

Smt. Santa vs Sudesh Kumar Rajora on 9 April, 2018

IN THE COURT OF SH. DEVENDER KUMAR, PO-MACT,
SHAHDARA, KARKARDooma COURTS, DELHI

MAC No. 1333/16

1. Smt. Santa
W/o Sh. Sukhveer Singh

2. Sukhveer Singh
S/o Sh. Harvansh Singh

Both R/o Village Chaurauli,
Tehsil-Jewar, Distt. Gautam Budh Nagar,
Uttar Pradesh

....Petitioners

Versus

1. Sudesh Kumar Rajora
S/o Sh. Sukhpal Singh
R/o Village Mehmodpur Saligpur,
PS. Shikarpur, Distt. Bulandshahr,
UP

(Driver of Dumper No.UP-81AF9345)

2. M/s Prinkle Construction Company
Through Prop. Sh. Dharamveer Singh
S/o Harvansh Singh,
C/o B-275, GF Yojna Vihar,
Delhi -110095

(Owner of Dumper No-UP81AF9345)

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors.

1/57

3. The New India Assurance Company Ltd.
C/o Regional Office II,
10th Floor, Core-I, Scope Minar,
Laxmi Nagar District Centre,
Delhi

(Insurer of Dumper No.UP-81AF9345)

4. Sh. Udayveer Singh
S/o Sh. Todar Singh
R/o Village- Itwarpur,
PS-Khair, District Aligarh,
UP

(Driver of Dumper No.UP81AF9346)

5. M/s Prinkle Construction Company
Through Prop. Sh. Dharamveer Singh
S/o Harvansh Singh,
C/o B-275, GF, Yojna Vihar,
Delhi -110095

(Owner of Dumper No.UP81AF9346)

6. The New India Assurance Company Ltd.
C/o Regional Office II,
10th Floor, Core-I, Scope Minar,
Laxmi Nagar District Centre,
Delhi

(Insurer of Dumper No.UP81AF9346)

...Respondents

MAC No. 1333/16	Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1334/16	Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 405/16	Jitender Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1246/16	Manish Kumar & Ors Vs. Dharamveer Singh & Ors.
MAC No. 1334/16	

2/57

1. Smt. Rajo Devi
W/o Sh. Hari Chand

2. Km. Sumintra
D/o Sh. Hari Chand

3. Km. Pavitra
D/o Sh. Hari Chand

4. Master Neeraj
S/o Sh. Hari Chand

5. Master Dheeraj
S/o Sh. Hari Chand

6. Master Pankaj
S/o Sh. Hari Chand

(Claimants No. 2 to 6 through mother being natural guardian being minor)

All R/o Village Chaurauli,
Tehsil-Jewar,
Distt. Gautam Budh Nagar, UP

....Petitioners

Versus

1. Sudesh Kumar Rajora
S/o Sh. Sukhpal Singh
R/o Village Mehmoopur Saligpur,
PS. Shikarpur, Distt. Bulandshahr,
Uttar Pradesh

(Driver of Dumper No.UP-81AF9345)

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors.

3/57

2. M/s Prinkle Construction Company
Through Prop. Sh. Dharmveer Singh
S/o Harvansh Singh,
C/o B-275, GF, Yojna Vihar,
Delhi -95 (Owner of Dumper No.UP-81AF9345)

3. The New India Assurance Company Ltd.
C/o Regional Office II,
10th Floor, Core-I, Scope Minar,
Laxmi Nagar District Centre,
Delhi -92 (Insurer of Dumper No.UP-81AF9345)

4. Sh. Udayveer Singh
S/o Sh. Todar Singh
R/o Village- Itwarpur,
PS-Khair, District Aligarh,
UP (Driver of Dumper No.UP-81AF9346)

5. M/s Prinkle Construction Company
Through Prop. Sh. Dharamveer Singh
S/o Harvansh Singh,
C/o B275, GF Yojna Vihar,
Delhi -95. (Owner of Dumper No.UP-81AF9346)

6. The New India Assurance Company Ltd.
C/o Regional Office II,
10th Floor, Core-I, Scope Minar,

Laxmi Nagar District Centre,
Delhi

(Insurer of Dumper No. UP-81AF9346)

... Respondents

MAC No. 1333/16	Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.	
MAC No. 1334/16	Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.	
MAC No. 405/16	Jitender Vs. Sudesh Kumar Rajora & Ors.	
MAC No. 1246/16	Manish Kumar & Ors Vs. Dharamveer Singh & Ors.	4/57
MAC No. 405/16		

1. Jitender (minor)
S/o Sh. Nem Singh
R/o Village Modelpur @ Saddulapur,
PS-Jewar, Distt. G. B. Nagar,
UP
(Through mother and natural guardian Smt. Santo Devi)

....Petitioners

Versus

1. Sudesh Kumar Rajora
S/o Sh. Sukhpal Singh
R/o Village Mehmoodpur Saligpur,
PS. Shikarpur, Distt. Bulandshahr,
UP
(Driver of Dumper No.UP-81AF9345)

2. M/s Prinkle Construction Company
Through Prop. Sh. Dharmveer Singh
S/o Harvansh Singh,
C/o B-275, GF Yojna Vihar,
Delhi -95,
(Owner of Dumper No.UP-81AF9345)

MAC No. 1333/16	Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1334/16	Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 405/16	Jitender Vs. Sudesh Kumar Rajora & Ors.

MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 5/57
3. The New India Assurance Company Ltd.
C/o Regional Office II,
10th Floor, Core-I, Scope Minar,
Laxmi Nagar District Centre,
Delhi

(Insurer of Dumper No.UP-81AF9345)

4. Sh. Udayveer Singh
S/o Sh. Todar Singh
R/o Village- Itwarpur,
PS-Khair, District Aligarh,
UP

(Driver of Dumper No.UP-81AF9346)

5. M/s Prinkle Construction Company
Through Prop. Sh. Dharamveer Singh
S/o Harvansh Singh,
C/o B-275, GF Yojna Vihar,
Delhi -95

(Owner of Dumper No.UP-81AF9346)

6. The New India Assurance Company Ltd.
C/o Regional Office II,
10th Floor, Core-I, Scope Minar,
Laxmi Nagar District Centre,
Delhi

(Insurer of Dumper No-UP81AF9346)

... Respondents

MAC No. 1333/16	Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.	
MAC No. 1334/16	Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.	
MAC No. 405/16	Jitender Vs. Sudesh Kumar Rajora & Ors.	
MAC No. 1246/16	Manish Kumar & Ors Vs. Dharamveer Singh & Ors.	6/57
MAC No. 1246/16		

1. Manish Kumar
S/o Sh. Hari Prakash

2. Master Dharuv Kumar
S/o Sh. Manish Kumar

3. Baby Aarya
D/o Sh. Manish Kumar

(Petitioner no. 2 & 3 through father being natural guardian)

All R/o H.N.46, Kambuhaan, Manroli Road,
Tehsil-Jewar, Distt. Gautam Budh Nagar, UP

Presently at:
C/o Anil Kumar Pathak
G-19, East Jyoti Nagar,
Loni Road, Shahdara, Delhi

....Petitioners

Versus

1. Dharmaveer Singh
S/o Harvansh Singh
Proprietor of Prinkle Construction Company
C/o 97, 3rd Floor, Savita Vihar,
Delhi -95

(Owner of Dumper No.UP-81AF9346)

2. Sudesh Kumar Rajoura
S/o Sh. Sukhpal
R/o Village Mehmoopur Saligpur,
PS. Shikarpur, Distt. Bulandshahr,
UP

(Driver of Dumper No-UP-81AF9345)

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors.

