

(2002) 12 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO

APPELLANT

Vs

SHIV DUTT SHARMA

RESPONDENT

Date of Decision : 31-12-2002

Acts Referred:

Citation : 2003 3 CPJ 667

Hon'ble Judges : T.S.DOABIA J.

Judgement

1. THESE appeals have arisen out of two sets of claim petitions; one pertains to an accident cause whereof was a bomb blast and the other deals with an incident where bullets of the terrorists snuffed life out of the passengers. Legal heirs have claimed compensation. In both sets of cases legal heirs have been successful. It is the Insurance Company which has challenged the decision so given.

2. SO far as the appeals pertaining to bomb blast are concerned, these are enumerated in Annexure A appended to this judgment. The appeals pertaining to the claimants who are heirs of those who died on account of terrorists bullets find serialised in Annexure B. Bomb blast cases deal with incidents which took place on 7.10.1992 and 28.11.1994. The first incidental as noticed above took place on 7.10.1992. At about 9.30 a.m. a bus started from Keso Manahasan to Jammu. When bus reached Digiana Asharam, a bomb exploded in it. A number of persons died and some were grievously injured. The said accident it was alleged took place because of the carelessness and negligence on the part of the driver and conductor of the vehicle because they did not take proper care to check the bus during the days of insurgency. It was said that they were supposed to take proper care and check the passengers before they were allowed to board the bus. This was not done. It was thus stated that it was because of their negligence the gruesome tragedy took place.

3. IN the second bomb blast case, the injured were travelling in bus bearing registration No. JK 02B 3875. It was the 28th day of November, 1994. The bus was going from Jammu to Katra. When the bus reached Ramnagar Morh near Panj Peer a bomb exploded. This caused fatal injuries and also personal injuries

to the passengers. Claim petitions were lodged. A preliminary objection was taken that the claim petitions are not maintainable. The matter came up to this Court. This Court was of the opinion that the petitions required to be tried on merits. Thereafter, trial was held. The Insurance Company has been held liable. Appeals have now been preferred by the Insurance Company.

4. SO far as bomb blast cases are concerned these can be categorised in two categories : one category is where injuries proved to be fatal, and the other where injured survived but suffered injuries. The facts in cases arising out of death on account of terrorists activity be noticed. The accident took place on 14.8.1993. One of the passengers survived to tell the events. He is Jai Krishan s/o Dharam Chand. He appeared in the witness box on 14.8.1993. He stated that at about 5.30 p.m. passengers were travelling in a bus bearing registration No. JKU/2003 when the bus was about 200 feet away from Sarthal Link Road, the passengers noticed some militants standing at the center of the road. They had covered their faces. They were carrying fire arms. The passengers told the driver to speed up the bus and not to stop. The driver, however, stopped the bus when he reached near the militants. The two militants came inside and told the driver to take the bus on the Link Road. The bus was taken 5 to 7 kms. inside. It was got stopped. The passengers were told to get out of the bus. Then the passengers belonging to two different communities were segregated. Passengers belonging to one community were told to run away. This witness also took advantage of that and ran along with them. When he looked back, he found that 16 passengers belonging to the other community were shot at and they fell on the ground. Even the conductor was killed. It is submitted that it is on account of negligence of the driver that the accident occurred. Had he not stopped the bus then the said event could have been avoided.

5. THE question which is required to be gone into is as to what is the scope of the term arising out of the use of the vehicle. Before proceeding to analyse the scope of this phrase, it would be apt to mention that liability is also being created under the Workmens Compensation Act of 1923 (hereinafter referred to as the 1923 Act). The words used in the Act of 1923 are "arising out of and in the course of employment". Reference to this provision is made as some of the decisions under the aforementioned Act of 1923 do indicate that even where there is a casual relationship between the cause of the death and employment then compensation becomes payable.

6. BEFORE proceeding to deal with the meaning of the term accident and whether these cases fall within the scope of Section 147 of the Motor Vehicles Act, 1988 it would be apt to first refer to a decision of this Court given in case titled Sneh Sharma v. Parshotam Singh, 1996 KLJ 457. This decision deals with the very accidents which are being dealt with in these cases. They came to this Court at preliminary stages. In Sneh Sharmas case (supra), the deceased was travelling in Matador bearing registration No. JK 02 -9091. He was going to his office situate at Bikram Chowk, Jammu. The driver of the vehicle tried to

overtake a bus at Digiana Jammu where a powerful bomb exploded in the bus. Passengers of the bus suffered injuries and in some cases these injuries proved to be fatal. Some of the splinters hit the passengers in the Matador in which Pradeep Kumar Sharma was travelling. He died as a result thereof. A claim petition was preferred. The other case which was there before the Division Bench of this Court, is the one regarding which facts have already been stated. This was with regard to bus bearing registration No. JKU 2003. This pertains to militant violence. In both the cases, the Tribunal was of the view that the accident did not arise out of the use of the motor vehicle and the driver was not responsible. Against these decisions, appeals were preferred. It was urged that the claim petitions could not be dismissed in a summary manner. Emphasis was laid on the term "use of the vehicle" and ultimately it was concluded that the Tribunal was not justified in rejecting the claim(s) at the very threshold. The view expressed was that it was for the driver of the bus to observe strict vigilance. The view expressed by the Division Bench in the case of death caused by the militants was that the driver of the bus should have been vigilant enough. Again the driver of the bus in which the bomb exploded was found to be negligent in not carrying out a search. It was observed that had a search been carried out then the ultimate accident could have been avoided. The Division Bench observed as under : "Now the question is whether the facts of the cases before us attract the application of these principles. The bus came from a place where militant activities were going on. Obviously, strict vigilance should have been exercised before admitting the passengers into the vehicle. It ought to have been searched to find out whether any bomb had been planted inside it. The incoming and outgoing passengers should have been kept under vigil and their articles kept under gaze. Passengers should have been warned to be careful about their belongings and anything which did not belong to them be pointed out to the crew of the vehicle. All such precautions were not made. Contention that there was no legal duty to do so, is hardly convincing. The owner of the vehicle had to take care of the safety of the passengers. His duty is not limited to take the passengers against payment of money without paying attention towards their safe passage. Such a duty is implicit in the nature of the services offers to the general public and one does not have to look to any express provision of law in this regard. The facts clearly point out that the owner and the crew of the bus did not pay any attention towards taking precautions for the safety of the passengers although it was well known that militant activities were gaining ground and immediate precautions against such activities were necessary. The accident arose out of the use of vehicle and there is no doubt about it and the respondents are squarely responsible for the same."

7. WITH regard to death caused by militant activities, the same reasoning was given. It was observed that the driver of the bus was careless and on account of this accident, the militants were able to enter the bus and then carry out their design. What was said qua this case is being reproduced below : "The second case also presents almost the similar situation. The bus was coming from

Kishtwar starting in the early hours of the day and passing through difficult region. The driver of the bus knew very well that persons asking him to stop the bus were armed with guns. He should not have allowed these persons to get into the vehicle by stopping it. His carelessness has directly resulted in the incident in which number of persons were shot dead by the militants. The owner of the vehicle ought to have known that extra care was required for plying the vehicle through the difficult region and during that time. Negligence, therefore, is writ large and is proximate cause of the incident. The result of the aforesaid discussion is that the Tribunal has not correctly examined the matter and the claim petitions have been dismissed erroneously holding that it had no jurisdiction to entertain them. Consequently, the impugned judgments are liable to be set aside." After expressing the aforesaid view, the matter was remanded. Case was tried on merits. Decision has infact been given on merits. Claimants have been held entitled to compensation. The Insurance Company has come in appeal.

