
(2002) 12 J&K CK 0027
In the Jammu And Kashmir High Court
Case No : C.I.M.A. No. 184 of 2002

National Insurance Co. Ltd.	Vs	APPELLANT
Shiv Dutt Sharma		RESPONDENT

Date of Decision : 31-12-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 166

Citation : (2004) ACJ 2049 : (2010) 4 JKJ 318

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : C.S. Gupta, for the Appellant; R.K. Gupta, Roop Lal and R. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.—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'. (Annexures omitted)

3. The bomb blast cases deal with incidents which took place on 7.10.1992 and 28.11.1994. The first incident 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 Ashram, 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.

4. In the second bomb blast case, the injured were travelling in the bus bearing registration No. JK 02-B 3875. It was on 28.11.94. 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 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.

5. 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 the injured survived but suffered injuries,

6. 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 one Jai Krishan s/o Dharam Chand. He appeared

in the witness-box. He stated that at about 5.30 p.m. passengers were travelling in a bus bearing the registration No. JKU 2003. When the bus

was about 200 ft. away from Sarthal Link Road, passengers noticed some militants standing at the centre 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. Two militants came inside and told the driver to take the bus on the Link Road. The bus was taken 5 to 7 km.

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 accident occurred. Had he not stopped the bus then the said event

could have been avoided.

7. 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 Workmen's 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 causal relationship

between the cause of the death and employment then compensation becomes payable.

8. 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 and Others Vs. Sewa Ram and

Others, . This decision deals with the very accidents which are being dealt with in these cases. They came to this court at preliminary stages.

9. In Sneh Sharma and Others Vs. Sewa Ram and Others, , the deceased was travelling in Matador bearing registration No. JK 02-9051. He was

going to his office situated at Bikram Chowk at Jammu. The driver of the vehicle tried to overtake a bus at Digyana, 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 Matador in which Pradeep Kumar Sharma was travelling. He died as a result thereof. A claim application 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, a 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. The 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 offered 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 the vehicle and there is no doubt about it and the respondents are squarely responsible for the same.

10. 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, 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 Claims 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 in fact been given on merits. Claimants have

been held entitled to compensation. The insurance company has come in appeal.

11. One of the judicial precedents which was noticed by the Division Bench in the aforementioned case is the one reported as Shivaji Dayanu Patil

and another Vs. Smt. Vatschala Uttam More, . In the above case on 29.10.1987 at about 3 a.m. there was a collision between a petrol tanker and

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 ft. from the highway. As a result of overturning 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 the 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 interpreting beneficial legislation, the approach of the courts should be to adopt a construction which advances the beneficent 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 para 20 of the judgment. These were commented upon by Hon'ble Supreme Court. Ultimately, in para 26 of the judgment it was observed that the accident even though occurring after sometimes would be covered by the expression 'arising out of'. Para 26 is instructive and is being reproduced below:

(26) 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 breakdown 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 92-A 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 tanker in question while proceeding along the 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 breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in use at the time when it was lying on its side after the collision with the truck.

Again in para '31' of the judgment it was observed that the expression 'arising

out of' has been used by the courts widely as well as narrowly, keeping in view the context in which those arise. Paras 36 and 37 are relevant and these are also being quoted below:

(36) 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 (ii) and 96 (2) (b) (ii) of the Act. In Section 92-A, Parliament, however, chose to use the

expression 'arising out of' which indicates that for the purpose of awarding compensation u/s 92-A, 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 a motor vehicle' in Section 92-A enlarges the field of protection made available to the

victims of an accident and is in consonance with the beneficial object underlying the enactment.

(37) 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 sloping 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 causing 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 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.

12. 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'.

13. Other decision which is relevant and has been given u/s 163A of the Motor Vehicles Act, 1988, be also examined.

14. In Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , what was said in Shivaji Dayanu Patil and another Vs. Smt.

Vatschala Uttam More, , was found to be fully applicable when the claim was lodged by the heirs of the deceased. The deceased was employed

to drive an autorickshaw for ferrying passengers on hire on the fateful day when the autorickshaw was parked in the autorickshaw 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 autorickshaw in question was never traced out. The owner of the

autorickshaw claimed compensation from the insurance company for the loss of autorickshaw. 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 163A will show that a victim or his heirs are entitled to claim from the

owner/insurance company compensation for the 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 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 will 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 simpliciter, while if the cause of murder or

the act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is accidental

murder.