7/57

3. Udayveer Singh
S/o Sh. Todar Singh
R/o Village- Itwarpur,
PS-Khair, District Aligarh,
Uttar Pradesh

(Driver of Dumper No-UP81AF9346)

4. The New India Assurance Company Ltd.
C/o 12/1, Jeewan Raksha Building,
Asaf Ali Road,
New Delhi

(Insurer of Dumper No.UP81AF9345)

5. The New India Assurance Company Ltd.
C/o 12/1, Jeewan Raksha Building,
Asaf Ali Road,
New Delhi

... Respondents

Date of Institution of MAC No.1333/16 : 17.02.2014
Date of Institution of MAC No.1334/16 : 17.02.2014
Date of Institution of MAC No. 405/16 : 24.04.2014
Date of Institution of MAC No. 1246/16 : 29.05.2014
Date of Arguments : 09.03.2018
Date of Judgment : 09.04.2018

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors.

8/57

JUDGMENT:

1. Vide this judgment I shall dispose off four cases filed by the petitioners with the facts that on 13.12.2013, deceased Bharat @ Bharti was driving his Auto Tempo No. UP-14-AP 0019 from village Chaurauli to Jewer and Hari Chand, Smt. Chhama and Jitender were occupants of that vehicle and vehicle bearing Dumper No. UP-81AF 9346 was going ahead to him and Dumper bearing No. UP-81AF 9345 was behind the vehicle of deceased. It is further stated that the driver of Dumper No. UP-81AF-9346 suddenly applied its brakes and other Dumper No. UP-81AF-9345 struck from behind the vehicle of the deceased and his squeezed between both dumpers which resulted in sustaining fatal injuries to most of the occupants and they died during this accident on the spot, but one of the occupant namely Jitender sustained injuries and was under treatment till filing of these claims. An FIR No. 468/2013 was registered u/s 279/338/304A/427 IPC with PS Jewar (Gautam Budh Nagar) against the drivers of the both the vehicles against this accident who were arrested and charge-sheeted. It is further stated that this accident took place due to rash and negligent driving of both the dumpers and alleged that all the respondents are jointly or severally liable to pay compensation to all claimants of four petitions. The claims raised by all the injured / deceased on the facts are as follows:

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 9/57 1.1. Deceased Bharat @ Bharti was aged about 32 years and was auto driver by profession and stated to be earning Rs. 20,000/- pm. He has left behind his wife Smt. Neeraj but now stated to have left house of the deceased with her parents after his death and her current whereabouts are not known to the petitioners. This claim has been filed by the parents of deceased. After the

death of the deceased, postmortem was conducted on his body in Govt. Hospital, G.B. Nagar, UP. The petitioners have filed this claim of Rs. 70 Lacs with interest @ 12% pa.

1.2. Deceased Hari Chand was aged about 32 years at the time of accident and was mason by profession and stating to be earning Rs.

15,000/- pm. The entire family was dependent upon him and has left behind his wife and five minor children. Petitioners have filed this claim Rs. 80 Lacs alongwith interest @ 18 % per annum.

1.3. Injured Jitender was minor, aged about 15 years and was student at the time of accident. It is alleged that the injured was also doing agriculture work to earn Rs. 6,000/- pm. He has suffered multiple injuries during accident and remained hospitalized for long time and has spent Rs. 2 Lacs on his treatment and stated to be still under treatment. Injured has filed this claim petition through his mother and natural guardian for Rs. 10 Lacs along-with interest @ 18 % per annum.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 10/57 1.4. Deceased Kashma Sharma was aged about 31 years and was employed as Guest Teacher with Uttar Pradesh Basic Education Council and was earning Rs. 7,000/- pm on contract basis. She has left behind her family comprising of husband and two minor children. Petitioners have filed this claim for Rs. 50 Lacs along-with interest 18 % per annum.

2. Respondent No. 1 i.e. Sudesh Kumar Rajoura was driver of Dumper No. UP-81AF-9345, Respondents No. 2 and 5 i.e. owner of dumpers M/s. Prinkle Construction Company and Respondent No. 4 Udayveer Singh have filed a joint reply to all petitions with the plea that none of the deceased was working at the time of accident and petitioners have falsely alleged their profession and nature of job in petitions just to extort claim from the Respondents, whereas no accident was ever took place by any of the offending vehicles in the mode and manner as stated by the Petitioners. It is denied that the deceased Bharat @ Bharti was driving auto Tempo No. UP-14AP 0019 boarded by other deceased / injured or that he was going from Chaurauli to Jewar. It is further denied that the driver of Dumper No. UP-81 AF 9346 applied sudden breaks or the other Dumper bearing No. UP-81AF-9345 hit the vehicle of deceased from behind by his rash and negligent driving. It is categorically denied that the deceased or injured sustained any injury during this accident by rash and negligent driving of any of the offending vehicles and have prayed that all the claims are liable to be dismissed.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 11/57

3. Respondent No-3 i.e. New India Assurance Company Ltd. has filed a separate reply thereby stating that the driver of the Vehicle No. UP-14AP-0019 was driving in rash and negligent manner

and caused this accident, whereas owner and Insurance Company of that vehicle have not been impleaded to this case. It is admitted that the offending vehicle No. UP-81 AF-9345 was insured with the company vide policy bearing No. 12140431130110000152 for the period from 29.05.2013 to 28.05.2014, in the name of M/s. Prinkle Construction company, but it is denied that Insurance Company is liable to pay any compensation. It is further stated that the interest rate claimed by the all the petitioners is exorbitant with aim just to make profit by this accident and all the petitions are liable to be dismissed.

4. Respondent No. 6 i.e. New India Assurance Company Ltd. has filed a separate reply thereby stating that the deceased was driving his Vehicle No. UP-14AP-0019 in rash and negligent manner and caused this accident but it is admitted that the offending Vehicle bearing No. UP-81-AF-9346 was insured with the company vide Policy No. 12140431130110000154 for the period from 29.5.2013 to 28.5.2014, in the name of M/s. Prinkle Construction Company, but it is denied that the Insurance Company is liable to pay any compensation. It is further stated that the interest rate claimed by all the petitioners is exorbitant with aim just to make profit by this accident and all the petitions are liable to be dismissed.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 12/57

5. Four Petitions were filed separately but arising out of same accident due to all Petition Nos. 1333/16 (Old No. 54/14), 1334/16 (Old No. 55/14), 405/16 (Old No. 108/14) & 1246/16 (Old No. 133/14) were clubbed together vide order dated 26.2.2015 and Petition MAC No. 1333/16 (Old MAC No. 54/14) was treated as main Petition to lead evidence. As such, evidence has been led by both parties in this Petition for all cases.

6. From the pleading of the parties following issues are framed as under:

MAC No. 1333/16 (Old No. 54/14)

1. Whether Sh. Bharat @ Bharti suffered fatal injuries in the accident occurred on 13.12.2013 due to rash and negligent driving of vehicles No UP-81AF-9345 (Dumper) and UP -81 AF 9346 being driven by respondent No. 1 and 4 respectively ?
2. Whether the petitioners are entitled for any compensation, if so, as to what amount and from whom? OPP
3. Relief.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 13/57 MAC No. 1334/16 (Old No. 55/14)

1. Whether Sh. Hari Chand suffered fatal injuries in the accident occurred on 13.12.2013 due to rash and negligent driving of vehicles No. UP-81AF-9345 (Dumper) and UP-81AF-9346 (Dumper) being driven by respondent No. 1 and 4 respectively ?
2. Whether the petitioners are entitled for any compensation, if so, as to what amount and from whom? OPP
3. Relief.

