

**(1992) 01 DEL CK 0009**  
**In the Delhi High Court**  
**Case No : F.A.O. No. 140 of 1979**

|                                                   |            |
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| Sqdn. Ldr. D.D. Upadhayay and Others              | APPELLANT  |
| Vs                                                |            |
| U.P. State Road Transport Corporation and Another | RESPONDENT |

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**Date of Decision :** 27-01-1992

**Acts Referred:**

**Citation :** (1992) ACJ 929

**Hon'ble Judges :** S. Duggal, J

**Bench :** Single Bench

**Advocate :** A.C. Gambhir, for the Appellant; Ishwar Sahai, for the Respondent

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## Judgement

1. This appeal, filed by the claimants against the award given on 6th April, 1969 by the Motor Accident Claims Tribunal, Delhi (for short the MACT), raises questions as to the adequacy of the compensation awarded, and also the counts on which compensation should be determined, in cases of death by accident caused by motor vehicles.

2. There is no controversy on facts, inasmuch as it is not denied that death of Smt. Kailashwati wife of appellant No. 1, D. D. Upadhayay, then Sqn Leader, posted in Delhi, occurred as a result of an accident that took place on 25th October, 1970 when the deceased while sitting on the pillion seat of the scooter driven by her husband, was struck down by the bus belonging to respondent No. 1, (U. P. Government Roadways), being bus No. UST 4656. The MACT returned a finding that this accident was result of rash and negligent driving on the part of the driver of the bus, imp leaded as respondent No. 2, who unmindful of the traffic before him struck against the scooter which the appellant No. 1 was driving and due to the impact, the deceased fell down on the road and was run over by the left rear wheel of the bus, resulting in multiple injuries to which she succumbed later on in the hospital. This finding is final between the parties for the reason that the respondents have filed neither any appeal nor any cross objections.

3. Mr. Ishwar Sahai appearing for the respondents did make an endeavor to raise certain questions during the course of his arguments, which could have been available in an appeal or cross-objections but even while doing so, Mr. Sahai has not questioned the finding of fact as to the accident being the result of rash and negligent driving on the part of the driver of the bus.

4. Pursuant to the finding, as noted above, the MACT proceeded to determine the compensation that was awardable, on the fact and circumstances of the case. Certain factors, which have a bearing on the question as to what would be the just compensation for the claimants, as found by the MACT, are that the age of the deceased at the time of her accidental death was 49 years, whereas appellant No. 1 was 52 years old. They had three children, namely, a daughter Jayanti, married at the time of death, a son Vinod Kumar, then aged about 17-1/2 years and a daughter named Savita, then aged about 11 years. The MACT has also recorded that the parents of the deceased were alive and whereas the father was 78 years old, the mother was 70 years of age. There was un rebutted statement of appellant No. 1 that both possessed good health. In view of the fact, however, that the deceased was a housewife, the Tribunal did not adopt the usual method of calculating the dependency by determining the multiplier and multiplicand, but awarded a lump sum of Rs. 5,000/- by way of compensation on account of loss of expectation of life.

5. The MACT further held that petitioner No. 1 lost company of his wife when he was only 52 years of age, and that he had a justifiable claim for compensation for loss of the society of his wife as well as services, that is, consortium-et-servitium. The Tribunal further observed that this petitioner having retired as Sqn. Leader all the more needed consortium of his wife. After having so held, and basing himself on a judgment of Bombay High Court, reported as Abdulkadar Ebrahim Sura and Another Vs. Kashinath Moreshwar Chandani and Others, and looking to the current value of the rupee at the time; the MACT found a sum of Rs. 2,000/- to be fair and just compensation on this account.

6. Petitioners' claim for compensation for the pecuniary loss suffered on account of petitioner No. 1 having had to incur expense in engaging servants after the death of his wife was held to be not sustainable for the reason that no evidence had been adduced to establish that the servants were in fact employed or they were paid the amount as stated by petitioner No. 1 in his deposition. Thus an award of only Rs. 7000/- was made by way of compensation to all the petitioners, namely, the husband and three children. Interest @ 6% p.a. from the date of the petition till realisation was ordered to be paid only in the event of the respondents not paying the amount of compensation of Rs. 7000/- within two months from the date of the award.

