

interest at the rate of 6 per cent per annum from the date of filing of claim petition till its realization.

(2015)2SCC771

Kala Devi Vs. Bhagwan Das Chauhan

Hon'ble Judges/Coram: V. Gopala Gowda and A.K. Goel, JJ.

Brief Facts of the Case

The deceased is the husband of the Appellant was travelling in a vehicle which was being driven by Respondent No. 3. The vehicle got stuck due to snow surfaced road. The deceased and few others alighted and tried to push the vehicle. In the process of pushing the vehicle, suddenly the vehicle slipped and hit the deceased and went off the road and resulted in his death.The claimants i.e. the wife, 2 minor children and mother of the deceased filed a claim petition before the Motor Accidents Claims Tribunal, Shimla (in short 'the Tribunal') claiming Rs. 12,96,000/- as compensation on the ground that the deceased was 25 years of age, a matriculate and a driver by vocation, earning Rs. 9,000/- p.m. at the time of his death.

The Tribunal took the income of the deceased at Rs. 3,000/- p.m. for the purpose of quantifying loss of dependency of the Appellants. 1/3rd of the monthly income was deducted towards personal expenses of the deceased. As the deceased was 25 years of age at the time of his death, therefore by applying the appropriate multiplier of 17, the compensation determined by the Tribunal towards the loss of dependency was arrived at Rs. 4,08,000/- (Rs. 2,000 x 12 x 17). A sum of Rs. 32,000/- was awarded towards conventional heads. Thus, a total compensation of Rs. 4,40,000/- was awarded by the Tribunal with interest at the rate of 7.5% p.a. to the Appellants.

The High Court in appeal was of the view that there was nothing to dislodge the income of the deceased as assessed by the Tribunal. However, it could not be applied for all of the forthcoming years had the deceased survived. Therefore, keeping in view the potentiality that the deceased could have had, a benefit of 40% increase in the income was given by the High Court. Thus, arriving at an income of Rs. 4,200/- p.m. and after deducting 1/3rd amount towards personal expenses, the dependency was arrived at Rs. 2,800/- p.m. (Rs. 33,600/- p.a.). The appropriate multiplier of 18 was adopted by the High Court and arrived at a loss of dependency of Rs. 6,04,800/-. It was further held that the Appellant-wife was entitled for a compensation of Rs. 30,000/- for loss of consortium and the minors were entitled to a compensation of Rs. 40,000/- for loss of love and affection. Further, the Appellants were also entitled for Rs. 25,000/- under the head of conventional charges. Thus, the total amount of compensation calculated by the High Court was Rs. 6,99,800/- with 9% interest p.a. with costs quantified at Rs. 5,000/-.

Decision of the Supreme Court

The deceased was 25 years of age at the time of death and was a matriculate, working as a driver with a valid license for driving heavy motor vehicles. A driver in Himachal Pradesh on an average earns Rs. 9,000/- p.m. as per Minimum Wages Act. Therefore, the courts below have failed to take judicial notice of the same and the fact that the post of a driver is a skilled job. Thus, considering the facts and circumstances of the case, we take the gross monthly income of the deceased at Rs. 9,000/- p.m., i.e. Rs. 1,08,000/- p.a. On deduction of 20% towards income tax, the net income comes to Rs. 86,400/- p.a. Further, deducting 1/3rd towards personal expenses and applying the appropriate multiplier of 18, the loss of dependency is calculated at Rs. 10,36,800/-.

Further, the High Court has failed in not following the principles laid down by this Court in ***Rajesh and Ors.*** *v.* ***Rajbir Singh and Ors.*** (2013) 9 SCC 54 and erred in awarding a meagre sum of just Rs. 30,000/- under the head of loss of consortium, Rs. 40,000/- towards loss of love and affection. Accordingly, we award Rs. 1,00,000/- towards loss of consortium, Rs. 25,000/- towards funeral expenses and Rs. 1,00,000/- to each minor child of the deceased (i.e. Rs. 2,00,000/-) towards loss of love and affection as per the guidelines laid down by this Court in ***Juju Kuruvila and Ors.*** *v.* ***Kunjujamma Mohan and Ors.*** (2013) 9 SCC 166.

The High Court has further erred by not awarding compensation towards loss of estate to the Appellant-wife. We accordingly award Rs. 1,00,000/- towards the same, as per the principles laid down by this Court in ***Kalpanaraj and Ors.*** *v.* ***Tamil Nadu State Transport Corporation*** 2014 (5) SCALE 479.

In the result, the Appellants shall be entitled to compensation under the following heads:

1.	Loss of dependency	Rs. 10,36,800/-
2.	Loss of Consortium	Rs. 1,00,000/-
3.	Loss of Estate	Rs. 1,00,000/-
4.	Loss of love and affection	Rs. 2,00,000/-
5.	Funeral expenses	Rs. 25,000/-
	TOTAL	**Rs. 14,61,800/-**

Thus, the total compensation payable to the Appellants by the Respondent-Insurance Company will be Rs. 14,61,800/- with interest at the rate of 9% p.a. from the date of filing of the application till the date of payment. Accordingly, we allow this appeal in awarding Rs. 14,61,800/- with interest @9% p.a.

(2015)2SCC764

Kalpanaraj and Ors. Vs. Tamil Nadu State Transport Corpn.

Hon'ble Judges/Coram: Gyan Sudha Misra and V. Gopala Gowda, JJ.

Brief Facts of the Case

The deceased, while going on his motorcycle from Vellore to Kannamangalam, collided with the bus of the Respondent-Corporation as a result of which he sustained fatal injuries and died on the spot. The legal representatives of the deceased viz., his wife and two minor children filed M.C.O.P. No. 539 of 1994 contending that the accident occurred solely because of the rash and negligent driving of the bus of the Respondent-Corporation. If the driver of the bus had driven the bus with carefulness, there might have been no possibility of dragging the deceased along with the motorcycle for a distant of 120 feet. The Appellants-claimants claimed an amount of Rs. 20 lakhs compensation for the death caused by the Respondent.

The Tribunal, after considering the material evidence on record of P.W. 1 and P.W. 2 and R.W.1 and the ten exhibits filed on behalf of the Appellant-claimants, found that the accident has occurred only due to rash and negligent driving of the driver of the bus of the Respondent-Corporation. Therefore, the learned judge, holding the monthly income at Rs. 15,000/- and adopting the multiplier of 18, determined a sum of Rs. 32,40,000/- as compensation. However, he restricted the sum of compensation to Rs. 20,90,000/-, since that was the amount claimed by the Appellants-claimants. The Tribunal further awarded interest @12% per annum on the said amount.

The High Court opined that the Tribunal erred in relying upon the statement of evidence of the wife of the deceased to determine the monthly income of the deceased at Rs. 15,000/- instead of relying upon the income shown in the Income Tax return. Further, the High Court opined that the Tribunal erred in not deducting 1/3rd for personal expenses of the deceased. Further, according to the High Court, the Tribunal erred in determining the multiplier of 18 instead of 13 considering the age of the deceased which was 46 at the time of the accident.

The monthly income of the deceased is therefore taken as Rs. 3,115/- per month for computation of the multiplicand on the basis of net average income of the deceased calculated as per the income tax return produced as evidence on record. Therefore, the compensation determined under the head of loss of income under the head of 'loss of income' of the deceased was determined by the High Court at 4,86,000/-. Further, the High Court has reduced compensation under the head of funeral expenses from Rs. 25,000/- to Rs. 10,000/-. The Tribunal awarded a consolidated amount for loss of love and affection by the children, loss of income and loss of consortium by the wife at Rs. 19,55,000/-. The High Court reduced the compensation under the head of 'loss of love and affection' by the minor children at Rs. 20,000/- each. Also, the amount awarded towards loss of consortium to the wife was reduced by the High Court to Rs. 30,000/-. Therefore, in total, the High Court awarded a total amount of Rs. 5,76,000/- as compensation to the Appellants-claimants. The interest rate was also reduced to 9% per annum by the High Court from 12% awarded by the Tribunal.

Decision of the Supreme Court

It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return. However, the High Court erred in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating compensation. In the light of the principle laid down by this Court in the case of ***National Insurance Co. Ltd. v. Indira Srivastava and Ors.*** (2008) 2 SCC 763 we are of the opinion that the High Court erred in making deductions under various heads to arrive at the net income instead of ascertaining the gross income of the deceased out of the annual income earned from his occupation mentioned in the income tax return submitted for the relevant financial year 1994-1995.

As per the Income Tax return of the financial year 1994-1995 produced on record, the deceased was earning Rs. 88,660/- per annum or Rs. 7330/- per month. Further, the deceased being 46 years of age at the time of death, he is entitled to 30% increase in the future prospects of income as per the legal principle laid down by this Court in ***Santosh Devi v. National Insurance Co. Ltd. and Ors.*** (2012) 6 SCC 421. Also, since the deceased was 46 years of age at the time of the accident, a multiplier of 13 seems appropriate for determining the quantum of compensation as per the principle laid down by this Court in the case of ***Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.*** (2009) 6 SCC 121. Therefore, the total amount of compensation the Appellants-claimants are entitled to under the head of loss of income is:

[(Rs. 7330+30/100 x Rs. 7330) x 12 x 13] = Rs. 14,86,524/-.]

Further, since the deceased has left behind his wife and two children, the amount to be deducted under the head of personal expenses is 1/3rd of the total income in the light of the principle laid down in ***Sarla Verma*** case (supra) which was reiterated in ***Santosh Devi*** case (supra). Therefore, the amount to be awarded as compensation to the Appellant is = (Rs. 14,86,524/- - 1/3 x Rs. 14,86,524/-) = Rs. 9,91,016/-.

The Appellant-claimants sought an amount of Rs. 10,000/- towards damage to the motorcycle. Since, the claim has neither been rebutted with evidence by the Respondent, we grant compensation of Rs. 10,000/- towards the damage caused to the bike.

Further, the High Court awarded a sum of Rs. 30,000/- towards loss of consortium and Rs. 20,000/- each towards loss of love and affection by the minor children. This amount awarded by the High Court is on the lower side in the light of the principle laid down in ***Rajesh and Ors. v. Rajbir Singh and Ors.*** (2013) 9 SCC 54 wherein the Court awarded 1,00,000/- towards loss of consortium and 1,00,000/- towards loss of care and guidance to the minor children. Accordingly, we award a compensation of 1,00,000/- each towards loss of consortium and towards loss of love and affection.

Apart from this, we award Rs. 1,00,000/- towards loss of estate and Rs. 1,00,000/- towards loss of expectation of the life of the deceased. We also award a sum of Rs. 50,000/- for funeral expenses and cost of litigation. Therefore, a total sum of 14,51,016/- which is rounded off at Rs. 14,51,000/- is awarded to the Appellants-claimants.

Further, the High Court has awarded the compensation with interest @9% per annum. We concur with this holding of the High Court in the light of the decision of this Court in ***Municipal Corporation of Delhi, Delhi*** *v.* ***Uphaar Tragedy Victims Association and Ors.*** (2011) 14 SCC 481 Accordingly, we award an interest @ 9% per annum on the compensation to be awarded to the Appellants-claimants. The compensation awarded shall be apportioned between the Appellants equally with proportionate interest.

2015(12)SCALE49

Kamlesh and Ors. Vs. Attar Singh and Ors.

Hon'ble Judges/Coram: H.L. Dattu, C.J.I. and Arun Mishra, J.

Brief Facts of the Case

The claimants, widow of deceased, three minor sons and mother of the deceased filed a claim petition as against the driver, owner and insurer of Maruti Car and driver of three wheeler tempo. The compensation of Rs. 12 lakhs was prayed on account of the death of the deceased in the accident caused due to the collision between Maruti car and tempo. Maruti car was driven by Respondent No. 1 whereas the tempo was driven by Respondent No. 4. Deceased was travelling in the tempo towards village. Respondent No. 4 was driving the tempo on his right side at a normal speed in due observance of the traffic rules. Maruti car came from the opposite side and struck the tempo in between near footstep as a result of which deceased received injuries and succumbed to them on the way to the hospital. Police, on due investigation, found that Respondent No. 4 was negligent and chargesheet was filed against him. A criminal complaint has been filed by Respondent No. 4 against Respondent No. 1, driver of Maruti car before Additional Chief Judicial Magistrate for rash and negligent driving.