MAC No. 405/16 (Old No. 108/14)

1. Whether the petitioner suffered injuries in the accident occurred on 13.12.2013 due to rash and negligent driving of vehicles Nos. UP-81AF-9345 (Dumper) and UP-81-AF 9346 (Dumper) being driven by respondent No. 1 and 4 respectively ?
2. Whether the petitioner is entitled for any compensation, if so, as to what amount and from whom?
3. Relief.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 14/57 MAC No. 1246/16 (Old No. 133/14)

1. Whether Smt. Kashma Sharma suffered fatal injuries in the accident occurred on 13.12.2013 due to rash and negligent driving of vehicles No. UP-81AF-9345 and UP-81AF-9346 being driven by respondent No. 1 and 4 respectively. ?
2. Whether the petitioners are entitled for any compensation, if so, as to what amount and from whom?
3. Relief.

7. To prove all Petitions, PW1 Smt. Santa has deposed in petition qua death of Bharat @ Bharti that her son suffered fatal injuries in road accident occurred on 13.12.2013 at about 2.45 pm and caused by two dumpers while driving in rash and negligent manner. It is further deposed that the deceased was going by his tempo boarding other occupants from village Chaurali to town Jewer and died on the spot after the accident. It is further deposed that a postmortem was conducted on the dead body of deceased at Noida and a criminal case was registered against the drivers of both offending vehicles. It is further deposed that the deceased has left behind his claimants who are his sole LRs and were financially dependent upon him. It is further deposed that the deceased was living in a live-in relationship with one Ms. Neeraj but no formal marriage was solemnized between them and MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo

Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 15/57 even Ms. Neeraj has left the house after the death of deceased and now residing at unknown place. It is further deposed that the deceased was aged about 32 years and was earning Rs. 20,000/- pm by his auto driving and LRs have suffered mental pain and agony by the death of deceased. She has relied upon documents i.e. Copy of Voter ID Ex.PW1/1, Copy of Voter ID of Sukhbir Singh as Ex.PW1/2, Voter ID of deceased as Ex.PW1/3 and Certified copy of Criminal Record as Ex.PW1/4.

7.1. During cross examination, she has admitted that she is not an eye witness to this accident and even is not in possession of DL of the deceased and was not aware as to whether deceased was holding any DL. She has deposed that deceased was unmarried and was living in live-in relationship with one Ms. Neeraj whose particulars and whereabouts are not known. Deceased was working in Delhi and was also living in Delhi at the time of death, but she is not aware about his residential address at Delhi. It is further deposed that he both sons are married. It is admitted that she has not made any complaint with police regarding living relationship of deceased with Ms. Neeraj and she came to know about this fact when deceased did not take interest in his marriage and she saw photograph of Neeraj. It is further deposed that the deceased was studied upto 8th class but she has no proof of his educational qualification or income. It is further deposed that she has 10 bigha lands in the name of her father-in-law but her husband is not doing any agriculture work. She along-with her husband sell milk MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 16/57 by rearing buffaloes to earn her livelihood, but it is denied that both the claimants were not financially dependent upon the deceased.

7.2. PW2 Smt. Rajo Devi has deposed in Claim Petition qua the death of deceased Hari Chand and has deposed that she is the wife of deceased Hari Chand who also met with an accident and sustained fatal injuries during the accident caused by both the dumpers. She has deposed the mode and manner of the accident as deposed by PW1 Smt. Santa. She has further deposed that the deceased was aged about 48 years and was working as mason and was earning Rs. 15,000/- pm. It is further deposed that the deceased has left behind his wife and children who were financially dependent upon him. It is further deposed that her family has suffered mental pain and suffering by the sudden demise of the deceased. She has relied upon documents i.e. Copy of Voter ID of deceased as Ex.PW2/1, Copy of her Voter ID as Ex.PW2/2, Copy of School ID of children Pankaj, Neeraj and Dheeraj as Ex.PW3/2 to Ex.PW3/5, Domicile certificate of Sumitra as Ex.PW3/6 and Copy of Aadhar Card of daughter Pavitra as Ex.PW3/6.

7.2.1. During cross examination, she has admitted that she is not an eye witness to accident and even has no document pertaining to the occupation and income of the deceased that he was earning Rs. 15,000/- pm. It is further admitted that all her children are studying and none of them is married. She has no agricultural land. Her parents in MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 17/57 law have expired prior to the death of her husband. It is further

deposed that the actual name of deceased was Hari Chand and not Hari Chandra as mentioned in his Voter ID. She has no document to prove the particulars and relationship of family members to each other as issued by any Gram Pardhan. She has not filed any document pertaining to her financial dependency on the deceased.

7.3. PW3 Smt. Santa Devi has led her evidence on behalf of injured Jitender and has deposed regarding the mode and manner of accident in which injured sustained injury and other passengers died. She has been deposed that injured is her minor son who suffered grievous injuries during this accident and was removed to Kailash Hospital, Greater Noida after the accident where his MLC was prepared and was treated and operated upon. It is further deposed that a criminal case was registered against the drivers of offending vehicle regarding this accident. It is further deposed that her son was earning Rs. 6,000/- pm, but now not earning anything after this accident. She has incurred Rs. 2 Lacs on the treatment of injured. She has relied upon documents i.e. Certified copy of MLC as Ex.PW3/1, Medical bills and treatment record as Ex.PW3/2, Copy of Aadhar card as Ex.PW3/3 and Aadhar receipt / acknowledgement as Ex.PW3/4.

7.3.1. During cross examination, she has admitted that injured was studying in 9th class at the time of accident. She is not an eye witness to this accident and even has no medical bills to prove that she spent MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 18/57 Rs. 2 lacs on the treatment of injured. It is denied that injured was not doing any work at the time of accident.

7.4. PW4 Ranjeet Kumar @ Rinku is an eye witness to this accident and has deposed that on 13.12.13 at about 2.25 pm, he was standing on his shop situated at Khurja -Jewar road, Town Jewar and saw that an Auto No. UP-14AP 0019 was going towards Jewar town and one Dumper No. UP-81 AF 9346 was going ahead to the said auto and another Dumper bearing No. UP-81 AF 9345 was going behind to that auto, but the driver of Dumper No. UP-81AF 9346 suddenly applied its brakes and Dumper No. UP-81AF-9345 hit that auto from behind and auto crushed between both Dumpers. It is further seen that all the occupants of auto died on the spot except one teenage boy who badly injured. It is further deposed that this accident took place by the negligence of the drivers of both Dumpers. He has relied upon his DL as Ex.PW4/A. 7.4.1. During cross examination, he has admitted that he is not a summoned witness and has been deposing at the instance of Petitioners. It is further deposed that he was running his shop in the name and style of Chaudhary Motors at the spot but he has not brought any document to this effect that his shop is situated at the place of accident. It is further deposed that police has not cited him as an eye witness to the criminal case and even he was not aware about any site plan of the spot of accident prepared by the police. It is denied MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 19/57 that he is not an eye witness to this accident, but it is admitted that there was no much traffic on the road at the time of accident. It is further deposed that as per his observation, Dumper bearing No. UP-81AF-9345 was more negligent than Dumper No. UP-81AF 9346 in causing this accident. It is further deposed that there was a distance of about 15 feet between tempo/auto of deceased and Dumpers but he was not aware

about the distance between auto and each of Dumpers.