7. The appellants feeling aggrieved have come up in appeal. It is contended that the amount of Rs. 2000/- awarded on account of loss of consortium-et-servitium was too meagre and neither fair nor reasonable, and the same required to be enhanced. It is further contended that amount of Rs. 5,000/- awarded by way of

compensation on account of loss of expectation of life was grossly inadequate. It is also pleaded that the Tribunal ought to have allowed compensation under another head of loss of love and affection of which the children were deprived because of the death of their mother, and that the award suffered from an erroneous approach and misconstruction of evidence.

8. Before proceeding further, I consider it expedient to extract from the claim petition, the portion whereby basis for claiming compensation was laid. It reads:

"The deceased was looking after the petitioners and she was a source of help to the petitioners in many ways. She was rendering various services to the petitioner which the petitioners cannot now get even by spending huge amounts. Two of the petitioners are minor and they were being looked after by the deceased. The petitioners have suffered monetary loss by the untimely death of the deceased. The petitioners have also been deprived of the company of the deceased. Petitioner No. 1 shall have to keep servants for doing the work which the deceased was doing in her lifetime. The petitioners are claiming compensation for monetary loss as well as loss to the estate of the deceased. The deceased possessed a very good health."

It is followed by the prayer clause as under:

"It is, Therefore, prayed that the petitioners be awarded a sum of Rs.50,000/- (Rupees fifty thousand only) as compensation."

9. Mr. A. C. Gambhir appearing for the appellants canvassed two pertinent propositions -- one, the principle of award of compensation to the husband for loss of both society of the wife as well as services and second, compensation to the children on the same footing, namely, loss of love, affection and care of the mother. He placed reliance on a Full Bench judgment of the Rajasthan High Court reported as Rajasthan State Road Transport Corporation Vs. Smt. Kistoori Devi and Others, , tabulating the heads on which compensation was admissible in cases of fatal accidents, which includes:

1. Loss of love and affection of spouse/ children/parents.
2. Consortium.
3. Loss of future happy life of deceased.
4. Mental shock.
5. Mental and physical agony, pain and sufferings.

10. The learned counsel argued that it has been emphatically laid down in this decision, after having a look at the entire case law on the subject, that the principle of award of compensation, as stipulated in section 110B of the Motor Vehicles Act, 1939 requires the Tribunal to fix such compensation which appears to it to be just, and that in this view of the matter, the power in the matter of fixing compensation is very wide, and that the principles that govern should be

not only the loss of dependency or loss of pecuniary benefit to the estate but heads such as loss of consortium, love and affection, future happy life of the deceased should be recognised in addition to pecuniary loss to the estate that might have been proved on record. Mr. Gambhir pointed out that in fact the Tribunal has recognised this principle and has awarded compensation both on account of loss of consortium-et-servitium and also on account of loss of expectancy of life, but the error that has crept into the judgment is that apart from determining the amount at a very disproportionately low figure, otherwise also, no regard has been shown to the claim of the children for the loss of love and affection as well as maternal care suffered by them on account of untimely death of their mother due to the accident.

11. I would first deal with the head of loss of consortium to the husband. On a conspectus of judicial decisions on the subject, I would unhesitatingly say that there can be no denying the proposition that the husband is entitled to be compensated for the loss of the society of his wife.

12. Mr. Sahai, however, contended that the basic principle governing the award of compensation is the pecuniary aspect of the loss, and that what is to be allowed is not a solarium but compensation, and that this would bring within its purview, only the extent of actual pecuniary loss suffered by the claimants as a result of death, or such loss as caused to the estate of the deceased. He argued, Therefore, that no other claim such as for loss of love and affection or company and care was permissible.

