
(2008) 11 DEL CK 0088

In the Delhi High Court

Case No : M.A.C. Appeal No"s. 277, 279 and 283 of 2004

Delhi Transport Corporation

APPELLANT

Vs

Neelam Deshwar and Others

RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:

Income Tax Act, 1961 — Section 203
Motor Vehicles Act, 1988 — Section 168, 171

Citation : (2009) ACJ 1 : (2009) 2 ILR Delhi 694

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : S.P. Jain and S.N. Parashar, for the Appellant; Ashok Popli and Bharat Bhushan Sachdeva, for the Respondent

Judgement

Kailash Gambhir, J.—The appellant D.T.C. feeling aggrieved with the award dated 2.1.2004 passed by Motor Accidents Claims Tribunal has preferred the present appeals, viz., M.A.C. Appeal Nos. 277, 279 and 283 of 2004. Since the appeals arise out of the common award, therefore, the same are being disposed of by this common order.

2. The facts of the case in a nutshell are as follows:

On 13.11.1999 at about 11.45 a.m., Suresh Kumar Deshwar along with his wife, Neelam Deshwar, their daughters Pooja and Somya and his uncle, Jiya Lal were going in a Maruti car bearing registration No. UP 16-6468, which was being driven by Suresh Kumar Deshwar at a slow speed and on the correct side of the road from Delhi to Muzaffarnagar. When the aforesaid car reached at Partapur bypass opposite Gandhi Hotel, a D.T.C. bus bearing registration No. DL 1P-A 2398 came from the opposite direction driven in a rash and negligent manner by its driver hit the car of the deceased, head-on, causing fatal injuries to Suresh Kumar Deshwar, Jiya Lal and Pooja, who died on the spot and caused grievous injuries to Neelam Deshwar, whereas Somya sustained minor injuries. Somya claimed no compensation for her minor injuries. Four claim petitions were filed

by the claimants before Motor Accidents Claims Tribunal and all the four petitions, viz., Claim Petition Nos. 782, 783, 784 and 785 of 2003 were disposed of by the learned Tribunal vide common award dated 2.1.2004.

M.A.C. Appeal No. 277 of 2004:

3. This appeal relates to Claim Petition No. 784 of 2003 filed by Neelam Deshwar and Somya seeking compensation on account of the death of Pooja.

4. Mr. S.P. Jain, counsel for the appellant D.T.C. assailed the aforesaid award and contended that the Tribunal has considered imaginary income of the deceased Pooja, aged 9 years to the tune of Rs. 5,000 per month which is exorbitant and contention of mother of the deceased that there was possibility of the deceased becoming a doctor cannot be sustained by any stretch of imagination specially when deceased was merely an average student at the time of her demise. The counsel urged that the Tribunal should have assessed the income at Rs. 15,000 per annum as per the Second Schedule, which has not been followed by the Tribunal. The counsel also pointed out that learned Tribunal erred in not making 1/3rd deductions for personal expenses of the deceased while making assessment of compensation. The counsel further submitted that the Tribunal had erred in applying the multiplier as per the age of the deceased and not the claimants, as settled in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, . The counsel maintained that while computing compensation, the Tribunal erred in not appreciating the fact that there was only one claimant in the instant matter. The counsel also pointed out that the compensation granted by the Claims Tribunal for the loss of love and affection to the tune of Rs. 20,000 and funeral expenses to the tune of Rs. 15,000 are on the higher side and not in synchrony with the amounts mentioned under the Second Schedule. The counsel relied on the judgment of the Supreme Court in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., . The counsel further contended that the Tribunal erred in not believing the testimony of the D.T.C. bus driver and in believing the version of the claimant who was an interested party in the instant matter. The counsel also urged that the claimants in collusion with the police officials have got registered a criminal case against the driver of the D.T.C. bus despite the fact that the accident took place entirely due to rash and negligent driving on the part of Maruti car driver. The claimant eyewitness herself had sustained head injuries in the accident and in such situation it cannot be expected that she had seen the occurrence of the accident. The counsel further added that the Tribunal also erred in believing the version of the claimant because she had sustained head injuries, therefore, no credence can be given to her version. The counsel also maintained that the rate of interest awarded by the Tribunal is on the higher side as the then prevailing rate of interest was 4 per cent per annum, therefore, same should be awarded.

