

(2011) 10 DEL CK 0081

In the Delhi High Court

Case No : Mac. App. No. 321-22 of 2006 and CM No. 12506 of 2007

National Insurance Company Ltd. and Another

APPELLANT

Vs

Smt. Sudesh Chabra and Others

RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 122, 126, 133, 168

Citation : (2011) 10 DEL CK 0081

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant; O.P. Mannie, for the Respondent

Judgement

Reva Khetrapal, J.—By this common order, it is proposed to decide a batch of ten appeals arising out of the judgment and award of the Motor Accident Claims Tribunal dated 20th January, 2006. The Motor Accident Claims Tribunal by its orders dated 18.05.2001 and 15.03.2003 had clubbed the ten petitions out of which the present appeals arise and Petition bearing No. 1238/1998 (New No. 648/2003), titled as "Smt. Sudesh Chabra & Ors. Vs. Mani Ram & Ors.", was taken as the lead case. Since all the ten petitions arise out of the same motor vehicular accident, it is proposed to delineate the facts in the lead case, that is, MAC. APP. No. 337-38/2006 titled as National Insurance Company Ltd. and Anr. Versus Sudesh Chabra and Ors..

2. Concisely, the facts are that on 29.03.1998 at about 2.00 a.m., a private bus bearing No. DL 1P 0798, carrying passengers travelling from Chhatarpur to Jahangir Puri, collided with a stationary TMB trailer bearing registration No. HNC 422 near Golf Ground, R.R. Centre on the Ring Road. The said trailer, which was allegedly parked on the wrong side of the road, was carrying angle iron protruding outside the body of the trailer. As a result of the accident, some of the passengers received injuries and some others died. The injured victims as well as the legal representatives of the deceased persons filed claim petitions claiming

compensation, alleging that the accident had been caused on account of the carelessness, rashness and negligence of the driver and owner of the TMB trailer, the respondents No. 4 and 5. In some of the petitions, Ajay Yadav (the respondent No. 5) had been impleaded as the owner, while in others Lata Yadav was also impleaded as respondent, being the joint owner of the offending trailer along with the said Ajay Yadav.

3. The owner and the driver of the offending trailer filed a joint written statement raising the preliminary objection that the accident was the outcome of the negligence of the driver and owner of the bus in which the passengers were travelling, i.e., the respondents No. 6 and 7. An objection was also raised by them regarding the non-impleadment of the insurer of the bus.

4. The appellant, M/s National Insurance Company Limited, which was impleaded as respondent No. 3 in all the petitions, being the insurer of the TMB trailer, in the separate written statement filed by it, pleaded that it had no notice of the accident and that the vehicle was being driven in violation of the conditions of the policy of the insurance.

5. Respondents No. 6 and 7, that is, the driver and the owner of the bus, though they initially entered appearance on service of notice upon them of the institution of the petition, subsequently stopped appearing and no written statement was filed by them. The said respondents were accordingly proceeded ex-parte by the learned Tribunal by order dated 30th January, 2001.

6. Identical issues were framed in all the claim petitions with the exception of issue No. 1 which was suitably modified in view of the fact that six of the claim petitions pertained to fatal injuries sustained by the victims while the other four cases pertained to the injuries sustained by the claimants themselves. In all, ten witnesses were examined on behalf of the claimants and one witness was examined on behalf of the respondents, namely, RW1-Mani Ram, the driver of the offending trailer. Needless to state, all the petitions having been consolidated, the entire evidence was recorded in the lead case.

7. The learned Claims Tribunal after conducting an enquiry, arrived at the conclusion that the accident had occurred due to the sole negligence of the driver of the trailer (the respondent No. 4, Mani Ram), as the trailer was carrying angle iron, which was protruding outside the body of the trailer and was parked on the road in a negligent manner. As regards the evidence of RW-1 Mani Ram-the driver of the offending trailer, the learned Tribunal observed that his testimony could not be accepted to be true, for, the site plan prepared by the Investigating Officer did not support his version of the manner in which the accident occurred and thus his deposition was nothing but an attempt to save him. Mani Ram was, therefore, held to be the principal tort-feasor. The respondent No. 5, being the owner of the trailer was held by the learned Tribunal to be vicariously liable, and in view of the fact that there was no evidence on record to indicate that there was any breach of the conditions of the insurance policy, the appellant-insurer of

the trailer was held liable to indemnify the insured in respect of his liability towards the victims. The learned Tribunal thereafter proceeded to assess the compensation payable to the claimants in each of the cases and to pass awards.

8. Aggrieved from the aforesaid findings of the learned Tribunal, the appellant has preferred the present appeal, principally on the ground that there was composite negligence on the part of both the drivers, that is, the driver of the trailer and the driver of the bus in causing the accident, and the learned Tribunal should therefore have apportioned the liability to pay compensation on the basis of negligence of both the drivers of the vehicles.

9. It is contended by Ms. Shantha Devi Raman, the learned counsel for the appellant that the learned Tribunal erroneously held that the entire negligence was attributable to the driver and owner of the stationary trailer and erred in directing the appellant/Insurance Company to pay the entire compensation amount in its capacity as the insurer of the trailer. Hence the judgment of the Tribunal deserved to be set aside on the aspect of negligence of the driver and the owner of the trailer.