7.5. PW5 Manish Kumar has deposed qua the death of Kshma Sharma and has deposed that deceased Kashma Sharma was his wife and died during this accident when she was returning back from her duty at Chorauli to her home at Jewar by Vehicle No. UP-18 AP-0019. He has also deposed the similar mode and manner of accident as deposed by other witnesses. He has further deposed that deceased was about aged 31 years and was teacher on contract basis and was earning Rs. 7,000/- pm. It is further deposed that the deceased has left behind her husband and two minor children aged about 5 years and 9 months respectively. It is further deposed that the entire family was financially dependent upon the deceased. He has relied upon documents i.e. Copy of ration card as Ex.PW5/1, Certified copy of FIR as Ex.PW5/2, Certified copy of chargesheet as Ex.PW5/3, Copy of Educational Certificates of deceased as Ex.PW5/4 to Ex.PW5/12, Copy of NCC B certificate as Ex.PW5/13, Copy of NSS certificate of deceased as Ex.PW5/14, Copy of certificates of extra-curricular activities of deceased as Ex.PW5/15 to Ex.PW5/20, Copy of Voter ID MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 20/57 of deceased as Ex.PW5/21, Copy of Employment Certificate of deceased as Ex.PW5/22, Copy of Computer Certificate of deceased as Ex.PW5/23, Copy of Republic day parade certificate of deceased as Ex.PW5/24, Copy of Birth Certificates for both children as Ex.PW5/25 and Ex.PW5/26, copy of PM report of deceased as Ex.PW5/27, Copy of appointment letter of deceased as Ex.PW5/28 and Copy of Joining Letter as Mark A. 7.5.1. During cross examination, he has deposed that the date of birth of deceased Kashma Sharma was 16.11.1982. It is admitted that he is drawing salary of Rs. 50,000/- pm from his employment with Escorts Ltd. It is further deposed that deceased left job from Amazon International School and joined U.P Govt. School against a salary Rs. 7,000/- pm on contract basis. He has no document that deceased had undergone a teacher eligibility test of State Level. It is admitted that he is not an eye witness to the accident. His wife was also known as Madhu.

8. R4W1 Udayveer i.e. Respondent No. 4 has deposed that he was driver of Dumper No. UP-81AF-9346 under the employment of Respondent Dharamvir Singh to drive his dumper. It is further deposed that on 13.12.2013, both Dumpers were parked at the construction site at Jewar, Distt. Guatam Budh Nagar, U.P and no accident took place by any of the Dumpers and has alleged to be falsely implicated to this case.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 21/57 8.1. During cross examination, he has admitted that he did not convey to higher Police Officials that his vehicle was in parking mode at the time of alleged accident and even did not make any complaint that he has been falsely implicated in this case. It is admitted that he was released on bail in case FIR lodged against him pertaining to this accident, however, he has not received any summons of criminal court in case till date. It is admitted that Respondent No. 1 Sudesh Kumar was the driver of Vehicle No UP 81AF 9345. It is further deposed that his DL was issued by Licensing Authority, Farukabad, UP, but he has not produced his DL. It is further deposed that document Mark K is the Copy of his DL but

number of DL is not visible in this copy. He has not produced his original DL being lost in the month of November- December 2015; however, he has no document to this effect. He also did not inform the Licensing Authority about the lost of his DL. Police gave him Acknowledgement to this effect but the same is not traceable. It is admitted that has no DL except Mark K since 2015 onwards. It is admitted that he was asked by the court and counsel for insurance to produce his DL by serving notice, but he has failed to produce the same, as he did not receive any such notice. He has not applied for his fresh DL since 2015 as he has left his job about two years ago being suffered by an eye problem.

8.2. R6W1 Kamal is the Insurance Witness has produced the Insurance Policy of Vehicle No. UP-81AF 9346 which is Ex.R6W6/A. He served a notice u/o 12 Rule 8 CPC issued to Respondent No. 4 MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 22/57 and M/s. Prinkle Construction Company Ltd. under the instruction of counsel vide registered AD to produce Original documents including DL of Respondent No.4 but no reply was received. Notice is Ex.R6W1/B and postal receipt is Ex.R6W1/C. It is admitted that Insurance Company did not receive back any AD or proof of delivery of service of the notice Ex.R6W1/B upon the Respondents. It is admitted that the offending vehicle was insured with the Insurance Company.

9. I have heard the arguments and perused the record. I am taking up Issue No. 1 in all the Petitions together as this issue in all Petitions is common as well as similar. The onus to prove this issue was fixed upon all the Petitioners who have filed their respective petitions. My Issue-wise findings are as under:

ISSUE NO-1 in All Petitions - The onus to prove this issue was fixed upon the petitioners. To discharge this onus, petitioners have examined themselves as well as eye witness Ranjeet Kumar @ Rinku. They have repeated their allegations leveled in their plaints. The onus to prove this rash and negligent driving of Vehicle No. UP-81AF 9346 or UP-81AF 9346 was on the petitioners who have claimed their separate Compensations. Petitioners are required to prove rash and negligent driving of both the offending vehicles to claim this compensation under Section 166 of M.V. Act and, legal proposition regarding it is well established. The law to this effect is relevant to be considered. It is held in Oriental Insurance Co. Ltd. v. Premlata MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 23/57 Shukla & Ors. III (2007) ACC 54 (SC) that the insurer, however, would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance. Proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under section 166 of the Act. A similar proposition has laid down in case titled DTC and Another v. Rajeshwari Sankar And Ors, MAC. A.

No-442/2005 dated 25/5/13 that rash and negligence is supposed to be proved to claim the compensation u/s 166 of M.V. Act. Even the Hon'ble High Court of Delhi in MAC App. No.200/2012 case titled United India Insurance Co. Ltd. V. Smt. Rinki @ Rinku & Ors dated 23/07/2012 has held that negligence is a sine qua non to a Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act). Even the similar proposition has been repeated in Oriental Insurance Company Limited v. Meena Variyal and Ors., (2007) 5 SCC 428, Minu B. Mehta and Anr. v.

Balkrishna Ramchandra Nayan and Anr., 1977 (2) SCC 441 and Surender Kumar Arora and Anr. v. Manoj Bisla and Ors., (2012) 4 SCC 552.

10. The mode and manner of proving the rash and negligent driving of the offending vehicle has also been considered in various other judgments as well and has held that the onus to prove the rash and negligent driving is not to be discharged beyond doubt or in the similar manner as a fact is to be proved in a civil case. Rather it has to be MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 24/57 proved on the touchstone of preponderance of probability and holistic view is to be taken while dealing with the Claim Petition based upon negligence. The observation of the Hon'ble High Court made in New India Assurance Co. Ltd. V. Sakshi Bhutani & Ors, MAC APP. 550/2011 decided on 02.07.2012 is relevant that it has to be borne in mind that the Motor Vehicles Act does not envisage holding a trial for a petition preferred under Section 166 of the Act. Under Section 168 of the Act, a Claims Tribunal is enjoined to hold an inquiry to determine compensation which must appear to it to be just. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal. Further in State of Mysore Vs. S.S. Makapur, 1993 (2) SCR 943, the Hon'ble Supreme Court held that the Tribunals exercising quasi-judicial functions are not courts and are not bound by strict rules of evidence.

11. Further, the approach of the tribunal has also been defined by the Hon'ble Supreme Court of India in N.K.V. Bros. (P) Ltd. v. M. Marumai Ammal, 1980 ACJ 435 (SC), that the Accidents Claims Tribunal must take special care to see that innocent victims do not suffer and persons liable do not escape liability merely because of some doubt here and some obscurity there. The court should not succumb to niceties, technicalities and mystic maybes. The court is bound to take broad view of the whole matter. As such, the case of the injured has to be decided in view of the above said proposition in this case.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 25/57

12. Now the facts of this case are to be taken up. PW4 Ranjeet Kumar @ Rinku is the main eye witness to this accident to prove rash and negligent driving of the offending vehicles, whereas none of the Claimants in all four Petitions witnessed this accident. The testimony of PW4 is of an eye witness but his testimony has been disputed by Ld. Counsel for Respondents on the ground that he

has admitted during his cross examination that he did not make any statement before police or criminal court and this admission has proved that he is not an eye witness to this accident and his testimony is liable to be discarded. On the other hand, Ld. Counsel for Petitioners in all Petitions have argued that the name of Respondent No. 4 is mentioned in Charge- sheet prepared and filed by the Police against the drivers of the offending vehicles and this testimony has duly proved that he not only witnessed the accident but also reported the matter to the Police after accident and there is no reason to discard his reliable testimony which has duly proved the rash and negligent driving of both vehicles.