5. Per contra, Mr. Ashok Popli, counsel for the respondents, vehemently refuted the contentions of the counsel for the appellant and submitted that the award made by the Tribunal is just, fair and reasonable and does not require any

interference by this Court. The counsel relied on the judgment of this Court in R.K. Malik and Others Vs. Kiran Pal and Others,

M.A.C. Appeal No. 279 of 2004:

6. This appeal relates to Claim Petition No. 782 of 2003 filed by Neelam Deshwar, Somya, Raj Singh and Tarawati seeking compensation on account of the death of Suresh Kumar Deshwar.

7. Mr. S.P. Jain, counsel for the appellant D.T.C. has assailed the impugned award on the ground that the Tribunal has considered the gross income of the deceased Suresh Kumar Deshwar to the tune of Rs. 8,19,965 per annum on the basis of the last drawn salary of the deceased. Further the learned Tribunal had deducted Rs. 1,60,000 which was used to be paid to the deceased towards petrol expenses, car maintenance, medical expenses, lunch and telephone expenses, etc. and the counsel further submitted that the witness examined by the claimants as PW 5 did not give any break-up of the salary of the deceased, therefore, the counsel contended that since the deceased was earning such a high salary so he must have been an income tax assessee and the slab applicable for such a high salary may be up to 40 per cent of the salary but the claimants withheld this material information from the learned Tribunal just to enrich themselves by hiding facts. The counsel also contended that deceased must have also been covered by different policies of personal accident and life insurance, etc., but again this relevant information was not placed before the learned Tribunal by the claimants and the same was withheld intentionally. The counsel submitted that the Tribunal erred in making assessment of compensation on the basis of gross income of the deceased, which is clearly against the well settled principles of law. The counsel further maintained that the Tribunal should have assessed the financial loss to the claimants to which they were deprived of due to his death and for that purpose the Tribunal ought to have taken that amount of salary alone into consideration which he used to bring home and not his gross salary. The counsel urged that the Tribunal erred in doubling the income of the deceased at the time of assessment of the financial loss to the claimants because, firstly, the deceased was not in a government job, therefore, was not having a stable job and secondly, the deceased was placed at such a high scale of salary and was holding the post of Senior Consultant, therefore, it was not possible for him to double the income during his lifetime. The counsel maintained that there is a saturation point in the income of every person and, therefore, by doubling the income of the deceased in the absence of any evidence on record, the Tribunal committed a grave error. The counsel further contended that the Tribunal erred in deducting $\frac{1}{3}$ rd towards personal expenses and at least $\frac{2}{3}$ rd deduction should have been made as the deceased was earning such a high salary that it was not expected that he would be spending only $\frac{1}{3}$ rd on himself more particularly when deceased is survived by his widow and a daughter.

8. The counsel further pointed out that the multiplier of 16 as applied by the

Tribunal is on the higher side for the death of a person of 38 years and relied on the decision in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , where the Hon"ble Supreme Court has taken multiplier of 12. The counsel further contended that the sum of Rs. 25,000 towards loss of consortium and Rs. 15,000 towards funeral expenses are exorbitant and not in consonance with the provisions of the Second Schedule to the Motor Vehicles Act. The counsel relied on the judgment of the Apex Court in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc.,

9. The counsel further contended that the Tribunal erred in not believing the testimony of the D.T.C. bus driver and in believing the version of the claimant who was an interested party in the instant matter. The learned Counsel also urged that the claimants in collusion with police officials got registered a criminal case against the driver of the D.T.C. bus despite the fact that the accident took place entirely due to rash and negligent driving on the part of Maruti car driver. The claimant eyewitness herself sustained head injuries in the accident and in such a situation, it cannot be expected that she had seen the occurrence of the accident. The counsel further added that the Tribunal also erred in believing the version of the claimant because she had sustained head injuries, therefore, no credence can be given to her version. The counsel also maintained that the rate of interest awarded by the Tribunal is on the higher side and the prevailing rate of interest was 4 per cent per annum, therefore, same should be awarded.

10. Per contra, Mr. Ashok Popli, the counsel for the respondents, vehemently refuted the contentions of the counsel for the appellant and submitted that the award made by the Tribunal is just, fair, equitable and reasonable and does not require any interference by this Court.