The Tribunal found that Respondent No. 4, driver of the tempo, was negligent and determined the quantum of compensation at Rs. 5,81,000/- with interest at the rate of 6% per annum from the date of filing application, liability to pay the same has been fastened upon Respondent No. 4. Aggrieved, Respondent No. 4 preferred appeal before High Court. The High Court, on the ground that in claim petition the negligence of Respondent No. 4 has not been pleaded and the claimants have relied upon the evidence of PW 2 and PW 3 to prove the negligence of the driver of Maruti car; whereas the driver of Maruti car had lodged the first information report. The High Court allowed the appeal filed by Respondent No. 4 and

dismissed the claims petition. Aggrieved thereby, the present appeal has been preferred by the claimants.

Decision of the Supreme Court

The method and manner in which the accident has taken place leaves no room for doubt that it was a case of composite negligence of drivers of both the vehicles, i.e.the driver of Maruti car and driver of tempo. Though Police has registered a case against driver of the tempo and has filed a chargesheet but the same cannot be said to be conclusive. Though, Respondent No. 4, Attar Singh has stated that it was in order to oblige the driver of the Maruti car, a case was registered against him. Be that as it may. It appears both the drivers have tried to save their liability. In such circumstances, the version of eyewitnesses, PW. 2 and PW. 3 assumes significance. The fact remains that car had dashed the tempo on the middle portion near footstep. Thus the method and manner in which the accident has taken place leaves no room for doubt that both the drivers were negligent.

Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. No effort has been made by the High Court to appreciate the evidence and method and manner in which the accident has taken place. Both the aforesaid witnesses have stated Maruti Car was in excessive speed. However, it appears driver of tempo also could not remove his vehicle from the way of Maruti Car. Thus, both the drivers were clearly negligent. It appears from the facts and circumstances that both the drivers were equally responsible for the accident. Thus, it was a case of composite negligence. Both the drivers were joint 'tort-feasors', thus, liable to make payment of compensation.

The amount determined/awarded by the Claims Tribunal was Rs. 5,81,000/- along with 6 per cent interest from the date of filing of the petition till the date of realization of the amount is upheld as no appeal for its enhancement was filed before the High Court by the claimants. It would be open to the claimants to recover the entire amount from any of the Respondents, that is from owner, driver and insurer of the Maruti car or Respondent No. 4, driver of the tempo as their liability is joint and several with respect to claimants. It would be open to the Respondents to settle their inter se liability as per the aforesaid decision of this Court. Appeal is allowed.

2015(1)SCALE366

Kanhsingh Vs. Tukaram

Hon'ble Judges/Coram: V. Gopala Gowda and C. Nagappan, JJ.

Brief Facts of the Case

Deependra Singh Chouhan, son of the Appellants herein, aged 27 years met with an accident when his motor cycle was hit by a tanker Deependra Singh succumbed to his injuries during the course of treatment. The claimant-Appellants, parents of the deceased filed a claim petition before the Motor Accidents Claims Tribunal under Section 166 of the M.V. Act, 1988, for a compensation of Rs. 27,85,000. The Tribunal by its judgment and award partly allowed the Claim Petition by awarding a total sum of Rs. 12,10,014.

Being aggrieved by the judgment and award passed by the Tribunal, the Appellants filed Miscellaneous Appeal No. 2918 of 2009 before the High Court of Madhya Pradesh at Indore. The High Court by its judgment and award dated 23.07.2012 partly allowed the said appeal and disposed of the same with an enhancement of Rs. 2,00,000/-. Hence, this appeal.

Decision of the Supreme Court

In our considered view, the courts below have erred in taking the monthly income of the deceased at Rs. 11,146 p.m. From the facts, circumstances and evidence on record, it is clear that the deceased was 27 years of age, working with HDFC as the Manager earning Rs. 1,81,860 per annum (i.e. Rs. 15,155/- p.m.) and there were definite chances of his further promotion and consequent increase in salary by way of periodical revision of the salary on the basis of cost of living Index prevalent in the area if he would alive and worked in the bank. Therefore, adding 50% under the head of future prospects to the annual income of the deceased according to the principle laid down in the case of ***Vimal Kanwar and Ors.*** *v.* ***Kishore Dan and Ors.*** [*(2013) 7 SCC 476*], the total loss of income comes to Rs. 2,72,790/- per annum [Rs. 1,81,860 + (1/2 * Rs. 1,81,860)]. Deducting 10% tax (Rs. 27,279/-), net annual income comes to Rs. 2,45,511/-. Deducting 1/3rd [Rs. 81,837] towards personal expenses since the claimants are the parents of the deceased, loss of dependency comes to 1,63,674 X 11 (appropriate multiplier as per the age of the parent) Rs. 18,00,414/-.

The Tribunal and the High Court have further erred in law in awarding only Rs. 2,000/- towards funeral expenses instead of Rs. 25,000/- according to the principles laid down by this Court in ***Rajesh and Ors.*** *v.* ***Rajbir Singh and Ors.*** [*(2013) 9 SCC 54*]. Hence, we award Rs. 25,000/- towards the same. Further, the Tribunal and the High Court have erred in not following the principles laid down by this Court in ***M. Mansoor and Anr.*** *v.* ***United India Insurance Co. Ltd.*** [*2013 (12) SCALE 324*] in awarding a meagre sum of just Rs. 30,000/- under the heads of loss of love and affection. Accordingly, we award Rs. 1,00,000/- to the Appellants towards the same. Further, we award Rs. 5,00,190/- towards medical expenses incurred towards medical treatment.

In the result, the Appellants shall be entitled to compensation under the following heads:

1.	Loss of dependency	Rs.18,00,414/-
2.	Loss of love and affection	Rs.1,00,000/-
3.	Funeral expenses	Rs.25,000/-
4.	Medical expenses	Rs.5,00,190/-
	TOTAL	**Rs.24,25,604/-**

The Courts below have erred in not granting the interest on compensation at the rate of 9% p.a. as per the principles laid down in the case of ***Municipal Corporation of Delhi*** *v.* ***Association of Victims of Uphaar Tragedy*** [*(2011) 14 SCC 481*]. The total compensation payable to the Appellants by the Respondent-Insurance Company will be Rs. 24,25,604/- with interest at the rate of 9% p.a. from the date of filing of the application till the date of payment to the Appellants.

2014(5)SCALE520

Manasvi Jain Vs. Delhi Transport Corporation

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and N.V. Ramana, JJ.

Brief Facts of the Case

The Appellant-claimant is the son of deceased Suresh Chandra Jain who died in a road accident. He filed a claim petition before the Motor Accidents Claim Tribunal, Dehradun seeking compensation of an amount of Rs. 36,00,000/- on the basis that the deceased who was aged 55 years on the date of accident, was working as Executive Engineer with the Public Works Department of the Government of Uttarakhand and was earning a salary of Rs. 26,950/- per month.

The Tribunal came to the conclusion that the accident took place due to rash and negligent driving of the bus driver--Respondent No. 2 and as such, the Appellant is entitled for compensation. According to the original salary certificate of the deceased issued by the Executive Engineer, Public Works Department, Uttarakhand, the gross salary of the deceased was found to be Rs. 26,950/- and after various deductions towards GPF, House Rent, GIS and Income Tax, the take home salary was determined as Rs. 15,784/- p.m. The Tribunal considering the fact that the deceased was 55 years old, as evidenced by the documentary evidence, applied the multiplier 8. Thus, taking into consideration his age and monthly salary at Rs. 15,784/-, the Tribunal calculated the loss of dependency as Rs. 10,10,176/- (2/3rd of Rs. 15,784 x 12 x 8). In addition to that Rs. 5,000/- was granted towards funeral expenses and Rs. 10,000/- towards mental agony and finally awarded Rs. 10,25,176/- as compensation with interest payable @ 5% p.a. from the date of institution of claim petition till the date of payment. The Tribunal also fastened the liability of making payment of compensation on the

Delhi Transport Corporation-Respondent No. 1 as the bus which caused accident belongs to them.

The High Court was of the view that the amount awarded by the Tribunal as compensation was perfectly justified. It accordingly dismissed the Appellant's appeal.

Decision of the Supreme Court

It is not in dispute that the deceased was getting an amount of Rs. 26,924/- as monthly salary and Rs. 11,140/- was being deducted under various heads such as GPF, House Rent, G.I.S. and Income Tax. After taking into account these deductions, the tribunal arrived at a conclusion that the net salary of the deceased is Rs. 15,784/- and awarded a total compensation of Rs. 10,25,176/-, including Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards mental agony. The High Court did not interfere with the judgment of the Tribunal.

This Court in ***Shyamwati Sharma and Ors.*** **v.** ***Karam Singh and Ors.***(2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "***while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.***

In the present case, there is no dispute about of the salary of the deceased. As per salary certificate, his monthly income and deductions are as under:

Monthly Income	Rs. 26950-00
Deductions	
Provident Fund	8,000-00
House rent	525-00
GIS	120-00
Income Tax	2500-00

So, from the above table, it is clear that except an amount of Rs. 2,500/- towards Income Tax, rest of the amounts were voluntarily contributed by the deceased for the welfare of his family. Considering the decision of this Court in ***Shyamwati Sharma and Ors.,*** (supra), in our opinion, except contribution towards Income Tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary. Hence, the take home salary of the deceased comes to Rs. 24,450/- which can be rounded to Rs. 25,000/-. Accordingly, we determine the monthly take home salary of the deceased as Rs. 25,000/-. Applying multiplier 8, the Appellant is entitled to the compensation as under:

Financial Loss 2/3rd of 25,000 x 12 x 8	Rs. 16,00000-00
Funeral Expense	Rs. 5,000-00
Towards Mental Agony	Rs. 10,000-00
Total Compensation	Rs. 16,15,000-00

The Appellant is also entitled to an interest @ 6% p.a. from the date of filing of the petition before the Tribunal till the date of payment.

(2014)3SCC394

Montford Brothers of St. Gabriel and Anr. Vs. United India Insurance and Anr. etc.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and Shiva Kirti Singh, JJ.

Brief Facts of the Case

The Appellant No. 1 is a charitable society registered under the Societies Registration Act, 1960. It runs various institutions as a constituent unit of Catholic Church. It is running various orphanages, industrial schools and other social service activities besides number of educational schools/institutions. Its members after joining the Appellant society renounce the world and are known as "Brother". Such a 'Brother' severs his all relations with the natural family and is bound by the constitution of the society which includes Article 60 which states that whatever the 'Brother' receives by way of salary, subsidies, gifts, pension or from insurance or other such benefits belongs to the community as by right and goes into the common purse. Appellant No. 2 is Principal of St. Paul's Higher Secondary School, Aizawl, Mizoram and represents Appellant No. 1 as well.

One 'Brother' of the Society, namely, Alex Chandy Thomas was a Director-cum-Head master of St. Peter High School and he died in a motor accident on 22.06.1992. The accident was between a Jeep driven by the deceased and a Maruti Gypsy covered by insurance policy issued by the Respondent Insurance Company. At the time of death the deceased was aged 34 years and was drawing monthly salary of Rs. 4,190/-. The claim petition bearing No. 55 of 1992 was filed before M.A.C.T., Aizawl by Appellant No. 2 on being duly authorized by the Appellant No. 1 the society. The owner of the Gypsy vehicle discussed in his written statement that vehicle was duly insured and hence liability, if any, was upon the Insurance Company.

The Tribunal awarded a compensation of Rs. 2,52,000/- in favour of the claimant and against the opposite parties with a direction to the insurer to deposit Rs. 2,27,000/- with the Tribunal as Rs. 25,000/- had already been deposited as interim compensation. The Tribunal also

permitted interest at the rate of 12% per annum, but from the date of judgment dated 14.07.1994 passed in MACT case Nos. 55 and 82 of 1992.

The Respondent-Company preferred a writ petition under Article 226 of the Constitution of India before the Gauhati High Court and by the impugned order under appeal dated 20.08.2002, the High Court allowed the aforesaid writ petition (C) No. 20 of 2002 ex-parte, and held the judgment and order of the learned Tribunal to be invalid and incompetent being in favour of person/persons who according to the High court were not competent to claim compensation under the Motor Vehicle Act.

Decision of the Supreme Court

In case of death of a person in a motor vehicle accident, right is available to a legal representative of the deceased or the agent of the legal representative to lodge a claim for compensation under the provisions of the Act. The issue as to who is a legal representative or its agent is basically an issue of fact and may be decided one way or the other dependent upon the facts of a particular case. But as a legal proposition it is undeniable that a person claiming to be a legal representative has the locus to maintain an application for compensation under Section 166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue.