8. ONE of the judicial precedents which was noticed by the Division Bench in the aforementioned case is the one reported as Shivaji Dayanu Patil v. Smt. Vatschala Uttam More, AIR 1991 SC 1769. In the above case on 29.10.1997 at about 3 p.m. there was a collision between a petrol tanker and a truck on the National Highway No. 4 near village Kavatha in the District of Satara, State of Maharashtra. As a result of the said collision, the petrol tanker went off the road and fell on its left side at a distance of about 20 feet from the highway. As a result of over -turning of the petrol tanker, the petrol contained in it leaked and collected nearby. After about four hours i.e. at 7.15 a.m. an explosion took place in the petrol tanker. The fire spread. The petrol which stood spread also caught fire. Number of people who had assembled there sustained burn injuries and some of them were not fortunate enough to survive. One of the dead was Deepak Uttam More. His mother filed a claim petition. The question arose as to whether the accident was such which could be brought within the expression arising out of use of the vehicle. In the above case, what was being interpreted was Section 92 -A of the Motor Vehicles Act of 1939. It was observed that this provision is a beneficial legislation enacted with a view to confer benefit on the victim of an accident arising out of the use of a motor vehicle. It was observed that in the matter of interpretation beneficial legislation, the approach of the Courts should be to adopt a construction which advances the beneficial purposes underlying the enactment in preference to construction which tends to defeat the purpose. The argument put across was that the petrol tanker was stationary; it was not in use and, therefore, the accident taking place after four hours cannot be connected with the expression arising out of the use of the motor vehicle. Some of the decisions which were referred to have been noted in paragraph 19 of the judgment. These were commented upon by the Supreme Court of India. Ultimately in para 25 of the judgment it was observed that the accident even though occurring after sometimes would be covered by the expression arising out of. Para 25 is instructive and is being reproduced below :

"25. These decisions indicate that the word "use, in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some break -down or mechanical defect. Relying on the above mentioned decisions, the Appellate Bench of the High Court has held that the expression "use of a motor vehicle in Section 92A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion the word "use has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break -down or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck." (p. 1779) Again in para 30 of the judgment it was observed that the words arising out of has been used by the Courts widely as well as narrowly, keeping in view the context in which those arise. Paras 35 and 36 are relevant and these are also being quoted below : "35. This would show that as compared to the expression "caused by the expression "arising out of has a wider connotation. The expression "caused by was used in Sections 95(1)(b)(i) and 96(2)(b)(ii) of the Act. In Section 92A, Parliament, however, chose to use the expression "arising out of which indicates that for the purpose of awarding compensation under Section 92A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of motor vehicle in Section 92A enlarges the field of protection made available to the victim of an accident and is in consonance with the beneficial object underlying the enactment. 36. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle. In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on slopping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the

explosion and fire were not unconnected but related events and merely because there was an interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the petrol tanker No. MKL 7461." (p. 1781) When the said decision is perused then it becomes apparent that notwithstanding the fact that the tanker was stationary and the accident took place after four hours the accident was found to be covered by the expression arising out of use of a vehicle.

9. OTHER decision which is relevant and has been given under Section 163 of the Motor Vehicles Act of 1988 be also examined.

10. IN *Rita Devi v. National Insurance Co.*, IV (2000) SLT 179=II (2000) ACC 291 (SC)=2000 (II) ACJ 801, what was said in *Shivaji Dayanu Patils* case (supra), was found to be fully applicable when the claim was lodged by the heirs of the deceased. The deceased was employed to drive an auto rickshaw for ferrying passengers on hire on the fateful day when the auto rickshaw was parked in the auto rickshaw stand at Dhimapur, some unknown passengers had engaged him for journey. As to what happened on that day is not known. It was only on the next day that the police was able to recover the body of the deceased but the auto rickshaw in question was never traced out. The owner of the auto rickshaw claimed compensation from the Insurance Company for the loss of auto rickshaw. The heirs wanted compensation for the death of the driver. According to them death had occurred on account of accident arising out of use of the motor vehicle. The Supreme Court of India was of the view that the heirs of the deceased would be entitled to compensation. The question as to whether a case of murder would be covered or not was also gone into. Paras 9 and 10 are relevant and are quoted below : "9. A conjoint reading of the above two sub - sections of Section 163 -A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle, without having to prove wrongful act or neglect or default of any one. Thus, it is clear if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (*Dasarath Singh*) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words "death due to accident arising out of the use of motor vehicle. 10. The question, therefore, is : can a murder be an accident in any given case ? There is no doubt that murder as it is understood in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there

are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident depends on the proximity of the cause of such murder. In our opinion if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder." In para 12 reference is made to the case of *Nisbet v. Rayne and Burn*, (1910) 1 KB 689 (CA). In this case a cashier while travelling in a railway to a colliery with a large sum of money for the payment of his employers workmen, was robbed and murdered. The Court of Appeal held : "That the murder was an accident from the stand point of the person who suffered from it and that it arose out of an employment which involved more than the ordinary risk and consequently that the widow was entitled to compensation under the Workmens Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of *Challis v. London and South Western Railway Company*, (1905) 2 KB 154. In the case of *Nisbet* the Court also observed that it is contended by the employer that this was not an "accident within the meaning of the Act because it was an intentional felonious act which caused the death and that the word "accident negatives the idea of intention. In my opinion this contention ought not to prevail. I think it was an accident from the point of view of *Nisbet* and that it makes no difference whether the pistol shot was deliberately fired at *Nisbet* or whether it was intended for somebody else and not for *Nisbet*."

11. THE judgment of the Court of Appeal in *Nisbets case* (supra), was followed by the majority judgment by the House of Lords in case of *Board of Management of Trim Joint District School v. Kelly*, (1914) 2 AC 667. Ultimately in para 14 it was concluded by the Supreme Court as under : "Applying the principles laid down in the above cases to the facts of the case in hand we find that the deceased a driver of auto -rickshaw, was duty bound to have accepted the demand of fare -paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (*Dasarath Singh*) was caused accidentally in the process of committing the theft of the auto rickshaw."

12. *SAMIR Chand v. Managing Director, Assam State Transport Corpn., II* (1998) ACC 333 (SC)=VII (1998) SLT 230=(1998) 6 SCC 605, is a case arising out of use of motor vehicle. Injuries were suffered by the claimant due to bomb blast inside the vehicle. The Supreme Court of India sustained the claim for

compensation and in doing so reliance was placed on the decision given in Shivaji Dayanu Patils case (supra). This authority directly supports the view expressed by the Tribunal so far as injuries; both fatal and otherwise, were caused on account of bomb blast. With a view to complete the noticing or judicial pronouncements on this subject it would be apt to refer to a decision in Smt. Inder Mohini v. Lakhvinder Pal Singh Duggal, Punj. LR CII -(1992 -2) 488. My Lord V.K. Jhanji, J. (now a Judge of this Court) while dealing with a case arising under the Motor Vehicles Act in the Punjab and Haryana High Court held that the Insurance Company would be liable. In the above case the vehicle came within the range of the cross firing going on between the Police and the terrorists in the District of Ferozpur in Punjab. The claimants put across their point of view and urged that had the driver been vigilant enough and had he not been driving rashly then the vehicle could have been stopped and he could have avoided coming between the firing range. This argument was accepted and the claimants were held entitled to compensation when the death had taken place on account of a bullet which hit the deceased in the cross fire. The relevant observations of Justice V.K. Jhanji, J. are being reproduced below : "After hearing the learned Counsel for the parties I am of the considered view that the order of the Motor Accident Claims Tribunal, Ferozepur cannot be sustained. The claimants in their petition have made a clear averment that on account of negligence and rash driving of the driver, the vehicle could not be stopped with the result that it came within the range of cross fire and this is how the use of the vehicle resulted in the death of Harpreet Singh. In case the claimants can prove this averment, then certainly the petition is maintainable and the Tribunal has the jurisdiction to entertain and try the petition."