M.A.C. Appeal No. 283 of 2004:

11. This appeal relates to the Claim Petition No. 783 of 2003 filed by Savitri Deshwar seeking compensation on account of the death of Jiya Lal.

12. Mr. S.P. Jain, counsel for the appellant assailed the impugned award on the ground that the Tribunal considered the income and pension of the deceased Jiya Lal to the tune of Rs. 20,000 p.m. The counsel also contended that as per the witness, PW 4, produced by the claimant, there was a pension loss of Rs. 3,541 only. Further there was no evidence on record in respect of the income from consultancy as alleged in the affidavit of evidence. Moreover, there was no proof of income tax assessment, which is mandatory when the income of Rs. 16,000 to Rs. 17,000 p.m. is shown by claimant. It was further submitted by the counsel that no official of any company was produced who could verify that the deceased was working or that he was earning any amount during his lifetime. The counsel further submitted that the Tribunal did not consider the fact of the age of the deceased and his capability and capacity of earning at such an advance stage of his life and the Tribunal has passed the amount of compensation only on the oral testimony of the attorney holder. The counsel further submitted that the

deceased was 65 years of age at the time of accident, therefore, it was not possible that he was earning substantial amount of Rs. 16,000 to Rs. 17,000 p.m. The counsel further urged that the future prospects as assessed by the Tribunal are erroneous as firstly at the age of 65 years, it cannot be expected that he had prospects of enhancement in future and secondly, there is no proof of stable job on record. The counsel maintained that 1/3rd deductions for personal expenses were on the lower side. It was urged that when the widow was the only survivor then the question of 1/3rd expenses does not arise, further, the only dependent survivor was receiving the pension which was received by the deceased during his lifetime and there was no other source of income then the question of 1/3rd deduction does not arise and in fact there is no financial loss to the claimant in respect of the death of Jiya Lal as even after the death of the deceased Jiya Lal, the widow is getting her full share of pension from the Indian Railways. The counsel also contended that the multiplier of 5 applied by the Tribunal at the time of accident was applied without taking into consideration the decisions of the higher courts. The counsel also submitted that the sum of Rs. 15,000 towards loss of consortium and Rs. 10,000 towards funeral expenses are on the higher side and not in consonance with the provisions of the Second Schedule to Motor Vehicles Act. The counsel relied on the judgment of the Apex Court in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc.,

13. The counsel further contended that the Tribunal erred in not believing the testimony of the D.T.C. bus driver and in believing the version of the claimant who was an interested party in the instant matter. The counsel also urged that claimants in collusion with the police officials got registered a criminal case against the driver of the D.T.C. bus despite the fact that the accident took place entirely due to rash and negligent driving on the part of Maruti car driver. The claimant eyewitness herself sustained head injuries in the accident and in such situation it cannot be expected that she had seen the occurrence of the accident and, therefore, no credence can be given to her version. The counsel also maintained that the rate of interest awarded by the Tribunal is on the higher side and the prevailing rate of interest was 4 per cent per annum, therefore, same should be awarded.

14. Per contra, Mr. Ashok Popli, the counsel for the respondents, vehemently refuted the contentions of the counsel for the appellant and submitted that the award made by the Tribunal is just, fair, equitable and reasonable and does not require any interference by this Court.

15. I have heard learned Counsel for the parties and perused the record.

Decision in M.A.C. Appeal No. 277 of 2004:

16. This appeal involves compensation awarded by the Tribunal in favour of the claimants on the death of a child aged 9 years. The Tribunal has awarded total sum of Rs. 9,35,000 in favour of the claimants-respondents after taking into

consideration the assumed income of the deceased at Rs. 5,000 per month. The said assumed income of Rs. 5,000 per month has been arrived at by the Tribunal looking into the brilliant academic record of the deceased, who was a student of 4th standard in the year 1999 at the time of the accident. Contention of the counsel for the appellant on such assumed income is that at such a young age with no certainty or exactitude of the future, the income of the child could not have been assessed at Rs. 5,000 p.m. The reference of the Tribunal that such child had ambition to become a doctor in her career and then taking her assumed income as Rs. 5,000 per month appears to be totally imaginary and fanciful. It is no doubt true that the compensation to be awarded in each and every case arising on account of any accident has to be just, fair and adequate, but for determining such compensation there has to be some basis and rationality, the structured formula as laid down under Second Schedule to the Motor Vehicles Act for non-earning persons below the age of 15 years notional income of Rs. 15,000 per annum has been determined and I do not find any reason to deviate from the said notional income laid down in the Second Schedule to the Act in the facts of the present case. Also it would be worthwhile to refer to the decision of the Hon'ble Apex Court. In this regard, the Supreme Court in *New India Assurance Co. Ltd. Vs. Satender and Others*, , has observed as under:

