

Delhi High Court R.K. Malik And Ors. vs Kiran Pal And Ors. on 17 May, 2006
 Equivalent citations: III (2006) ACC 261, 2007 ACJ 2010 Author: S Khanna
 Bench: S Khanna JUDGMENT Sanjiv Khanna, J. 1. By this common order,
 I shall be disposing of 22 appeals, the details and particulars of which have
 been given below: S. Appeal Name of Age Claimant Date of Date of Amount
 No. Number the relationship filing the awarded Deceased with the the Claim
 Decision as Pecuniary Deceased Damages (Loss of Dependency + Funeral
 Last Rites) in Rs. Rate of interest 1. MACA 205-206/05 Manju Yadav 16
 Parents 11-3-98 22-11-04 1,65,000 (1,60,000+5,000) 6% for four years 2. MACA
 196/05 Pallavi 13 Parents 17-3-98 22-11-04 1,55,000 Thakur (1,50,000+5,000)
 -do- 3. MACA 742-743/05 Rahul Sharma 8 Parents 17-4-98 22-11-04 1,30,000
 (1,25,000+5,000) -do- 4. MACA 195/05 Kumari Anu 7 Parents 29-5-98 22-11-04
 1,30,000 (1,25,000+5,000) -do- 5. MACA 228-229/05 Neeraj Kumar 12 Parents
 23-3-98 22-11-04 1,55,000 (1,50,000+5,000) -do- 6. MACA 213/05 Parul 6
 1/2 Parents 11-3-98 22-11-04 1,30,000 (1,25,000+5,000) -do- 7. MACA 207-
 208/05 Krishna 11 Parents 17-3-98 22-11-04 1,55,000 Gopal (1,50,000+5,000)
 Yadav -do- 8. MACA 221/05 Rushnika 7 Parents 17-3-98 22-11-04 1,30,000
 (1,25,000+5,000) -do- 9. MACA 220/05 Vishrat 11-15 Parents 24-2-99 6-12-04
 1,55,000 Kahol ((1,50,000+5,000) -do- 10. MACA 231-232/05 Kumari 11-15
 Parents 1-4-98 -do- 1,55,000 Navneet ((1,50,000+5,000) Singh -do- 11. MACA
 215/05 Mayur Rathi 9 Grand Parents 9-4-98 -do- 1,05,000 (1,00,000+5,000)
 -do- 12. MACA 197/05 Renu Sharma 17 Parents 1-4-98 -do- 1,65,000
 (1,60,000+5,000) -do- 13. MACA 199/05 Asha Pal 11-15 Parents 22-4-98 -do-
 1,55,000 (1,50,000+5,000) -do- 14. MACA 214/05 Manoj 11-15 Parents 1-4-98
 -do- 1,55,000 Kumar (1,50,000+5,000) -do- 15. MACA 209-210/05 Puneet 81/2
 Parents 23-3-98 -do- 1,30,000 Jain (1,25,000+5,000) -do- 16. MACA 194/05
 Ritu Malik 16 Parents 6-5-98 -do- 1,65,000 (1,60,000+5,000) -do- 17. MACA
 203-204/05 Harish 11 Parents 20-4-98 8-11-04 1,56,000 (1,50,000+5,000+1,000
 [Loss of Books] -do- 18. MACA 217/05 Jatish 7 Parents 20-4-98 -do- 1,31,000
 (1,25,000+5,000+1,000 [Loss of Books]) -do- 19. MACA 222/05 Preeti 15
 Father 2-4-98 -do- 1,56,000 Srivastava (Now Dead (1,50,000+5,000+1,000
 so through [Loss of Books]) Brother) -do- 20. MACA 201-202/05 Monika
 13 Parents 3-4-98 -do- 1,56,000 Sharma (1,50,000+5,000+1,000 [Loss of
 Books]) -do- 21. MACA 233-234/05 Sonal 10 Parents 8-5-98 -do- 1,56,000
 (1,50,000+5,000+1,000 [Loss of Books]) -do- 22. MACA 200/05 Neeru Yadav
 16 Mother 8-5-98 -do- 1,66,000 (1,60,000+5,000+1,000 [Loss of Books]) -do-

No compensation under the head of non-pecuniary damages has been paid to
 any of the appellants.