13. THERE is yet another decision dealing with the same accident in which V.K. Jhanji, J. has expressed his opinion. This is an un-reported judgment. This is First Appeal from Order No. 49 of 1996 titled New India Insurance Co. Ltd. v. Inder Mohani. The facts as noticed in the judgment are that on 25.10.1990 in the cross firing, fatal injuries were caused. The Division Bench was of the opinion that had the driver exercised due care and attention and had he not been negligent then death could have been avoided. Sudhalkar, J. speaking for the Bench concluded as under : "From the award it is clear that it was not denied by the respondent -driver that when he reached the village Machhi Burgra he heard the cross firing between the police and the terrorists. It was not denied that he started driving the vehicle at a fast speed and that he was confused as a result of which vehicle started running faster and that he lost the control over the vehicle as a result of which the deceased suffered bullet injuries and died on the spot. The learned Tribunal held that it was a matter of common sense and general behaviour of a human being that if there was a danger ahead the driver should have stopped behind and allow the danger to pass and that was what was expected of the driver at that time he should have stopped the vehicle before the point of cross firing and should have turned to village Machhi Burgra and to wait till the firing was over, but the driver did not do so and rashly and negligently

speeded up the vehicle as a result of which it came in the range of the cross firing and this is how the use of the vehicle resulted into the death of Harpreet Singh." The aforementioned decision given by the Division Bench on 27.2.1996 as indicated above deals with the same accident which was subject matter of decision before V.K. Jhanji, J. Even though that decision was not noticed by the Division Bench but the reasoning given is the same, and this would apply to the case where death occurred on account of militant related violence.

14. WITH regard to law relating to grant compensation, the word accident may include compensation for personal injury sustained by a person and the liability would be there for any act or injury which is not designed by a person who seeks to benefit himself. In this sense, the word accident would mean and include an untoward event not expected or designed. Thus the word accident as it is understood in common parlance may exclude the idea of wilful and intentional act but it may not be so when Courts deal with claims arising under the Law of Torts. Before proceeding to deal with judicial precedents arising under the Workmens Compensation Act, 1923 the meaning of the word accident be elaborated, would it exclude a wilful and intentional act ? The word accident is derived from the Latin Verb accidere signifying fall upon, befall, happen, chance. In its etymological sense anything that happens may be said to be an accident. In this sense, the word has been defined as a befalling, a change, a happening, an occurrence or an event.

15. ACCIDENTS have been divided into two classes : (a) those where there is some external act, and (b) those where there is no external act, agency or mishap.

16. THE question as to what will and will not constitute an accident under a given circumstance is dependent upon the facts of each particular case. In its most commonly accepted meaning, or in its ordinary or popular, sense the word may be defined as meaning a fortuitous circumstance, event or happening, an event happening without any human agency or if happening wholly or partly through human agency an event which under the circumstances is unusual and unexpected by the person to whom it happens. It represents an unusual fortuitous, unexpected, unforeseen or unlooked for event, happening or occurrence which is unusual or an unexpected result attending the operation or performance or a usual or necessary act or event, chance of contingency, fortune mishap. Some sudden and unexpected event taking place without expectation rather than something, happening by chance, foreseen, unexpected, unusual, extraordinary or phenomenal, taking place not according to the usual course of things or events out of the range of ordinary calculation that which exists or occurs, abnormally, an uncommon occurrence. The word may also be employed as denoting a calamity, casualty, catastrophe, disaster an undesirable or unfortunate happening, any unexpected personal injury resulting from any unlooked for mishap or occurrence, any unpleasant or unfortunate occurrence that causes injury, loss, suffering or death, some untoward occurrence which

does not happen in usual course or events. The word is used to denote both the cause and the effect, no attempt is being made to discriminate between them.

17. CONSIDERING an accident as an occurrence to which human fault does not contribute the term accident has been defined also as a casualty which could not be prevented by ordinary care and diligence as event happening unexpectedly and without fault as event resulting in damage or injury, proceeding from an unknown cause or from a known cause without human agency or without human fault an event which occurs without negligence of either party involved, the happening of an event without fault or negligence on the part of anyone, an injury which occurs without being caused by negligence. In its legal and restricted meaning an incident that could not have been reasonably foreseen anticipated, prevented or provided against an occurrence which human prescience and prudence cannot foresee or forestall, something that occurs after the exercise of a care that the law requires to be exercised to prevent the occurrence an unavoidable casualty without any blame and without negligence in doing, permitting or omitting to do things that cause the casualty such an unexpected catastrophe as occurs without anyone being to blame for it, an unusual and unexpected event happening without negligence but in these definitions the word is considered in restricted sense.

18. IN its more general sense the terms does not exclude human fault called negligence but is recognised as an occurrence arising from the carelessness of man and the fact that the negligence of the person injured contributed to produce the result will not make it any less an accident and in this sense the word has been defined as a fortuitous circumstance preventable and not prevented an unexpected or unforeseen event happening with or without human fault. Again the word accident is a more comprehensive term than negligence and for legal purpose it is often important to distinguish careless from other unintended and unexpected events and hence the term mere accident or pure accident are often used when it is desired to repel the idea of negligence and they have been said to be equivalent to the words not by defendants negligence.

19. AGAIN there are inevitable accident. These can be of two classes namely, (a) those occasioned by the elementary forces of nature unconnected with the agency of man or other cause; and (b) those which have their origin either in whole or in part in the agency of man or in any other cause independent of the agency of natural forces.

20. IN dealing with occurrences of the first class the term has been defined as meaning a catastrophe occurring without any intervention of man an accident physically unavoidable an accident which is absolutely unavoidable because effected or influenced by the uncontrollable operations of nature any accident produced by any physical cause which is irresistible and in this connection Courts have expressed the opinion that the words inevitable accident are exactly equivalent to or interchangeable or anonymous with the expressions act of God such as perils of the sea and unavoidable accident. In relation of inevitable

accident of the second class the word has been defined as meaning or referring to an accident which could not be prevented by the exercise of ordinary care and prudence which is not due to negligence and which no human foresight could avoid or guard against which is not occasioned in any degree either remotely or directly by want of such care and skill as the law holds every man bound to exercise or such as the circumstances demand which occurs despite all efforts and skill used to prevent it and in this sense it has been compared with irresistible force and distinguished from act of God. Now some decisions given under Workmens Compensation Act are also being taken note of.

21. THE term used in the Act of 1923 is "arising out of and in the course of employment". In *Sumitra Devi v. Executive Engineer, Udar Rathan Irrigation Division Gaya*, 1997 (1) ACJ 155, the workman was performing duty of a Khalasi employed on casual basis by the Irrigation Department. When some persons fired at him; he became traceless though blood was found at the place of duty. The question arose as to whether the accident arose out of and in the course of employment and whether the widow of the deceased was entitled to compensation. A Division Bench of the Patna High Court was of the opinion that the legal heirs of the workman were entitled to compensation. Reference was made to an earlier decision in *M. Mackenzie v. I.M. Irak*, 1969 ACJ 422.