(8) In *State of Haryana and Another Vs. Jasbir Kaur and Others*, it was held as under:

(7) It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes fairness, equitability and reasonableness and non-arbitrariness. If it is not so it cannot be just.

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

(10) In case of the death of an infant, there may have been no actual pecuniary benefit derived by the parents during the child's lifetime. But this will not necessarily bar the parent's claim and prospective loss will find a valid claim provided that the parents" establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of Taff Vale Rly. v. Jenkins (1913) AC 1 and Lord Atkinson said thus:

...all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues, it is quite true that the existence of this expectation is an inference of fact-there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that deceased earned money in the past and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them.

(11) This Court in Lata Wadhwa and Others Vs. State of Bihar and Others, , while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

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

Based on the above preposition of law laid down by the Supreme Court the notional income of the deceased is assessed at Rs. 15,000 per annum and not Rs. 5,000 per month as held by the Tribunal. The Tribunal has applied the

multiplier of 15 years and the said multiplier is arrived at by the Tribunal after taking into consideration the age of the deceased.

17. The learned Tribunal has, however, not taken into consideration the age of the claimant mother, which was higher in comparison to the age of the deceased. In this regard the Supreme Court in *The New India Assurance Company Limited Vs. Smt. Kalpana and Others*, has observed as under:

(7) The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last.

18. The age of the claimant was 31 years at the relevant date of accident and, therefore, multiplier of 17 shall be applicable. Applying the said multiplier to the multiplicand of Rs. 15,000 p.a., the total compensation towards the loss of dependency would come to Rs. 2,55,000 and after deducting 1/3rd towards personal expenses, the loss of dependency would come out as Rs. 1,70,000.

19. The award of compensation towards loss of financial dependency as awarded by the Claims Tribunal is, therefore, set aside. The claimants-respondents shall be entitled to a sum of Rs. 1,70,000 towards loss of financial dependency besides a sum of Rs. 20,000 awarded towards loss of love and affection and a sum of Rs. 5,000 towards funeral expenses and thus in all a sum of Rs. 1,95,000 shall be paid by the appellant to the claimants-respondents.

20. As regards the issue of interest that the rate of interest of 12 per cent per annum from the date of filing of the petition till 31.3.2001 and thereafter at the rate of 9 per cent per annum from 31.3.2001 till 31.3.2003 and at the rate of 6 per cent per annum from 31.3.2003 till final realisation awarded by the Tribunal is on the higher side and the same should be reduced to 4 per cent per annum, I feel that the rate of interest awarded by the Tribunal is just and fair and requires no interference. It is well settled that the interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money which ought to have been paid to him. No rate of interest is fixed u/s 171 of the Motor Vehicles Act, 1988 but time and again the Hon'ble Apex Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking into consideration relevant factors including inflation, policy being adopted by Reserve Bank of India from time to time and other economic factors. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest at the rate of 12 per cent per annum from the date of

filing of the petition till 31.3.2001 and thereafter at the rate of 9 per cent per annum from 31.3.2001 till 31.3.2003 and at the rate of 6 per cent per annum from 31.3.2003 till final realisation by the Tribunal as the Tribunal considered the bank rate of different periods and has awarded the interest accordingly. No interference is made in the award on this count.

21. Vide order dated 2.8.2005 this Court directed execution of the award amount and later vide order dated 17.5.2006 directions were given for release of 75 per cent of the said amount without security and 25 per cent on furnishing security. The Claims Tribunal awarded Rs. 9,35,000 as compensation.

22. In view of the above the respondent mother is directed to pay back the excess amount over and above the amount of compensation awarded in the present appeal to the appellant within a period of two months from the date of this order, failing which the appellant shall get a right to recover the same with interest at the rate of 7.5 per cent per annum on the excess amount from the date of the receipt of the amount by the respondent petitioner till realisation.