13. I have heard the arguments of both parties and perused the record. The Charge-sheet filed by the Police is part of record as Ex.PW1/4 and comprising of FIR, site plan, Court orders regarding the release of both offending vehicles on superdari and a notice u/s 133 of M.V. Act served upon the owner Dharamvir Singh by the police which was duly replied by the owner that Respondent No. 1 and 4 were driving both the offending vehicles at the time of accident. It is further revealed that Post Mortem Reports of deceased persons with MLC of MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 26/57 injured Jitender are part of record and have proved that the death of all the occupants of the vehicle being driven by Bharat was result of this accident. By the contents of Charge-sheet, it stands proved that Ranjeet @ Rinku was the Complainant of the FIR lodged after this accident and criminal case was lodged at his instance. He has deposed that he was running his shop at the spot of accident and even the spot of accident proved by the site plan prepared by the police has also corroborated this fact that the spot of accident was surrounded by various shops and offices of agencies and it may not be ruled out that PW4 was present at his shop and witnessed this accident caused by the rash and negligent driving of both Dumpers which were being driven by Respondents No. 1 and 4 i.e. Sudesh and Udayveer. Even otherwise it has already proved by the testimony of R4W1 and notice u/s 133 of M.V. Act served upon the owner of both vehicles that both the respondents were driving the vehicles at time of this accident. The site plan prepared by the IO has proved that the accident took place in the middle of the road which was not the lane of driving of the offending vehicles to drive. Though it was also not expected from the deceased to drive his vehicle with so many passengers in the middle of the road, yet the offending vehicles which were heavy duty vehicles were also not expected to drive in such a manner that they would not be able to apply its brakes in exigencies. As such, the mode and manner of driving of the offending vehicles has proved that both drivers not only caused this accident by their rash and negligent driving but also ran away from the spot after the accident. Both the vehicles were MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 27/57 seized and got released on supardari. As such, it stands proved that both the offending vehicles were being driven by both the drivers in rash and negligent manner and driver of offending Vehicle No. UP-81AF-9346 applied sudden brakes without any reason which amounts to rash and negligent driving on the part of driver in the absence of any plausible reason. Similarly, the Respondent No. 4 failed to maintain appropriate distance from the vehicle of the deceased and also failed to apply its break and struck the vehicle of the deceased from behind which resulted into squeezing the vehicle No. UP-14AP-0019 between both the dumpers and

sustained fatal injuries by three occupants and grievous injuries by injured Jitender. One more fact is pertinent to mention here that the Respondent No. 4 Udayvir Singh has failed to produce his DL and has proved that he was driving the vehicle either without DL or with forged DL. He was main culprit of this accident as per the version of eye witness Rinku who observed that the Vehicle No. UP-81AF 9346 was more responsible to cause this accident. In view of the facts and circumstances, I am of the opinion that this accident was caused by the rash and negligent driving of the offending vehicles. Respondents No. 2 and 5 i.e. M/s. Prinkle Construction Company Ltd. is the owner of the both vehicles and Dharmveer Singh is proprietor of this business entity and owner of the both vehicles is vicariously liable for rash and negligent act of Respondents No. 1 & 4 being employer. As such, all the Petitioners in all Petitions have discharged the onus to prove Issue No. 1 in all MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 28/57 Petitions and this Issue is decided in favor of Petitioners and against the Respondents.

14. ISSUE NO. 2 in MAC No. 1333/16- The onus to prove this Issue No. 2 was fixed upon the petitioners. Since the Petitioners have proved that the Respondents No. 1 & 4 caused this accident by their rash and negligent driving of both the offending vehicles, due to Petitioners are entitled for compensation. However, it is to be decided as to what compensation is to be paid and by whom. Admittedly, the offending vehicles were insured with Respondents No. 3 & 6 and Respondent No. 6 has contested this claim on the ground that the driver Udayveer Singh was not having a valid DL to drive Vehicle No. UP-81AF-9346 due to Insurance Company is not liable to pay this compensation. However, this plea of Insurance Company shall be taken up later on at the time of deciding liability of the Respondents to pay compensation. However, Petitioners are entitled for compensation on account of vehicular death of deceased Bharat @ Bharti.

15. To determine the compensation in a fatal case, Petitioners are required to prove the age, income of the deceased and number of dependents to make deduction towards personal expenses of the deceased. The age of deceased is necessary to apply the multiplier. Petitioners have disclosed the age of the deceased Bharat @ Bharti as MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 29/57 32 years at the time of this accident, whereas the age of the deceased as per his Voter ID which is Ex.PW1/3 was more than 37 years on the day of accident. However, the claimants in this case are parents of the deceased and their age is to be considered to determine this compensation. Though it is alleged that the deceased was unmarried but living with one Ms. Neeraj in live-in relationship, yet this fact could not be proved by any party that Ms. Neeraj was legally wedded wife of the deceased to consider her claim. On the other hand, Petitioners have deposed that her whereabouts are not known as she has left to unknown place after the death of the deceased, accordingly the un-rebutted version of the parents of deceased is being considered that he was unmarried. In case of a death of an unmarried man, age of mother or claimant is to be considered to determine the compensation. Mother is to be considered as dependent to determine this compensation and her age is relevant as held in Bharti Axa General Insurance Co. Ltd. and Ors. v. Poonam And Ors MAC App. No. 79/2014 NS 413/15, New India Assurance Company Ltd. V. Shanti

Pathak (Smt) (2007) 10 SCC 1 and National Insurance Co. Ltd. V. Shyam Singh (2011) 7 SCC 65. As per document Ex.PW1/1, Smt. Santa was aged about 40 years on 1.1.1995 when this document was prepared, whereas this accident took place on 13.12.13 and age of dependent comes to less than 58 years at the time of accident and same age is considered for the purpose of this claim.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 30/57

16. After ascertaining the age of the deceased, an appropriate multiplier has to be determined. The judgment of case titled Sarla Verma v. DTC, (2009) 6 SCC 121 is relevant to consider this multiplier. Para 21 of the judgment has laid down the multiplier as per age as under:

MULTIPLIER	AGE GROUP OF DECEASED
M-18	Age groups between 15 to 20 and 21 to 25 years)
M-17	Age groups between 26 to 30 years,
M-16	Age groups between 31 to 35 years,
M-15	Age groups between 36 to 40 years,
M-14	Age groups between 41 to 45 years,
M-13	Age groups between 46 to 50 years,
M-11	Age groups between 51 to 55 years,
M-9	Age groups between 56 to 60 years,
M-7	Age groups between 61 to 65 years
M-5	Age groups between 66 to 70 years.

In view of the above said judgment, a multiplier of 9 has to be applied against 58 years of age of the deceased to determine this compensation.