22. IN this case it was observed by the Supreme Court of India as under : "It is well established that under this section there must be some casual connection between the death of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death or if the death was due not only to the disease but the disease coupled with the employment then it could be said that the death arose out of employment and the employer would be liable. Even if a workman dies from a pre -existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental his death results from injury by accident." In *Suptd. Engineer v. Andammal*, 1983 ACJ 286, the Madras High Court found that where there was a casual proximate connection between employment and the accident compensation is payable. In the above case a Laskar appointed to regulate the flow of water was done to death by some persons. The Laskar was to regulate the flow of water. It was found that the accident had a casual as well as proximate connection with the ultimate death.

23. IN *T.N.C.S. Corpn. Ltd. v. S. Poomalai*, I (1997) ACC 288=1996 ACJ 273, the workman was on his way to Mill for attending to his duty. He was murdered in a communal riot. The contention put across was that the incident had taken place before the commencement of the work outside the workspot and there is no connection between the murder and employment. The Madras High Court was of the opinion that as the deceased employee met with death while he was going to

work, the death occurred during the course of employment. It was accordingly held that the heirs were entitled to get compensation. The reasoning given was that if there is a casual connection between the incident and the employment then liability can be fastened on the employer. Reference was made to a decision of Gujarat High Court in case of *Dudhiben Dharamshi v. New Jahangir Vakil Mills Ltd.*, 1976 ACJ 136, wherein the Division Bench observed that the expression arising out of employment is not confined to the mere nature of the employment. It applies to employment as such to its nature, its conditions, its obligations and its incidents. The Division Bench said : "The expression "arising out of employment is not confined to the mere nature of the employment. It applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one arising out of employment. To put it differently if the accident occurred on account of a risk which is an incident of an employment, the claim for the compensation must succeed unless of course the workman has exposed himself to an added peril by his own imprudent act. The employee who belonged to the second shift of the mill working at 3.30 p.m. started from his house to go to the mill on one afternoon. In order to see that the second shift started at 3.30 p.m. the mill had devised a rule that the workers should be inside the mill compound five minutes before the shift commenced. The entry by particular gate had been fixed for the orderly, convenient egress and ingress for the large number of employees when one shift ended and the other started. The employee came at about 3.20 p.m. at a distance of 10 -15 ft. away from the mill gate and when he was trying to get access in the mill he was knocked down by a cyclist causing his death. On the question whether the doctrine of notional extension applied. Held : That the case clearly came within what is called incident or employment because instead of the entire route being prescribed the entry gate and timings had been specified by the employer so that the worker could properly leave and enter from the particular gate facilitating search by the watchmen at that particular time. The employee would be under a duty to obey this rule. Therefore, clearly the workman came within the scope of employment can be carried out these incidental orders and the doctrine of notional extension, therefore, clearly applied to the case and the claimants were entitled to compensation." Yet another decision which was referred is in *Bhacubai v. Central Railway*, (1994) 2 LLJ 402. The Division Bench of the Bombay High Court has held thus : "It is clear that there must be a causal connection between the accident and the employment in order that it could be said that the accident arose out of the employment of the concerned workman and the cause contemplated is the proximate cause and not any remote cause. If the employee in the course of his employment has to be in a particular place and by the reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face then a casual connection is established between the accident and employment. The fact that the employee shares the peril with other members of the public in an irrelevant consideration. It is true that the peril which he faces must not be personal to him; the peril

must be incidental to his employment and he must not by his own act to add to the peril which he faces has nothing to do with his own action or his own conduct but it is a peril which would have been faced by any other employee or any other member of the public then if the accident arose out of such peril, a causal connection is established between the employment and accident. So when a workman was stabbed on his way to work and when there was no evidence to prove that there was any motive behind the murder it was held that the accident must be held to be one arising out of the employment. Once the applicant has established that the deceased was at a particular place and he was there because he had to be there by reason of his employment and the applicant further establishes that because the deceased was there he met with an accident the applicant has discharged the burden which the law places upon him. The law does not place an additional burden upon the applicant to prove that the peril which the employee faced and the accident which arose due to that peril was not personal to him but was shared by all the employees or the members of the public. Once the peril is established it is for the employer then to establish that the peril was brought about by the employee himself, that he added or extended the peril but a peril personal to the employee." It was thus observed that once the peril is established it is for the employer then to establish that the peril was brought about by the employee himself; that he added or extended the peril or that the peril was not a general peril but a peril personal to the employee.

24. THERE is yet another decision arising under the Workmens Compensation Act. This is reported as Jayamma v. C. Munikrishnappa, II (1998) ACC 424=1998 ACJ 1165. The workman was employed as a taxi driver. He was murdered at the place where he had taken the taxi. Insurance Company contended that the death did not arise in the course of employment as it was a homicidal death and there was no nexus between the death and employment. Following the decision of the Gujarat High Court in Union of India v. Shantaben, 1985 ACJ 818, the view expressed was that as the driver was driving the taxi under the employment of the employer, therefore, he would be entitled to compensation. Chagla, C.J. in the case of Bhagubai v. General Manager, Central Railway, AIR 1955 Bom. 105, in which the provision of Section 3 of the Workmens Compensation Act was considered and observed as under : "(2) Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him, the peril must be incidental to his employment. It is

also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is peril which would have been faced by any other employee or any other member of the public then, if the accident arises out of such peril a causal connection is established between the employment and the accident". (p. 106)

25. IN Director (T&M) D.N.K. Project v. D. Buchitali, 1988 ACJ 654 (Ori.), and General Superintendent, Talcher Thermal Station v. Bijuli Naik, 1994 ACJ 1054 (Ori.), it was again found that there was a causal connection between the death and the employment and the nature of employment had contributed to the eventual death of the workman.

26. THE Workmens Compensation Act, 1923 is in pari materia with the English Workmens Compensation Act, 1897. A Full Bench of the Allahabad High Court in the case of Abida Khatun v. General Manager, Diesel Locomotive Varanasi, 1972 ACJ 489, considered the English decisions while determining the meaning and connotation of the term accident arising out of and in course of employment. The Full Bench followed various decisions including the view taken by the Court of Appeal in Nisbets case (supra), and Anderson v. Baffour, 1910 (2) LR 497, and held that the definition of accident extended to case of death by murder. It was observed that injury by accident is an integrated phrase and an event in the ordinary and popular sense can be described as an accident even though it was caused by deliberate violence. The term accident for the purpose of law relating to compensation for personal injury includes any injury which is not self-suffered and it is of no consequence that the injury was designed and intended by the person inflicting the same.