10. Reliance was placed by Ms. Raman on the evidence of RW-1 Mani Ram, who appeared in the witness box to depose that at about 10.00 p.m. on 28.03.1998, when his trailer was near Brar Square, ahead of Dhaula Kuan, the bearing of the rear wheel broke and he accordingly parked his trailer by the extreme side of the road, put on the parking light, placed red cloth on the iron rods and stones on the rear side of the trailer, and also tree branches by the side of the stones. He further stated that he was in the trailer when, at about 1.30 a.m., he heard a loud thud and on coming out of the trailer, saw that the front portion of the bus had banged into the rear portion of the stationary trailer. The accident, he stated, was caused on account of the absolute negligence of the driver of the bus. In cross-examination, he denied that he had not placed any indication to show that his vehicle was stationary, though he was compelled to admit that he was facing criminal trial for this accident and that the owner of the trailer Ajay Yadav too was facing trial.

11. Ms. Raman, the learned counsel for the appellant, also invited my attention to the site plan prepared by the Investigating Officer to contend that the learned Tribunal had failed to notice the significant fact that the offending trailer was parked on the left side of the road, and was partly on the "kacha" road (mud) and partly on the metallic portion of the road. She contended that the parking of the trailer as depicted in the site plan showed that the stationary trailer had been parked in a proper manner. She emphasized that the driver of the trailer, Mani Ram, RW-1 had appeared in the witness box and had categorically stated that the bearing of the rear wheel of the trailer had broken and, hence, the trailer had to be stopped and parked on the road. He had further deposed that he had tied a red cloth on the iron rods on the rear portion, and had also placed some stones and tree branches. He had also stated that there was sufficient street-light, and had denied the suggestion that he had not placed any indication to make the

road-user aware of the stationary vehicle. On the contrary, the driver of the bus, who had been duly served with notice of the filing of the Claim Petitions and had appeared in person on 30.10.2000, as set out in the impugned order, had subsequently stopped appearing, and thereafter did not appear in the witness box to depose about the manner in which the accident occurred. Adverse inference was, therefore, liable to be drawn against him.

12. Ms. Raman also pointed out that the driving license of the driver of the bus was not available in the criminal records and though the owner of the bus had, on service of notice u/s 133 of the Motor Vehicles Act, disclosed the name and address of the driver, the police could not trace out the driving license of the driver of the bus. The fact that he was absconding, she argued, was in itself sufficient to show that he was to be blamed for the accident.

13. Finally, Ms. Raman contended that the Tribunal had ignored the significant fact that petitioners themselves in their petition had pleaded that the accident had occurred due to the negligence of the drivers of both the vehicles, but, at the time of evidence, the petitioners had controverted and negated their own stand taken in the petition.

14. On perusal of the Claim Petition, however, I find that this is not so and the last contention of Ms. Raman does not hold water. It is clearly stated in the Claim Petition as under:-

that the deceased was travelling in the Private Bus bearing No. DL-1P-0798 coming from Chattar Pur to Jahangirpuri alongwith other passengers. The bus collided with the TMB Trailer No. HNC-422 which was stationary at the wrong side in the bus lane carrying black iron angles which were too much over hanging dangerously, carelessly, outside the Trailer having no sign or indicator on the body of Trailer or on back side, so as to the bus could take the precautions. The wrongly parked stationary vehicle-Trailer was not visible to the driver and passengers of the bus and were not familiar of its parking and all of sudden it struck with the over hanging iron angles placed in Trailer which was on the wrong side. The passengers cried and shouted. In the process number of persons died and seriously injured. The Trailer owner and driver were bound to take cognizance of the increase in the volume of traffic and ought to have installed Barricade or kept a watchman at such place for the benefit of the public under a duty of care. It was inherently carelessness, negligence and dangerous activity of respondents Nos. 1 & 2 for keeping Trailer on wrong track and that too without any head lights, indicator or reasonable and necessary care. They had special responsibility for the purpose of preventing danger to passengers on the road by reason of wrong parking and over hanging iron angles. The respondents must have taken reasonable care to avoid acts which one can reasonably foresee would be likely to injure the passengers on road. It is obvious that the accident could have been avoided had there been no vehicle on wrong track (bus lane), especially with over hanging roads for which respondents are solely responsible, therefore, the accident is only due to sole negligence of respondents No. 1 and 2,

due to gross negligence and carelessness of the driver of the Trailer the accident occurred resulting the instant death of deceased alongwith other passengers instantaneously due to various grievous injuries.