15. In para 12 reference is made to the case of *Nisbet v. Rayne and Burn* (1910) 1 KB 689. In this case a cashier while travelling in a railway to a

colliery with a large sum of money for the payment of his employer's workmen, was robbed and murdered. The Court of Appeal held:

That the murder was an 'accident' from the standpoint 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 Workmen's 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*.

16. The judgment of the Court of Appeal in *Nisbet's* case (1910) 1 KB 689, was followed by the majority judgment by the House of Lords in the

case of Board of Management of Trim Joint District School v. Kelly (1914) ACJ 667. Ultimately, in para 14 it was concluded by the Apex 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 the autorickshaw, was

duty-bound to have accepted the demand of the 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 autorickshaw and in the course of achieving the said object of stealing

the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the

autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the said

process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. 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

autorickshaw.

17. Samir Chanda Vs. Managing Director, Assam State TPT. Corpn., , 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 sustained the claim for compensation and in doing so reliance was placed on the

decision given on Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . 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.

18. With a view to complete the noticing of all judicial pronouncements on this subject it would be apt to refer to a decision in Smt. Inder Mohini

and Others Vs. Lakhvinder Pal Singh Duggal and Others, . 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 Ferozepur 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 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 Accidents Claims Tribunal, Ferozepur, cannot be sustained. The claimants in their petition have made a clear averment that on account of negligent 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.

19. There is yet another decision dealing with the same accident in which V.K. Jhanji, J. has expressed his opinion. This is an unreported judgment.

This is titled New India Assurance Co. Ltd. v. Inder Mohani, F.A.F.O. No. 49 of 1996. 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 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 allowed 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 the 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

that would apply to the case where the death occurred on account of militant related violence.

20. With regard to law relating to grant of 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 Workmen's Compensation Act, 1923, the meaning of the word 'accident' be

elaborated, would it exclude a wilful and intentional act?

21. 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 chance, a happening, an occurrence or an event.

22. 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.

23. 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, unforeseen, unexpected or

unlooked for event, happening or occurrence which is unusual or 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 loss, injury, suffering or death, some untoward

occurrence which does not happen in usual course or events.

24. The word is used to denote both the cause and the effect, no attempt is being made to discriminate between them.

25. 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.

26. In its more general sense the term 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.

27. 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'.

28. Again there are 'inevitable accidents'. These can be of two classes, namely, (a) those occasioned by the elementary forces of nature and

unconnected with the agency of man or any 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.

29. 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 expression 'act of God' such as perils of the sea and

unavoidable accident.

30. 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 the

'irresistible force' and distinguished from 'act of God'.

31. Now some decisions given under the Workmen's Compensation Act are also

being taken note of.

32. The term used in the Act of 1923 is 'arising out of and in the course of employment'. In *Sumitra Devi Vs. Executive Engineer, Udar Asthan*

Irrigation Division, 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 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 *Mackinnon Mackenzie*

& Co. Pvt. Ltd. v. Ibrahim Mahmmod Issak 1969 ACJ 422 (SC). 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 causal connection between the death of 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 not only due 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.

...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.

33. In *Superintending Engineer, Parambikulam Aliar Project, Pollachi v. Andammal* 1983 ACJ 286 (Madras), the Madras High Court found that

where there was a causal and proximate connection between employment and the accident compensation is payable. In the above case a Luskar

appointed to regulate the flow of water was done to death by some persons. The Luskar was to regulate the flow of water. It was found that the

accident had a causal as well as proximate connection with the ultimate death.

34. In *TNCS Corporation Ltd. Vs. S. Poomalai*, the workman was on his way to the mill for attending to his duty. He was murdered in a

communal riot. The contention put across was that incident had taken place

before the commencement of the work outside the work spot 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 had 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 causal 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 and Others Vs. New Jehangir Vakil Mills Ltd., Bhavnagar, 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 had occurred on account of a risk which is an incident of employment, the claim for 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 of 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 zone of employment when he 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 causal connection is established between the accident and

employment. The fact that the employee shares the peril with other members of the public is 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 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 or that the peril was not a general 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.

35. There is yet another decision under the Workmen's Compensation Act. This is reported as Smt. Jayamma Vs. C. Munikrishnappa and Others,

. The workman was employed as a taxi driver. He was murdered at the place where he had taken the taxi. Insurance company contended that

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 High Court of Gujarat in Union of India v. Shantaben 1985 ACJ 818 (Gujarat), 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.

36. Chagla, C.J. in the case of Bhagubai Vs. General Manager, Central Railway, V.T., Bombay, , in which the provision of Section 3 of the

Workmen's 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.