13. The respondents did not, as already observed, file any appeal or cross-objections, and it is to be seen as to whether the arguments raised by the learned counsel could be entertained. He no doubt relied on a judgment of the Allahabad High Court reported as *The New India Assurance Company Ltd., Saharanpur Vs. Shri Sudesh Bhalla and others*, , laying down that even though the respondents had not filed any appeal or cross-objections, nevertheless the appellate court could still pass such a decree as was appropriate on the facts and circumstances of the case. This principle was recognised in view of the provisions of Rule 33 of Order 41, CPC, which read as under (at page 47 of All.):

"33. Power of court of appeal: The appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favor of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees," .

14. It was held that since this rule empowered the appellate court to pass such

decree, as the facts warrant, adequate relief could be granted to the respondents even though they have not filed any appeal or cross-objections. In this reported case, the challenge to the compensation made by the claimants as respondents, in appeal filed by the Insurance Company was entertained and their plea for enhancement of compensation upheld, irrespective of the fact that they had not filed any appeal or cross-objections.

15. On a careful consideration of the ambit, within which the provisions of Rule 33 of Order 41, CPC are intended to operate, I do not find it possible to countenance the proposition as advanced by Mr. Sahai that this provision entitled a court to reopen questions of law decided by the first court even when the party who seeks now to raise such questions, had never appealed or filed cross-objections. My reading of this provision is that its operation is limited to cases where on facts on record the appellate court finds it to be a case that in order to do complete justice between the parties, an order could be passed, even in respect to a party who had not appealed or filed cross-objections, because the emphasis is that the appellate court may in exercise of the power conferred by Order 33 of Rule 41, CPC make such orders or pass such decree, "which ought to have been passed or made."

16. The inference is clear to the effect that in case the appellate court feels that the lower court had omitted to give, on the proven facts on record, certain relief or make an order in respect to a party to the dispute or proceedings, then to that extent, the appellate court is empowered to pass appropriate orders even in respect of a party or parties, who has not filed appeal or cross-objections. It can never be the intention of this rule that even questions of law can be raised or allowed to be re-opened by the party who has not come up in appeal against the order. I am fortified in this view by the commentary of Mulla on the Code of Civil Procedure, (Thirteenth Edition), Volume II, at page 1615 where it is noted that the object of the rule is to empower the appellate court to do complete justice between the parties", and that it empowers the court, to make orders appropriate to the ends of justice. The power is apparently to cover cases where appropriate relief had not been granted to any party or on the facts and circumstances of the case, the order of the lower court is required to be modified or varied so that full and complete justice is done to all the parties.

17. The High Court of Madras in the case reported as Venukuri Krishna Reddi and Another Vs. Kota Ramireddi and Others, , enumerated certain cases where the power conferred on an appellate court under Order 41 Rule 33, CPC could be exercised and pinpointed the principles in accordance with which such jurisdiction should be exercised by making following observations at page Mad 851 :

"Though O.41, R. 33, confers wide and unlimited jurisdiction on Courts to pass a decree in favor of a party who has not preferred any appeal, there are, however, certain well defined principles in accordance with which that jurisdiction should be exercised. Normally, a party who is aggrieved by a decree should, if he seeks to escape from its operation, appeal against it within the time allowed after

complying with the requirements of law. Where he fails to do so, no relief should ordinarily be given to him under O.41, R.33.

But there are well recognised exceptions to this rule. One is where as a result of interference in favor of the appellant it becomes necessary to re-adjust the rights of other parties. A second class of cases based on the same principle is where the question is one of settling mutual rights and obligations between the same parties. A third class of cases in which this rule has been applied is when the relief prayed for is single and indivisible but is claimed against a number of defendants. These are well recognised classes of cases in which it would be legitimate to exercise there power under that rule even though there was no appeal relating to the subject-matter....."

18. Even in the case before the Allahabad High Court *The New India Assurance Company Ltd., Saharanpur Vs. Shri Sudesh Bhalla and others*, , on which Mr. Ishwar Sahai placed reliance, all that was done was compensation in favor of the respondents while dismissing the appeal filed by the Insurance Company was enhanced because the court felt that the amount granted was not adequate. This decision cannot be taken to lay down the proposition that a respondent not filing even cross-objections or having failed to file an appeal can have the entire judgment re-opened on a question of law, as is sought to be done in the present case, namely, right of a husband to grant of compensation for loss of consortium or services of the wife. I, Therefore, do not find it possible to entertain this objection raised by the learned counsel.