15. As noted by the learned Tribunal, the aforesaid averments made in the Claim Petition are corroborated by the testimonies of PW-2, PW-3 and PW-6 to PW-10, who have deposed on similar lines. The relevant portion of the judgment of the learned Tribunal dealing with the testimonies of the aforesaid witnesses is reproduced as under:-

8. In support of this issue petitioners have examined PW-2 Mahinder Kaur who was a passenger in the bus. She has deposed that the truck bearing No: HNC 0422 (TMB Trailer) was parked on the bus lane loaded with iron angles which were coming out of the truck. There was no light or any indication that the iron angles were loaded in the trailer. On account of the collision the iron angles entered the bus and caused injuries to many passengers. On cross-examination she deposed that the truck was not visible and it was dark. PW-3 Jaswant Kaur has also deposed on the same lines. PW-6 Smt. Sudesh Chabra has also reiterated the facts as deposed by PWs-2 and 3. On cross-examination she has deposed that the speed of the bus was normal. She was not in a position to see what lay ahead on the road. She denied that the bus driver was rash and negligent. PW-7 Baljeet Kaur has also deposed in the same terms as PWs-2 and 3. She has not been cross-examined as regards the manner of the accident, though she has denied the suggestion that there was sufficient light. PW-8 Dalip Kaur, PW-9 Ravinder and PW-10 Gurdeep Singh have also deposed about the negligence of the truck driver.

16. On the aspect of composite negligence, reliance was placed by Ms. Raman on the judgments of this Court rendered in *Angoori Devi & Others Vs. Megh Raj & Others I* (2001) ACC 724 (DB); *Om Wati (since deceased) through L.Rs. Vs. Mohd. Din and Others* 2002 ACJ 868 (DB); and *Oriental Insurance Co. Ltd. Vs. Madhu Vohra & Ors. III* (2010) ACC 565 and a judgment of the Allahabad High Court in *U.P. State Road Transport Corporation v. Rajani & Ors.*, 2007 ACJ 1771(DB).

17. In the case of *Om Wati (Supra)*, there was a collision between a truck and a car coming from opposite direction, resulting in the death of two passengers in the car. The Tribunal held that the truck-driver and car-driver were both negligent in the ratio of 70:30. The question arose as to the extent of the liability of the insurer of the truck and whether the claimants were liable to forgo their 30% share of compensation because they had failed to implead the driver, owner and insurer of the car involved in the accident. It was in this context that a Division Bench of this court held as follows:-

9. Coming to the question of apportionment, it seems to us that First Appellate Court was in error in holding that claimants would have to forego 30 per cent share of their awarded compensation in favor of the joint tort-feasors of the truck

present before the Court as they had failed to implead tort-feasors of the car as party-respondents in their claim suits. This is because the accident could not be wholly treated to be the result of contributory negligence. Even if it was assumed that the drivers of the two vehicles contributed to the accident in some measure, the other two deceased who were travelling in the car could not be held responsible for any such negligence. Therefore, it was a case of composite negligence in their case. The principle of composite negligence is that where more than one person is responsible for commission of the wrong, the person wronged has a choice of proceedings against all or any one or more. Any one of the wrong-doer is liable for the whole damage if it is otherwise made out. In other words the liability of two sets of tort-feasors becomes both joint and several.

10. It logically follows from this that a claimant could choose to file a claim petition against all or any one of them and it was not necessary that he should implead all joint tort-feasors as party respondents because they were only proper parties and not necessary parties. It may as well be that claimant had not set up a case of composite negligence but if there was material on record to suggest so, neither Tribunal nor Court was disabled or incompetent to record a finding in this regard. Support for this is derived from a DB judgment of Gujarat High Court in *Hiraben Bhaga v. Gujarat State Road Transport Corporation*, 1982 ACJ (Supp) 414 (Guj), holding as under:

It passes one's understanding as to how could a passenger's compensation be deducted on account of the contributory negligence of the driver of a vehicle. It is entirely the choice of the claimant whether to implead both the joint tort-feasors and either of them. The claimants cannot be saddled with the liability for contributory negligence of one of the joint tort-feasors, if they fail to implead him as one of the opponents, in their claim petition. It would be for the impleaded joint tort-feasor to take proceedings to get the other joint tort-feasors impleaded in the claim petition, or for that matter such an impleaded joint tort-feasor may select to sue the other one after the decree or award is given and the other joint tort-feasor is held liable therein. It would be, however, quite a different argument to advance that because the claimants did not sue one of the tort-feasors, they themselves should be held liable for the deduction of the amount, which the omitted joint tort-feasor would have been called upon to pay. Thus, there would be no deduction in the amount of compensation awarded to the appellants as done by the Tribunal.

11. We, therefore, hold that it was a case of composite negligence in case of Shiv Singh and Sat Pal and their claimants had an option to file the claim petition either against all or any one of the joint tort-feasors and their failure to implead the tort-feasors of the car was not fatal for their claim and that First Appellate Court had wrongly forfeited their 30% share of awarded compensation amount for this which they were entitled to recover from the appellant company, being insurer of tort-feasors? truck. It would then be open to the company to recover

such amount from the owner/insurer of the car jointly or severally.