Further, proceeding before the Motor Vehicle Claims Tribunal is a summary proceeding and unless there is evidence in support of such pleading that the claimant is not a legal representative and therefore the claim petition be dismissed as not maintainable, no such plea can be raised at a subsequent stage and that also through a writ petition**.**

A perusal of the judgment and order of the Tribunal discloses that although issue No. 1 was not pressed and hence decided in favour of the claimants/Appellants, while considering the quantum of compensation for the claimants the Tribunal adopted a very cautious approach and framed a question for itself as to what should be the criterion for assessing compensation in such case where the deceased was a Roman Catholic and joined the church services after denouncing his family, and as such having no actual dependants or earning? For answering this issue the Tribunal relied not only upon judgments of American and English Courts but also upon Indian judgments for coming to the conclusion that even a religious order or organization may suffer considerable loss due to death of a voluntary worker. The Tribunal also went on to decide who should be entitled for compensation as legal representative of the deceased and for that purpose it relied upon the Full Bench judgment of Patna High Court reported in AIR 1987 Pat. 239, which held that the term 'legal representative' is wide enough to include even "intermeddlers" with the estate of a deceased. The Tribunal also referred to some Indian judgments in which it was held that successors to the trusteeship and trust property are legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure.

In the light of the aforesaid discussions, we have no hesitation in holding that the High Court erred in law in setting aside the judgment of the learned Tribunal by ignoring the fact that the Respondent-Insurance Company had not pressed issue No. 1 nor it had pleaded and led evidence in respect to the said issue. The Court explained that the Appellants were the legal representatives of the deceased. Such an issue of facts could not be decided by the High Court for the first time in a writ petition which could only be entertained under Article 227 of the Constitution for limited purpose. Accordingly, orders of the High Court are set aside and the judgment and order of the Tribunal is restored.

(2015)6SCC347

Munna Lal Jain and Ors. Vs. Vipin Kumar Sharma and Ors.

Hon'ble Judges/Coram: Anil R. Dave, Madan B. Lokur and Kurian Joseph, JJ.

Brief Facts of the Case

The Appellants are the parents of late Satendra Kumar Jain, a self-employed bachelor aged 30 years, who died in a motor accident. The Appellants claimed an amount of Rs. 95,50,000.00. The Claims Tribunal awarded a total compensation of Rs. 6,59,000.00 including loss of dependency to the tune of Rs. 6,24,000.00 with interest @ 7.5 per cent from the date of institution of the petition. Dissatisfied, Appellants approached the High Court of Delhi in MAC APP. 687/2011 leading to the impugned judgment. The High Court enhanced the compensation and fixed it at Rs. 12,61,800.00 with interest as ordered by the Claims Tribunal. The High Court fixed the monthly income to Rs. 12,000.00 and added 30% towards future prospects relying on ***Santosh Devi v. National Insurance Co. Limited*** (2012) 6 SCC 421. 50% was deducted towards personal expenditure and a multiplier of 13 was applied.

Decision of the Supreme Court

In the absence of any statutory and a straight jacket formula, there are bound to be grey areas despite several attempts made by this Court to lay down the guidelines. Compensation would basically depend on the evidence available in a case and the formulas shown by the courts are only guidelines for the computation of the compensation. That precisely is the reason the courts lodge a caveat stating "ordinarily", "normally", "exceptional circumstances", etc., while suggesting the formula. In the case before us, there are no such exceptional circumstances or compelling reasons for deviation on the basis of evidence and therefore deduction of 50% towards the personal and living expenses is not to be disturbed.

As far as future prospects are concerned, in ***Rajesh and Ors. v. Rajbir Singh and Ors.*** (2013) 9 SCC 54, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income

of the deceased while computing future prospects. The deceased being of the age of 30 years, 50% is the required addition.

The remaining question is only on multiplier. The High Court following ***Santosh Devi*** (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in ***Reshma Kumari.*** It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken.

The multiplier, in the case of the age of the deceased between 26 to 30 years is 17. There is no dispute or grievance on fixation of monthly income as Rs. 12,000.00 by the High Court.

Thus, the Appellants are entitled to compensation of Rs. 18,36,000.00 towards loss of dependency, which is calculated as follows-

CALCULATION	TOTAL (IN RS.)
→ Rs.12,000/- (Monthly Income) add [50% of Rs.12,000/-(Future Prospects)] =	18,000.00
→ 50% of [Rs.18,000/- (Deductions)] =	9,000.00
→ [Rs.9,000/-] multiply by [12(Annual Income)] =	1,08,000.00
→ [Rs.1,08,000/-] multiply by [17(Multiplier)] =	**18,36,000.00**

There shall be no change on the amounts awarded by the High Court on other heads or on rate of interest.

(2015)9SCC166

National Insurance Co. Ltd. Vs. Pushpa

Hon'ble Judges/Coram: Dipak Misra and V. Gopala Gowda, JJ.

The Respondent Nos. 1 to 7, the legal heirs of deceased, Kamalesh Mewada, filed a claim petition MACP No. 194 of 2010 before the MACT, Kekri Ajmer, Rajasthan, Under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation amounting to Rs. 1,55,55,000/- along with interest at the rate of 12% per annum from the date of filing of the claim petition. On the basis of evidence brought on record the tribunal awarded a sum of Rs. 27,35,744/- with 6% interest payable jointly and severally by the owner, driver and the insurer.

As is evincible from the award passed by the tribunal, the aforesaid amount was determined as compensation on the basis that the deceased was aged about thirty years and his income was Rs. 13,300/- per month. The tribunal added 30% towards future prospects by placing reliance on the decision in ***Santosh Devi v. National Insurance Co. Limited and Ors.*** (2012) 6 SCC 421.

The High Court found that there is some contradiction in the decision in ***Rajesh and Ors. v. Rajbir Singh and Ors*** (2013) 9 SCC 54 and ***Reshma Kumari and Ors. v. Madan Mohan and Anr.*** (2013) 9 SCC 65 and thereafter, observed as follows:

> *The learned Counsel for the Appellant has also relied on the case of Union of India and Ors. v. S.K. Kapoor [MANU/SC/0246/2011 : (2011) 4 SCC 589] wherein the Hon'ble Supreme Court has expressed its opinion that in case a latter Bench of equal strength does not agree with the decision of a former bench, the proper course would be for the subsequent Bench to refer the case to a Larger Bench. There can be no issue about the Principle laid down by the Hon'ble Supreme Court on this point. However, simultaneously the rule of precedent are also a life to the fact that, at times, the proper course may not be followed by the court of laws. In order to meet out such an eventuality, the rule is that the latter judgment should followed in case the former and the latter benches are of equal strength. Thus, this Court has no option but to follow the judgment and the opinion expressed by the Hon'ble Supreme Court in the case of Rajesh and Ors. (supra).*

The High Court concurred with the opinion expressed by the tribunal pertaining to grant of benefit in respect of addition of income for future prospects. Needless to say, the other contentions raised by the insurer were rejected.

Decision of the Supreme Court

In the case of ***Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr.*** (2009) 6 SCC 121, this Court, while dealing with the issue of addition of income for future prospects, took note of the decisions in ***Kerala SRTC v. Susamma Thomas*** (1994) 2 SCC 176, ***Sarla Dixit v. Balwant Yadav*** (1996) 3 SCC 179 and ***Abati Bezbaruah v. Geological Survey of India*** (2003) 2 SCC 148 and in paragraph 24 opined thus:

> *24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the*

age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

In ***Santosh Devi*** (supra), the Court, while dealing with the contention of addition of income for the future prospects to a case where the deceased was neither a Government servant nor was a permanent employee of a corporation or a company which may have ensured increase in his income from time to time, referred to paragraph 24 of the judgment in ***Sarla Verma*** (supra) and stated thus:

We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Sarla Verma case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

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 in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it

cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.

18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation.

In ***Rajesh*** (supra), a three-Judge Bench, delivered the judgment on April 12, 2013, opining thus:

8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In Sarla Verma case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

In ***Reshma Kumari*** (supra) which was decided on April 2, 2013, the three-Judge Bench was dealing with the reference made by the two-Judge Bench, and one of the questions that was referred to it reads as follows:

Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospects?

While answering the same, the Court referred to paragraph 24 of Sarla Verma's case and held thus:

39. *The standardisation of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases. xxx xxx xxx*

43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in Sarla Verma.

Be it noted, though the decision in Reshma (supra) was rendered at earlier point of time, as is clear, the same has not been noticed in Rajesh (supra) and that is why divergent opinions have been expressed. We are of the considered opinion that as regards the manner of addition of income for future prospects there should be an authoritative pronouncement. Therefore, we think it appropriate to refer the matter to a larger Bench. Let the papers be placed before the Hon'ble the Chief Justice of India for constitution of appropriate larger Bench.

2014(5)SCALE522

Ramilaben Chinubhai Parmar and Ors. Vs. National Insurance Co. and Ors.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and N.V. Ramana, JJ.

Brief Facts of the Case

The Appellants herein are the claimants who filed a petition before the Motor Accident Claims Tribunal, Ahmedabad claiming an amount of Rs. 40.00 lakhs as compensation on the ground that the sole breadwinner of their family, who was 46 years old, had died in a road accident. The Tribunal, relying upon the oral as well as documentary evidence, took the income of the deceased at Rs. 15,000/- p.m. and considering his age at 46, applied the

multiplier 12. In addition to that, the Tribunal granted Rs. 50,000/- as conventional amount, and finally awarded Rs. 22,10,000/- as compensation to the Appellants with interest @ 9% p.a.

The High Court determined the net salary of the deceased as Rs. 14,000/- p.m. by applying the multiplier 8, arrived at the compensation towards loss of dependency as Rs. 13,44,000/-. It further added Rs. 25,000/- for loss of estate and Rs. 15,000/- for loss of consortium to the widow of the deceased and Rs. 5,000/- towards funeral expenses. The High Court, thus, in all, awarded a total amount of Rs. 13,90,000/- as compensation with 7.5% interest. Thus, the High Court by the impugned order reduced the compensation from Rs. 22,10,000/- to Rs. 13,90,000/- and reduced the rate of interest from 9% p.a. to 7.5% p.a.

Decision of the Supreme Court

It is evident from the order of the Tribunal as well as Salary Certificate filed as (Annexure P-2) the deceased was getting a gross salary of Rs. 14,103.77 ps. p.m. apart from benefits like GPF, D.A., and other allowances. It is also stated therein that the deceased was having another 12 years of service and there is a chance of revision of pay scales and getting one more promotion. Taking all these into consideration, the Tribunal arrived at a conclusion that the salary of the deceased would be Rs. 35,000/- p.m. at the time of his retirement and Rs. 25,000/- p.m. as his potential earning capacity on the date of his death. After deducting Rs. 10,000/- towards personal expenses, his liability towards taxation etc., the net contribution of the deceased towards his dependents was arrived at Rs. 15,000/- p.m., applied the multiplier 12 taking into consideration the age of the deceased and finally awarded an amount of Rs. 22,10,000/- as total compensation payable with interest @ 9% p.a. The High Court without properly appreciating the factum of the young age of the deceased and without taking future prospects of the deceased into consideration has reduced the compensation from Rs. 22,10,000/- to Rs. 13,90,000/- and the rate of interest from 9% p.a. to 7.5% p.a.

Even though we are not convinced with the calculation and reasoning given by the Tribunal, but keeping in view the peculiar facts and circumstances of the case, where the deceased died at an early age of 46 years, had 12 more years of service, would have got promotions, resulting in hike in his pay and emoluments, we feel that ends of justice would be met if the potential earning capacity of the deceased is fixed at Rs. 30,000/- p.m. Accordingly, we fix the potential earning capacity of the deceased per month at Rs. 30,000/- instead of Rs. 25,000/- as fixed by the Tribunal. After deducting 1/3rd portion from Rs. 30,000/- towards personal expenses, the dependency benefit for the Appellants would come to Rs. 20,000/- and the multiplier applicable is 12 taking into consideration the age of the deceased. Accordingly, the loss of dependency is fixed at Rs. 20,000 x 12 x 12 = Rs. 28,80,000/-. In addition to that, the Appellants are entitled to Rs. 50,000/- as conventional amount as granted by the Tribunal. Thus, the Appellants would be entitled to a total compensation of Rs. 29,30,000/- with interest @ 7.5% p.a.

2014(9)SCALE431

Saraladevi Vs. Divisional Manager, Royal Sundaram Alliance Ins. Co. Ltd.

Hon'ble Judges/Coram: Dipak Misra and V. Gopala Gowda, JJ.

Brief Facts of the Case

The deceased met with an accident on account of rash and negligent driving of the motor vehicle, which hit the back side of the deceased's motor cycle. The deceased sustained grievous injuries and succumbed to the same.