19. Even if such a contention could be entertained, the principle of entitlement of the husband to compensation for loss of society of his wife is so well-established that it needs no reconsideration. It has been held in Halsbury"s Laws of England, third edition. Volume 19 at page 820 that a husband can maintain an action for damages against any third person who commits wrongful act against his wife, and thereby deprives him of consortium, that is to say, her society and services. There are cases where even partial impairment of consortium due to disabling injuries or prolonged illness has been compensated.

20. The Full Bench of the Rajasthan High Court in the case of *Smt. Kistoori Devi* (supra) has, while tabulating the heads under which a compensation in the event of fatal accidents can be claimed, has recognised loss of consortium as one of such heads. It would be an absolutely wrong approach to say that in the case of a house-wife, who was not having any income of her own, no compensation is claimable for the reason that there has been no loss to the estate nor that of dependency to the survivors. The case on which Mr. Sahai placed reliance, namely, *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, , was a case under Fatal Accidents Act, 1955, and so the principle laid down there that damages for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under S. 2 the measure of damages is the economic loss sustained by the estate, cannot in terms be stretched to apply while considering the ground of compensation to the claimants under the provisions of

S. 110B of the Motor Vehicles Act, 1939, by which the present case is governed.

21. Even in the aforesaid case, the Supreme Court recognised that there can be no exact or uniform rule for evaluating human life, and the measure of damages cannot be arrived at by precise mathematical calculations and the amount recoverable depends on the facts and circumstances of each case. It has further been noted in this case that the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, and that an element of conjecture is unavoidable while assessing damages, under the Fatal Accidents Act, and the appellants in that case were held entitled to recover the present cash value of the prospective services of the deceased minor child, in addition to what they may receive by way of compensation for loss of pecuniary benefits reasonably to be expected after the child attained majority. It is thus clear that even while considering damages under Fatal Accidents Act, the Court held that the equivalent of the services expected to be rendered by a child to his parents in future can be converted into a figure of damages.

22. The cases under the Motor Vehicles Act have necessarily to be considered from an angle different than the strict criteria of pecuniary loss to the beneficiaries of the estate, as contemplated by Fatal Accidents Act.

23. I am fortified, in the view I am taking, by a Division Bench judgment of this Court reported as *Ishwar Devi Malik and Others Vs. Union of India and Others*, where it was held that (at Pp Delhi 189 & 190):

"The Fatal Accidents Act is a general law providing for compensation to the representatives of a deceased person or to his estate for the loss occasioned by his death as a result of an accident. On the other hand, the Motor Vehicles Act is a special law which, by S. 110 to 110-F provides for adjudication upon claims for compensation in respect of accidents involving the death of, or injury to, persons arising out of the use of motor vehicles."

24. The difference between the language employed in S. 1-A and S. 2 of the Fatal Accidents Act, 1955 and that of S. 110-B of the Motor Vehicle Act, was highlighted in this case and it was held that a Claims Tribunal is empowered to determine the amount of compensation which, "appeared to it to be just" , and that the word "just" has a wider ambit than the words used in Ss. 1-A and 2 of the Fatal Accidents Act. The Court further observed that:

".....a Claims Tribunal dealing with a claim under the Motor Vehicles Act has only to consider what appears to it to be just compensation on the facts and circumstances of the case before it, and need not strictly follow and apply the basis of the assessment of compensation indicated in the various decisions under the Fatal Accidents Act or under English Law."

The Court also held that the principles of cases decided under the Fatal Accidents Act would apply to cases of compensation under the Motor Vehicles Act only to

the extent of considering the pecuniary or material loss to the beneficiaries from the death of a person or the support of which beneficiaries have been deprived.

