Delhi High Court National Insurance Company Ltd. vs Smt. Pushpa Rana And Ors. on 20 December, 2007 Author: K Gambhir Bench: K Gambhir JUDGMENT Kailash Gambhir, J. 1. The present appeal preferred under Section 173 of The Motor Vehicles Act, 1988, arises out of an award dated 24th April, 2007 of the Motor Accident Claims Tribunal, whereby the Tribunal awarded a sum of Rs. 13,26,000/- along with interest @ 7% per annum to the appellant from the date of filing of the petition. 2. The brief facts are that the deceased Sh. Kailash Singh Rana, aged 26 years while driving his scooter No. DL 9S G 4738 on 30th December 2004 at about 7:30 pm dropped Ms. Ramni Taneja to her residence at A-34, defense Colony, New Delhi and after finishing off his duty he left for his residence situated at Bijwasan, Delhi. At around 8:30 pm, when he was approaching the turning point of the petrol pump opposite to Shiv Murti and was about to take a right turn towards Bijwasan, suddenly a TATA Tempo bearing registration No. HR 47 6169 driven by Sh. Shambhu Kumar Singh hit the scooter badly in a rash and negligent manner from behind due to which he fell on the ground and sustained fatal injuries and was removed to AIIMS hospital where he succumbed to his injuries. The legal representatives of the deceased filed the claim petition on 12th May 2005 and the Tribunal passed the impugned award. Aggrieved with the award dated 24th April 2007, the appellant insurance company has preferred the instant appeal. 3. Sh. S.L. Gupta, counsel for the appellant contended that the overtime of Rs. 1000 per month considered by the learned tribunal couldn't be treated as regular income of the deceased. It has been maintained by the counsel that the multiplier of 18 applied by the learned tribunal is on the higher side and the multiplier has not been reduced for uncertainty of life by the learned tribunal. Further, it has been urged by the counsel that the future prospects could not be considered as the deceased was in a private job working as a driver. The counsel lashed out that no negligence was proved by the respondents claimants and hence the finding of the tribunal is bad in view of the judgment of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. Meena Variyal . The counsel for the appellant has further relied on following judgments of the Apex court in this regard: 1. Sarla Dixit and Anr. v. Balwant Yadav and Ors. 2. Managing Director, TNSTC Ltd. v. K.I. Bindu and Ors. (2005) 8 Scale 173 4. Per Contra, Sh. Sanjeev K. Tiwari, counsel for respondent Nos. 1 to 4 has vehemently controverter the contentions of the counsel for the appellant. The counsel while relying on the deposition of PW4, Ms. Ramni Taneja, employer of the deceased contended that the employer of the deceased her self submitted that the deceased was working as a driver on the salary of Rs. 5000 per month besides earning a sum of Rs. 2,500 per month on account of over time. The counsel further urged that Ms. Ramni Taneja is a respectable member of the Bar and is an advocate practicing in Supreme Court and Delhi high Court and the deceased used to work overtime on regular basis in a month because of her professional association with various senior advocates with whom she used to attend various conferences. Hence, the overtime of Rs. 1000 per month considered by the learned tribunal could be treated as regular income of the deceased. Regarding the issue of future prospects the counsel maintained that in her cross examination PW4, Ms. Ramni Taneja had

submitted that she would have paid him Rs. 1000 per annum as increment plus overtime because the deceased was a sincere, diligent and a dedicated employee. Further, reliance was placed on the deposition of PW3, Sh. Abhishek Ojha, working as secretary and accounts executive of Ms. Ramni Taneja, who deposed in his cross examination that the deceased had joined at a salary of Rs. 4250 which was subsequently increased to Rs. 5000. Hence, the tribunal has correctly considered the future prospects of the deceased. The counsel has also stoutly denied that the multiplier of 18 is on the higher side as the deceased died at a young age of 26 yrs and is survived by his young widow, his 2 children of tender age and a widowed mother. Counsel has also denied that the respondent claimants did not prove the negligence of the respondent. 5. I have heard learned Counsel for the parties and have also perused the records. 6. The first contention raised by the counsel for the appellant was that the Tribunal has wrongly taken into consideration the overtime amount of Rs. 1,000/- per month. The deceased was admittedly employed as a driver with Ms. Ramni Taneja, Advocate and as per the deposition of the Advocate herself the overtime was a part of his regular income on account of the fact that she was regularly attending conferences held with the senior advocates till late hours in the night. The respondents claimants have claimed a sum of Rs. 2,500/- towards the overtime, but the Tribunal has considered only Rs. 1,000/- per month as earnings of the deceased towards the overtime on average basis. I do not agree with the contention of the counsel for the appellant that as the Tribunal has adopted the criteria of Sarla Dixit's case, in which the benefit towards the future prospect is taken into consideration, therefore, the overtime allowance should not have been considered while giving the benefit towards the future prospects. Future prospects and advancement in career cannot be equated with the overtime allowance. Moreover, the claimants have proved on record that the deceased was earning a sum of Rs. 2500/- per month towards the overtime allowance. The contention of the counsel for the appellant on this score is therefore, rejected. 7. I also do not find force in the contention of counsel for the appellant that the Tribunal has wrongly applied the multiplier of 18. The deceased was 26 years of age at the time of occurrence of the accident and he was survived by his widow and two minor children besides his mother. The Tribunal has observed in the impugned award that the deceased was survived by widow of a very young age besides two minor children, therefore, taking in view the age of the deceased as 26 years, the appropriate multiplier of 18 as laid down in the Second Schedule of the Motor Vehicles Act has been applied by the Tribunal. Therefore, I do not find any infirmity in the impugned order with regard to the multiplier of 18. The Apex Court has taken a view in catena of judgments that the multiplier as laid down in the Second Schedule of M.V. Act 1988 can be deviated only under exceptional circumstances otherwise normally the same acts as a safe guide. The Apex Court in United India Insurance Co. Ltd. v. Patricia Jean Mahajan has held as under: 12. It thus makes it clear that it is for the Tribunal to arrive at an amount of compensation, which it may consider to be just in the facts and circumstances of the case. This Court however has been of the view that structured formula as provided under the Second Schedule would be a safe guide

to calculate the amount of just compensation. Deviation though permissible, may only be resorted to for some special reasons to do so. 8. I, therefore, do not find any infirmity in the impugned award so far as the said multiplier of 18 is concerned. 9. As regards the future prospects, the Tribunal has applied the criteria laid down in Sarla Dixit's case (Supra). 10. I also do not find any force in the argument of counsel for the appellant that since the deceased was in private job, therefore, future prospects should not have been taken into consideration. The Apex Court has not made any distinction between the private or Government employees in this regard. 11. The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the Judgment of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. Meena Variyal . On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR No. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver. 12. On the basis of these observations, I feel that there is no infirmity in the impugned award of the learned Tribunal. 13. Dismissed.