23. M.A.C. Appeal No. 277 of 2004 is disposed of in terms of the aforesaid directions.

Decision in M.A.C. Appeal No. 279 of 2004:

24. This appeal involves challenge to the compensation awarded in favour of the claimants-respondents due to the death of one Suresh Kumar Deshwar, who died in the said accident at the age of 36 years. The deceased Suresh Kumar Deshwar is survived by his widow aged 31 years, besides his minor daughter and parents.

25. The main thrust of the argument of the counsel for the appellant is that the Tribunal has not deducted any amount towards the income tax and has wrongly taken into consideration the gross salary being earned by the deceased. Counsel for the appellant also invited my attention to the cross-examination of Neelam Deshwar, PW 2, who in her deposition categorically stated that her husband used to pay income tax and he used to file income tax returns. Mr. Ashok Popli, counsel for respondents on the other hand invited my attention to Form No. 16, which is a certificate issued u/s 203 of the Income Tax Act, 1961, proved on record as Exh. P6. The said certificate shows that a deduction in a sum of Rs. 58,241 has been duly made, therefore, the contention of the counsel for the appellant does not appear to have any force that no income tax has been deducted from the salary of the deceased.

26. For proving income of the deceased, as per PW 2, Suresh Kumar was graduate in Electronics and Communications from Roorkee Engineering College in the year 1986 with first division. Deceased Suresh Kumar as per PW 2 during his studies also took a training for about two months with NELCO, Bombay. PW 2 also deposed that the deceased Suresh Kumar also undertook specialised computer programmes as regards application of electronics and computers in nuclear programme with Bhabha Atomic Research Centre, Bombay during the

period 1.9.86 to 31.3.1987. PW 2 also stated that after joining the training programme in 1987, deceased Suresh Kumar was promoted as a Scientific Officer and thereafter all promotions were achieved by him in the minimum time period on merit basis. She also stated that deceased Suresh Kumar undertook a real time programming from 18.7.1987 to 22.7.1988. She stated that deceased Suresh Kumar had 9 years experience in the field of system analysis, designing development, testing and commissioning. Ultimately, deceased Suresh Kumar, as per PW 2 joined River Run Software Group in the year 1987 and at the time of his death he was drawing annual gross salary of Rs. 8,19,965. She proved on record the revised salary letter of deceased Suresh Kumar as Exh. PW2/6 and stated that in a short span from 1.11.99, deceased Suresh Kumar got 3rd increment and was promoted as Senior Consultant, entitled to annual gross salary of Rs. 9,08,465 vide letter Mark A. PW 2 also stated that deceased Suresh Kumar had a bright future and was fully devoted to his profession due to which he was repeatedly sent abroad for commissioning specialised projects developed by him. She proved on record as Exh. PW2/7 the certificate of excellence award bestowed upon the deceased Suresh Kumar for his excellent performance. She proved as Exh. PW2/8 copy of passport of the deceased Suresh Kumar and as Exh. PW2/9 to Exh. PW2/14B various academic achievement certificates of the deceased Suresh Kumar.

27. Also, Anil Sharma, Manager (HR) in River Run Software Group, PW 5, with whom the deceased Suresh Kumar was employed during his lifetime brought the service file of deceased Suresh Kumar and on the basis of records deposed that the deceased joined their company as Senior Assistant Designer on 18.8.1997 at an annual salary of Rs. 4,09,939. Annual salary of the deceased, as per PW 5 was enhanced to Rs. 4,84,000 w.e.f. 1.1.1998 and he was promoted to the post of Consultant. PW 5 further deposed that w.e.f. 1.6.1998 annual salary of the deceased was enhanced to Rs. 6,00,131 and the last drawn salary of deceased Suresh Kumar, as per PW 5, was Rs. 8,19,965 per annum w.e.f. 1.6.1999. He also deposed that the deceased was given an excellence award in April 1999. He further stated that as per record the deceased Suresh Kumar was Bachelor of Electronics and Communications from the University of Roorkee and his date of birth was 2.2.1963.