25. In a subsequent judgment, a Division Bench of this court reported as AIR 1981 Del 71, *Dewan Hari Chand v. Municipal Committee of Delhi*, no doubt, applied the principles as laid down under the Fatal Accidents Act to a case of compensation under the Motor Vehicles Act, but that was a case where questions only of the assessment of damages vis-a-vis the income of the deceased and the calculation of loss of dependency to that extent were involved, and it was in that context that the Court held that the principles of Ss. 1-A and 2 of the Fatal Accidents Act would also enter into the calculations of the compensation to be awarded under this Act. The Principle propounded in the case of *Smt. Ishwari Devi Malik* (supra) did not arise for consideration as to the powers of a Claims Tribunal or Court considering the compensation under Motor Vehicles Act, being wider in so far as heads of damages are concerned than those covered by Ss. 1-A and 2 of the Fatal Accidents Act. The earlier decision for this reason does not seem to have been referred to before the latter Bench because they were considering an entirely different question.

26. A Division Bench of the Karnataka High Court in the case reported as *Basappa and Another Vs. K.H. Sreenivasa Reddy and Others*, , held that the claim of the husband for compensation for loss of consortium was one of the recognised heads for claiming compensation.

27. The arguments advanced by Mr. Sahai that the principle governing award of compensation is only that of compensation for pecuniary loss and not by way of solarium for loss of society or love and affection to the surviving spouse or the children cannot be conceded because the dictionary meaning of the word "solarium" would show that it is equivalent to compensation for injury. This meaning has support from Black's Law Dictionary, revised fourth edition at page 1563 where the term "solarium" has been defined to mean "compensation, damages allowed for injury to the feelings." The Concise Oxford Dictionary, New Seventh Edition, at page 1008 also defines "solarium" to mean, inter alia, "things given as compensation."

28. While considering a claim under Motor Vehicles Act, the concept of solarium and compensation are bound to overlap, when the Act contemplates grant of "just compensation" on the facts of a given case. Such facts cannot be based merely on loss of pecuniary benefits by determining the years of dependency, but heads such as loss of society, love and affection and also services have also come into calculation.

29. The Bombay High Court in the case of *Abdulkadar Ebrahim Sura* (supra), held in Division Bench judgment that the word "injury" is a word of large import and cannot be restricted to mean monetary injury only, and if that was so, apart from claiming damages, which the claimant has suffered, the claimant would also be entitled to compensation in respect of any other injury suffered, as one of the

heads of such injury would be the loss of society of the deceased. Therefore, the husband was held entitled to make a claim under S. 1-A of the Fatal Accidents Act due to death of wife because of accident. This case shows that even while considering award of damages under the Fatal Accidents Act, loss of consortium was recognised to be one of the heads of injury.

30. The award in this case is, Therefore, unassailable in so far as the grant of compensation for loss of consortium to appellant No. 1 (husband) is concerned. What is to be seen, however, is whether the amount awarded under the said head is just compensation. The Tribunal considered Rs. 2000/- to be an adequate amount on this account. Mr. Gambhir has rightly contended that the MACT erred in fixing the compensation under this head by reference to the Bombay case because the compensation has to be determined on the facts of each case. The Tribunal itself observed that the husband was only 52 years of age when he lost company of his wife due to the accident when she was only 49 years of age and possessed good health, and that the husband who was Sqn. Leader at the time of accident had since retired and needed company of his wife all the more. There was also unrebutted evidence on record that the parents of the deceased were alive and were 78 and 70 years of age respectively. There was thus history of longevity in the family of the deceased. Even if the value of the rupee at the time the claim petition was made, that is, 1971 is to be kept in mind, even then it is my considered view that the sum of Rs. 2000/- on account of compensation for loss of consortium was grossly inadequate and on the totality of the circumstances, a sum of Rs. 7000/- would have been a fair compensation on this account.

31. The item next requiring consideration is entitlement to compensation for loss of services. In certain cases decided by English Courts, which can furnish good guiding principles, compensation was awarded on account of loss of servitium of the wife for the reason that the wife cannot or will not or does not perform the usual household services.

32. In Bingham's Motor Claims Cases at page 417, it is noted, as held in a case reported as *Dutts v. Chumley*, (1967) 2 All ER 89 that the claim for loss of wife due to motor accident can be both for loss of services as well as loss of society.