17. After deciding the age and multiplier, the income of the deceased has to be determined. The deceased was an auto driver and stated to be earning Rs.20,000/- pm, but no document has been proved to this MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 31/57 effect, due to his earning is taken as per minimum wages for an unskilled labour prevalent in

U.P being resident of UP. Even it also could not be proved that he was an auto driver and his educational qualification has also not been proved to consider his claim for skilled labor. The minimum wages in the month of December, 2013 in U.P was Rs. 200/- per day for unskilled worker ($Rs.200 \times 30 = Rs. 6,000/-$) and such earning is considered to calculate this compensation. As such, annual income of deceased comes to $Rs. 6,000 \times 12 = Rs. 72,000/-$.

18. After choosing the age, multiplier and income of the deceased, necessary deductions have to be made out of the income of the deceased towards personal expenses. The Hon'ble Supreme Court of India in case titled Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65, in Para 30, has laid down the necessary deductions towards personal living and expenses of deceased as under:

Number of dependents Deductions out of earning of the deceased.

Half / $\frac{1}{2}$	Where dependent is 1
1/3rd	Where the number of dependent family members is 2 to 3
1/4th	Where the number of dependent family members is 4 to 6,
1/5th	Where the number of dependent family members exceeds 6 (six).

19. In view of the above said judgment, the Petitioner No. 1 is the mother of the deceased and Petitioners No. 2 is father. Father of the MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.

MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 32/57 deceased is not to be considered dependent upon the deceased. As such, the dependents of the deceased was only one due to $\frac{1}{2}$ earning of the deceased has to be considered towards deductions out of his yearly earning. As such, $\frac{1}{2}$ amount out of annual income of Rs. 72,000/- i.e. Rs. 36,000/- p.a. has to be reduced towards personal expenses and actual loss of estate of deceased to petitioners comes to Rs. 36,000/- per annum.

20. Besides it, a future income of the deceased has also to be considered in view of the latest judgment of the Hon'ble Apex Court titled National Insurance Company Limited vs. Praney Sethi & Ors, SLP (Civil) No. 25590 of 2014 decided on 31.10.2017 in which it is observed as under:-

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should

be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 33/57

21. In fact, in view of the above said judgments 10% income of the deceased has to be considered towards future earnings as the age of deceased was between 50-60 years. As such, the compensation of the petitioners has to be adjudicated on account of Loss of Estate, Funeral Charges and Future Damages.

22. I have already observed that the deceased was earning Rs. 36,000/- p.a. Thereafter, this annual income has to be multiplied by multiplier of 9 as per Sarla Verma v. DTC (supra). $Rs. 36,000/- \times 9 = Rs. 3,24,000/-$. Thereafter, 10% income towards future income of the deceased has to be added in terms of National Insurance Co. v. Pranay Shetty (Supra) i.e. 32,400/- has to be added to above said amount. Total amount comes to $Rs. 3,24,000 + 32,400 = 3,56,400/-$. Besides the above said damages/ compensation, the other compensation under the unconventional heads i.e. Rs. 15000/- towards funeral expenses is also to be awarded in terms of Pranay Shetty judgment. However, deceased has no medical treatment expenses due to Petitioners are not entitled for reimbursement of any medical bill.

23. As such, petitioner is entitled for the compensation as under:

1. Loss of Estate: Rs. 3,56,400
2. Funeral Charges Rs. 15,000/-

Rs. 3,71,400 / Total = (Rs.3,72,000/-)

rounded off) MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 34/57

24. Liability: Petitioners have proved that both the vehicles were insured with the insurance company i.e. The New India Assurance Company Ltd. which are Respondents No. 3 & 6 in the claims. Admittedly, there is no contest on the aspects that the vehicles were not insured. However, Ld. Counsel for the Insurance Company has argued that the Respondent No. 4 was driving the offending vehicle bearing No. UP-81AF 9346 but has failed to produce a valid DL to drive despite service of the notice u/o 12 rule 8 CPC, due to Insurance Company is not liable to pay this compensation in any of the cases. However, this fact has been controverted by the Respondents. Admittedly, DL of the driver i.e. Respondent No. 1 Sudesh Kumar Rajoria is not disputed, but DL of driver i.e. Respondent No. 4 Udayveer Singh is disputed. He has failed to produce his DL before this court despite service of the notice under section 12 rule 8 CPC. Though copy of the DL is on record, yet it is not legible to give an opportunity to the Insurance Company to summon the witness to prove its authenticity. Ld. Counsel for the Respondents has argued that the service of legal notice upon the Respondent No 4 & 5 was not proved due to Respondents were not obliged to produce DL of Respondent No. 4 and it was duty of Insurance Company to prove that he was not holding any DL or that his DL was fake which has not been proved. However, there is presumption of the service of the notice u/s 27 of General Clauses Act if it was sent by a registered post to correct address and did not return back unserved which has proved by postal receipts. Even otherwise the DL was supposed to be produced by the MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 35/57 driver or owner if he was holding a valid DL, but it has not been done due to it may be presumed that driver was not holding a valid DL especially when he has alleged that his DL was lost but has failed to produce any FIR or document regarding loss of such DL. As such, Respondent No. 4 i.e. Udayveer Singh was not holding a valid DL and it amounts to violation of the terms and conditions of the Insurance Policy of Vehicle bearing No. UP-14 AF 9346. In case of violation of the terms and conditions of insurance policy, Insurance Company is liable for recovery rights of the claim likely to be paid by it. In this case also, both the vehicles were insured by insurance company i.e. The New Indian Assurance Company Ltd. and violation of the terms has been proved qua Vehicle No. UP-14 AF 9346 and there is no violation of any terms of the insurance policy qua vehicle No. UP-14 AF 9345, due to Respondents No. 3 & 6 i.e. The New India Assurance Company Ltd. shall be entitled for recovery of 50% of the entire amount from the Respondents No. 2, 4 and 5 jointly or severally as both vehicles are found involved in accident.

25. Keeping in view of the facts and circumstances of this case, Petition is allowed. Petitioners are entitled for compensation of Rs.3,72,000/- from the Respondent No. 3 & 6 i.e. The New India Assurance Co. Ltd. with interest @ 9% p.a. from the date of filing of the petition till its realization, subject to waiver of interest, if any as directed by this court during the pendency of this case and further with right of recovery of 50% of the entire award amount from Respondents No. 2, 4 & 5 jointly and severally. Respondent No. 3 & 6 i.e. The New MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 36/57 India Assurance Co. Ltd. is directed to give notice regarding deposit of the said amount to the petitioner and their counsel. As such, petitioners have successfully discharged the onus to prove the issue No. 2 and are entitled for the claim amount as above. The

following award is passed as under:

AWARD This petition is allowed. Respondents No. 3 & 6 i.e. The New India Assurance Co. Ltd. is directed to pay a compensation of Rs. 3,72,000/- with interest @ 9% p.a. from the date of filing of this petition till its realization to the petitioners subject to waiver of interest, if any as directed by this court during the pendency of this case and to deposit the award amount within one month from the date of this award. However, Respondent No. 3 & 6 shall have right to recovery of 50% of total award amount from the Respondents No. 2, 4 and 5. Copy of Form V duly filled shall be treated as part of this award. Award amount be released to the injured / claimant after deposit by the Respondents No. 3 & 6 in terms of disbursement.

26. Apportionment of Award amount: The award amount has to be distributed amongst the claimants. Petitioner No. 1 Smt. Santa is the mother of deceased and is entitled for 70% of the entire compensation amount i.e. Rs. 2,60,400/-. Petitioner No. 2 is the father of the deceased and is entitled for 30% of the award amount i.e. Rs. 1,11,600/-. The share amount shall be with corresponding interest against the award amount.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 37/57

27. Disbursal of Award amount: Now the disbursement of award amount has to be considered. The procedure of disbursement of the award amount has been provided in Clause-29 of Modified Claims Tribunal Agreed Procedure formulated by the Hon'ble High Court of Delhi in Rajesh Tyagi v. Jaibir Singh, I (2005) ACC 838 (Del.) and Tazuddin Ansari & Ors. v. Satish Kumar & Ors, 2016 SCC OnLine Del 5380 and the disbursement of the award amount is as under.