The Appellants - the widow, two daughters and bedridden aged mother of the deceased-Vasanthan approached the Motor Accidents Claims Tribunal, Vellore by filing claim petition Under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 45,00,000/- on account of death of their sole bread earner, against the owner as well as the insurer of the vehicle.

The Tribunal came to the right conclusion and held that the accident occurred due to the negligence of the driver of the offending vehicle. Thereafter, on the basis of legal evidence on record the MACT determined the quantum of compensation. For this purpose, the Tribunal has taken the monthly salary of the deceased at Rs. 50,809/- as per the salary certificate. Therefore, his annual income was fixed at Rs. 6,09,708/-. The deceased was aged 58 years at the time of the accident and the Tribunal has taken the multiplier as 8. Therefore, the total loss of income of the deceased would be Rs. 48,77,664/-. 1/4th of this amount i.e. Rs. 12,19,416/- was deducted towards his personal expenses as his dependents are four in number. Hence, the loss of dependency of the Appellants was calculated at Rs. 36,58,248/-. For funeral expenses, a sum of Rs. 5,000/- was awarded. For loss of estate Rs. 10,000/- and for loss of consortium to the 1st Appellant, a sum of Rs. 10,000/- was granted. For loss of love and affection, a sum of Rs. 50,000/- was granted to the Appellants. Thus, the Tribunal has assessed the total compensation under different heads as mentioned above and passed an award for a sum of Rs. 37,33,248/- to the Appellants with interest @ 7.5% from the date of petition i.e. 08.06.2009 and further directed the Insurance Company to pay the said amount by indemnifying the owner of the vehicle as the same was insured with it.

The High Court, after examining the facts, evidence and circumstances of the case, has held that as per the judgment in ***Sarla Verma and Ors.*** *v.* ***Delhi Transport Corporation and Anr.*** *(2009) 6 SCC 121* the correct multiplier between the age group of 56-60 should have been 9 since the deceased was 58 years at the time of his death. Further, the High Court held that if the actual salary of Rs. 50,809/- is taken into consideration, the annual loss of income of the deceased works out to Rs. 6,09,708/- and 10% of the amount is liable to be deducted towards income tax deduction. 10% in the sum of Rs. 6,09,708/- comes to Rs. 60,970.80 and the same can be rounded off to Rs. 61,000/-. If so, the balance amount works out to Rs. 5,48,708- (Rs. 6,09,708/- minus Rs. 61,000/-), rounded off to Rs. 5,49,000/- as the annual income of the

deceased. Hence, annual loss of income could be fixed at Rs. 5,49,000/-. For the first two years, the loss of income would be Rs. 10,98,000/- (Rs. 5,49,000/- x 2 years). For the balance 7 years, only 50% annual income has to be taken into consideration as notional income, which comes to Rs. 19,21,500/- (Rs. 2,74,500/- x 7 years). Therefore, the total loss of income works out to Rs. 30,19,500/-. Further, the High Court was of the opinion that 1/3rd amount is liable to be deducted towards personal expenses of the deceased. If this amount is deducted out of the annual income of the deceased, the balance amount works out to Rs. 20,13,000/- which amounts to a total loss of dependency (Rs. 30,19,500/- minus Rs. 10,06,500/-). The High Court further held that there is contributory negligence on the part of the deceased which was assessed at 25% which amount would be Rs. 5,03,250/-. When this amount was deducted out of Rs. 20,13,000/-, the High Court held that the legal heirs of the deceased are entitled to Rs. 15,09,750/- towards loss of dependency.

Thus, the High Court reduced the total compensation and awarded under the following heads:

Loss of Dependency	Rs.15,09,750/-
Funeral Expenses	Rs. 5,000/-
Loss of Estate	Rs. 10,000/-
Loss of Consortium	Rs. 10,000/-
Loss of love and affection	Rs. 50,000/-
Total :	**Rs.15,84,750/-**

Decision of the Supreme Court

In our considered view, the High Court has erred in not considering the principles laid down in the case of ***Sarla Verma and Ors.*** (supra) in so far as deduction of 1/4th of the monthly income of the deceased to arrive at the multiplicand and reducing the compensation by adopting the split up multiplier. Further, recording the finding of contributory negligence on the part of the deceased in the absence of evidence on record in this regard rendered the finding erroneous in law and error in law as the same is contrary to the decision of this Court reported in ***Jiju Kuruvila and Ors.*** *v.* ***Kunjujamma Mohan and Ors.*** (2013) 9 SCC 166. At the time of death, Vasanthan was 58 years old and was earning a salary of Rs. 50,809/- per month i.e. Rs. 6,09,708/- annually. By applying the appropriate multiplier of 8 as laid down under ***Kerala Road Transport Corporation*** *v.* ***Susamma Thomas***: AIR 1994 SC 1631, the loss of dependency comes to Rs. 48,77,708/-.

Further, deduction towards personal expenses of the deceased out of the annual income would be 1/4th as held by this Court in the case of ***Sarla Verma and Ors.*** (supra). The High Court failed to follow the above judgment and committed an error in law in deducting 1/3rd amount towards personal expenses of the deceased. Therefore, as per the above judgment the deduction ought to be 1/4th only as correctly calculated by the Tribunal. Thus, after deducting 1/4th i.e. Rs. 12,19,416/- towards personal expenses; the loss of dependency would be Rs. 36,58,248/-. Further, we affirm the sum granted by the Tribunal as Rs. 5,000/- for funeral expenses, under the head of loss of estate at Rs. 10,000/-, loss of consortium at Rs. 10,000/- and Rs. 50,000/- for loss of love and affection of the deceased.

Further, the High Court has erred in not following the decision of ***Rajesh and Ors.*** *v.* ***Rajbir Singh and Ors.*** (2013) 9 SCC 54 by awarding only Rs. 10,000/- for loss of consortium, instead of Rs. 1,00,000/-. Towards loss of estate, the High Court awarded Rs. 10,000/- instead of Rs. 1,00,000/. Therefore, to this extent there is loss caused to the Appellants in not being compensated correctly under different heads such as, loss of consortium, loss of estate, and loss of love and affection. Further, as per ***Municipal Corporation of Delhi*** *v.* ***Uphaar Tragedy Victims Association and Ors.*** (2011) 14 SCC 481, the Appellants are entitled for 9% interest per annum on the compensation awarded from the date of filing of the application till the date of payment. Thus, there will be a difference of 1.5% interest amount payable on the total compensation awarded by both the Tribunal and the High Court as they have awarded at 7.5% interest. Therefore, if the less awarded difference of interest amount @ 1.5% by both the Tribunal and the High Court is taken into consideration on the total compensation awarded in favour of the Appellants, it would take care of the amount that was required to be deducted towards income tax out of the gross salary of the deceased for determining the compensation under the heading of loss of dependency.

Since, the High Court has erred in not correctly awarding compensation under the above heads and having regard to the facts and circumstances of the case, we affirm the Award of the Tribunal and the same is restored. Therefore, the determination of compensation under the loss of dependency under other heads as indicated in the following paragraph is perfectly legal and valid as the said compensation is just and reasonable keeping in view the monthly income at Rs. 50,809/- as per the documentary evidence (Ex. P-7), the salary certificate. In the result, the impugned judgment and order of the High Court is liable to be set aside and accordingly set aside and the Award of the Tribunal is affirmed. Therefore, the Appellants shall be entitled to compensation under the following heads:

Loss of Dependency	Rs.36,58,248/-
Funeral Expenses	Rs. 5,000/-
Loss of love and affection	Rs. 50,000/-
Loss of estate	Rs. 10,000/-
Loss of consortium	Rs. 10,000/-
Total:	**Rs.37,33,248/-**

Thus, the total compensation payable to the Appellants/claimants will be Rs. 37,33,248/- with interest @ 7.5% per annum from the date of filing of the application till the date of payment.

(2015)9SCC150

Shashikala and Ors. Vs. Gangalakshmamma and Ors.

Hon'ble Judges/Coram: V. Gopala Gowda and R. Banumathi, JJ.

Brief Facts of the Case

The Appellants have filed a claim petition under the Motor Vehicles Act on account of death of deceased Sri H.S. Ravi who had met with an accident on 14.12.2006. On the fateful day, the deceased Ravi was proceeding in a motor cycle as a pillion rider. The rider of the motor cycle applied sudden brake due to which both rider and pillion rider fell down and both sustained grievous injuries. The rider of the motor cycle died on the spot. Ravi who was a pillion rider sustained grievous injuries and was immediately rushed to the hospital. However, after six days deceased-Ravi succumbed to the injuries. Deceased-Ravi was aged 45 years and he was engaged in a transport business of supplying newspapers from the Head Office destination to other places. The deceased was paying income-tax and was an income-tax Assessee. Stating that the deceased was the only earning member of the family and that they have lost the support of the bread winner of the family, the claimants filed a claim petition claiming compensation of Rs. 33,90,000.

The tribunal has taken the income of the deceased-Ravi at Rs. 75,000/- per annum and deducting 1/3rd towards the personal expenses of the deceased, the tribunal calculated the loss of dependency at Rs. 50,000/- per annum. Taking the age of the deceased as 46 years, the tribunal adopted multiplier 13 and awarded compensation of Rs. 6,50,000/- (Rs. 50,000/- x 13) towards loss of dependency. In addition to this, the tribunal awarded conventional damages of Rs. 35,000/- (Rs. 10,000/- towards loss of consortium, Rs. 10,000/- towards loss of love and affection, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses) and Rs. 1,00,000/- towards medical expenses as against the claim of Rs. 1,82,150/-. Thus, the tribunal has awarded total compensation of Rs. 7,85,000/-.

Aggrieved by the said award of the tribunal, the Appellants filed appeal before the High Court seeking enhancement of compensation. The High Court modified the award by recalculating the income of the deceased. Taking the income tax returns of the deceased for the assessment years 2005-06 and 2006-07, the High Court calculated average of the same and taken the income at Rs. 1,55,812/- per annum. After making deductions towards income-tax, professional tax and income from house property, the High Court calculated the net income of deceased at Rs. 1,17,831/- per annum. The High Court deducted 1/4th towards personal expenses and to the remaining amount of Rs. 88,373/- applied multiplier of 14 and accordingly re-determined the loss of dependency at Rs. 12,37,222/- as against Rs. 6,50,000/- awarded by the tribunal. Awarding conventional damages at Rs. 45,000/- and medical expenses at Rs. 1,87,150/-, the High Court enhanced the compensation to Rs. 14,69,372/-.

Decision of the Supreme Court

R. Banumathi, J.

The deceased was aged 45 years and was doing transport business. Though the claimants have filed income tax returns for two assessment years 2005-06 and 2006-07, as per the income tax returns for the year 2006-07, the income of the Assessee was Rs. 2,02,911/-. Tribunal did not take the income of the deceased for the assessment year 2006-07 on the ground that only xerox copy was filed and the claimants have failed to examine income-tax

authorities to prove the same. Instead of taking the income of the deceased as per the assessment year 2006-07, the High Court has chosen to calculate the average of the income for two assessment years 2005-06 and 2006-07. Considering the age of the deceased and the nature of business he was doing, in my considered view, the High Court was not justified in so taking the average of income of the two assessment years. The deceased was aged 45 years and doing business. Admittedly, he was also owning agricultural lands. Even though agricultural income was not shown in the income tax return, it emerges from the evidence that the deceased was also doing agricultural work.

Section 168 of the Motor Vehicles Act enjoins the courts/tribunals to make award determining the amount of compensation which appears to be just and reasonable. The wide amplitude of such power does not empower the tribunal to determine the compensation arbitrarily, although the Act is a beneficial legislation, it can neither be allowed as a source of profit nor as a windfall to the persons affected. Determination of compensation has to be fair and reasonable and acceptable by the legal standards. In *Nagappa* v. *Gurudayal Singh and Ors.* (2003) 2 SCC 274, this Court held as under:

> *10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, the only requirement for determining the compensation is that it must be "just". There is no other limitation or restriction on its power for awarding just compensation.*

The same principle was reiterated in the decisions of *Oriental Insurance Co. Ltd.* v. *Mohd. Nasir and Anr.* (2009) 6 SCC 280, and *Ningamma and Anr.* v. *United India Insurance Co. Ltd.* (2009) 13 SCC 710.

Without adverting to the issue whether additions are to be made towards future prospects or not, as it is obligatory on the part of the Court to award just compensation, considering the age of the deceased and the nature of business he was doing, in my view, the income of the deceased as stated in the income tax return for the year 2006-07 i.e. Rs. 2,02,911/- may be taken as the income of the deceased. Ten per cent of the said amount i.e. Rs. 20,290/- is to be deducted towards income tax and the remaining comes to Rs. 1,82,620/-. The amount to be deducted for professional tax is Rs. 2,400/- and after deducting the same, the balance comes out to Rs. 1,80,220/-. The income from the house property for the year 2006-07 is shown to be Rs. 20,000/- and after deducting the same, the net amount comes to Rs. 1,60,220/-. Deducting $1/4^{th}$ (one/fourth) towards personal expenses which comes out to Rs. 40,055/-, the loss of dependency/loss of contribution is arrived at Rs. 1,20,165/- per annum.

Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and

adopted multiplier 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs. 16,82,310/- (Rs. 1,20,165/- x 14).

With respect to the award of compensation towards conventional heads, the tribunal has awarded only Rs. 10,000/- towards loss of consortium and Rs. 10,000/- towards love and affection, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral charges. The High Court totally awarded Rs. 45,000/- towards conventional heads such as loss of estate, loss of love and affection, loss of consortium, transportation of dead body and funeral expenses. In various decisions, this Court has held that substantial compensation is to be awarded towards conventional damages like loss of consortium, loss of love and affection and funeral expenses. In ***Rajesh and Ors.*** **v.** ***Rajbir Singh and Ors.,*** (supra) and ***Jiju Kuruvila and Ors.*** **v.** ***Kunjujamma Mohan and Ors***. (2013) 9 SCC 166, this Court has awarded substantial amount of Rs. 1,00,000/- towards loss of consortium and Rs. 1,00,000/- towards loss of love and affection and Rs. 25,000/- towards funeral expenses. Following the same, Rs. 1,00,000/- is awarded towards loss of consortium and Rs. 1,00,000/- towards loss of love and affection to the minor children and Rs. 25,000/- towards funeral expenses and Rs. 25,000/- towards loss of estate totalling to Rs. 2,50,000/-. Thus, the compensation awarded to the claimants is enhanced to Rs. 19,32,310/-.

In the result, the compensation awarded to the claimants is enhanced and the compensation is awarded at Rs. 19,32,310/-. The enhanced compensation of Rs. 4,62,938/- is payable with interest at the rate of 9% per annum from the date of the claim petition till the date of realisation. Out of enhanced compensation of Rs. 4,62,938/-, Rs. 3,12,938/- alongwith accrued interest shall be paid to the first Appellant-wife of the deceased, balance Rs. 1,50,000/- alongwith accrued interest shall be apportioned amongst the claimants 2 to 4. If the Appellants 2 to 4 are still minors claimants, their share of the enhanced compensation shall be invested in a nationalized bank on the same terms as directed by the High Court. In case, the Appellants No. 2 to 4 have already attained majority, they are permitted to withdraw their entire share of apportioned compensation.

V. Gopala Gowda, J.

I am in respectful agreement with all the points which are answered in favour of the Appellants-claimants, except for the non-consideration on the question of making addition to the income of the deceased towards the future prospects in the case of salaried persons vis-`-vis where the deceased was self employed or on fixed wages.

In ***Reshma Kumari and Ors.*** *v.* ***Madan Mohan and Anr.*** (2013) 9 SCC 65 the court had envisioned a situation where future prospects in private employment too, were to be taken into consideration (although in a slightly different context) and an addition of 50% of actual salary was made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years.

In ***Santosh Devi*** *v.* ***National Insurance Co. Ltd. and Ors.*** (2012) 6 SCC 421, a two judge Bench of this Court had earlier doubted the decision with respect to future prospects in ***Sarla Verma*** (supra) and interpreted the limiting of grant of compensation amount to a person who is self-employed, privately employed or is engaged on fixed wages if he/she becomes victim of an accident and held that the Court had not intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation.

In ***Rajesh and Ors.*** (supra), a three judge Bench decision of this Court, which took into consideration the decisions of this Court in the cases of ***Sarla Verma and Ors.*** and ***Santosh Devi*** (supra) held that since, the Court in ***Santosh Devi*** case actually intended to follow the principle in the case of salaried persons as laid down in ***Sarla Verma*** case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

I am of the opinion that ***Rajesh and Ors.*** (supra) itself applied the ***Santosh Devi*** (supra) case, even while clarifying that for self employed individuals, age is also a determining factor, as is seen in the observation in the case of ***Rajesh and Ors.*** (supra) that in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects.

In fact, this gives shape to the view that future prospects are to be taken into account even in case of self-employment and also that there cannot be a set formula for determining such compensation.

I agree that the matter in relation to future prospects to be added to the annual income to determine the compensation towards loss of dependency cannot be finally decided by us and has to be ultimately referred to a larger Bench-because I was a party to the reference in ***National Insurance Co. Ltd.*** *v.* ***Pushpa*** (supra) and more importantly, cannot in propriety recall that reference while I am part of another Bench presently. In view of the observations, the matter has to be placed before the Hon'ble Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench in accordance with law.

Since we have disagreed only insofar as the addition towards the future prospects in case of self-employed or fixed wages to be added to the compensation towards the dependency, the

matter may be placed before the Hon'ble the Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench to decide the said issue.

Pendente lite the said issue, the enhanced compensation of Rs. 4,62,938/- along with interest at the rate of 9% p.a. from the date of the claim petition till the date of realisation shall be paid within four weeks from today by way of a demand draft or be deposited before the Motor Accident Claims Tribunal, Bangalore, to enable the Appellants herein to withdraw the same.

(2014)4SCC505

Smt. Savita Vs. Bindar Singh and Ors.

Hon'ble Judges/Coram: Gyan Sudha Misra and Pinaki Chandra Ghose, JJ.

Brief Facts of the Case

One Sandeep Chauhan died in an accident on November 26, 2010 due to rash and negligent driving by the driver of a truck bearing registration No. HR-56-6047 between Ram Nagar and Dhandhera. The claim petition was filed Under Section 166 of the Motor Vehicles Act, 1988 claiming compensation against the Respondents.

The Tribunal held that on November 26, 2010, Driver Binder Singh while driving Truck No. HR-56-6047 with speed and carelessness in the centre of the road, hit the motorcycle of Sandeep Chauhan, as a result of which Sandeep Chauhan was seriously injured and subsequently succumbed to his injuries. The issues were also discussed by the Tribunal which further held that accidental vehicle was permitted to be driven with legal and effective documents and driving licenses.On the issue of compensation the Tribunal after taking into account all the facts and materials placed before it, came to the conclusion that since the claimant could not prove that the deceased was getting Rs. 7,000/- per month as salary the Tribunal following the principle enunciated in an order of the Uttarakhand High Court, held that notional annual income of the deceased was Rs. 36,000/-. The Tribunal also followed the principle laid down in *Smt. Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121 and held that one third share from the notional income of the deceased should be deducted as his personal expenses to calculate compensation on the basis of the notional annual income of the deceased. The Tribunal further held that the deceased's father, mother and wife were dependents on the deceased and they should be treated as dependents of the deceased. The multiplier of 17 was fixed by the Tribunal considering the age of the deceased who was 26 years of age at the time of the accident. After taking into account all these aspects, Tribunal came to the conclusion and assessed the compensation amount at Rs. 4,08,000/- and further granted Rs. 5,000/- for cremation, Rs. 5,000/- for loss of estate and Rs. 10,000/- for loss of consortium and thereby the compensation amount was determined at

Rs. 4,28,000/- and also directed that interest to be paid at the rate of 6% per annum on the total compensation amount from the date of filing of the petition till the date of decision.

The High Court dismissed the said appeal on the ground that there was no illegality in the award passed by the Tribunal.

Decision of the Supreme Court

After considering the decisions of this Court in *Santosh Devi* as well as *Rajesh v. Rajbir Singh* we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation.

In the instant case, it appears that the Tribunal and the High Court have also failed to consider the fact-situation of this case, without taking any pragmatic view and further without considering the price-index prevailing at the moment, assessed the compensation ignoring the principle laid down by this Court in the recent decisions (see: *Rajesh v. Rajbir Singh* (supra) as also *Santosh Devi* (supra)) and without revisiting the present situation, came to the conclusion and awarded the total compensation for a sum of Rs. 4,28,000/-. In our opinion, such award suffers from proper assessment of compensation awarded by the Tribunal, and High Court on the conventional heads, i.e., 'loss of consortium' to the spouse, 'future prospects of the deceased' and further the sum awarded under the head 'funeral expenses', cannot be said to be a just compensation. In our opinion, there should have been an endeavour on the part of the Tribunal as well as the High Court to consider the inflation factor and further they should have considered the amounts fixed by the court several decades ago on such heads. Accordingly, as has been pointed out by this Court in *Rajesh v. Rajbir Singh* (supra), we hold that the compensation under the head 'loss of consortium' to the spouse, loss of love, care and guidance to children and funeral expenses amounts should have been awarded under such heads, that is, for Rs. 1,00,000/- and Rs. 25,000/- respectively and we award such compensation under the said heads. So far as the head of 'salary' is concerned, we do not express any opinion since we have found that the Appellant could not prove the salary certificate and for such reason, we do not intend to interfere with the opinion expressed by the Tribunal on the established principle of notional income and accordingly, we do not want to disturb the said notional income while calculating the total compensation in favour of the Appellant.

We have failed to understand why the Tribunal as well as the High Court lost its sight to hold that the victim could have had future prospects with regard to the amounts the victim used to earn during his life-time? Therefore, the notional income also needs to be increased by at least 30% and thereby the claimant is entitled to get the benefit of Rs. 900/- being the future prospects; the said amount should be added to the notional income of the victim. Therefore, it appears that the total salary along with future prospects of the victim should have been calculated at Rs. 3,000/- plus Rs. 900/- amounting to Rs. 3,900/- per month. The total deduction on personal expenses, in our opinion, should have been one third of Rs. 3,900/- amounting to Rs. 1,300/-. Therefore, salary after deduction would come to Rs. 2,600/- and the multiplier should be applied at 17, as has been done correctly by the Tribunal after taking into account the age of the victim. In this process, the total amount of compensation to be paid would be Rs. 2,600 x 17 x 12 amounting to Rs. 5,30,400. We modify and reassess the compensation in accordance with the Calculation Table set out hereunder:

Salary (Since it is not proved sufficiently as per the order of the Tribunal)	₹ 3,000/- per month
Future prospects (at the rate of 30% as prayed for) (as per para 8)	[30% of ₹ 3,000 = ₹ 900/-] Salary is (3,000+ 900) = ₹ 3,900/-
Deduction towards personal expenses (as per Schedule II)	1/3rd of ₹ 3,900 = ₹ 1,300/-
Total salary after adding future prospects and deducting personal expenses	₹ 3,900 – ₹ 1,300 = ₹ 2,600/-
Multiplier i.e. 17 (as per Schedule II and Section166)	₹ 2,600 x 17 x 12 = ₹ 5,30,400/-
Total amount of compensation (as per para 8)	₹ 5,30,400/-
Compensation under the head of "loss of consortium" (as per para 7)	₹ 1,00,000/-
Compensation under the head of 'funeral expense' (as per para 7)	₹ 25,000/-
Grand Total	**₹ 6,55,400/-**

The order of the High Court and Tribunal is modified. We direct that the claimant/Appellant is entitled to a sum of Rs. 6,55,400/- plus interest @ 8 per cent per annum from the date of filing of the claim petition till the date of payment as compensation.

VI

Liability of Insurers for Compensation on basis of No Fault Liability under Section 163A

(2004)5SCC385

Deepal Girishbhai Soni v.United India Insurance Co. Ltd., Baroda

Hon'ble Judges/Coram: V.N. Khare, C.J., S.B. Sinha and S.H. Kapadia, JJ.

A Division Bench of the Supreme Court, doubting the correctness of 2-Judge Bench decision in ***Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala*** referred the matter to a 3-Judge Bench whereby and whereunder the proceedings under Section 163A of the Motor Vehicles Act, 1988 has been held to be a final proceeding as a result whereof the claimants had been debarred from proceeding with their further claims made on the basis of fault liability in terms of Section 165 thereof.

The Supreme Court was of the view that the relevant provisions of the Motor Vehicles Act are beneficial in nature. The provisions as regard no fault liability evidently were inserted having regard to the fact that the road accident in India had touched a new height and at least in some of the cases it was found that rash or negligent driving causing death or injury to the innocent persons could not be proved. Whereas in terms of Section 140 of the Act a statutory liability has been cast upon the owner in case of death or permanent disablement; both under Section 163A as also Section 166 of the Act, the insurer had been made responsible. In terms of Section 163A of the Act an option had been provided for so as to enable a person to lay a claim for compensation either under Section 140 or Section 163A and not under both but having regard to the scheme of the Act, the same was not necessary.