28. Tribunal perused Exh. PW1/6 as per which the gross annual salary paid to deceased Suresh Kumar was Rs. 8,19,965 out of which a sum of Rs. 1,60,000 was by way of reimbursement of petrol expenses, car maintenance expenses, car washing expenses, professional kit expenses, medical expenses, lunch expenses, telephone expenses and cafeteria reimbursement. For the purpose of computation the reimbursement of Rs. 1,60,000 cannot be considered and accordingly, income of the deceased Suresh Kumar comes to Rs. 6,59,965 per annum which the Tribunal rounded off to Rs. 6,60,000. It has also come on record that the deceased was a young man and as reflected by the documents placed on the record, he was growing very fast and his income would not have remained static.

29. The Claims Tribunal after taking the annual earnings of deceased Suresh Kumar as Rs. 6,60,000 and adding to the same double thereof, i.e., Rs. 13,20,000 and dividing the total by 2 assessed the income after considering future prospects as Rs. 9,90,000. I feel that there is no infirmity in the award in this regard. The respondent claimant duly proved the income and future prospects of the deceased and, therefore, no interference is made in the award in this regard.

30. The appellant is also aggrieved on account of the fact that the Tribunal has taken into account the future prospects of the deceased although he had almost reached at the saturation point in his career and was also drawing a quite high scale of pay. The counsel, therefore, urged that the criteria as laid down in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , has been wrongly applied in the facts of the present case. Deceased was also not a government servant and, therefore, being in private job there could not have been any job security or time bound promotion. The appellant is further aggrieved due to the Tribunal considering 1/3rd of his income for personal expenses and not 1/2 of the personal expenses out of the earned income. As regards the challenge to the multiplier, I do not find there is any illegality in the same. The deceased was of 36 years of age while the widow of the deceased was of 31 years of age. For applying the multiplier of the age of the deceased and the age of the claimants, whichever is higher is to be taken into consideration and as per the Second Schedule to the Motor Vehicles Act the appropriate multiplier for the age of 36 years is 16 years. In this regard, judgment in The New India Assurance Company Limited Vs. Smt. Kalpana and Others, , has already been discussed. I, therefore, do not find any merit in the submission of the counsel for the appellant that a wrong multiplier has been applied in the facts of the present case. As regards the applicability of criteria laid down in Sarla Dixit's case (supra), to give the advantage of future prospects I find that the widow of the deceased Neelam Deshwar in her deposition amply proved the future prospects of the deceased and, therefore, it cannot be said that there was no evidence on record with regard to the future prospects of the deceased. In this regard the relevant portion of para 8 of the judgment in the case of Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , is reproduced below:

(8) ...The mere assertion of the claimants that deceased would have earned more than Rs. 8,000 to Rs. 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before M.A.C.T. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be...

31. I also do not find myself in agreement with the submission of the counsel for

the appellant that since the deceased was not in government service, therefore, no future prospects could have been taken into consideration.

32. I also do not find merit in the submission of the counsel for appellant that due to the higher income of the deceased, 1/2 of the income for personal expenses should have been taken into consideration. The deceased was survived by his widow and a minor child besides his aged parents. Simply because the deceased was drawing a handsome salary that in itself would not mean that the deceased would have lived a luxurious life and would have spent 1/2 of his income towards personal expenses. In all similar cases, the Hon'ble Supreme Court has taken the view of deducting 1/3rd income of the deceased towards personal expenses. There is no apparent reason to deviate from the same. The finding of the Tribunal deducting 1/3rd income towards the personal expenses is upheld.

33. As regards non-pecuniary damages, I do not feel that there is any infirmity in the award on this count. I do not feel inclined to interfere with the amount of Rs. 25,000 awarded for loss of consortium and Rs. 15,000 towards funeral expenses.

34. As regards the issue of rate of interest applicable in the instant case, the same has been discussed at length in the decision in M.A.C. Appeal No. 277 of 2004, accordingly, no interference is made in the award in this regard.

35. On the basis of the foregoing discussion, total loss of dependency comes to Rs. 1,06,00,000. Thus no interference is made in the award.

36. On perusal of the order sheet it comes forth that Rs. 15,00,000 have already been paid to the respondents. Let the remaining amount be paid by the appellant to the respondents with up-to-date interest at the rate of 7.5 per cent per annum from the date of filing of the petition till realisation in the same proportion as apportioned by the learned Tribunal.