27.1. Petitioner No. 1 Smt. Santa is the mother of the deceased and shall be entitled for an amount of Rs. 60,400/- out of Rs.2,60,400/- and corresponding interest instantly to be credited in her saving bank account nearby to her residence. Remaining amount of Rs. 2,00,000/- shall be fixed by the way of monthly FDRs of Rs. 10,000/- (each) from 1 month to 20 months w.e.f July, 2018.

27.2. Petitioner No. 2 Sukhbir Singh is the father of the deceased shall be entitled for an amount of Rs.11,600/- out of Rs.1,11,600/- and corresponding interest instantly to be credited in his saving bank account nearby to his residence. Remaining amount of Rs. 1,00,000/- shall be fixed by the way of monthly FDRs of Rs. 10,000/- (each) from 1 month to 10 months w.e.f July, 2018.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 38/57

28. ISSUE No. 2 in MAC No. 1334/16 qua death of Hari Chand - Issue No. 1 has been decided in favour of the Petitioners that this accident was caused by the rash and negligent driving of the vehicles being driven by the Respondent Sudesh Kumar Rajora and Udayveer Singh and now it has to be decided as to what compensation is to be paid and by whom. I have already observed herein above while deciding the connected claims that there is a violation of terms of Insurance Policy qua the vehicle No. UP-81AF-9346 as driver Udayveer Singh was not holding a valid DL to drive the offending vehicle due to Respondents No. 3 & 6 have been given recovery rights qua 50% of entire award amount in all cases against the Respondents i.e. Drivers and Owner of both vehicles as both the vehicle were responsible for this accident.

29. To determine the compensation, petitioners are required to prove the age and income of the deceased as well as number of dependents. The age of deceased is necessary to apply the multiplier. As per voter ID which is Ex.PW2/1, the age of deceased was 27 years on 01.01.1995 and this accident took place on 13.12.2013. The age of deceased comes to about 45 years at the time of accident.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 39/57

30. After ascertaining the age of the claimant, an appropriate multiplier has to be determined in view of case titled Sarla Verma v. DTC, (2009) 6 SCC 121, as per which multiplier of 14 is to be applied to determine this compensation qua Loss of dependency. Necessary deductions have to be made out of the income of the deceased towards his personal expenses as per the case titled Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. Deceased was married and left behind one wife and five minor children who were dependent upon him due to 1/4th earning of the deceased has to be deducted out of his yearly earnings. However, earning of the deceased is also to be determined. The deceased was mason by profession but PW2 has not proved any document to the effect of his profession or earning due to he is entitled for minimum wages to determine compensation. The minimum wages on the day of accident was Rs. 5,200/- pm. Besides it, the future income of the deceased is also to be considered in view of latest judgment titled National Insurance Company Limited vs. Praney Sethi & Ors, SLP (Civil) No. 25590 of 2014 decided on 31.10.2017. The claimants are also entitled for 25% for future damages in view of the age of deceased besides Funeral Charges, Loss of Consortium and Loss of Estate.

31. I have already observed that the deceased Hari Chand was earning as per minimum wages of Rs. 5,200/- pm and an amount of Rs. 1,300/- pm has to be deducted out of his monthly income towards personal expenses. Rs. 3,900/- has to be multiplied by 12 which MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 40/57 comes to Rs. 46800/- p.a. Thereafter, annual income has to be multiplied by multiplier of 14 as per Sarla Verma v. DTC (supra). As such, loss of dependency comes to $Rs. 46,800 \times 14 = Rs. 655,200/-$. Thereafter, 25% income towards future income of the deceased has to be added in terms of National Insurance Co. v. Pranay Shetty (Supra) i.e. 1,63,800/- has to be added to above said amount. $Rs. 655,200 + 163,800 = 8,19,000/-$. Besides the above said

damages / compensation, the other compensation of Rs. 70,000/- under the conventional heads i.e. Funeral expenses, loss of consortium and loss of estate has to be added to the above said amount.

32. As such, petitioners are entitled for the compensation as under:

1. Loss of dependency/ contribution to family: Rs. 8,19,000/-
2. Funeral Charges Rs. 15,000/-
3. Loss of consortium Rs. 40,000/-
4. Loss of Estate Rs. 15,000/-

Total Rs. 8,89,000/-

33. Keeping in view of the facts and circumstances of this case, Petition is allowed. Petitioners are entitled for compensation of Rs.8,89,000/- from the Respondents No. 3 & 6 i.e. The New India Assurance Co. Ltd. with interest @ 9% p.a. from the date of filing of the petition till its realization, subject to waiver of interest, if any as directed by this court during the pendency of this case and further with MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.

MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 41/57 right of recovery of 50% of the entire award amount from Respondents No-2 4, & 5 jointly and severally. Respondent No. 3 & 6 i.e. The New India Assurance Co. Ltd. is directed to give notice regarding deposit of the said amount to the petitioner and their counsel. As such, petitioners have successfully discharged the onus to prove the issue No. 2 and are entitled for the claim amount as above. The following award is passed as under:

AWARD This petition is allowed. Respondents No. 3 & 6 i.e. The New India Assurance Co. Ltd. is directed to pay a compensation of Rs. 8,89,000/- with interest @ 9% p.a. from the date of filing of this petition till its realization to the Petitioners subject to waiver of interest, if any as directed by this court during the pendency of this case and to deposit the award amount within one month from the date of this award. However, Respondents No. 3 & 6 shall have right to recovery of 50% of total award amount from the Respondents No. 2, 4 and 5. Copy of Form V duly filled shall be treated as part of this award. Award amount be released to the injured / claimant after deposit by the Respondents No. 3 & 6 in terms of disbursement.

34. Apportionment of Award amount: The award amount has to be distributed amongst the claimants. Petitioner No. 1 is the wife of deceased and is entitled for 50% of the entire award amount i.e. Rs.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 42/57 4,44,500/- Petitioner No. 2 to 6 are the children of deceased and are entitled for 10% (each) of the award amount i.e. Rs. 44,450- (each). The share amount of Petitioners shall be with corresponding interest of the award amount.

35. Disbursement of the award amount: Now the disbursement of award amount has to be considered. Petitioner No. -1 Smt. Rajo Devi shall be entitled for an amount of Rs. 44,500/- out of Rs. 4,44,500/- with corresponding interest instantly to be credited in her saving bank account nearby to her residence. Remaining amount of Rs. 4,00,000/- shall be fixed into automatically renewable FDRs for 1 to 20 months of Rs. 20000/- each w.e.f. July, 2018 onwards. The other conditions of the FDR with regard to withdrawal of the amount etc. shall be fixed later on with the disbursement of the award amount of other claimants.

35.1. Petitioners No. 2 to 6 are minor children of the deceased and their share amount shall be fixed by the way of FDRs till attainment of majority by them. Thereafter, the amount shall be released under the directions of this court. However, the interest amount shall to be calculated against the FDRs of Claimants No. 2 to 6 by the bank on quarterly basis and shall be released to the Petitioner No. 1 which shall be utilized by the Petitioner No. 1 towards the education and welfare of the children.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 43/57

36. ISSUE No. 2 in MAC No. 1246/16 qua death of Smt. Kashma Sharma - Issue No. 1 has been decided in favor of the Petitioners that this accident was caused by the rash and negligent driving of the vehicle occupied by the deceased and now it has to be decided as to what compensation is to be paid and by whom. I have already observed herein above while deciding the connected claims that there was a violation of terms of insurance policy qua the Vehicle No. UP-81AF 9346 as driver Udayveer Singh was not holding a valid DL to drive the offending vehicle and Respondents No. 3 & 6 have been given joint recovery rights qua 50% of entire award amount against the driver Udayveer Singh and Owner of both vehicles.