33. In *Berry v. Humm and Co.*, 1915 1 KB 627, the learned Judge observed :

"I can see no reason in particular why such pecuniary loss should be limited to the value of money lost, or the money value of things lost, as contributions of food or clothing and why I should be bound to exclude the monetary loss incurred by replacing services rendered gratuitously by a relative, if there was a reasonable prospect of their being rendered freely in future but for the death."

34. Appellant No. 1, amongst others, sought compensation for pecuniary loss suffered by having had to engage servants after death of his wife to look after the children, which was totally disallowed. This again betrays an erroneous approach. The principle is now well established that even on the death of a

housewife, who was not an earning hand, the compensation on the principle of taking value of domestic services rendered by household lady are to be taken into consideration while assessing compensation. This principle has been recognised in a judgment of this Court reported as , Gurdeep Singh Narula v. Mali Singh. In that case, the services of the lady as a housewife were evaluated at Rs. 200/- per month.

35. Although the quality of services rendered by a housewife shall differ from case to case, and the status of the husband would become a relevant factor, but petitioner No. 1 had claimed compensation @ Rs. 200/- p.m. on the plea that he had to employ two servants after death of his wife for four years and thereafter one servant who was still serving. The Court rejected this claim on a very narrow view that no receipt had been produced nor persons said to have been employed as servants had been examined. Apart from the fact that when there is no rebuttal to the evidence produced by a party, then the initial onus has to be treated to have been discharged but otherwise also, once the principle is recognised that the loss of a house-wife can be evaluated in terms of money and can be calculated in the absence of a proof of definite income or loss by principle of fair estimate, I think, claim of appellant No. 1 for compensation on this account deserved to be allowed. In this case the husband furnished a reasonable basis to calculate the loss on this account. In the case of Basappa (supra) the Karnataka High Court also held that the husband is entitled to be compensated for an amount that he would have spent on the protection and care of the minor children of the deceased.

36. This principle is recognised in Kemp & Kemp, The Quantum of Damages, Law and Practice, Special Edition, as observed at page 21-006 that in the nature of things, a house-wife, particularly a mother, provides services which have monetary value, in that, to the extent that such services can be replaced. It is further noted by the learned author at the same page that the value of the personal care and attention of a wife to her husband is an appropriate element to reflect in the element of dependency and that the heirs are entitled to recover in respect of any loss which can be proved to flow from the death of the deceased.

37. In the case decided by the Punjab and Haryana High Court, reported as Sunny Chugh and Others Vs. Darshan Lal and Others, , it was noted that compensation was payable amongst others, calculated on the basis of money value of the household work which the deceased woman did as wife or mother, though she had been doing this gratuitously, and that the loss suffered by the husband or children on the death of wife would also include the additional expenses incurred or likely to be incurred by having the household run by a house-keeper or servant, instead of the wife.

38. The Court pertinently observed that there is no retirement age for a house-wife, and that she worked in the house as long as she is physically capable of doing so, and that on this basis it can be said that the deceased would have continued to provide services to her husband and children for many many years.

39. In my view a wife's or mother's loss cannot be evaluated by so much of the amount alone as paid to the servants, and so relegate her to the position of mere housekeeper. I am tempted to extract the following observations made by Watkins, J. in the case of *Regan v. Williamson*, (1976) 2 All ER 241 :

"I am, with due respect to the other judges to whom I have been referred, of the view that the word "service" has been too narrowly construed. It should, at least, include an acknowledgment that a wife and mother does not work to set hours and, still less, to rule. She is in constant attention, save for those hours when she is, if that is the fact, at work. During some of those hours she may well give the children instruction on essential matters to do with their upbringing and, possibly, with such things as their home-work. This sort of attention seems to be as much of a service, and probably more valuable to them, than the other kinds of service conventionally so regarded.

40. In the present case, we are concerned with a woman who was not only fit and healthy but also a good wife and a good mother. I, Therefore, hold that the amount claimed by appellant No. 1 is the minimum that ought to have been allowed to him, as a recompense for loss of services of his wife.