37. In *Director (T&M), D.N.K. Project v. D. Buchitalli* 1988 ACJ 654 (Orissa) and *General Superintendent, Talcher Thermal Station Vs. Bijuli*

Naik, 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.

38. The Workmen's Compensation Act, 1923, is in pari materia with the English Workmen's 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 (Allahabad), 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 *Nisbet's case* (1910) 1 KB 689 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.

39. 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.

40. 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 or absence of

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 Workmen's 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 unlocked 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.

41. In case of *Fenton v. J. Thorley & Co. Ltd.* (1903) ACJ 443, it was held that in the Workmen's Compensation Act, 1897, Lord Lindley has observed that the word 'accident' is not a technical legal term with 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 used 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 causal connection between the death and the employment of the deceased.

42. Facts in individual claim petitions may now be noticed:

In C.I.M.A. No. 56 of 2002 arising out of Claim Petition No. 42 of 1993, pertaining to the claim petition of Chuni Dudha and others, the claimants are the widow and daughters of the deceased Kanhaiya Lal Dudha. The deceased was working as a surveyor in Oriental Insurance Co. Ltd. and

also in National Insurance Co. Ltd. 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 of 2002 arising out of Claim Petition No. 151 of 1998, i.e., Sneh Goel's case 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 had been rightly fixed. This appeal as such is found to be without merit and is dismissed.

In C.I.M.A. No. 87 of 2002 arising out of Claim Petition No. 260 of 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 of 2002 arising out of Claim Petition No. 244 of 1997, was filed by Bharat Chand and another. The deceased in this case was

Balwant Singh. The claimants are the parents of deceased. The deceased was 25 years of age. It was pleaded that 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 this 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 of 2002 arising out of Claim Petition No. 245 of 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 deceased's 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 of 2002 arising out of Claim Petition No. 420 of 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 towards 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 of 2002 has arisen out of Claim Petition No. 386 of 1997 preferred by Kanta Devi, as her husband Dewan Chand had

died in the accident. He left behind the widow, two daughters and one son. All children 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 and 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 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 towards loss of

expectation of life and Rs. 5,000 towards 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 of 2002 arising out of Claim Petition No. 357 of 1996, was preferred by Pushpa Devi, a 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 p.m. Tribunal took a reasonable view and fixed a sum of Rs. 4,500 as his income. It was thought apt to apply

multiplier of 13. Compensation was fixed at Rs. 5,38,256. This includes Rs. 15,000 towards loss of expectation of life, Rs. 15,000 towards loss of

consortium to the 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 of 2002 arising out of Claim Petition No. 243 of 1997, Khushi Ram and his wife are the claimants. They are the parents of the

deceased Sham Lal. Amri Devi is the widow of the deceased and 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 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. Total amount of compensation which was allowed was Rs. 5,34,200.

This includes Rs. 15,000 as loss of consortium, Rs. 15,000 for loss of expectation of 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 of 2002 arising out of Claim Petition No. 242 of 1997, Amri Devi, widow and her 3 minors daughters are the claimants. 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 total 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 for loss of consortium, Rs. 15,000 towards loss of expectation of life and Rs. 5,000 for 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 passengers of the bus No. JK 02-B

3875, in an accident. These claim petitions were decided by the Motor Accidents Claims Tribunal, Jammu.

C.I.M.A. No. 187 of 2002 which has arisen out of Claim Petition No. 292 of 1998, was preferred by Ram Ditta and another. They are the sons

of 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 and Others Vs. State of Bihar and Others, , 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 of 2002 arising out of Claim Petition No. 564 of 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 10 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, insofar as quantum of compensation is concerned, does not call 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 of 2002 has arisen out of Claim Petition No. 479 of 2002, which was preferred by Bachitar Singh and Gita Devi, who are

parents of deceased Darshan Singh. The deceased was employed in Sri 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 and Another Vs. United India

Insurance Company Limited and Another, , 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 of 2002 has arisen out of Claim Petition No. 182 of 1998, which was preferred by Swaran Singh and Manjeet Kour, who are

the parents of 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 by Karnataka High Court in the case

of Gulam Khader (supra), compensation has been allowed to the extent of Rs. 1,50,000. Besides this, Rs. 3,000 has been awarded as the 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 of 2002 has arisen out of Claim Petition No. 379 of 1998, which was preferred by 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 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 of 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 housewife was fixed in terms of the decision given by the Apex Court in the case of Lata Wadhwa (supra). Compensation has been

allowed accordingly, by treating deceased's 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 for loss of consortium and Rs.