18. In Angoori Devi's case (Supra), two trucks were involved in an accident in which a class IV employee of NCERT, who happened to be in one of the said trucks was killed. The Motor Accident Claims Tribunal found it to be a case of composite negligence and apportioned liability of respondents No. 1, 2 and 3 jointly and severally at 75% and that of the respondents No. 4 and 5 at 25%. No liability was fastened on the respondent No. 6 (the insurer of one of the trucks) for being untraceable perhaps. The insurer of the other truck filed an appeal against this award on various grounds and the appellants/claimants also filed cross-objections. The insurer's appeal was dismissed but the appellant's cross-objections were allowed enhancing the compensation. Dissatisfied with this, the claimants filed a further appeal and one of the grounds raised was that the Motor Accident Claims Tribunal and the First Appellate Court had fallen in error in apportioning the liability of 75% on respondents No. 1, 2 and 3 and 25% on respondents No. 4 and 5 when no such apportionment was permissible in the case of composite negligence. A Division Bench of this court held that a plain reading of Section 168 of the Motor Vehicles Act, 1988 leaves no scope for doubt that it extends the jurisdiction of the Tribunal to awarding the compensation amount against all or some of the tort-feasors or even one of the tort-feasors. It further held as under:-

20. We accordingly hold that apportionment of liability was not a taboo and was permissible even in a case of composite negligence and Tribunal was competent to apportion and specify liability of two sets of tort feasers though it was open to claimant/s to recover the whole compensation amount from one of them where the other one defaulted.

19. In the case of Madhu Vohra (Supra), one Amit Vohra alongwith his wife and children was travelling in a car being driven by his brother when a truck going ahead of the car suddenly stopped without any signal or indication and the car dashed against the tail-board of the truck, resulting in injuries to the occupants of the car and on the spot death of the daughter of the family and the demise of the said Amit Vohra in hospital. Before the learned Tribunal, a plea was raised that the accident was the result of contributory negligence. The Tribunal negated the said plea by observing that the issue of contributory negligence did not arise since it was nobody's case that the deceased was driving the offending car and at the most it could be a case of composite negligence on the part of the truck driver and car driver as he was not keeping a safe distance from the truck ahead. The Tribunal then proceeded to award compensation to the claimants. In appeal, the appellant-Insurance Company contended that the trial court despite holding that it was a case of composite liability had not apportioned the payment of award amount amongst the two tort-feasors. Referring to and relying upon the judgment of this court rendered in Om Wati's case (Supra) and the judgment of Division Bench of the Allahabad High Court in the case of Rajani & Ors. (Supra), a learned single Judge of this court held that the Tribunal had rightly observed

that the entire awarded amount could be claimed from the appellant-Insurance Company, for the Tribunal was competent to direct anyone of the joint tort-feasors to satisfy the award, though it could direct recovery from other tort-feasors.

20. It may be noted that the Division Bench of the Allahabad High Court in the case of Rajani & Ors.(Supra) observed as under:-

... In a case, where all the joint tort-feasors have been brought on record, it is needless to say that Tribunal is under statutory duty to specify the amount which shall be paid by driver or owner or insurer of the vehicles involved in the accident. The apportionment of liability amongst the individual joint tort-feasors has to be done by Tribunal to the extent their negligence contributed to the damage caused to the victim of the accident. Thus in case of insurers to the extent of their liability covered by insurance policy or under statute. The said provision, in our view, is only intended to the extent possible, to avoid multiplicity of proceedings inter se between the drivers, owners and insurers of the two vehicles and to the extent possible to give finality to their liability....

Thus in case of an accident caused by composite negligence of two motor vehicles, where one vehicle is insured and another is not covered by valid insurance policy and both are impleaded as party and also heard, it is open to the Tribunal after specifying their respective liability to the extent of damage contributed, direct the owner or insurer of vehicle insured to pay entire amount of award to the claimants and recover the excess amount so paid over and above his or its liability from the owner or driver of the another vehicle involved in such accident.

21. The aforesaid decisions in my view are of no avail to the appellant-Insurance Company though undoubtedly the law laid down therein is well settled. The question of composite negligence and the apportionment of liability between the respective driver, owner and insurer of the two vehicles in each case is a question of fact to be determined by the Tribunal on the evidence adduced before it. Then again, it is open to the claimants to claim compensation from all or any of the joint tort-feasors. It is also open to the Tribunal to hold from the evidence on record that only one of the tort-feasors was liable for the accident or all the tort-feasors were liable for their rash and negligent act and to apportion the ratio of liability between each of the tort-feasors. No hard and fast rule can be laid down as each case must be determined on its own facts.

22. On facts, adverting first to the site plan prepared by the Investigating Officer, a perusal thereof, in my view, negates the contention of Ms. Raman, the learned counsel for the appellant-Insurance Company, that the truck was parked partly on the mud and partly on the metalled portion of the road, inasmuch as it clearly shows that though the truck is shown to be parked towards the left side of the road, yet it is parked on the metalled portion. The site plan also does not show any stones, tree branches, bushes, red cloth or any other indication, as was

deposed by RW-1 to have been placed on or near the stationary trailer. The site plan also does not reflect the presence of any street light or any other source of light, such as lantern, parking lights, etc.