27. IN Trim Joint District School Board of Management v. Kelly, (1914) AC 657, an Assistant Master at Industrial School was assaulted and killed by two of the pupils while the Assistant Master was performing his duties. The House of Lords held that his death was caused by an accident for the purposes of the same statute. Viscount Haldane L.C. pointed out that the meaning of the term accident would vary accordingly "as the context varies and as instances mentioned criminal jurisprudence where crime and accident are sharply divided by the presence of absence or mens rea and the law of marine insurance where the maxim, Injure non remote cause, sed proxima spectatur (in law the proximate and not the remote cause is to be regarded) applies". The learned Lord Chancellor said : "My Lords, if we had to consider the principle of the Workmens Compensation Act as res integra, I should be of opinion that the principle was one more akin to insurance at the expense of the employer of the workman against accidents arising out of and in the course of his employment than to the imposition on the employer of liability for anything for which he might reasonably be made answerable on the ground that he ought to have foreseen and prevented it. I think that the fundamental conception is that of insurance in the true sense. And if so it appears to me to follow that in giving a meaning to

"accident in its context in such a scheme one would look naturally to the proxima causa of which Lord Herschell and Lord Barmwell spoke in connection with marine insurance, the kind of event which is unlooked for and sudden and causes personal injury and is limited only by this that it must arise out of and in the course of the employment. Behind this event it appears to us that the purpose of the statute renders it irrelevant to search for explanation or remoter causes provided the circumstances bring it within the definition. No doubt the analogy of the insurance cases must not as Lord Lindley points out in his judgment in *Fenton v. J. Thorley & Co. Ltd.*, (1903) AC 443, be applied so as to exclude from the cause of injury the accident that really caused it merely because an intermediate condition of the injury in that case a rupture arising from an effort voluntarily made to move defective machine has intervened. If so far as the workman is concerned, unexpected misfortune happens and injury is caused which the statute seems to me to impose in the interest of the employer who cannot escape from being a statutory insurer is that the risk should have arisen out of and in the course of the employment."

28. IN the case of *Fenton v. J. Thorley and Co. Ltd.*, (1903) AC 443, it was held that in the Workmens Compensation Act, 1897, Lord Lindley has observed that the word accident is not a technical legal term which a clearly defined meaning. Speaking generally but with reference to legal liabilities an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often under to denote any unintended and unexpected loss or hurt apart from its cause and if the cause is not known the loss or hurt itself would certainly be called an accident. The word accident is also often used to denote both the cause and the effect no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness but for legal purposes it is often important to distinguish carelessness from other unintended and unexpected events. From the aforesaid decisions, it is clear that in order to succeed, it must be established that there was a casual connection between the death and the employment of the deceased. Facts in individual claim petitions be noticed : In C.I.M.A. No. 56/2002 arising out of Claim Petition No. 42/1993, pertaining to the claim petition of Chuni Duda and others, the claimants are the widow and the daughters of the deceased Kanhaiya Lal Dudha. The deceased was working as a Surveyor in the Oriental Insurance Company Limited and also in the National Insurance Company Limited. His income, it was stated, was found to be Rs. 10,000/ - per month. For coming to this conclusion, reliance was placed on the statement of one Opinder Krishan Handoo, a colleague of the deceased. The Tribunal, however, came to the conclusion that his income should have been around Rs. 4,500/ - per month. It was on this basis and applying the unit system, compensation to the extent of Rs. 4,44,232/ - was allowed. This includes compensation for loss of consortium, loss of expectation of life and funeral expenses. Nothing has been pointed out by the appellants to show as to how this figure arrived at, is not justified. As such, no ground has been made out for altering the finding of fact recorded in this regard by the Tribunal. This appeal as

such, is found to be without merit and is dismissed. In C.I.M.A. No. 62/2002 arising out of Claim Petition No. 151/1998, i.e. Sneh Goels case the claimants are the widow, daughter and son. It was stated that her husband was a Medical Representative, and he was generating an income of Rs. 4,000/- per month. He used to get incentives and other allowances as well. As the deceased was a Medical Representative, his day to day pocket expenses were being met by the employer/Company. His monthly income was taken as Rs. 4,000/-. Her annual dependency was calculated accordingly. Taking into consideration the age of the deceased, a multiplier of 13 was applied. The total amount of compensation was fixed at Rs. 6,59,000/-. This includes Rs. 15,000/- for loss of expectation of life, Rs. 15,000/- for loss of consortium and Rs. 5,000/- for funeral expenses. It has not been demonstrated as to how this amount is on the higher side. It is accordingly concluded that this amount has been rightly fixed. This appeal as such is found to be without merit and is dismissed. In C.I.M.A. No. 87/2002 arising out of Claim Petition No. 260/1996, the claimants are Manju Sharma, her two sons and daughter (minors). It is stated that the deceased was a Manager in an Insurance Company at Kishtwar, and his monthly salary was Rs. 7,000/-. Unit system was applied. A total amount of Rs. 3,53,376/-, has been allowed. This includes Rs. 15,000/- for loss of expectation of life, Rs. 15,000/- for loss of consortium and Rs. 5,000/- for funeral expenses. The appellant -Company has not been able to demonstrate as to how the said amount of compensation is on the higher side. This appeal as such is found to be without merit and is dismissed. C.I.M.A. No. 660/2002, arising out of Claim Petition No. 244/1997, was filed by Bharat Chand and another. The deceased in this case was Balwant Singh. The claimants are the parents of the deceased. The deceased was 25 years of age. It was pleaded that the deceased was an agriculturist and was selling milk also. His monthly income was projected as Rs. 5,000/-. The Tribunal fixed the income of deceased at Rs. 3,000/- per month. The parents were held entitled to one -third of the amount. It is on his basis that assessment of compensation has been made. The age of the father is 42 years and the mother is 38 years. It was on this basis, compensation to the extent of Rs. 2,05,000/- has been fixed. Nothing has been demonstrated by the appellant, as to how this figure is on the higher side. The aforesaid awarded amount is thus sustained. This appeal is found to be without any merit and is dismissed. In C.I.M.A. No. 59/2002, arising out of Claim Petition No. 245/1997, Hukam Chand father along with two brothers of deceased Anoop Kumar are the claimants. The deceased was a labourer. His income was assessed at Rs. 3,500/- per month. 1/3rd is the amount payable to the claimants. It was on this basis and taking into consideration the age of the deceaseds father which was 60 years, a multiplier of eight was applied. Compensation was fixed at Rs. 1,26,936/-. This includes Rs. 10,000/- for loss of love and care and Rs. 5,000/- as funeral expenses. Again, nothing has been demonstrated as to how this figure has not been arrived at properly. As such, there is no room for interference. This appeal as such is found to be without merit and is dismissed. C.I.M.A. No. 61/2002 arising out of Claim Petition No. 420/1997, was preferred by Tej Krishen s/o Dharam Chand deceased

who had died in the accident. It is stated that the claimant father was 60 years of age, and the deceased was having a monthly income of Rs. 8,000/- . It was stated that the deceased was running a bakery shop. As nothing was indicated as to how much was the income of the deceased, the Tribunal found it just and proper to assess the same at Rs. 4,000/- per month. Applying the unit system, the monthly dependency was fixed at Rs. 2,000/- . A multiplier of 5 was applied, and it was in this manner that compensation was fixed at Rs. 1,25,000/- . This includes Rs. 5,000/- as funeral expenses. Nothing has been demonstrated by the appellant as to how the aforesaid figure arrived at is on the higher side, and has been wrongly calculated. As such, this appeal is found to be without merit and is dismissed. This C.I.M.A. No. 85/2002 has arisen out of Claim Petition No. 386/1997 preferred by Kanta Devi, as her husband Dewan Chand had died in the accident. He left behind the widow, two daughters and a son. All of them are minors. It was projected that the income of the deceased was Rs. 5,000/- per month. This income was being generated by him as a conductor as also as an agriculturist. Taking into consideration the fact that his children were studying in a school, it was presumed by the Tribunal and rightly so, that the deceased must have been generating an income of Rs. 4,000/- per month. It was on this figure that reliance was placed. A multiplier of 16 was applied. Unit system was followed. The compensation which has been allowed is to the extent of Rs. 4,56,200/- . This includes Rs. 15,000/- as loss of consortium, Rs. 15,000/- for loss of expectation of life, and Rs. 5,000/- for funeral expenses. Nothing has been demonstrated by the appellant as to how the aforesaid figure arrived at is on the higher side. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 82/2002 arising out of Claim Petition No. 357/1996, was preferred by Pushpa Devi and the minor son and two daughters (all minors) of the deceased Jagdish Raj. The deceased was 42 years of age. It is submitted that he was running the business of cement and iron at Kishtwar. His income was projected at Rs. 10,000/- . The Tribunal took a reasonable view and fixed a sum of Rs. 4,500/- as his income. It was thought apt to apply a multiplier of 13. The compensation was fixed at Rs. 5,38,256/- . This includes Rs. 15,000/- as loss of expectation of life, Rs. 15,000/- as loss of consortium to widow and Rs. 5,000/- as funeral expenses. Nothing has been demonstrated by the appellant as to how the aforesaid figure arrived at is on the higher side. This appeal as such, is found to be without merit and is dismissed. In C.I.M.A. No. 57/2002 arising out of Claim Petition No. 243/1997, Khushi Ram and his wife were the claimants. They are the parents of the deceased Sham Lal. Smt. Amri Devi is the widow of the deceased and Miss Pushpa Kumari is his minor daughter. They are also the claimants. It is stated that the deceased was having a bakery shop at Talab Tillo, Jammu. He had engaged 7/8 workers in the shop. His monthly income was projected as Rs. 15,000/- . As the deceased was not an income tax payee, therefore, his income was assessed at Rs. 4,500/- per month. Applying unit system and taking other circumstances into consideration, a multiplier of 13 was applied. The total amount of compensation which was allowed was Rs. 5,34,200/- . This includes Rs. 15,000/- as loss of consortium, loss of expectation