37. With the above directions, M.A.C. Appeal No. 279 of 2004 is disposed of.

Decision in M.A.C. Appeal No. 283 of 2004:

38. In the present appeal, death of Jiya Lal, who at the time of the accident was of 65 years of age, is involved. The grievance of the appellant is that the Tribunal has wrongly considered the income and pension of the deceased to the extent of Rs. 20,000 per month. The appellant is also aggrieved that Claims Tribunal has wrongly considered the future prospects of the deceased by applying the criteria laid down in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, without considering the fact that at such an advanced age of the deceased the chance of any future prospects gets totally bleaked. The Tribunal has also wrongly considered 1/3rd income for personal expenses although the deceased was survived by his widow alone, who was entitled to get the monthly pension due to the demise of her husband. The Tribunal has applied wrong multiplier as well as awarded higher rate of interest as per the contention of the counsel for the appellant. Counsel for the appellant has invited my attention to the relevant

portion of the judgment where the Tribunal has itself held that there was no direct documentary evidence as regards the earnings of the deceased Jiya Lal, but still the Tribunal has assessed the earnings of the deceased at Rs. 20,000 per month. It is a settled legal position that for proving the income of victim of the offending vehicle a bald statement is not enough. There has to be some documentary evidence or any other sufficient material to prove the income. In this regard the Apex Court in *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, , has held as under:

(9) ...It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Claims Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that Motor Vehicles Act vis-a-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer company to produce the relevant documents to show that the income that was being derived by deceased from his employment...

39. The perusal of the deposition of Raj Singh Verma, PW 3, shows that he has highlighted the high profile career of the deceased while he was in service and even after his retirement, but the said witness failed to place anything on record to prove that deceased was earning approximately Rs. 16,000 to Rs. 17,000 per month by rendering private consultancy to the reputed companies. It cannot be assumed that since the deceased had a bright service record in the past, therefore, necessarily some earning would have remained continued till even at the advanced age of 65 years. The said witness has not even discussed the name of the alleged reputed companies where the deceased was rendering his consultancy and nor any other documentary proof has been placed on record, which could show receipt of any money by the deceased through such reputed companies in the absence of any evidence on record it is difficult to believe that the deceased was earning approximately Rs. 16,000 to Rs. 17,000 per month. The Tribunal has wrongly assessed the income of the deceased at Rs. 20,000 per month without there being any basis to support the same. At best the income of the deceased as that of skilled workman can be taken into consideration in the facts and circumstances of the present case. As regards the issue of multiplier, I do not find any infirmity in applying the multiplier of 5. Raj Singh Verma, PW 3, deposed that Jiya Lal was aged about 65 years and as per the Second Schedule the applicable multiplier is 5, therefore, no interference is made in the award on this count.

40. As regards the issue of deduction that the 1/3rd deduction made by the Tribunal is on the higher side, considering that the deceased is survived by his wife and considering that she will have no recurring earning, I do not feel inclined to interfere in the award as regards deduction.

41. As per the Minimum Wages Act the income of the skilled workman as on the date of the accident is Rs. 2,772 p.m. and the multiplier of 5 years shall be applicable in the facts of the present case. No future prospects can be taken into consideration at the most the enhancement in the minimum wages for the period of 5 years can be taken into consideration, i.e., Rs. 3,319 p.m. Considering the increase in wages in the period of 5 years and taking a mean of the same, the average income of the deceased would come to Rs. 3,045.50 p.m. and after applying the multiplier the total loss of dependency of the claimant would come to Rs. 1,21,820.

42. As regards non-pecuniary damages, the Tribunal awarded Rs. 15,000 for loss of consortium and Rs. 10,000 for funeral expenses, the contention of the counsel for the appellant is devoid of any merit as since 1994 the government has not revised the Second Schedule and considering the rise in inflation and price index, no interference is made in the award.