23. In the testimony of RW-1 Mani Ram also, there is not a whisper about any lantern and all that is stated is that stones were placed on the rear side of the trailer and tree branches were also placed by the side of the stones. Significantly, however, there is no mention of stones and tree branches in the joint written statement filed by the respondents No. 4 and 5. Then again, whereas in his testimony RW-1 Mani Ram had stated that there was sufficient street light on the road to show the stationary trailer, it is not so stated in the written statement filed by him. Thus, clearly, to my mind, the testimony of this witness cannot be believed in the absence of any indication in the site plan that there was any red cloth or street lights or stones, bushes, etc. All the aforesaid appear to be an after-thought. Moreover, there is no reason to disbelieve the testimonies of the seven witnesses examined from the side of the petitioners, who have in one voice deposed that the trailer could not be seen at the time of the occurrence, and that there was no indication to show that the trailer was stationary on the road. Even otherwise, had there been an iota of truth in the testimony of RW-1, Mani Ram, the Investigating Officer would have been produced in the witness box by the appellant and asked as to why in the site plan prepared by him, he had not reflected the presence of street lights, red flag, stones, bushes, etc. to indicate the presence of the trailer in the bus-lane, but they failed miserably to do so.

24. It would be apposite at this juncture to reproduce the relevant provisions of the Motor Vehicles Act on the aspect of parking of a vehicle in such a condition as to cause dangerous obstruction or cause undue inconvenience to other users of the road. The said Sections read as under:-

Section 122- Leaving vehicle in dangerous Position:-

No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

Section 126- Stationary vehicles:-

No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

25. From the aforesaid, it is clear that the law mandates that no person in-

charge of a motor vehicle or any trailer shall allow the same to remain on the road in such a position or in such a condition or in such circumstances as to cause danger, obstruction or undue inconvenience to other users of the road. Parking of the trailer on the metalled portion of the Ring Road without taking any due and reasonable care to indicate that the trailer stood parked in the bus lane must, therefore, be construed as an act of negligence, more so when the said trailer was carrying angle iron/saria which was dangerously protruding out. The Motor Accident Claims Tribunal has, thus, to my mind, correctly held that the driver of the trailer was negligent and I find no cogent ground to interfere with the well-reasoned findings of the Tribunal on this aspect.

26. Resultantly, the appeals filed by the Insurance Company, namely, MAC APP. Nos.321-22/2006, 317-18/2006, 319-20/2006, 323-24/2006, 326-27/2006, 328-29/2006, 333-34/2006, 335-36/2006, 337-38/2006 and 345-46/2006 are dismissed.

CM No. 12506/2007 in MAC. APP. No. 321-322/2006 titled as National Insurance Company Ltd. & Anr. Vs. Sudesh Chabra & Ors. 27. By way of these cross-objections, the respondents/claimants viz., the widow and two minor daughters of the deceased, seek enhancement of the compensation awarded to them on account of the accidental death of their bread-earner Shri Mahesh Chabra. The respondent No. 1 is the widow of the deceased and the respondents No. 2 and 3 are the daughters.

28. In order to substantiate the averments made in the Claim Petition filed by her, the widow of the deceased appeared in the witness box as PW-6 to depose that her husband was doing wholesale and retail business of sale of fruits and vegetables and was also running a hotel in Azadpur Mandi. She further deposed that he was 35 years of age on the date of the incident and was earning Rs. 18,000/- to Rs. 20,000/- per month.

29. The learned Tribunal, however, held that since no authentic proof of age had been tendered by the petitioners/claimants, the age of the deceased Mahesh Chabra must be held to be 40 years on the date of the accident. The learned Tribunal further observed that except for the bald statement of PW-6, the wife of the deceased, that he was earning Rs. 18,000/- to Rs. 20,000/- per month, there was no evidence on record with regard to the income of the deceased. PW-6 had not proved any income tax return or any statement of account or even any license to show that the deceased was authorized to sell fruits and vegetables at Azadpur Mandi or to run a hotel there. There was also no evidence on record to show that he had any permanent place of business in the said Mandi. In the absence of such evidence, the learned Tribunal took recourse to the Minimum Wages for a non-matriculate which were in the sum of Rs. 2,130/- per month, and after taking into account the future prospects of increase in the minimum wages of the deceased, assessed the average monthly income of the deceased to be in the sum of Rs. 3,195/- per month. Deducting one-third there from for the personal expenses and maintenance of the deceased, the Tribunal assessed the

average annual loss of dependency of the claimants to be in the sum of Rs. 25,560/- per annum and proceeded to augment this figure with the multiplier of 15, thereby assessing the total loss of the dependency of the petitioners to be Rs. 3,83,400/-. It held that apart from this amount, the claimants were entitled to receive a sum of Rs. 10,000/- towards the loss of estate and loss of love and affection of the deceased, a sum of Rs. 5,000/- for the last rites of the deceased and also held the respondent No. 1, the widow of the deceased was entitled to Rs. 20,000/- towards the loss of consortium. Thus, in all, the Tribunal awarded a sum of Rs. 4,18,400/- rounded off to Rs. 4,18,000/- (including the amount of interim award) with interest at the rate of 7.5% per annum from the date of the institution of the petition till the date of realization of the award amount.