to life and Rs. 5,000/- as funeral expenses. Nothing has been demonstrated by the appellant to show as to how the aforesaid figure arrived at is on the higher side. This appeal as such is found to be without merit and is dismissed. In C.I.M.A. No. 58/2002 arising out of Claim Petition No. 242/1997, Smt. Amri Devi widow and her three daughters are the claimants. Smt. Amri Devi is a young widow of 36 years and her daughters are all minors. It is stated that the deceased was having a bakery shop at Talab Tillo, Jammu, and his monthly income was around Rs. 6,000/-. As the deceased was not an income tax payee, therefore, his income was assessed at Rs. 4,500/- per month. Loss of dependency was fixed by unit system, and the amount of compensation was fixed at Rs. 5,05,496/-. This includes Rs. 15,000/- as loss of consortium, Rs. 15,000/- as loss of expectation of life and Rs. 5,000/- as funeral expenses. Again, nothing has been demonstrated as to how the aforesaid amount is on the higher side. Therefore, this appeal is found to be without merit and is dismissed. The second set of appeals have arisen out of claim petitions wherein fatal and other injuries were caused to the passengers of Bus No. JK02B/3875, in an accident. These claim petitions were decided by the Motor Accident Claims Tribunal, Jammu. C.I.M.A. No. 187/2002, which has arisen out of Claim Petition No. 292/1998, was preferred by Ram Ditta and Anr. They are the sons of Smt. Paro Devi who died in the accident. Income of the deceased was taken at Rs. 3,000/- per month, and in doing so, the opinion expressed by the Supreme Court in the case of Lata Wadhwa v. State of Bihar, AIR 2000 SCW 3086, was taken note of. It was on this basis that compensation has been allowed to the tune of Rs. 1,25,000/-. This includes funeral expenses to the tune of Rs. 5,000/- also. The age of the deceased was 55 years, and a multiplier of 5 was rightly applied. There is no room for interference, so far as the quantum of compensation awarded is concerned. This appeal as such is found to be without merit and is dismissed. In C.I.M.A. No. 167/2002, arising out of Claim Petition No. 564/1999, was preferred by Manzoor Fatima and others. The claimants are the widow, the two sons and daughter, who are majors. It is stated that the deceased was serving in the PHE Department, and his monthly salary was Rs. 2,100/-. It is also stated that he used to earn a total income of Rs. 5,000/- per month, as he was generating extra income from his land and dairy also. As per recommendations of the 5th Pay Commission, there was an increase in his salary and this was to the extent of Rs. 2,019/-. Taking into consideration the fact that the deceased was running a dairy farm also his income was assessed at Rs. 4,000/- per month. His contribution towards the family was treated at Rs. 2,800/- and in this manner, annual dependency was worked out at Rs. 33,600/-. A multiplier of 11 was applied and the compensation has been allowed to the extent of Rs. 3,71,000/-. This includes Rs. 15,000/- for loss of consortium, Rs. 15,000/- for loss of expectation of life and Rs. 5,000/- for burial expenses. Nothing has been demonstrated by the appellant as to how the aforesaid amount has been fixed on the higher side. The appeal preferred, in so far as quantum of compensation is concerned, does not called for any interference. The award passed by the Tribunal is sustained. This appeal as such is found to be without

any merit and is dismissed. C.I.M.A. No. 188/2002 has arisen out of Claim Petition No. 479/2002, which was preferred by Bachitar Singh and Smt. Gita Devi, who are parents of deceased Darshan Singh. The deceased was employed in Shri Mata Vaishno Devi Shrine Board and was getting a salary of Rs. 2,618/ - per month. Applying the ratio of the decision given by the Karnataka High Court in the case of Gulam Khader v. United Insurance Co. Ltd., 2001 ACJ 163, the parents were held entitled to a total amount of Rs. 2,80,544/ -. This includes Rs. 30,000/ - as loss of love, affection and care, and Rs. 5,000/ - as funeral expenses. Nothing has been demonstrated by the appellant as to how the compensation awarded is on the higher side. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 194/2002 has arisen out of Claim Petition No. 182/1998, which was preferred by Swaran Singh and Smt. Manjeet Kour, who are the parents of Miss Neeru, who died in the accident. Their son, namely, Deepak Singh and his wife Manjeet Kour also sustained grievous injuries in the said accident. Separate claim petition was filed by them. Age of the deceased was said to be of 12 years. She was a student of sixth class. Taking note of a decision given by Karnataka High Court in case of Ghulam Khader (supra), compensation has been allowed to the extent of Rs. 1,50,000/ -. Besides this, Rs. 3,000/ - has been awarded as funeral expenses. I am, of the view, that the view expressed by the Tribunal in this regard, which is supported by the judicial precedent noticed above, does not call for any interference. This appeal as such is found to be without merit and is dismissed. C.I.M.A. No. 186/2002 has arisen out of Claim Petition No. 379/1998, which was preferred by Smt. Man Mohini Revoo for and on her behalf and on behalf of her minor son. It is stated that the deceased Bal Krishan was a Clerk in the J&K Information Department, and his salary was Rs. 2,500/ - per month. Salary certificate was placed on the record. The age of the deceased was 40 years. Taking into consideration these factors and the provisions contained in Section 163A of the Motor Vehicles Act, the compensation has been assessed at Rs. 2,99,732/ -. This includes Rs. 15,000/ - as loss of consortium, Rs. 15,000/ - as loss of expectation of life and Rs. 5,000/ - as funeral expenses. Nothing has been demonstrated by the appellant as to how the compensation awarded by the Tribunal is on the higher side. This appeal as such is found to be without merit and is dismissed. C.I.M.A. No. 193/2002, has arisen out of Claim Petition No. 470 of 1998 titled : Mani Ram v. Tilak Raj, the claimants are husband of the deceased, whereas other petitioners are sons and daughters of the deceased (three of them are minors). The income of the deceased by treating her as a house wife was fixed in terms of the decision given by the Supreme Court in the case of Lata Wadhwa (supra). Compensation has been allowed accordingly, by treating deceaseds income as Rs. 3,000/ - per month. The age of the deceased being 34 years, a multiplier of 17 was applied. It was on this basis, the total amount which was allowed was Rs. 3,32,000/ -. This includes Rs. 15,000/ - as loss of consortium and Rs. 5,000/ - as funeral expenses. The compensation has been awarded as per the judgment of the Supreme Court given in Lata Wadhwas case (supra). Nothing has been demonstrated by the appellant as to how this compensation awarded is not