43. As regards aspect of negligence, PW 2 said that the car bearing registration No. UP 16-6468 was being driven by deceased Suresh Kumar at a slow speed and on correct side of the road. She further stated that when at about 11.45 a.m. the said car reached just before Partapur bypass, a D.T.C. bus bearing registration No. DL 1P-A 2398 driven by the respondent No. 1 came from opposite direction in a rash and negligent manner and at a fast speed. The offending bus, as per PW 2, struck against car of the deceased to its right side causing death of deceased Suresh Kumar on the spot. PW 2 further stated that her daughter deceased Pooja and uncle deceased Jiya Lal also received fatal injuries while she herself received grievous injuries and her daughter Somya sustained minor injuries. PW 2 categorically deposed that the accident was caused due to rash and negligent driving on the part of respondent No. 1. She proved on record as Exh. PW2/1 to Exh. PW2/5 the certified copies of criminal court record. In her cross-examination, PW 2 denied the suggestion that her car was being driven in a rash and negligent manner by deceased Suresh Kumar and that while trying to overtake a truck, their car went to wrong side of the road causing accident. She also denied the suggestion that on seeing the car coming on wrong side the respondent No. 1 swerved his bus towards kacha portion of the road but even then the accident occurred. On the other hand, respondent No. 1 stepped into the witness-box as RW 1 and deposed that on 13.11.1999 he was driving the bus bearing registration No. DL 1P-A 2398 from Delhi carefully and on correct side of the road. When he reached Partapur bypass at about 12 noon near Gandhi Hotel, a truck bearing registration No. UP 16-6468 overtaking a Maruti car was coming from opposite direction in a rash and negligent manner as per PW 1. But subsequently, RW 1 has rectified his statement and said that in

fact it was Maruti car bearing registration No. UP 16-6468 which overtook the truck. RW 1 also stated that he swerved the bus at kacha portion, but driver of the car lost his balance and hit against the bus. In his cross-examination, RW 1 deposed that he started from Haridwar at about 7.30 a.m. and en route he stopped the bus at various places to pick the passengers and also for taking breakfast at Khatauli. As per RW 1 the offending bus stopped at Khatauli for about 20-25 minutes and he also stated that the distance between Partapur and Haridwar is about 135 km. Police, as per RW 1 registered a criminal case against him and the same is pending. The offending bus was seized by police and RW 1 was released on bail. In cross-examination, RW 1 stated that before the accident he had seen the car of the deceased at a distance of about 50-60 ft but could not notice the registration number of the truck. Also, RW 1 admitted it as correct while going from Delhi to Meerut bypass, one has to take a left turn but clarified that he was coming from Meerut and not from bypass. He stated that when he first saw the car, his bus was in the middle of the road and denied that the accident took place on account of his rash and negligent driving. He also stated to have written to his office about the manner in which the accident occurred. He also denied the suggestion that the car was going on its correct side and it was the offending bus which came on wrong side and hit against the car.

44. On perusal of Exh. PW2/5 which is the certified copy of site plan which depicts the spot of accident, the learned Tribunal observed that it is implicit from the site plan that at the time of accident the offending bus was being driven towards the right edge of the road and it was respondent No. 1 who was driving the bus on the wrong side. The site plan also belies the testimony of RW 1 to the effect that he was coming from Meerut and not from bypass. The site plan clearly shows that the offending bus was coming from bypass and not Meerut. The site plan Exh. PW2/5 also belies the testimony of RW 1 to the effect that on seeing the car of the deceased he swerved the offending bus on kacha portion of the road. Spot of accident has been shown in the site plan as in almost middle of the road and on kacha portion there are a few shops and a hotel. Although, PW 2 was cross-examined at length, her testimony as regards the factum of accident and the rash and negligent driving of respondent No. 1 remains unshattered. Thus, it is manifest that the accident happened due to rash and negligent driving of the offending bus, therefore, no interference is made in the award.

45. As regards the issue of rate of interest, applicable in the instant case, the same has been discussed at length in decision in M.A.C. Appeal No. 277 of 2004, accordingly, no interference is made in the award in this regard.

46. In view of the above discussion, total compensation comes out to Rs. 1,46,820. Therefore, the compensation is reduced from Rs. 12,25,000 to Rs. 1,46,820. This Court vide order dated 17.5.2006 directed release of 75 per cent of the award amount without security and 25 per cent on furnishing security.

47. In view of the above, the respondent is directed to pay back the excess amount over and above the amount of compensation awarded in the present

appeal to the appellant within a period of two months from the date of this order, failing which the appellant shall get the right to recover the same along with an interest at the rate of 7.5 per cent per annum from the date of receipt of the amount by the respondent till realisation.

48. In view of the foregoing, the appeal is disposed of.