30. A two-fold contention was raised by Mr. O.P. Mannie, the learned counsel for the respondents/claimants to assail the award. His first contention is that the deceased left behind him four dependants, that is, his widow, his two minor daughters and a minor son. Thus, the learned Tribunal ought to have made a deduction of one-fourth from his average annual income towards his personal expenses and maintenance, instead of one-third. I am not inclined to agree with the aforesaid contention for the reason that the minor son of the deceased, namely, Pankaj Chabra, died in the same accident as his father, the deceased Mahesh Chabra, and he, therefore, left behind three legal representatives being his widow and two minor daughters. The learned Tribunal, thus, rightly deducted one-third ($\frac{1}{3}$ rd) of the income of the deceased towards his personal expenses.

31. The second contention of Mr. Mannie, the learned counsel for the respondents is that a meager sum of Rs. 10,000/- has been awarded by the Tribunal towards the loss of estate and loss of love and affection of the deceased and the said amount deserves to be enhanced. Reliance in this context has been placed by Mr. Mannie on a recent judgment of the Supreme Court rendered in the case of Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, wherein a sum of Rs. 25,000/- was awarded by the Supreme Court for the loss of love and affection of the deceased. Although, I am of the view that Madhusudan's case (supra) does not lay down as a rule of thumb that in each case a sum of Rs. 25,000/- should be awarded for the loss of love and affection, I am inclined to enhance the amount of compensation awarded under the head of loss of love and affection by holding that apart from the sum of Rs. 10,000/- awarded towards loss of estate, the respondents shall be entitled to a sum of Rs. 30,000/- towards the loss of love and affection of the deceased.

32. In view of the aforesaid, the respondents-objectors shall be entitled to the award of Rs. 4,48,000/- with interest at the rate of 7.5% per annum from the date of the filing of the petition till the date of realization of the award amount. The award amount thus stands enhanced from Rs. 4,18,000/- to Rs. 4,48,000/- with proportionate interest thereon.

33. The enhanced amount shall be deposited by the Insurance Company within 30 days of the date of the passing of this order with the Registrar General of this

court and shall ensure solely to the benefit of the widow of the deceased.

34. CM No. 12506/2007 stands disposed of accordingly.

CM No. 12496/2007 in MAC. APP. No. 337-38/2006 titled as National Insurance Co. Ltd. & Anr. Vs. Sudesh Chhabra & Ors. 35. These cross-objections relate to the enhancement of compensation awarded in Suit No. 648/2003 (old suit No. 1238/1998) titled as Smt. Sudesh Chabra & Ors. Vs. Mani Ram & Ors. on account of the death of one Pankaj Chabra, aged 14-15 years. The respondents/objectors are the mother and two minor sisters of the deceased.

36. As noticed above, Shri Mahesh Chabra, the father of the deceased died in the same accident in which the deceased lost his life. According to the testimony of PW6 Smt. Sudesh Chabra, her son was aged 15 years at the time of the accident and was a student of class 9th with a brilliant academic record and was earning about Rs. 2,000/- per month from tuitions. In the course of her cross-examination, however, she admitted that she did not have any document to prove the aforesaid facts by way of school records, etc., though she stated that her son was studying in a Government School at Paharganj.

37. The learned Tribunal taking note of the judgments rendered by the Supreme Court in the case of Lata Wadhwa and Others Vs. State of Bihar and Others, and in M.S. Grewal and Another Vs. Deep Chand Sood and Others, , held that from the evidence on record though no definite amount of expected pecuniary benefits to the claimants could be assessed, it could not be said that the deceased had no capacity to earn or that he would not have earned anything in his life. The Tribunal, therefore, proceeded to make a rough estimate of the expectation of pecuniary benefits, opining that even by a conservative estimate the deceased would have earned at least Rs. 1,000/- per month for his parents. It then held that the age of the mother of the deceased being 35 years as deposed by her, a multiplier of 16 would be applicable. The Tribunal accordingly held that the respondents/objectors were entitled to compensation in the sum of Rs. 1,92,000/- (that is, Rs. 1000 x 12 x 16), apart from a sum of Rs. 10,000/- for loss of love and affection and Rs. 5,000/- for funeral rites and ceremonies, that is, in all Rs. 2,07,000/-, including the amount of the interim award. Aggrieved from the findings of the learned Tribunal, the claimants have preferred these cross-objections praying for enhancement of the award amount.

38. In the course of hearing these cross-objections, Mr. O.P. Mannie, the learned counsel for the objectors/claimants heavily relied upon the judgment of the Supreme Court rendered in the case of R.K. Malik and Another Vs. Kiran Pal and Others, to contend that the award amount deserves to be enhanced. In the said case, twenty-nine school-going children were drowned as the result of a road accident caused by the overturning of the bus in which the said children were proceeding to the school, which bus after overrunning the road and breaking the railing got drowned in the Yamuna river at Wazirabad Yamuna Bridge. The Tribunal, by its common judgment, awarded a sum of Rs. 1,55,000/- to the