2. For the purpose of the present order, MAC Appeal No.194/2005 titled
 R.K.Malik and Anr. v. Kiran Pal and Ors is treated as the lead case.
 Arguments were addressed by the learned Counsel for the parties in this
 case. I was informed that the facts, questions and issues raised in the
 other cases are similar. 3.The appellants/claimants are parents, who lost
 their daughter, Ms. Ritu Malik, aged 16 years on 18.11.1997 when the

school bus she and other school children was traveling fell down in the Yamuna river. She was a student of class 11. Ms. Ritu Malik and other children mentioned above expired in the said accident. The bus was being driven by Mr. KiranPal, the respondent no.1 and was owned by Mr. Hari Krishnan, the respondent no.2 and was insured with National Insurance Company Ltd, the respondent no.3 herein.

3. The learned tribunal by the impugned order dated 6.12.2004 held that the accident had taken place due to the negligence of the respondent no.1 and therefore the said respondent along with the respondents 2 and 3 were jointly and severally liable to pay compensation.
4. On the question of quantum of compensation payable, learned tribunal by the impugned award has awarded compensation of Rs.1,55,000/- to the dependants of the children between the age group of 10 to 15 years and Rs.1,65,000/- to the children who were more than 15 years old but less than 18 years. Three of the children were less than 10 years. In the case of Kailash Rathi and another compensation of Rs.1,05,000/- was awarded and in the cases of Neena Jain and Jatish Sharma compensation of Rs.1,30,000/- and Rs.1,31,000/- respectively was awarded. Additional Rs.1000/- was awarded in the case of Jatish Sharma as in some other cases for loss of books. The figures mentioned above includes Rs.5,000/- for funeral expenses and last rites. The balance amount was awarded for loss of dependency that was calculated on notional income of Rs.15000/- per annum. Rs.5000/- was deducted towards personal living expenses. Ld. Tribunal applied multiplier of 15 for children below 15 years and multiplier of 16 for children between 16 to 18 years respectively.
5. The only contention and question raised before me was with regard to the quantum of compensation. The learned Counsel for the appellant had argued that the compensation awarded was inadequate and should be enhanced for the following reasons:
6. Future prospects had not been considered.
7. 1/3rd deduction towards personal expenses should not have been made.
8. No compensation was awarded for pain and suffering, love and affection.
9. In some cases no compensation was allowed for loss of books.
10. Rate of interest should be enhanced and interest should be awarded from the date of filing of the claim petition till payment.
11. In support of the submission made, reliance was placed upon Sarla Dixit v. Balwant Yadav ; H.R.T.C and Ant. v. Bimal Devi II 2000 ACC 380 (DB); Urmila v. Vijinder Singh III 2003 ACC 557; Shashi Jain v. Rajinder Yadav III 2003 ACC 262; Fakeerappa v. K.C.P. Factory ; Manju Devi v. Musafir Paswan IV 2005 ACC 15 (SC); Shyam Narayan v. Kitty Tours IV 2005 ACC 1; New India Assurances v. Anwar Ali III 2003 ACC 584 (DB); Daya Arora v. Kapur Singh IV 2005 ACC 313; Swaran Kanta v. Vijay Agarwal II 2002 ACC 70; Kanta Vohra v. Surat Singh I 2002 ACC 255(DB); Sangeeta v. Surender Kumar I 2004 ACC 266; Asha Gupta v. Ramji Lal I 2003 ACC 272; R.S.R.T.Cor v. Goru Ram III 2005 ACC 377(DB); U.I.I. v. S. Abhinesh III 2005 ACC 218(DB); Lata Wadwa v.