reasonable. As such, no room is made for interference. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 189/2002 has arisen out of Claim Petition No. 537/1998 preferred by Swami Raj Shan and another. The deceased was their daughter who was six years of age. She was studying in 9th class. Taking note of all the judicial precedents which have been noticed above, the parents were held entitled to the compensation at Rs. 1,60,000/- . Besides above, funeral expenses of Rs. 3,000/- were also allowed. Nothing has been demonstrated by the appellant as to how the compensation awarded is on the higher side. The compensation has been allowed taking into consideration the judicial precedents, which are fully applicable. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 191/2002 has arisen out of Claim Petition No. 468/1998 preferred by Mani Ram. The claimant is a person who lost his mother and wife in the accident. His minor daughter, namely, Miss Anuradha also died in the said accident. The age of the deceased daughter was three years. For the death of the minor daughter, compensation has been allowed at Rs. 1,25,000/- . In addition to this, funeral expenses of Rs. 3,000/- have been allowed. The amount of compensation which has been allowed is just and reasonable. The Madhya Pradesh High Court in the case of Oriental Insurance Co. v. Gopal Singh, 2000 ACJ 255, allowed compensation to the extent of Rs. 80,000/- when the age of the deceased child was four years, Punjab and Haryana High Court allowed compensation to the tune of Rs. 1,00,000/- in the case of Punjab Civil and Consumer Welfare Front Regd. Vaneer v. Union Territory of Chandigarh, 2000 ACJ 1281. The aforementioned decisions and as a matter of fact, various other decisions, do support the claim as put across by the petitioner (claimant). No room is made out for interference. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 190/2002 has arisen out of Claim Petition No. 293/1998 preferred by Smt. Manjeet Kour. She suffered injury in the thumb and right foot, which had to be amputated. She remained admitted in the hospital for six months and she was operated upon seven times. Thereafter, she was taken to Ludhiana for treatment. Skin grafting was also done on her ankle. The expenditure which was incurred was said to be of Rupees three lakhs. Her statement was corroborated by Dr. Anil Gupta an Orthopaedics Specialist. Taking into consideration all the facts and circumstances of the case and the material which had come on the record, the Tribunal allowed compensation to the extent of Rs. 1,83,800/- . This has been quantified, as under : (1) Medical Expenses = Rs. 25,000/- (2) Loss of earning during the trial = Rs. 61,200/- (3) Future loss of earning = Rs. 57,600/- (4) Pain and suffering = Rs. 20,000/- (5) Loss of amenities of life = Rs. 20,000/- Total : Rs. 1,83,800/- (Rupees one lac eighty three thousand eight hundreds only). I am of the opinion, that the quantum of compensation which has been fixed, has been fixed by taking into consideration the totality of circumstances. Room, if any, is made out for increasing of the compensation amount, and not for its decrease. As such, there is no merit in this appeal, which is accordingly, dismissed. C.I.M.A. No. 183/2002 has arisen out of Claim Petition No. 294/1998 which was preferred by Deepak Singh. He was a student of 2nd class. He was travelling in the vehicle

along with his sister Miss Neeru who died on the spot. His parents and another sister were also injured in the accident. The compensation is being claimed for the injuries sustained. The Tribunal has allowed compensation to the claimant to the extent of Rs. 1,60,000/ -. This has been allowed under following heads : (1) Medical expenses Rs. 40,000/ - (2) Pain and sufferings Rs. 40,000/ - (3) Loss of amenities of life Rs. 80,000/ - Total : Rs. 1,60,000/ - (Rupees one lac sixty thousand only) It has come on the record during the course of recording of evidence, that the injured still has dressing on his heel. A bone had to be removed from his back and inserted into the right leg. His skin grafting was also done. It was stated that the expenditure which has been incurred has to the extent of Rs. 3,00,000/ -. However, this claim was not substantiated, for want of any proof. It was in this manner, that compensation has been fixed. I am, of the opinion, that room if any, is made out for increase of the compensation, and not for any decreases thereof. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 185/2002 has arisen out of Claim Petition No. 667/1999 preferred by Balbir Singh. It is stated that he received injuries in the accident. On his left and right hands and has stiffness of both ankles, and had to incur an expenditure of rupees one lakh for his treatment. The Tribunal, however, allowed a claim of Rs. 30,000/ - under the following heads : (1) Medical expenses Rs. 4,000/ - (2) Pain and suffering Rs. 13,000/ - (3) Loss of amenities of life Rs. 13,000/ - Total : Rs. 30,000/ - (Rupees thirty thousand only) I am, of the opinion, that there is no room for decrease the said amount, and room, if any, is made out for increase of compensation. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 192/2002 has arisen out of Claim Petition No. 563/1999 preferred by one Makhan Lal Koul. According to him, his both bones of the left foot were fractured in the bomb blast. His right leg was burnt. This was still under treatment. Taking note of the evidence which has come on the record, the Tribunal allowed compensation to the extent of Rs. 1,20,000/ - under the following heads : (1) Medical expenses Rs. 30,000/ - (2) Pain and suffering Rs. 45,000/ - (3) Loss of amenities of life Rs. 45,000/ - Total : Rs. 1,20,000/ - I am, of the opinion, that room if any, is made out for increase of the compensation, and not for of any decrease thereof. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 184/2002 has arisen out of Claim Petition No. 608/1999 preferred by one Shiv Dutt Sharma. His claim is based on the plea that he received injuries on the foot and knee because of bomb splinters and his left ankle was also injured. Taking into consideration the evidence which has come on the record, the Tribunal allowed a compensation of Rs. 30,000/ - to the claimant under the following heads : (1) Medical Expenses Rs. 4,000/ - (2) Pain and suffering Rs. 13,000/ - (3) Loss of amenities of life Rs. 13,000/ - Total : Rs. 30,000/ - I am, of the opinion, that room, if any, is made out for increase of the compensation awarded, and not for its decrease. As such, this appeal is found to be without merit and is dismissed. The following claim petitions pertain to an accident, which took place while the passengers were travelling in Bus No. JK02 -A/9021. C.I.M.A. No. 86/2002 has arisen out of Claim Petition No. 211/1993. Claimants are the widow, son and daughters of the