dependents of the children between the age group of 10 to 15 years and Rs. 1,65,000/- to the dependents of children between 15 to 18 years. In the case of three children who were less than 10 years, the Tribunal awarded compensation of Rs. 1,05,000/-, Rs. 1,30,000/- and Rs. 1,31,000/- in their respective cases. Against the said order of the Tribunal, appeals were filed before the High Court, which were heard together by the High Court. The High Court by its common order held that the appellants were entitled to enhancement of compensation in all the cases by Rs. 75,000/- and Rs. 1,000/- (if not already awarded by the Tribunal) and interest at the rate of 7.5% per annum from the date of the filing of the petition till payment. Feeling aggrieved, a SLP was filed by the appellants, contending that the High Court ought to have applied the ratio of *Lata Wadhwa and Others Vs. State of Bihar and Others*, to the facts of the case and also that it had failed to award a fair and reasonable compensation. The Supreme Court, observing that compensation in cases of motor accidents, as in other matters, is paid to the claimants/dependants of the deceased persons for reparation of damages, and to put them in the pre-accidental position, held that the damages so awarded should be an adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong committed. Compensation is, therefore, required to be paid for prospective pecuniary loss. On the aspect of computation of compensation, after noticing that the Act provided for payment of "just compensation" vide Sections 166 and 168 of the Motor Vehicles Act, 1988, the Court observed that it had repeatedly been held that it is the multiplier method which should be applied as the said method is based upon the principle that the claimant must be paid a capital sum, which would yield interest to provide material benefits of the same standard and duration as the deceased would have provided for the dependents, if the deceased had lived and earned. The Court further observed that uniform application of the multiplier method ensures consistency and certainty and prevents different amounts being awarded in different cases.

39. Ms. Shantha Devi Raman, the learned counsel for the Insurance Company was unable to give any cogent reason as to why this Court should not re-compute the compensation in accordance with the principles of law enunciated by the Supreme Court in the case of *R.K. Malik (supra)*. It is accordingly proposed to re-calculate the compensation payable to the legal representatives of the deceased Pankaj Chabra in consonance with the law laid down in the said case. Thus, assuming the notional income of the deceased to be in the sum of Rs. 15,000/- per month in terms of the Second Schedule to the Motor Vehicles Act and applying the multiplier of 16, as applied by the learned Tribunal and as set out in the Second Schedule, the compensation on the basis of the notional income of the deceased after deducting one-third (1/3rd) towards the personal expenses of the deceased comes to Rs. 10,000/- x 16 = Rs. 1,60,000/-. As regards the future prospects of the deceased, the mother of the deceased (PW6 Smt. Sudesh Chabra) stated on oath that the deceased was good in academics and was a student of standard IX in a Government School. In the absence of

evidence to the contrary, there is no reason to disbelieve the testimony of this witness. Accordingly, in consonance with the judgment in the case of R.K. Malik (supra), a sum of Rs. 75,000/- is awarded towards the future prospects of the deceased child and a further sum of Rs. 75,000/- for the non-pecuniary damages sustained by the mother and sisters of the deceased, in all, a sum of Rs. 3,10,000/-. The award amount thus stands enhanced from Rs. 2,07,000/- to Rs. 3,10,000/- payable alongwith interest at the rate of 7.5% per annum as awarded by the learned Tribunal from the date of the institution of the petition till the date of realization.

40. The enhanced amount shall be deposited by the Insurance Company within 30 days of the date of the passing of this order with the Registrar General of this court and shall ensure solely to the benefit of the mother of the deceased.

41. CM No. 12496/2007 stands disposed of accordingly.

CM No. 12516/2007 in MAC. APP. No. 328-329/2006 titled as National Insurance Co. Ltd. and Anr. Vs. Baljeet Kaur and Ors. 42. These cross-objections relate to the award passed in Suit No. 645/2003 (old suit No. 29/1999) titled as Baljeet Kaur and Ors. Vs. Ajay Kumar & Ors. on account of the death of one Satinder Pal Singh, whereby a sum of Rs. 4,44,000/- was awarded to the legal representatives of the deceased alongwith interest at the rate of 7.5% per annum.

43. The respondents/objectors are the widow and two minor children of the deceased. At the time of hearing, the sole contention of Mr. O.P. Mannie, the learned counsel for the claimants/objectors was that a paltry amount of Rs. 10,000/- had been awarded by the learned Claims Tribunal under the heads of loss of estate and loss of love and affection of the deceased. The remaining grounds of appeal were not pressed.

44. In view of the fact that the deceased was survived by his widow and two minor children, I am inclined to enhance the amount of compensation awarded under the head of loss of love and affection by holding that apart from the sum of Rs. 10,000/- awarded towards loss of estate, the claimants/objectors shall be entitled to a sum of Rs. 10,000/- each towards the loss of love and affection of the deceased. Resultantly, the award amount stands enhanced from Rs. 4,44,000/- to Rs. 4,74,000/-. The rest of the award is upheld.

45. The enhanced amount shall be deposited by the Insurance Company within 30 days of the date of the passing of this order with the Registrar General of this court and shall ensure solely to the benefit of the widow of the deceased.

46. CM No. 12516/2007 stands disposed of accordingly.

CM No. 12499/2007 in MAC. APP. No. 333-34/2006 titled as National Insurance Co. Ltd. and Anr. Vs. Dalip Kaur and Ors. 47. These cross-objections relate to enhancement of compensation awarded in Suit No. 649A/2003 titled as Dalip Kaur and Ors. Vs. Mani Ram & Ors. on account of the death of one Fauja Singh.