State of Bihar ; M. S. Grewal v. Deep Chand Sood .

12. Learned counsel appearing for respondent no.3 defended the impugned award and it was submitted that the compensation awarded was just, fair and equitable. M.S. Grewal's case (supra) and Lata Wadhwa's case (supra) relied were sought to be distinguished on the ground that the children in the said cases belonged to well to do families and therefore had bright future prospects. Reliance was also placed upon Khazan Singh and Ors. v. Basheer Ahmed (2002) 2 SCC 724; Sohanlal and ors. v. Mangilal and Ors. II (2005) ACC 233; Haji Zainulla Khan (dead) v. Nagar Mahapalika, Allahabad and Shantibai and ors. v. Charan Singh and ors. II (1998) ACC 488(SC).
13. Compensation in law is paid to restore the person, who has suffered damage or loss in the same position, if the tortuous act or the breach of contract had not been committed. The law requires that the party suffering should be put in the same position, if the contract had been performed or the wrong had not been committed. The law in all such matters requires payment of adequate, reasonable and just monetary compensation.
14. In cases of motor accidents the endeavor is to put the dependents/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be 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. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act.
15. However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of a life. Loss of a child, life or a limb can never be eliminated or ameliorated completely. To put it simply- pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non pecuniary losses on account of loss of happiness, pain, suffering and expectancy of life etc. This aspect has been dealt with in some detail in the later part of the judgment.
16. The Motor Accident Claims Act, 1988 (hereinafter referred to as the 'Act', for short) provides for payment of just compensation (see Sections 166 and 168 of the Act). It is left to the courts to decide what would be just compensation? in facts of a case.
17. For calculating pecuniary loss or loss of dependency Supreme Court has repeatedly held that multiplier method should be applied. The said method is based upon the principle that the claimant must be paid a capital sum, which would yield sufficient interest to provide material benefits of the same standard and duration as the deceased would have provided for the dependants, if the deceased had lived and earned. The multiplier method is based upon the assessment that yearly loss of dependency should be equal to interest that could be earned in normal course on the capital sum invested. The capital sum would be the compensation for loss of

dependency or the pecuniary loss suffered by the dependants. Uniformly applying the multiplier method ensures consistency and certainty and prevents different amounts being awarded in different cases.

18. For calculating the yearly loss of dependency the starting point is the wages being earned by the deceased, less his personal and living expenses. This provides a basic figure. Thereafter, effect is given to the future prospects of the deceased, inflation and general price rise that erodes value and the purchasing power of money. To the multiplicand so calculated, multiplier is to be applied. The multiplier is decided and determined on the basis of length of dependency, which must be estimated. This has to be necessarily discounted for contingencies and uncertainties. Reference in this regard may be made to the judgments of the Supreme Court in the case of *Sarla Dixit (supra)*, *Managing Director TNSTC Ltd. v. K.T. Bindu* ; *T.N. State Transport Corp. Ltd. v. S. Rajapriya* ; *New India Assurance co. Ltd. v. Charlie* (2005) 10 SCC 720 and *United India Insurance co. Ltd. v. Patricia Jean Mahajan etc.*
19. The difficulty that arises in the cases of death of children is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. Yet it cannot be said that the dependants have not suffered any pecuniary loss. Loss of dependency by its very nature is awarded for prospective or future loss. In *Lata Wadhwa case (supra)* while dealing with the issue in relation to the compensation to be paid in relation to the death of children, placing reliance upon the decision of *Lord Atkinson in Taff Vale Rly. Co. v. Jenkins* (1911-13) All E R 160 has ruled that: In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.
20. Then, how does one calculate pecuniary compensation for loss of future earnings and loss of dependency of the parents, grand parents etc. in the case of a non-working student. Under the Second Schedule of the Act in case of a non earning person, his income is notionally estimated at Rs.15,000/- per annum. The Second Schedule is applicable to claim petitions filed under Section 163A of the Act, on the basis of principle of strict liability. The Second Schedule also provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. Even when compensation is payable under Section 166 read with 168 of the Act, deviation from the structured formula as provided in the Second schedule is not ordinarily permissible, except in exceptional cases (see *Abati bezbaruah v. Dy. Director General, Geological Survey of India*); *United India Insurance Company Ltd. v. Patricia Jean Mahajan and UP State Road Transport Corpn. v. Trilok Chandra*).
21. The Second Schedule of the Act was introduced w.e.f. 14.11.1994. Date of accident in the present case is 18.11.1997. Thus the notional income men-