5,000 for funeral expenses. The compensation has been awarded as per the judgment of the Apex Court given in Lata Wadhwa's 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 of 2002 has arisen out of Claim Petition No. 537 of 1998 preferred by Swami Raj Shan and another. The deceased was their

daughter who was 16 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 is found to be without merit and is dismissed.

C.I.M.A. No. 191 of 2002 has arisen out of Claim Petition No. 468 of 1998 preferred by Mani Ram. The claimant is a person who lost his

mother and wife in the accident. His minor daughter, namely, 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. Ltd. Vs. Gopal Singh and Others, , allowed compensation to the extent of

Rs. 80,000 when the age of 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.) and Another Vs. Union Territory of Chandigarh and Others, 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 of 2002 has arisen out of Claim Petition No. 293 of 1998 preferred by Manjeet Kour. She suffered injury in 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 Rs.

3,00,000. 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 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 earnings

during the trial Rs. 61,200

(3) Future loss of

earnings Rs. 57,600

(4) Pain and suffering Rs. 20,000

(5) Loss of amenities

of life Rs. 20,000

Total Rs. 1,83,800

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 of 2002 has arisen out of Claim Petition No. 294 of 1998 which was preferred by Deepak Singh. He was a student of 2nd

class. He was travelling in the vehicle along with his sister 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. Tribunal has allowed compensation to 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 suffering Rs. 40,000

(3) Loss of amenities

of life Rs. 80,000

Total Rs. 1,60,000

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 was 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 compensation and not for any decrease thereof. This appeal as such, is found to

be without merit and is dismissed.

C.I.M.A. No. 185 of 2002 has arisen out of Claim Petition No. 667 of 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 Rs. 1,00,000 for his treatment. The Claims

Tribunal, however, allowed compensation to the extent 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

I am of the opinion that there is no room for decrease in 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 of 2002 has arisen out of Claim Petition No. 563 of 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 leg 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 of 2002 has arisen out of Claim Petition No. 608 of 1999 preferred by one Shiv Dutt Sharma. His claim is based on the plea

that he received injuries on foot and knee because of bomb splinters and his left ankle was also injured. Taking into consideration the evidence

which has come on 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. JK 02-A 9021:

C.I.M.A. No. 86 of 2002 has arisen out of Claim Petition No. 211 of 1993. Claimants are the widow, son and daughters of the deceased Rattan

Lal. It is stated that deceased Rattan Lal was a pensioner. He was receiving a pension of Rs. 5,000 per month. Besides pension, he was earning

Rs. 4,000 to Rs. 5,000 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 11 was applied. The compensation which has been allowed is to the extent of Rs.

5,14,456. This includes Rs. 10,000 towards 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 of 2002 has arisen out of Claim Petition No. 226 of 1993. It pertains to claim lodged by Jagdish Kour and others, on account of

death of Karan Singh in an accident. Jagdish Kour is the 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 the Family Multipurpose Health Training School, Gandhi Nagar, Jammu. On this

basis, it was 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 of 2002 has arisen out of Claim Petition No. 272 of 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 also 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. As 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 the 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 of 2002 has arisen out of Claim Petition No. 212 of 1993 preferred by Maya Devi and others. Claimant Nos. 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 a sum of Rs. 3,000 per month to the family. Taking into consideration all the facts and

circumstances of the case, one-third of income which the deceased would have ultimately contributed towards the family was found to be Rs.

1,333 per month. On this amount, annual dependency was worked out, multiplier of 15 was applied. Total amount of compensation allowed was

to the extent of Rs. 2,92,848.

This includes Rs. 20,000 for loss of love and affection and Rs. 5,000 for 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 of 2002 has arisen out of Claim Petition No. 213 of 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 7.10.92 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 the facts and circumstances of the case, the Tribunal thought it apt to grant compensation to the extent of Rs. 4,08,300 to the claimant under different heads as under:

- (1) Medical expenses Rs. 20,000
 - (2) Loss of earnings
till date Rs. 2,04,300
 - (3) Future loss of
earnings 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 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 of 2002 has arisen out of Claim Petition No. 213 of 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 spend Rs. 300 per day when he used to visit the hospital. He had 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 the material which has come on record, 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 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.

43. 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 Patil and another Vs. Smt. Vatschala Uttam More, 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 Patil and another Vs. Smt. Vatschala Uttam More, . Therefore, merely because some of the victims were

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.

44. 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 the 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 3 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, the 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.

45. Before parting with this judgment, I must appreciate the effort put in by the learned Presiding Officer of the Motor Accidents 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.