deceased Rattan Lal. It is stated that the deceased Rattan Lal was a pensioner. He was receiving a pension of Rs. 5,000/- per month. Besides pension, he was earning Rs. 4/5 thousands also. This income he was generating from his pension and also from agricultural holdings. The Tribunal was, of the opinion, that the deceased must have been generating an income of Rs. 4,500/- per month. While excluding the expenses which the deceased might have been spending on his person, it was found that the monthly income of the deceased was Rs. 3,708/-. Annual dependency was calculated accordingly. The deceased was 42 years of age. A multiplier of 15 was applied. The compensation which has been allowed is to the extent of Rs. 5,14,456/-. This included Rs. 10,000/- as loss of consortium, Rs. 10,000/- for loss of expectation of life and Rs. 5,000/- for funeral expenses. Nothing has been demonstrated by the appellant as to how the aforesaid amount is on the higher side. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 88/2002 has arisen out of Claim Petition No. 226/1993. It pertains to claim lodged by Jagdish Kour and others, on account of death of Karan Singh in an accident. Jagdish Kour is widow, Viro Devi is mother, of the deceased. Two sons and two daughters of the deceased are also claimants. It is stated that the deceased was working as a Sanitary Inspector and his income was found to be Rs. 3,906/- per month. This was so proved by Madan Lal Gupta a Head clerk in family Multipurpose Health Training School, Gandhi Nagar, Jammu. On this basis, it was on this basis held that the deceased must have been contributing Rs. 3,500/- per month to the family kitty. It was on the basis of this figure and by applying a multiplier of 13, that compensation was fixed at Rs. 5,71,000/-. This includes Rs. 10,000/- as loss of consortium to widow, Rs. 10,000/- for loss of expectation of life and Rs. 5,000/- for funeral expenses. Nothing has been demonstrated by the appellant as to how the aforesaid amount is fixed on the higher side. This appeal as such, is found to be without merit and is dismissed. C.I.M.A. No. 84/2002, has arisen out of Claim Petition No. 272/1993 by Amri Devi and others. Amri Devi is widow of Sarwan Dass, along with two sons and two daughters (all minors) and Rodhi Devi mother of the deceased, have filed the aforesaid claim petition. It is stated that the deceased was a pensioner and was re-employed in D.S.C. In addition to his pension of Rs. 500/- per month he was getting a salary of Rs. 1,800/- per month. It is also stated that the deceased was also earning an income of Rs. 2,000/- from his agricultural pursuits Rs. 4,000/- was taken as income of the deceased per month. The Tribunal took note of this figure and after excluding the expenses which the deceased must have been spending on his person, took this figure as Rs. 3,000/- per month, Annual dependency was calculated accordingly. The deceased was 35 years of age. A multiplier of 13 was applied. The compensation which has been allowed is Rs. 5,03,000/-. This includes Rs. 15,000/- as loss of consortium to widow, Rs. 15,000/- as loss of expectation of life and Rs. 5,000/- as funeral expenses. Nothing has been demonstrated by the appellant as to how the aforesaid amount is on the higher side. This appeal as such also is found to be without merit and is dismissed. C.I.M. A. No. 80/2002 has arisen out of Claim Petition No. 212/1993 preferred by Maya Devi and Ors.

Claimants 1 and 2 are parents of the deceased and claimant No. 3 is his minor sister. It is stated that the deceased was ITI trained workman, and he was earning an amount of Rs. 4,000/- per month, and used to make available an amount of Rs. 3,000/- per month to the family. Taking into consideration all the facts and circumstances of the case, one-third of the income which the deceased would ultimately contribute towards the family, was found to be Rs. 1,333/- per month. On this amount, annual dependency was worked out. A multiplier of 15 was applied. Total amount of compensation allowed was to the extent of Rs. 2,92,848/-. This includes Rs. 20,000/- as loss of love and affection and Rs. 5,000/- as funeral expenses. Nothing has been demonstrated by the appellant as to how the aforesaid amount awarded is on the higher side. This appeal as such is found to be without merit and is dismissed. C.I.M.A. No. 83/2002 has arisen out of Claim Petition No. 213/1993 preferred by one Rakesh Kumar. He is claiming compensation for sustaining of injuries in the accident. It is stated that he had suffered disability to the extent of 60 per cent in the accident. The claimant (injured) remained admitted in Government Hospital at Jammu, from 7.10.1992 to 16.10.1992. Ultimately, his legs had to be amputated from knee joint. He was also taken to All India Institute of Medical Sciences, New Delhi. He remained admitted there for two days. Taking into consideration all the facts and circumstances of the case, the Tribunal thought it apt to grant compensation to the tune of Rs. 4,08,300/- to the claimants, under different heads, as under : (1) Medical expenses = Rs. 20,000/- (2) Loss of earning till date = Rs. 2,04,300/- (3) Future loss of earning = Rs. 1,44,000/- (4) Pain and suffering = Rs. 20,000/- (5) Loss of amenities of Life = Rs. 20,000/- Total = Rs. 4,08,300/- It be seen that this is a case, wherein the injured claimant has suffered disability to the extent of 60 per cent. Therefore, to say that the compensation which has been allowed is on the higher side, is an argument which cannot be accepted. This appeal as such is found to be without merit and is dismissed. C.I.M.A. No. 81/2002 has arisen out of Claim Petition No. 213/1993 preferred by one Saradi Lal. He is seeking compensation as he sustained injuries in the accident and as a result whereof, his both legs had to be amputated. He remained admitted in the hospital for 47 days. According to him he had to spent Rs. 300/- per day when he used to visit the hospital. He has to visit around 70 to 75 times. The injured claimant was a Painter and used to earn Rs. 1,500/- per month. He has suffered disability to the extent of 100 per cent. Taking into consideration the age of the injured and material which has come on the record, the Tribunal has allowed a compensation of Rs. 4,98,000/- to the claimant. This has been awarded under different heads as under : (1) For medical expenses Rs. 50,000/- (2) For expenses on transportation Rs. 20,000/- (3) For personal loss of income Rs. 1,62,000/- (4) For loss of future income Rs. 1,56,000/- (5) For pain and suffering Rs. 55,000/- (6) For loss of amenities of life Rs. 55,000/- Total Rs. 4,98,000/- I am of the opinion that the aforesaid findings as to quantum of compensation are well reasoned. This amount is not on the higher side.

29. ON the basis of the judicial pronouncements and the material which has come on the record, it is concluded : (i) That a passenger travelling in a bus when he suffers from an injury on account of bomb explosion or on account of any other activity including terrorist activity, he would be well within his rights to claim compensation. This view is spelt out from the decision given by the Supreme Court of India in Shivaji Dayanu Patils case (supra) and the latter decisions noticed above. (ii) That even if a person is not actually in the vehicle and is standing outside and suffers an injury, even in that case Supreme Court of India has allowed compensation in Shivaji Dayanu Patils case (supra). Therefore, merely because some victim was taken out of the Bus and thereafter shot dead, would not make any difference; (iii) That the material which has come on the record justified the grant of the compensation and the quantum thereof is accordingly sustained.

30. LET the awarded amount be deposited with the Registrar Judicial of this Court within a period of three months. In case this is not done within stipulated period then rate of interest would be 3 per cent over and above that has been allowed by the Tribunal. Amount be disbursed in ratio proportion to the heirs as specified by the Tribunal. Registrar Judicial would prepare fixed deposit receipts. Where awarded amount is Rs. 50,000/- or below FDRs be prepared for six months. In other cases 20 per cent of the awarded amount would be invested in a fixed deposit account valid for a period of six months. Remaining 80 per cent of the awarded amount would be invested in a fixed deposit account valid for a period of three years. Where minors are involved FDRs would be encashed when they attain age of majority. Age of majority would be 21 years. In the case of these claimants who are residing in Jammu, FDRs be obtained from the State Bank of India, Gandhi Nagar, Jammu and claimants who are not residing in Jammu their FDRs be obtained from any Nationalised Bank payable at the place where the claimants reside. FDRs be handed over to the claimants after due verification. Before parting with this judgment I must appreciate the effort put in by the learned Presiding Officer of the Motor Accident Claims Tribunal, Jammu. He has taken meticulous care in marshalling the facts. The legal position has been aptly noticed. This be mentioned in the Annual Performance Report of the concerned officer. These appeals are as such found to be without merit and are dismissed. Appeals dismissed.