Section 140 of the Act dealt with interim compensation but by inserting Section 163A, the Parliament intended to provide for making of an award consisting of a pre-determined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The Amendment was, thus, a deviation from the common law liability under the Law of Torts and was also in derogation of the provisions of the Fatal Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victim in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants under Section 166 of the Act.

Section 163A was, thus was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefore. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature.

It cannot be accepted that Sections 140 and 163A provide for similar scheme. Payment of the amount in terms of Section 140 of the Act is ad hoc in nature. A claim made thereunder, as has been noticed hereinbefore, is in addition to any other claim which may be made under any other law for the time being in force. Section 163A of the Act does not contain any such provision.

The scheme envisaged under Section 163A leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/- or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society.

It may be true that Section 163B provides for an option to a claimant to either go for a claim under Section 140 or Section 163A of the Act, as the case may be, but the same was inserted so as to remove any misconception in the mind of the parties to the lis having regard to the fact that both relate to the claim on the basis of non-fault liability.

Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby.

Hence, the Supreme Court held that the remedy for payment of compensation both under Section 163A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163A or under Section 166 of the Act, but not under both.

It is evident that whenever the Parliament intended to provide for adjustment or refund of the compensation payable on the basis of no-fault liability, as for example, Sections 140 and 161 in case of hit and run motor accident, for the amount of compensation payable under the award on the basis of fault liability under Section 168 of the Act, the same has expressly been provided for and having regard to the fact that no such procedure for refund or adjustment of compensation has been provided for in relation to the proceedings under Section 163A of the Act, it must be held that the scheme of the provisions under Sections 163A and 166 are distinct and separate in nature.

The Supreme Court held that the ***Kodala*** case(supra) has correctly been decided. However, the findings in ***Kodala*** (supra) that if a person invokes provisions of Section 163A, the annual income of Rs. 40,000/- per annual shall be treated as a cap cannot be agreed with. The proceeding under Section 163A being a social security provision, providing for a distinct

scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

(2008)5SCC736

Oriental Insurance Co. Ltd. Vs. Rajni Devi and Ors.

Hon'ble Judges/Coram: S.B. Sinha and V.S. Sirpurkar, JJ.

Brief Facts of the Case

Respondent filed an application under Section 163A of the Motor Vehicles Act, 1988 (the Act) claiming compensation for death of one Janak Raj (the deceased). He was riding on a motorcycle along with one Sukhdev Raj. Who was actually on the driver's seat is not known. The motorcycle is said to have gone out of control resulting in the accident. Appellant herein, having been issued notice, resisted the claim, inter alia, contending that although the owner of the vehicle deposited an extra amount of Rs. 50 covering his personal insurance, the same would not cover the case of the pillion rider and in any event, the owner of the vehicle is not a third party within the meaning of Section 147 of the Act.

The Tribunal noticed that the First Information Report (FIR) lodged at the Police Station in relation to the said accident was not clear to establish as to who was driving the motorcycle but despite the same proceeded to determine the question as to whether Janak Raj being himself the tort feasor, any application under Section 163A of the Motor Vehicles Act was maintainable. The premise on which the Tribunal proceeded to determine the said issue was that a comprehensive insurance policy having been taken, the only question which arose for its consideration was as to whether the accident took place by reason of use of the motor vehicle irrespective of the fact as to whether the deceased or the said Sukhdev Raj was driving the motorcycle or not. It, however, held that if the deceased was the tort feasor, the question of reimbursement of any amount of compensation by the insurer would not arise, opining:

Decision of the Supreme Court

It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle. Section 163A cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. The question is no longer res integra.

The liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient . The heirs of Janakraj could not have maintained a claim in terms of Section 163A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to. According to the terms of contract of insurance, the liability of the insurance company was confined to Rs. 1,00,000/- (Rupees one lac only). It was liable to the said extent and not any sum exceeding the said amount.

VII

Assessing Non-Pecuniary Damages and Loss in MACT Cases

(2015)4SCC237

Jitendra Khimshankar Trivedi and Ors. Vs Kasam Daud Kumbhar and Ors.

Hon'ble Judges/Coram: V. Gopala Gowda and R. Banumathi, JJ.

Brief Facts of the Case

Smt. Jayvantiben Jitendra Trivedi (deceased) succumbed to injuries caused in a motor accident. Appellant No. 1 (the husband of deceased) and Appellant Nos. 2 to 5 (husband's sisters, daughter and father-in-law respectively) have filed claim petition before the Motor Accidents Claims Tribunal claiming compensation under different heads to the tune of Rs. 2,96,480/- along with interest at the rate of 18 per cent per annum. The Appellants averred in the claim petition that the deceased was a housewife at the time of accident and was aged 22 years and that she was doing embroidery and knitting work and was earning Rs. 900/- per month from the said work and was maintaining her family.

After considering the oral and documentary evidence, the tribunal came to the conclusion that the death of Smt. Jayvantiben Jitendra Trivedi was caused due to the rash and negligent driving of Respondent No. 1. Based on the oral testimony of witnesses, tribunal came to the conclusion that deceased was earning Rs. 900/- per month. Relying upon the decision in *General Manager, Kerala S.R.T.C.* v. *Susamma Thomas and Ors.* MANU/SC/0389/1994 : (1994) 2 SCC 176, the tribunal assessed the income of the deceased at Rs. 1,500/- per month. After deducting 1/3rd for personal expenses and after adopting multiplier of 18, tribunal has calculated the loss of dependency at Rs. 2,16,000/-. Adding conventional damages Rs. 8,000/-, vide award dated 30.4.1998, the tribunal awarded total compensation of Rs. 2,24,000/- with interest at the rate of 15 per cent per annum.

The High Court in appeal taking the income of the deceased at Rs. 1,350/- per month and deducting 1/3rd for personal expenses held that the claimants are entitled to compensation of Rs. 2,09,400/- along with interest at the rate of 12 per cent per annum from the date of filing of the claim petition till the date of realization.

Decision of the Supreme Court

The tribunal has taken the income of the deceased at Rs. 1,500/- whereas the High Court has assessed the income of the deceased at Rs. 1,350/- per month. As observed by the tribunal, embroidery work, stitching work and local traditional embroidery work was doing well in the district of Kachchh and there was good earning. Considering the nature of the work and the evidence of claimants' witnesses-father-in-law and mother-in-law of the deceased, had the deceased Jayvantiben been alive she would have earned not less than Rs. 3,000/- per month.

Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to

monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased Jayvantiben Jitendra Trivedi as the home maker, it is reasonable to fix her income at Rs. 3,000/- per month.

Recognizing the services of the home maker and that domestic services have to be recognized in terms of money, in ***Arun Kumar Agrawal and Anr.*** **v.** ***National Insurance Co. Ltd. and Ors.*** (2010) 9 SCC 218, this Court has held as under:

> *The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.*
>
> *Household work performed by women throughout India is more than US $612.8 billion per year (Evangelical Social Action Forum and Health Bridge, p. 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing "just compensation".*

In terms of Section 168 of the Motor Vehicles Act, the courts/tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in awarding reasonable compensation was emphasized by this Court in *Nagappa* v. *Gurudayal Singh and Ors.* (2003) 2 SCC 274, *Oriental Insurance Co. Ltd.* v. *Mohd. Nasir and Anr.* (2009) 6 SCC 280, and *Ningamma and Anr.* v. *United India Insurance Co. Ltd.* (2009) 13 SCC 710. As against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to award just and reasonable compensation, it is appropriate to increase the compensation.

In order to award just and reasonable compensation income of the deceased is taken as Rs. 3000/- per month. Deducting 1/3rd for personal expenses contribution of the deceased and the family is calculated at Rs. 2,000/- per month. At the time of her death deceased Jayvantiben was aged about 22 years, proper multiplier to be adopted is 18. Adopting multiplier of 18, total loss of dependency is calculated at Rs. 4,32,000/- (Rs. 2000 x 12 x 18). With respect to the award of compensation under conventional heads, tribunal has awarded Rs. 5,000/- towards loss of estate and Rs. 3,000/- towards funeral expenses totaling Rs. 8,000/-. The High Court has awarded conventional damages of Rs. 15,000/- i.e. Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses. The courts below have not awarded any compensation towards loss of consortium and towards love and affection. In *Rajesh and Ors.* v. *Rajbir Singh and Ors.* (2013) 9 SCC 54, and *Jiju Kuruvila and Ors.* v. *Kunjujamma Mohan and Ors.* (2013) 9 SCC 166, this Court has awarded substantial amount of Rs. 1,00,000/- towards loss of consortium and Rs. 1,00,000/- towards loss of love and affection. Following the same, in the case in hand, Rs. 1,00,000/- is awarded towards loss of consortium and Rs. 1,00,000/- towards loss of love and affection to the minor children. Towards loss of estate and funeral expenses, award of compensation of Rs. 15,000/- awarded by the High Court is maintained. Thus, the claimants are entitled to a total compensation of Rs. 6,47,000/- .

As against the award passed by the tribunal even though the claimants have not preferred any appeal and even though the claimants have then prayed for compensation of Rs. 2,96,480/-, for doing complete justice to the parties, exercising jurisdiction Under Article 142 of the Constitution of India, we deem it appropriate to award enhanced compensation of Rs. 6,47,000/to the claimants.In situation of this nature, for doing complete justice to the parties, this Court has always exercised the jurisdiction Under Article 142 of the Constitution of India. It is well settled that in a situation of this nature this Court in exercise of its jurisdiction Under Article 142 of the Constitution of India read with Article 136 thereof can issue suit directions for doing complete justice to the parties.

The next question falling for our consideration is the rate of interest to be awarded. The tribunal has awarded interest at the rate of 15 per cent which was reduced to 12 per cent by the High Court. The rate of interest awarded by both the courts is on higher side. In *Amresh Kumari* v. *Niranjan Lal Jagdish Prasad Jain and Ors.* (2010) ACJ 551 and *Mohinder Kaur and Ors.* v. *Hira Nand Sindhi (Ghoriwala) and Anr.* (2007) ACJ 2123, this Court has awarded the compensation amount payable to the claimants with interest at the rate of 9 per cent.

The compensation reduced by the High Court from Rs. 2,24,000/- to Rs. 2,09,400/- is enhanced to Rs. 6,47,000/-. The quantum of compensation claimed is Rs. 2,96,480/- i.e. payable with interest at the rate of 9 per cent from the date of the filing of the claim petition till the date of payment. So far as the enhanced compensation of Rs. 3,50,520/- is payable with interest at the rate of 9 per cent from the date of filing of the special leave petition till the date of realization. The enhanced compensation of Rs. 3,50,520/- alongwith accrued interest shall be equally divided between the Appellants No. 1 and 4 Jitendra Khimshankar Trivedi,

Ku. Preeti Jitendra Trivedi (husband and daughter respectively of the deceased-Jayvantiben Jitendra Khimshankar) in equal share.

MANU/SC/1256/2015

Kantharaju Vs. Manager, Cholamandalam Gen. Ins. Co. L. and Ors.

Hon'ble Judges/Coram: Anil R. Dave and A.K. Goel, JJ.

The claimant is an agriculture labourer who suffered injuries in a road accident and he has been awarded Rs. 10,000/- under the head "Loss of amenities". On the perusal of the impugned judgment we find that the claimant had suffered compound fracture of right leg patella and in our opinion amount of Rs. 10,000/- awarded for the "loss of amenities" appears to be on lower side. We increase the same to Rs. 35,000/- which, in our opinion, is quite reasonable looking at the fact that he is an agriculture labourer and he has to use his legs for doing daily work in the fields.

(2015)1SCC539

Kumari Kiran Vs. Sajjan Singh

Hon'ble Judges/Coram: V. Gopala Gowda and A.K. Goel, JJ.