tioned in the Second Schedule and the multiplier specified therein can form the basis for the pecuniary compensation for the loss of dependency in the present cases. No fact and reason was highlighted during the arguments why the Second Schedule should not be applied in the present cases. No evidence was held and produced to show children who had expired were brilliant or there were circumstances to indicate they would have earned substantially higher income (see *Bijay Kumar Dugar v. Bidyadhar Dutta and Ors.* II (2006) SLT 651. The Second Schedule also provides for deduction of 1/3rd consideration towards expenses, which the victim would have incurred on himself if he had lived. As compensation for loss of dependency is to be calculated on the basis of notional income because the deceased was a child, it by necessary implication takes into account future prospects, inflation, price rise etc. To this extent arguments of the appellants have to be rejected.

22. Therefore keeping in view the Second Schedule of the Act, I do not see any reason to differ with the view taken by the learned Tribunal in so far as award of pecuniary compensation to the dependents/claimants is concerned. I must mention here that the learned Counsel for the appellants had argued that the notional sum of Rs.15,000/- should be enhanced and increased as the legislature has not amended the Second Schedule and the same continues to be in existence since it was enacted on 14.11.1994. I am not examining and going into this aspect as the accident had taken place in the present case nearly three years after the enactment of the Second Schedule. The time difference between the date of the enactment and the date of the accident is not such, that this aspect requires examination in the present matter. This aspect will require examination and may be considered in an appropriate manner.
23. The second question is with regard to non-pecuniary compensation to the dependants on the loss of human life, loss of company, companionship, happiness, pain and suffering, loss of expectation of life etc. The Supreme Court in the case of *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.*, has laid down as under : Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life i.e. on account of injury the normal longevity of the per-

son concerned is shortened; (iv) inconvenience, hardship, disappointment, frustration and mental stress in life.

24. In the said case, the Supreme Court had awarded non-pecuniary special damages of Rs. 3,00,000/-.
25. In the case *Ward v. James*, (1965) 1 ALL.ER 563 it was said: Although you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected years of survival. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money.
26. So too, in the *Halsbury's Laws of England*, 4th Edn., Vol. 12 regarding non-pecuniary loss it has been said [at page 446]: Non-pecuniary loss: the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the Courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases.
27. In *Common Cause, A Registered Society v. Union of India*, it was observed:
28. The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In *Mediana*, *Re Lord Halsbury, L.C.* observed as under: How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has un-

dergone by reason of an accident. . . . But nevertheless the law recognises that as a topic upon which damages may be given.