41. Accordingly, on the basis of testimony of appellant No. 1, a sum of Rs. 200/- p.m. for the first four years and Rs. 100/-p.m. for the next ten years, is the amount of compensation awardable to him on this account which, totals up to Rs. 21,600/-.

42. The other head considered by the MACT is that of loss of expectation of life. Here too, the Tribunal erred while assessing the loss of expectation of life by awarding only Rs. 5,000/-, in spite of having observed that:

"The petitioner also has sustainable claim for damages on account of loss of expectation of life. The petitioner has had a happy family, he himself being placed in good service. All the petitioners must be deriving great amount of joy in life surrounded as they were by all facilities and amenities. The deceased was 49 years of age and there is no rebuttal of the assertion that she enjoyed good health. It is more than reasonably possible that she would have at least lived up to the age of 60 and lived a happy life."

43. It has been noted by the Bombay High Court in the case of *Abdulkadar Ebrahim* in *Sura* (supra) while calculating damages even under S. 2 of Fatal Accidents Act on account of loss of expectation of life:

"the objective test of happy life is a correct test to be applied and in doing so, all relevant circumstances must be considered in estimating the reasonable amount of damages under this head."

Although a note of caution was struck that the amount should be moderate but it was also added that in assessing damages, present value of the rupee ought to be considered.

44. On the basis of the observations made by the Tribunal, as extracted above and considering the fact that appellant No. 1 was Sqn. Leader and his wife was of a relatively young age at the time of death, namely, 49 years and there were two children who were still minor and dependent upon the parents, and all of them together, including the married daughter constituted a happy life, and the deceased would have continued to enjoy the same at least up to the age of 60 years, I think a sum of Rs. 10,000/- would have been the right amount to qualify as "just compensation", on this count.

45. The next item which has been pressed by the appellants is loss of love and affection to the children. This has been noted to be a recognisable head by a Full Bench of the Rajasthan High Court in the case of Smt. Kistoori Devi (supra).

46. The factor of loss of love and affection of the mother as well as maternal care has also been recognised by the Punjab and Haryana High Court in the case of Sunny Chugh (supra).

47. The deceased had three children at the time of her death, out of whom one daughter was married. The children who are entitled to be compensated on this account are the younger children. The son who was at that time 17 1/2 years of age will be entitled to lesser amount of compensation than the minor daughter who was then 11 1/2 years. I, Therefore, think it a fit case to award Rs. 2,000/- by way of compensation to Vinod Kumar, appellant No. 3 and Rs. 5,000/- to Ms. Savita, appellant No. 4.

48. I accordingly allow the appeal and hold that the impugned award dated 6th April, 1979 made by the Motor Accident Claims Tribunal shall stand modified to the extent noted below:

1. The amount on account of loss of consortium granted to appellant No. 1 shall stand increased to Rs. 7,000/-.

2. Compensation on account of loss of servitium including for employment of domestic help by appellant No. 1.

.....Rs. 21,600/-.

3. Loss of expectation of life..... Rupees 10,000/- to be shared equally by all the appellants.

4. Loss on account of love and affection to the children..... Rs. 7,000/-, that is Rs. 2,000/-to appellant No. 3 and Rs.5,000/- to appellant No. 4.

49. It is to be noted that the total amount herein awarded falls below Rs. 50,000/-, which was claimed by the appellants in the claim petition, and is thus permissible.

50. The appellants are also held entitled to interest at the rate of 12% per annum on the enhanced amount from the date of the award till payment. I have refrained from awarding interest from the date of claim petition for the reason

that the petitioners closed their evidence only in December, 1978 and the award was given on 6th April, 1979. There was no delay caused by the respondents, as they had not been allowed any adjournment for evidence, excepting first opportunity, in the month of January, 1979.

51. The difference in the amount paid, and to be paid under this order, namely, the enhanced amount of the award and the interest be deposited or paid within two months from the date of service of this order, on the respondents failing which interest payable would be at the rate of 15% per annum. The appellants are also awarded costs of the appeal. Counsel fee assessed at Rs. 1,000/-.

52. Order accordingly.