The Appellant minors were going on a motor cycle as pillion with their father Harinarayan, (rider of the motor cycle, hereinafter referred to as the Appellant-father). While on their way, a tractor driven by Sajjan Singh (Respondent No. 1), collided with the motor cycle on which the Appellants were riding. Due to the impact of this collision the Appellants fell down and sustained grievous injuries. After medical examination, it was concluded that all the three Appellants had fractured their femur, tibia and fibula bones on their right leg and had to undergo an operation and a rod and a ring were implanted on each one of their right leg. Upon further medical examination, it was found that the right leg of all the three Appellants had become one inch shorter due to the injuries caused to them in the accident. Therefore, the Appellant-minor daughter and the Appellant-father were determined with 30% permanent disability and the Appellant-minor-son was determined with 20% permanent disability by the doctor who had treated them. The Appellants filed a claim petitions before the Motor Accident Claims Tribunal, Bhopal. The Tribunal after considering the facts, evidence produced on record and the circumstances of the case, apportioned contributory negligence at 50% on the part of the Appellant-father who was riding the motorcycle on which the Appellant-minors were the pillion riders and 50% on the driver of the offending tractor. The Tribunal ascertained the compensation due to the Appellants as per the calculations stated in the table below:

	Particulars	Kumari Kiran	Master Sachin	Harinarayan
1.	Notional income	Rs.15,000/- p.a.	Rs.15,000/- p.a.	Rs.18,000/- p.a.
2.	Multiplier	15	15	15
3.	Income for whole life	Rs.2,25,000/- (Rs.15,000/- X 15)	Rs.2,25,000/- (Rs.15,000/- X 15)	Rs.2,70,000/- (Rs.18,000/- X 15)
4.	Future loss of income due to permanent disability	Rs.67,500/- (30% of Rs.2,25,000/-)	Rs.45,000/- (20% of Rs.2,25,000/-)	Rs.81,000/- (30% of Rs.2,70,000/-)
5.	Agony	Rs.5,000/-	Rs.5,000/-	Rs.5,000/-
6.	Diet	Rs.3,000/-	Rs.3,000/-	Rs.3,000/-
7.	Medical expenses	Rs.69,844/-	Rs. 84,876/-	Rs.1,51,154/-
8.	Loss of income	-	-	Rs.4,500/-
9.	**Total compensation under all heads**	**Rs.1,45,344/-**	**Rs.1,37,876/-**	**Rs.2,44,654/- (Rounded off to Rs.2,44,500/-)**
10	50% deduction towards contributory negligence	Rs.72,672/-	Rs.68,938/-	Rs.1,22,250/-
11	**TOTAL**	**Rs.72,672/-**	**Rs.68,938/-**	**Rs.1,22,250/-**

The Tribunal awarded an interest at the rate of 6% p.a. on the total compensation.

The High Court held that the Appellant-minors who were the pillion riders cannot be held for contributory negligence as apportioned by the Tribunal even if their Appellant-father who was the motorcyclist was at fault. Therefore, the High Court set aside the deduction arising out of the contributory negligence from the compensation determined towards the permanent disability for the Appellant-minors. The High Court also reduced the contributory negligence on the part of Appellant-father (motorcyclist) from 50% to 25%. Further, the High Court enhanced the compensation of the Appellant-minor daughter by Rs. 30,000/-, the Appellant-minor-son by Rs. 25,000/- and the Appellant-father by Rs. 65,000/- (Rs. 30,000/- lump sum and Rs. 35,000/- towards medical expenses) to be paid with an interest @ Rs. 7.5% per annum.

Decision of the Supreme Court

We are of the view that the courts below have failed to follow the principles as laid down by this Court in the case of ***Subulaxmi v. M.D., Tamil Nadu State Transport Corporation and Anr.*** (2012) 10 SCC 177 in awarding compensation under a singular head towards permanent disability and loss of future earning to the Appellant-minors and Appellant-father.

The Appellant-minors were just 10 and 15 years old at the time of the accident. They have undergone immense physical pain and suffering as well as mental shock and trauma at a very tender age. The trauma undergone by the Appellant-minors due to the motor accident could have a severe and long-lasting effect. The Appellant-minors and their parents will have to make arrangements to support their disability in the future. No amount of monetary benefit will compensate for the suffering and pain that the Appellant-minors have to endure to overcome the probable shackles of their disability in the future. The Appellant-father suffers from 30% permanent disability due to the shortening of his right leg by one inch after injuries sustained by them in the motor vehicle accident. Both the children are suffering from

permanent disability due to this motor vehicle accident. The Appellant-father has and continues to undergo loss, pain and suffering in many ways due to this accident. Therefore, when the question of compensation arises in the case of permanent disablement suffered by the Appellants due to a motor accident, we refer to the principles laid down by this Court in the case of ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.*** (1995) 1 SCC 551, wherein it was held as under:

> *9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.*

Therefore, quantification of damages divided under different heads as mentioned in the above case must be very carefully observed by the courts while awarding compensation to the victims of motor-vehicle accidents. It is extremely essential for the courts to consider the two main components of damages i.e. both pecuniary and non-pecuniary damages as per the guidelines laid down by this Court in the above case so that the just and reasonable compensation is awarded to the injured.

Further, with respect to just compensation to be awarded to the victims of motor-vehicle accidents, we refer to the decision of this Court in the case of ***Raj Kumar v. Ajay Kumar and Anr.*** (2011) 1 SCC 343, wherein it was held as under:

> *The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also*

for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

Thus, the compensation should be reasonably sufficient so that it equips the victim to return to their normal life to the maximum possible extent. The Tribunal and the High Court have failed to show compassion to the Appellant-minors and Appellant-father by not examining the above relevant aspect of the case on hand and not following the guidelines as laid down by this Court to determine just and reasonable compensation in the cases referred to supra.

With regard to the Appellant-minors

12. With respect to compensation towards future loss of income due to permanent disability for Appellant-minors, we refer to the case of ***Master Mallikarjun*** *v.* ***Divisional Manager, The National Insurance Co. Limited and Anr.*** AIR 2014 SC 736, wherein this Court held as under:

While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs. 15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs.

This Court in accordance with the principles laid down by this Court in ***Master Mallikarjun*** *v.* ***Divisional Manager, The National Insurance Co. Limited and Anr.*** AIR 2014 SC 736 and after examining the facts, evidence on record and circumstances of the case on hand, we deem it fit and proper to award Rs. 3,00,000/- towards permanent disability of the Appellant-minors viz. Kumari Kiran and Master Sachin, since they have suffered 30% and 20% permanent disability respectively, due to the shortening of their right leg by one inch after the injuries sustained in the motor accident. Further, upon considering the age of Appellant-minors, they have a long journey ahead of them in their lives, during which they along with their parents will have to endure an immeasurable amount of agony and uncertain medical expenses due to this motor-vehicle accident. Thus, based on the principles laid down in the above case, we award Rs. 25,000/- each towards agony to parents and Rs. 25,000/- each towards future medical expenses.

With regard to the Appellant-father

Upon thorough examination of the facts and legal evidence on record in the present case, it cannot be said that the Appellant-father was rash and negligent just on the assumption made by the Tribunal that the collision occurred in the middle of the road since the two vehicles were approaching from opposite directions of the road. However, the only aspect of the case on hand that we can reasonably assume is that the Appellant-father would have taken sufficient caution while riding the motorcycle since he was travelling with his two minor children (Appellant-minors). Further, upon examining the evidence produced on record, there is no proof showing negligence on the part of the Appellant-father. Thus in our view, the contributory negligence apportioned by the High Court at 25% on the Appellant-father and 75% on the driver of the offending tractor is erroneous keeping in view the legal principles laid down by this Court on this aspect in the above referred case. Thus, we are of the firm conclusion that the negligence is wholly on the part of the driver of the offending tractor since he was driving the heavier vehicle. Therefore, we set aside the 25% contributory negligence on the part of the Appellant-father as apportioned by the High Court.

Further, the courts below have erred in ascertaining the notional income of Appellant-father at Rs. 1,500/- per month i.e. Rs. 18,000/- per annum. On examining the facts, evidence produced on record and circumstances of the case on hand, the Appellant-father owns 30 bighas of irrigated land in which he was doing agricultural work Keeping in mind the same, the notional income ascertained by the courts below is too less. In our opinion, the Appellant-father's notional income must be at least Rs. 5,000/- per month i.e. Rs. 60,000/- per annum. Thus, his loss of future income due to 30% permanent disability suffered by him due to the injuries sustained in this accident, taking the appropriate multiplier of 15 (as per ***Sarla Verma and Ors.*** *v.* ***Delhi Transport Corporation and Anr.*** (2009) 6 SCC 121), would be Rs. 2,70,000/- (15 X [30% of 60,000/-]).

The courts below have erred in awarding an amount of Rs. 5000/- only towards pain and suffering caused to the Appellant-father due to the motor-vehicle accident. The award towards non-pecuniary heads must be ascertained after careful reflection upon the facts and circumstances of the case on hand as opined by this Court in this aspect in ***R.D. Hattangadi's*** case (supra). Therefore, keeping in mind the loss suffered by the Appellant-father due to 30% permanent disability and circumstances of the case on hand and principles laid down by this Court in the above case, we award Rs. 50,000/- towards pain and suffering of the Appellant-father. We further award Rs. 50,000/- towards loss of amenities undergone by the Appellant-father as per the principles laid down in ***Sri Nagarajappa*** v. ***The Divisional Manager, The Oriental Insurance Co. Ltd.*** MANU/SC/0393/2011 : (2011) 13 SCC 323.

With regard to all the Appellant-claimants

16. We are of the opinion, that the Appellants without doubt need sufficient nutrition in order to ensure their good health, especially considering the Appellant-minors who are just over 10 and 15 years of age. As the Tribunal and the High Court have erred in awarding a meagre amount of Rs. 3,000/- to each one of the Appellants towards special food and nutrition, instead we award Rs. 10,000/- each towards the same.

In our considered view of the facts of the case, it is clear that medical attendants were taken for the Appellants' care for 3 months during their treatment and rest period. The Tribunal and the High Court have erred in not awarding compensation towards the same. Therefore, we award Rs. 9,000/- each towards attendant's charges (Rs. 3,000/- per month for each attendant) and Rs. 5,000/- each towards transportation charges.

The compensation awarded to the Appellants towards medical expenses by the Tribunal and enhancement of the same by the High Court to the Appellant-father is maintained.

Further, we are of the view that the Tribunal and the High Court have erred in granting interest rate at only 6% p.a. and 7.5% p.a. respectively on the total compensation amount instead of 9% p.a. by applying the decision of this Court in ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*** (2011) 14 SCC 481. Accordingly, we award the interest @9% p.a. on the compensation determined in these appeals.

In the result, the Appellants shall be entitled to compensation under the different heads as per the following table:

	Particulars	Kumari Kiran	Master Sachin	Harinarayan
1.	Loss of future income due to disability	-	-	Rs.2,70,000/-
2.	Pain and suffering	Rs.1,00,000/-	Rs.1,00,000/-	Rs.50,000/-
3.	Agony to parents	Rs.25,000/-	Rs.25,000/-	-
4.	Medical Expenses	Rs.69,844/-	Rs.84,876/-	Rs.1,86,154/-
5.	Attendant	Rs.9,000/-	Rs.9,000/-	Rs.9,000/-
6.	Transportation	Rs.5,000/-	Rs.5,000/-	Rs.5,000/-
7.	Special diet and nutrition	Rs.10,000/-	Rs.10,000/-	Rs.10,000/-
8.	Permanent Disability/ loss of amenities	Rs.3,00,000/-	Rs.3,00,000/-	Rs.50,000/-
9.	Future medical expenses	Rs.25,000/-	Rs.25,000/-	-
	TOTAL	**Rs.5,43,844/-**	**Rs.5,58,876/-**	**Rs.5,80,154/-**

2015(9)SCALE825

Mithusinh Pannasinh Chauhan Vs. Gujarat State Road Transport Corporation

Hon'ble Judges/Coram: Jasti Chelameswar and Abhay Manohar Sapre, JJ.

Brief Facts of the Case

Appellant, while riding a bicycle was struck by Respondent No. 2 and sustained serious head injury as a result of which he lost his memory. He was unable to speak nor was able to move properly, thereafter, and underwent medical treatment in hospital for a long time. At the time

of accident, he was aged about 35 years and was working as a constable in SRP and used to earn Rs. 1400 per month. Due to the accident and resultant injuries sustained, Appellant lost his job. MACT partly allowed Appellant's claim and held that accident was caused due to negligence of Respondent No. 2, Appellant had suffered 50 per cent disability in his body due to injuries sustained and awarded him a sum of Rs. 2,19,000 as compensation, which included expenses in receiving treatment and compensation for injuries sustained. Appeals were filed by Appellant for enhancement of compensation and by Respondents against an excessive award. High Court partly allowed Respondents' appeal, holding that claimant was entitled to Rs. 1,15,200 towards future loss of income, instead of Rs. 1,80,000 awarded by the MACT; it directed claimant to refund the excess amount of Rs. 64,800 with interest at the rate of 12% per annum to Respondent.

Decision of the Supreme Court

In our considered opinion, in a case where the Appellant has proved that he has lost his speaking power as also lost his memory retention power due to causing of head injury and further he is not able to move freely at the age of 35 years and lastly due to these injuries, he has also lost his job, we fail to appreciate as to how and on what reasons the MACT and the High Court could come to a conclusion that a compensation of Rs. 4,00,000/- claimed by the Appellant was on a higher side and thus reduced it to Rs. 1,54,200/-. Indeed we found no reason.