29. In Clerk and Lindsell on torts (16th Edn.), referring to damages for personal injuries, it is stated : In all but a few exceptional cases the victim of personal injury suffers two distinct kinds of damage which may be classed respectively as pecuniary and non- pecuniary. By pecuniary damage is meant that which is susceptible of direct translation into money terms and includes such matters as loss of earnings, actual and prospective, and out-of-pocket expenses, while non-pecuniary damage includes such immeasurable elements as pain and suffering and loss of amenity or enjoyment of life. In respect of the former, it is submitted, the court should and usually does seek to achieve *restitutio in integrum* in the sense described above, while for the latter it seeks to award 'fair compensation'. This distinction between pecuniary and non-pecuniary damage by no means corresponds to the traditional pleading distinction between special and general damages, for while the former is necessarily concerned solely with pecuniary losses ? notably accrued loss of earnings and out-of-pocket expenses ? the latter comprises not only non-pecuniary losses but also prospective loss of earnings and other future pecuniary damage. As to awards for non-pecuniary losses, the learned authors say : Non-pecuniary losses are different from pecuniary losses in that the *restitutio in integrum* objective cannot be applied literally to them ? damages cannot restore a lost limb or happiness. While there is some disagreement as to the function of non-pecuniary damages, many would agree with the Royal Commission's suggestions that they serve as a palliative, or provide the plaintiff with the means to purchase alternative forms of happiness, or help to meet hidden expenses caused by injury. While the practice of the courts is not to subdivide non-pecuniary damages under specific heads, nevertheless proper consideration cannot be given to the plaintiff's claim without taking into account the various types of loss he has suffered.
30. It is always difficult to quantify non-pecuniary compensation as it is to an extent based upon sentiments and emotions. However, at the same time it will be incorrect and unfair to the dependants not to pay any amount whatsoever on the ground that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy. After all human life cannot be counted only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and a loss of a child can have a devastating effect even on a family including parents, grant parents, brothers and sisters which can easily be visualised and understood.
31. The only mechanism known to law is to compensate a person who has suffered non ? pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. When a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for 'loss of expectation of life'. This head of compensation need not be restricted to a case

where the injured person himself initiates action and is equally admissible if his dependant brings about the action. Human life it must be assumed has more advantages than disadvantages. Damages for deprivation of life, pain and suffering happiness etc. in case of death should be more than the damages payable to a victim whose life has got shortened. It would be unjust and unfair not to award any amount what so-ever in these cases towards non-pecuniary damages.

32. We are however again confronted with the problem of quantification. The injury inflicted by depriving life of a young child is difficult to quantify and quantification by itself is beset with difficulties. In view of the uncertainties and contingencies of human life, what would be an appropriate figure, an adequate solarium is difficult to specify. To calculate precisely compensation on the basis of arithmetical formula is difficult. Courts have therefore used the expression 'standard compensation' and 'conventional amount/sum' to get over the difficulty that arises in quantifying a figure. This again has its advantage in ensuring consistency and uniformity in decisions.
33. While quantifying and arriving at a figure for 'loss of expectation of life', we have to keep in mind that this figure is not to be calculated for the prospective loss or future pecuniary benefits that has been awarded under another head- pecuniary loss. Compensation payable under this head is for loss of life and not loss of future pecuniary prospects. The measure of loss is the loss of prospective happiness. Under this head compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. It is compensation paid for loss of prospective happiness which the claimant/victim would have enjoyed had the child not been snatched away at the tender age. It is payment for loss of company and companionship. The compensation payable under this head should normally be uniform and consistent and not upon the financial status of the dependants or the deceased. Non pecuniary loss by its very nature cannot be equated with economic wealth of the party.
34. We have cases of *Lata Wadhwa* and *M.S. Grewal* (supra) in which substantial amount has been awarded as compensation on death of children. No doubt in those two cases the Supreme Court had noticed that the children who lost their lives were studying in an expensive school, had bright prospects and belonged to upper middle class, yet it cannot be said that higher compensation was awarded was for deprivation of life and the pain and suffering undergone on loss of life due to financial status. The term 'conventional compensation' used in *Lata Wadhwa*'s case has been used for non-pecuniary compensation payable on account of pain and suffering as a result of death. The Supreme Court in its judgment in *Lata Wadhwa* (supra) referred to Rs.50,000/- as conventional figure. The reason is loss of expectancy of life and pain and suffering on that account, generally speak-

ing is common and uniform to all regardless of the status. Unless there is a specific case departing from the conventional formula, non-pecuniary compensation should not be fixed on basis of economic wealth and background.