The respondents/objectors are the widow and five minor children of the deceased.

48. In order to substantiate the averments made in the Claim Petition, the respondent/objector No. 1 Dalip Kaur examined herself as PW8 and deposed that the deceased was doing the business of wholesale and retail of fruits and vegetables and was also running a hotel in Azadpur Mandi. She further deposed that he was 42 years of age on the date of the accident and was earning Rs. 20,000/- to Rs. 25,000/- per month. In the course of her cross-examination, she stated that her husband might have studied upto the 6th or the 7th class.

49. The learned Tribunal held that since no authentic proof of age or education had been tendered by the claimants (petitioners in the Claim Petition), the age of the deceased Fauja Singh as on the date of the accident must be held to be 50 years on the basis of the post-mortem report of the deceased. The learned Tribunal further observed that except for the bald statement of PW8, the wife of the deceased, that he was earning Rs. 20,000/- to Rs. 25,000/- per month, there was no evidence on record with regard to the income of the deceased and that in the absence of any such evidence, the only course left open to it was to take recourse to the Minimum Wages Act. The learned Tribunal further observed that since the deceased was not a laborer, it would be appropriate to take the minimum wage rate as applicable to a non-matriculate on the date of the accident. In this manner, the learned Tribunal assessed the average monthly income of the deceased to be in the sum of Rs. 2,130/- per month and after taking into account the future prospects of the deceased, estimated the income of the deceased to be Rs. 3,195/- per month. Deducting one-third (1/3rd) there from for the personal expenses and maintenance of the deceased, the learned Tribunal assessed the annual loss of dependency of the legal representatives of the deceased to be Rs. 25,560/- per annum. It then augmented the said multiplicand with the multiplier of 11, thereby calculating the total loss of dependency of the claimants in the sum of Rs. 2,81,160/-. It further held that apart from this amount, the claimants were entitled to receive a sum of Rs. 10,000/- towards the loss of estate and loss of love and affection of the deceased, a sum of Rs. 5,000/- for the last rites of the deceased and also held the claimant No. 1 to be entitled to Rs. 20,000/- towards the loss of consortium. Thus, in all, the Tribunal awarded a total sum of Rs. 3,16,000/- (including the amount of the interim award) to the legal representatives of the deceased alongwith interest at the rate of 7.5% p.a. from the date of institution of the petition till the date of realization of the award amount.

50. Mr. O.P. Mannie, the learned counsel for the respondents/objectors challenged the award on two counts. His first contention is that the deceased left behind him six legal representatives, that is, his widow and five children. Thus, the learned Tribunal ought to have made a deduction of one-fourth from his average annual income towards his personal expenses and maintenance, instead of one-third. I am inclined to agree with the aforesaid contention for the reason that the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi

Transport Corporation and Another, has laid down certain guidelines to be uniformly followed by all Tribunals and Courts and one of the said guidelines, which pertains to the deduction to be made from the income of the deceased for the purpose of computing the loss of dependency of his legal representatives, reads thus:-

14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

51. Thus calculated, the average annual loss of dependency of the objectors works out to Rs. 28,755/- per annum (that is, Rs. 3,195 x 3/4 x 12). Augmenting the said multiplicand by the multiplier of 11, as applied by the learned Tribunal and to which no challenge has been raised, the total loss of dependency of the claimants/objectors comes to Rs. 28,755 x 11 = Rs. 3,16,305/- which may be rounded off to Rs. 3,16,000/- (Rupees Three Lacs Sixteen Thousand Only).

52. The second contention of Mr. Mannie, the learned counsel for the appellants is that a meager sum of Rs. 10,000/- has been awarded by the Tribunal towards the loss of estate and loss of love and affection of the deceased and the said amount deserves to be enhanced. Reliance in this context has been placed by Mr. Mannie on a recent judgment of the Supreme Court rendered in the case of K.R. Madhu sudan (supra), wherein a sum of Rs. 25,000/- was awarded by the Supreme Court for the loss of love and affection of the deceased. Although, as stated hereinabove, I am of the view that Madhusudan's case (supra) does not lay down as a rule of thumb that in each case a sum of Rs. 25,000/- should be awarded for the loss of love and affection, I am inclined to enhance the amount of compensation awarded under the head of loss of love and affection by holding that apart from the sum of Rs. 10,000/- awarded towards loss of estate, the objectors shall be entitled to a sum of Rs. 50,000/- towards the loss of love and affection of the deceased, that is, in all a sum of Rs. 4,01,000/- is awarded to the claimants/respondents No. 1 to 6.

53. In view of the aforesaid, the respondents/objectors shall be entitled to the award of Rs. 4,01,000/- with interest at the rate of 7.5% per annum from the date of the filing of the petition till the date of realization of the award amount. The award amount thus stands enhanced from Rs. 3,16,000/- to Rs. 4,01,000/- with proportionate interest thereon.

54. The enhanced amount shall be deposited by the Insurance Company within 30 days of the date of passing of this order with the Registrar General of this

court and shall ensure solely to the benefit of the widow of the deceased.

55. CM No. 12499/2007 stands disposed of accordingly.

56. Records of the learned Tribunal are sent back to the concerned Tribunal.