Keeping in view of the nature of injuries sustained by the Appellant, resultant permanent disabilities caused to him to the extent of 50% or 30% due to such injuries which are held proved by the Appellant coupled with the amount spent by him in receiving medical treatment also duly held proved (Ex-P-1 to Ex-P-58) by him, loosing the permanent job due to injuries sustained by him, future loss of income caused as a result of the injuries and lastly the continuous mental pain and agony suffered by him, a sum of Rs. 4,00,000/- claimed by the Appellant by way of compensation is just and reasonable.

In a case of this nature, the injuries sustained by the claimant-Appellant herein are more painful because he has to live his remaining life with such disabilities, which he did not have before accident. This undoubtedly deprives him to live his normal life. The Courts below failed to take note of this material fact while determining the compensation, which in our opinion, calls for interference by this Court.

In view of foregoing discussion, the appeals filed by the claimant succeed and are hereby allowed. Impugned order is modified in Appellant-claimant's favour by awarding a sum of Rs. 4,00,000/- by way of compensation against Respondent No. 1-Corporation. An awarded sum, i.e. Rs. 4,00,000/- (Rs. 4 lakhs) would carry interest at the rate of 6% per annum payable from the date of claim petition till realization.

2015(3)SCALE795

Surti Gupta Vs. United India Insurance Company and Ors.

Hon'ble Judges/Coram: V. Gopala Gowda and C. Nagappan, JJ.

Brief Facts of the Case

The Appellant being the only surviving legal representative, who was the adopted child of the deceased, filed a claim petition No. 89 of 1990 before the M.A.C.T., Karnal seeking for compensation for the death of her deceased mother. The Appellant at the time of the accident was 15 years of age and was wholly dependent on her mother. The Tribunal by its award dated 11.11.1991 dismissed the said claim petition filed by the Appellant on the ground that she could not prove to be a legal representative of the deceased. Aggrieved by the said award of the Tribunal, the Appellant filed FAO No. 1647 of 1992 before the High Court of Punjab and Haryana at Chandigarh. The High Court allowed the appeal filed by the Appellant and set aside the award of the Tribunal and awarded an amount of Rs. 6,30,000/- to the Appellant.

At the time of death, the deceased was said to have been working as a teacher, drawing a salary of Rs. 4,214/-. She was 45 years of age and as per the formula prescribed in the judgment of the Hon'ble Supreme Court in ***Sarla Verma v. Delhi Transport Corporation and Anr.*** 2009(6) SCC 121,] the prospect of increase in salary must have been duly provided for by escalating the salary by another 30%. The average salary must be Rs. 5,478/- and if 1/3rd deduction were to be made for the personal consumption of the deceased, the dependency for the Appellant must be taken as Rs. 3,652/- per month. Providing for a multiplier of 14, the loss of dependency will be Rs. 6,13,536/-. To this sum shall be added the loss to estate, funeral expenses and loss of love and affection, all of which, in my view, add to another 15,000/-. In all, the total amount of compensation that become payable, shall be Rs. 6,28,536/-, which I round off to Rs. 6,30,000/-. Being aggrieved of the compensation amount awarded by the High Court in its impugned judgment and award, the Appellant has filed this appeal seeking for enhancement of compensation urging various grounds in support of her claim.

Decision of the Supreme Court

It is clear that the deceased at the time of her death was working as a teacher in a Government school. It has been observed by the High Court that the Appellant had been adopted by the deceased, and was wholly dependent on her mother at the time of the accident. It has also been observed by the High Court for the purpose of calculation of future loss of dependency of the Appellant that the deceased at the time of the accident on 10.7.1990 was drawing a salary of Rs. 4,214/- per month and was 45 years of age. However, we are of the view that the salary of the deceased at the time of her death taken by the High Court is on the lower side considering that she was employed as a permanent teacher in a government school and she must have had at least 20-25 years of work experience at the time of her death. Therefore, on

considering the facts, circumstances, pleadings and evidence on record in the present case, we are of the view that it would be just and proper to take the monthly income of the deceased at Rs. 6,000/- per month.

Further, on addition of 30% to the income of the deceased towards future prospects as per the principles laid down by this Court in the case of ***Sarla Verma*** v. ***Delhi Transport Corporation and Anr.*** 2009(6) SCC 121, the monthly income for the calculation of future loss of dependency of the Appellant would be Rs. 7,800/- (Rs. 6,000/- + 30% of Rs. 6,000/-). Therefore, the annual income comes to Rs. 93,600/-. On deduction of 1/3rd of the annual income towards personal expenses and applying the appropriate multiplier as per the principles laid down by this Court in the case of ***Sarla Verma*** (supra), the future loss of dependency suffered by the Appellant is calculated at Rs. 8,73,600/- [(Rs. 93,600/- (-) 1/3rd of Rs. 93,600/-) X 14].

Further, the High Court has certainly erred in awarding a meagre amount of only Rs. 15,000/- for loss of estate, loss of love and affection and funeral expenses. Therefore, we award Rs. 1,00,000/- towards loss of love and affection as per the decision of this Court in the case of ***Juju Kuruvila and Ors.*** *v.* ***Kunjujamma Mohan and Ors.*** (2013)9 SCC 166. We also award an amount of Rs. 1,00,000/- towards loss of estate as per the decision of this Court in the case of ***Kalpanaraj and Ors. v. Tamil Nadu State Transport Corporation*** 2014(5) SCALE 479. Further, a sum of Rs. 25,000/- is awarded towards funeral expenses as per the principles laid down by this Court in the case of ***Rajesh and Ors.*** *v.* ***Rajbir Singh and Ors.*** (2013) 9 SCC 54

The High Court has further erred in awarding an interest at the rate of 6% per annum only, instead of 9% per annum on the compensation amount as per the principles laid by this Court in the case of ***Municipal Corporation of Delhi*** *v.* ***Association of Victims of Uphaar Tragedy*** MANU/SC/1255/2011 : (2011) 14 SCC 481. We accordingly award an interest at the rate of 9% per annum on the compensation amount. In the result, the Appellant shall be entitled to compensation under the following heads:

1.	Loss of dependency	Rs.8,73,600/-
2.	Loss of Estate	Rs.1,00,000/-
3.	Loss of love and affection	Rs.1,00,000/-
4.	Funeral expenses	Rs.25,000/-
	TOTAL	**Rs. 10,98,600/-**

2014(5)SCALE772

V. Mekala Vs. M. Malathi and Anr.

Hon'ble Judges/Coram: Gyan Sudha Misra and V. Gopala Gowda, JJ.

Brief Facts of the Case

This appeal is preferred by the injured-claimant as she was aggrieved by the impugned judgment and award dated 31.8.2012 passed by the High Court of Judicature at Madras in C.M.A. No. 2131 of 2008 even though it has enhanced the compensation from Rs. 6,46,000/- to Rs. 18,22,000/- with interest at the rate of 7.5% per annum from the date of filing the claim petition under various heads urging various facts and grounds in justification of her claim. The claimant-Appellant is aggrieved by the determination of monthly notional income of the deceased by the High Court by taking a meager sum of Rs. 6,000/- instead of Rs. 18,000/- per month as she is a student studying in the 11th Standard holding first rank in her school. She had an excellent career ahead of her but for the accident in which she has sustained grievous injuries and has become a permanently disabled.

Decision of the Supreme Court

The High Court on the basis of medical evidence on record with reference to the fractures sustained by the Appellant to both the legs, rightly arrived at the conclusion that she has suffered 70% of permanent disablement and therefore she was awarded the compensation under the head of loss of earning in the impugned judgment taking into account monthly notional income of Rs. 6,000/- in the absence of any document on record as she was a student. This assumption of the courts below is on the lower side in view of the observations made by this Court in ***R.D. Hattangadi*** . The said principle is reiterated in ***Govind Yadav***.

Appellant is a brilliant student as she has secured first rank in the 10th Standard, she would have had a better future in terms of educational career to acquire basic or master degrees in the professional courses and she could have got a suitable' either public or private employment but on account of permanent disablement she suffered due to injuries sustained by her in the accident, that opportunity is lost to her and therefore, she is entitled to compensation as per law laid down by this Court in the cases of ***Raj Kumar, R.D. Hattangadi*** and ***Govind Yadav***. Further, having regard to the undisputed fact that there has been inflation of money in the country since the occurrence of the accident, the same has to be taken into account by the Tribunal and. Appellate Court while awarding compensation to the claimant-Appellant as per the principle laid down by this Court in the case of Govind Yadav which has reiterated the position of ***Reshma Kumari*** v. ***Madan Mohan*** (2009) 13 SCC 422.

The fact that the Appellant was a brilliant student at the time of the accident should also be taken into consideration while awarding compensation to her. Therefore, taking Rs. 6,000/- as monthly notional income by the Tribunal for the purpose of awarding compensation under

this head is too meager an amount. The learned Counsel appearing for the Respondent No. 2 contended that the Appellant can still finish her education and find employment and therefore, there is no necessity to enhance the amount of compensation under the head of 'loss of income' and 'future prospects'. It is pertinent to reiterate here that the claimant/Appellant has undergone and undergoing substantial pain and suffering due to the accident which has rendered both her legs dysfunctional. This has reduced the scope of her future prospects including her marriage substantially. Moreover, a tortfeasor is not entitled to dictate the terms of the claimants-Appellants career as has been held by the Karnataka High Court in the case of ***K. Narsimha Marthy*** v. ***The Manager, Oriental Insurance Co. Ltd. and Anr.*** ILR 2004 KAR 2471.

It would be just and proper for this Court, and keeping in mind her past results we take Rs. 10,000/- as her monthly notional income for computation of just and reasonable compensation under the head of loss of income. Further, the High Court has failed to take into consideration the future prospects of income based on the principles laid down by this Court in catena of cases referred to supra. Therefore, the Appellant is justified in seeking for re-enhancement under this head as well and we hold that the claimant-Appellant is entitled to 50% increase under this head as per the principle laid down by this Court in the case of ***Santosh Devi***.

The compensation under the head pain & suffering and mental agony was awarded by the High Court after recording concurrent finding with the award passed by the Tribunal. However, the courts below have not recorded the nature of the permanent disablement sustained by the Appellant, while awarding Rs. 1,00,000/- under this head which is too meager an amount and is contrary to the judgment of ***R.D. Hattangadi*** and ***Govind Yadav*** cases . The relevant paragraphs of ***Govind Yadav*** case. Therefore, under this head the amount awarded should be enhanced to Rs. 2,00,000/- as the Doctor-PW2 has opined that at the time of walking with support of crutches, the claimant-Appellant will be suffering pain permanently. Therefore, under this head it has to be enhanced from Rs. 1,00,000/- to Rs. 2,00,000/-.

The loss of amenity and attendant charges awarded by the courts below at Rs. 1,00,000/- is also too meager an amount as the Appellant has permanently lost her amenity of both the legs. For the purpose of walking, squatting, running and also studying throughout her life and particularly, at the advanced age, she will be requiring the attendant for giving assistance to attend the nature's call and also at the time of sitting or moving around. Therefore, the compensation at this head is required to be enhanced from Rs. 1,00,000/- to Rs. 2,00,000/- based upon the principle laid down by this Court in ***Govind Yadav*** case.

The amount of compensation awarded under the head of 'Loss of enjoyment of life and marriage prospects' at Rs. 2,00,000/- is totally inadequate since her marriage prospect has substantially reduced and on account of permanent disablement she will be deprived of enjoyment of life. Therefore, it would be just and proper to enhance the compensation from Rs. 2,00,000/- to Rs. 3,00,000/-. In so far as, purchase of crutches periodically, it would be

just and proper to award a sum of Rs. 50,000/-. Further, the accident had taken place on 11.4.2005 and the claimant-Appellant, since then has been fighting for justice, first, in the Motor Accident Claim Tribunal, then the High Court and finally before us. Therefore, we consider that she is rightfully entitled to the cost of litigation as per the principle laid down by this Court in the case of ***Balram Prasad*** v. ***Kunal Saha and Ors.*** (2014) 1 SCC 384 Therefore, we award a sum of Rs. 25000/- under the head of 'cost of litigation'.

Thus, the claimant-Appellant in this appeal is entitled to a total amount of Rs. 30,93,000/- as compensation with an interest @ 9% per annum based on the principle laid down by this Court in ***Municipal Corporation of Delhi, Delhi*** v. ***Uphaar Tragedy Victims Association and Ors.*** (2011) 14 SCC 481 from the date of filing of the application till the date of payment.