35. In the case of *M.S. Grewal* (supra), 14 students studying in a public school got drowned in a river due to negligence of the teachers. On the question of quantum of compensation, Supreme Court accepted that the multiplier method was normally to be adopted as a method for assigning value of future annual dependency but what was emphasised was that the Court must ensure that a just compensation was awarded. In the said case, compensation of Rs.5 lakhs was awarded to the claimants and the same was held to be justified. Learned counsel for the respondent no. 3, however, pointed out that in the said case the Supreme Court had noticed that the students belonged to an affluent school as was apparent from the fee structure and therefore the compensation of Rs. 5 lakhs as awarded by the High Court was not found to be excessive. It is no doubt true that the Supreme Court in the said case noticed that the students belonged to an upper middle class background but the basis and the principle on which the compensation was awarded in that case would equally apply to the present case.
36. In the case of *Lata Wadhwa* (supra), several persons including children lost their lives after a fire accident. The said accident had taken place on 3.3.1989. The multiplier method was again referred to and adopted with approval. In cases of children between 5 to 10 years of age, compensation of Rs.1.50 lakhs was awarded towards pecuniary compensation and in addition a sum of Rs.50,000/- was awarded towards 'conventional compensation'. In the case of children between 10 to 18 years compensation of Rs.4.10 lakhs was awarded including 'conventional compensation'. While doing so the Supreme Court held that contribution of each child towards family should be taken as Rs.24,000/- per annum instead of Rs.12,000/- per annum as recommended by Justice Y.V. Chandrachud committee. This was in view of the fact that the company in question had an unwritten rule that every employee can get one of his children employed in the said company.
37. Supreme Court in *Manju Devi and Ors. v. Musafir Paswan and Ors.* IV (2005) ACC 15 awarded compensation of Rs.2,25,000/- on death of a boy aged 13 years in an accident on 2.7.1998. While doing so the Supreme Court applied multiplier of 15 and as the deceased was a non earning person, Rs.15,000/- was taken as his notional income as mentioned in the Second Schedule. It appears in the said case, no deduction for personal living expenses was made. However, what is relevant is the figure of just compensation i.e 2,25,000/-.
38. The Delhi High Court in number of cases has examined the question of compensation payable in cases of minor children who were studying. In *Kishan Kumar Sharma and Anr. v. Shiv Raj Singh and Ors.* 1(2004) SCC 346, a boy aged 17 years expired after an accident on 5.2.1996. Taking

notional income as Rs.15,000/- per annum and after deducting 1/3rd towards personal expenses and applying multiplier of 13, total compensation of Rs.1,30,000/- was awarded towards loss of dependency. The High Court however took judicial notice that minimum wages had doubled between 1994 and 2002 and in these circumstances the average annual loss of dependency was calculated at Rs.13,500/-. Applying multiplier of 15, total compensation of Rs.2,02,500/- was awarded towards loss of dependency and a further sum of Rs.30,000/- was awarded towards non-pecuniary compensation. This amount was reduced to half as it was a case of contributory negligence.

39. Similarly in the case of Shyam Narain v. Kitty Tours IV 2005 ACC 1, compensation of Rs.2,25,000/- was awarded on death of minor child aged 5 years and in addition sum of Rs.50,000/- was awarded on account of loss of company of the child.
40. It will be seen from the above judgments that the Courts have been awarding compensation for pain and suffering and towards non-pecuniary damages. In several cases the 'just compensation' awarded in cases of death of a child was about Rs.2,25,000/-.
41. In Lata Wadhwa's (supra) case the fire accident had taken place on 3.3.1989, whereas in the present case the accident had taken place almost 8 years thereafter on 18.11.1997. In Lata Wadhwa's (supra) case compensation of Rs.4.10 lakhs in cases of children between 10 and 15 years was awarded and compensation of Rs.2.20 lakhs were awarded for children between 5 and 10 years. Similarly in the case of M.S. Grewal (supra) compensation of Rs.5 lakhs was awarded. The accident in this case had taken place on 28.5.1995. The Supreme Court had treated the figure of Rs.50,000/- in the case of Lata Wadhwa (supra) as the conventional figure for payment of non-pecuniary damages in cases of children. The decision in the case of Lata Wadhwa (supra) relates to a fire accident in 1989 and therefore this figure of conventional compensation has to be adequately enhanced to compensate for inflation and declining value/purchasing power of the Rupee. As per notified cost of inflation index issued by the Govt. of India under Section 48 of the Income tax Act, 1961 with base year as 1981-82 (= 100), the index was 172 in 1989-90 and 331 in the financial year 1997-98. If we go by the said figures the corresponding value of Rs.50,000/- in 1989 would be Rs. 97,000/- (approx.) in 1997. Taking the figure awarded in Lata Wadhwa's case and keeping in view the 'just compensation' as awarded in several other cases mentioned above and also applying the principle of moderation, I feel that in all cases a uniform sum of Rs.75,000/- should be awarded towards non-pecuniary compensation as conventional compensation or in other words compensation for loss of expectancy of life and pain and suffering etc. suffered by the victims due to the death. Thus the compensation payable to the appellants gets enhanced by Rs.75,000/- in all the cases. The appellants for the sake of uniformity will also be entitled to Rs.1000/- towards loss of books wherever the same has not

been awarded by the ld. tribunal. I may however add a word of caution that the above ?conventional amount? may not be applicable in cases of death of adults and this aspect has not been examined by me.

42. On the question of interest also I find that the appellants have made out a case. Learned Tribunal had directed payment of interest for only 4 years at the rate of 6% per annum from the date of filing of the petition till the award and in case payment was not made within 30 days further interest @6% from the date of award till payment. The reason given by the learned Tribunal was that a number of adjournments were taken by the claimant/ appellants during the enquiry and therefore the matter got delayed. It was also stated that the appellants took nearly one year in completing their evidence.
43. I have examined the order sheet of the trial court relating to MAC.194/05. In this case the petition was filed on 6.5.1998 and notice was issued to the respondents. The insurance company was duly served for 12.8.1998. Written statement was however not filed by the insurance company. On 2.9.1999, the Deputy Manger of the insurance company stated that the matter be taken up for reconciliation. However, the matter could not be settled and written statement was ultimately filed by the insurance company on 1.12.1999. After filing of the written statement, on two dates the Presiding Officer was on leave and issues were framed on 17.2.2000. Thereafter, again on two dates evidence could not be recorded. For one date, no reason has been stated in the order- sheet and on the other date, the Presiding Officer was on leave. Evidence of the appellants was recorded for the first time on 8.11.2000. Thereafter, the matter was again sent for reconciliation. Evidence including cross-examination of the witnesses of the appellant was completed only on 29.11.2001. The matter was then fixed for recording of evidence of the respondents. The order sheet shows that on several dates, no witnesses for the respondents was present and only on 11.7.2003, one witness of the respondent insurance company was examined. The order sheet also shows that cost of Rs.500/- was imposed on the insurance company vide order dated 1.11.2003 and thereafter some other witnesses were permitted to be examined by the said respondent.
44. Keeping in view all these aspects, I feel that the appellants are entitled to interest for the entire period during which the proceedings had remained pending at the rate of 7-1/2% per annum. Accordingly the appellants are entitled to interest at 7-1/2% on the awarded amount from the date of filing of the petition till payment. The award to this extent also is modified.
45. The appellants are entitled to enhancement of compensation in all the cases by Rs.75,000/- and Rs.1000/- (if not already awarded by the ld. tribunal) and interest @ 7.5% per annum from the date of filing of the claim petition till payment. 50% of the enhanced compensation with interest shall be paid and the balance 50% shall be kept in FDR or in post office for a period of six years. The dependants will be entitled to interest but shall not withdraw the principal amount during the lock-in period of six

without permission of the ld. Tribunal. No costs.