37. To determine the compensation, Petitioners are required to prove the age and income of the deceased as well as number of dependents. The age of deceased is necessary to apply the multiplier. As per school certificate Ex.PW4/5, the date of birth of deceased was on 16.11.1982. This accident took place on 13.12.2013. The age of deceased on the day of accident comes to 31 years.

38. After ascertaining the age of the claimant, an appropriate multiplier has to be determined in view of case titled Sarla Verma v. DTC, (2009) 6 SCC 121, as per which multiplier is of 16 is to be applied to determine this compensation qua Loss of dependency.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 44/57 Necessary deductions have to be made out of the income of the deceased towards her personal expenses as per the case titled Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. Deceased was married and left behind husband and two minor children who were dependent upon her, however husband is not to be considered dependent upon wife. Even husband Manish Kumar has admitted during cross examination that he has been earning Rs. 50,000/- pm from his job and has separate source of his earning. As such, dependents on the deceased were only her two minor children due to 1/3th earning of the deceased has to be deducted out of her yearly earnings towards personal expenses. To apply this deduction, earning of the deceased is also to be determined. The deceased was teacher by profession. She was teacher on contract basis with Education Department, Gautam Budh Nagar and document Ex.PW5/28 has proved this fact. She was drawing salary or remuneration of Rs. 7,000/- pm. She was Graduate and her earning of Rs. 7,000/- pm stands proved which comes to Rs. 84,000/- per annum.

39. Besides it, the future income of the deceased is also to be considered in view of judgment titled National Insurance Company Limited vs. Praney Sethi & Ors, SLP (Civil) No. 25590 of 2014 decided on 31.10.2017. The claimants shall be entitled for 40% for future damages in view of her age besides Funeral Charges, Loss of Consortium and Loss of estate.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 45/57

40. I have already observed that the deceased Kashma Sharma was earning Rs. 7000/- pm and an amount of Rs. 2333/- pm has to be deducted out of her monthly income towards personal expenses. Rs. 4667/- has to be multiplied by 12 which comes to Rs. 56004/- p.a. Thereafter, annual income has to be multiplied by multiplier of 16 as per Sarla Verma v. DTC (supra). Rs. 56,004 x 16 = Rs. 8,96,064/. Thereafter, 40% income towards future income of the deceased has to be added to the above said amount in terms of National Insurance Co. v. Pranay Shetty (Supra) i.e. 3,58,426/. Loss of dependency comes to Rs. 896064 + 358426 = 12,54,490/. Besides it, the above said damages / compensation, a sum of Rs. 70,000/- under the conventional heads i.e. Funeral expenses, Loss of Consortium and Loss of Estate has to be added to the above said amount.

41. As such, petitioners are entitled for the compensation as under:

1. Loss of dependency/ contribution to family: Rs. 12,54,490/-
2. Funeral Charges Rs. 15,000/-
3. Loss of consortium Rs. 40,000/-
4. Loss of Estate Rs. 15,000/-

Total = Rs. 13,24,426/- rounded of
Rs.13,25,000/-)

MAC No. 1333/16	Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1334/16	Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.
MAC No. 405/16	Jitender Vs. Sudesh Kumar Rajora & Ors.
MAC No. 1246/16	Manish Kumar & Ors Vs. Dharamveer Singh & Ors.

46/57

42. Keeping in view of the facts and circumstances of this case, Petition is allowed. Petitioners are entitled for compensation of Rs.13,25,000/- from the Respondents No. 3 & 6 i.e. The New India Assurance Co. Ltd. with interest @ 9% p.a. from the date of filing of the petition till its realization, subject to waiver of interest, if any as directed by this court during the pendency of this case and further with right of recovery of 50% of the entire award amount from Respondents No. 2, 4, & 5 jointly and severally. Respondents No. 3 & 6 are directed to give notice regarding deposit of the said amount to the petitioner and their counsel. As such, petitioners have successfully discharged the onus to prove the issue No. 2 and are entitled for the claim amount as above. The following award is passed as under:

AWARD This petition is allowed. Respondents No. 3 & 6 i.e. The New India Assurance Co. Ltd. is directed to pay a compensation of Rs. 13,25,000/- with interest @ 9% p.a. from the date of filing of this petition till its realization to the Petitioners subject to waiver of interest, if any as directed by this court during the pendency of this case and to deposit the award amount within one month from the date of this award. However, Respondent No. 3 & 6 shall have right to recovery of 50% of total award amount from the Respondents No. 2, 4, and 5. Copy of Form V duly filled shall be treated as part of this award. Award amount be released to the injured / claimant after deposit by the Respondents No. 3 & 6 in terms of disbursement.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 47/57

43. Apportionment of Award amount: The award amount has to be distributed amongst the claimants. Petitioner No. 1 is the husband of deceased and was not to be considered dependent upon the deceased, but he shall be entitled for 20% of the entire award amount i.e. Rs. 2,65,000/-. Petitioner No. 2 and 3 are the children of the deceased and are entitled for 40 % (each) of the award amount i.e. Rs.

5,30,000/- (each). The share amount of petitioners shall be with corresponding interest of the award amount.

44. Disbursement of the award amount: Now the disbursement of award amount has to be considered. Petitioner No. 1 Manish Kumar shall be entitled for an amount of Rs. 65,000/- out of Rs. 2,65,000/- with corresponding interest instantly to be credited in his saving bank account nearby to his residence. Remaining amount of Rs. 2,00,000/- shall be fixed into Two automatically renewable FDRs of Rs. 1 Lac each for a period of one years and one years respectively. The FDR amount shall be released automatically on maturity basis against the account of the Petitioner No.1. Meanwhile, FDRs shall not be en-cashed without the permission of the court.

44.1. Petitioners No. 2 to 3 are minor children of the deceased and their share amount shall be fixed by the way of FDR till attainment of majority by them. Thereafter, the amount shall be released under the directions of this court.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 48/57 MAC No-405/16

45. ISSUE No. 2 in MAC No.405/16 qua injury to injured Master Jitender- The onus to prove this issue was also fixed upon the Petitioner. Since the Petitioner has proved that the Respondents who were driver of the both vehicles caused this accident by their rash and negligent driving due to he is entitled for compensation.

46. The scope of the compensation in injury cases has been discussed by the Hon'ble Supreme Court in case titled Mr. R.D. Hattangadi vs M/S Pest Control (India) Pvt. Ltd., 1995 AIR 755 in the following words 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 or profit upto 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 person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs.

47. Further, in *Raj Kumar v. Ajay Kumar* (2011) 1 SCC (Cri) 1161, has laid down the following criteria to determine the compensation in injury cases as under:

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earning on account of permanent disability.

(iii) Future medical Expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and /or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earning on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii) (a) do not pose much difficulty as they involved reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses-Item (ii) - depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages-Items

(iv), (v) and (vi) - involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/ deprivation/ disability suffered by the claimant and the effect thereof

on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability- Item (ii) (a).

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 50/57 In view of the above said law, the damages of the petitioner have to be decided under the following heads as under:

48. Reimbursement of medical expenses: Petitioner has proved medical bill Ex.PW3/2 (colly.) for Rs. 18,531/- and Respondents have not disputed these bills. PW1 has not got any reimbursement of these bills due to he is entitled for the reimbursement of these medical bills.

49. Pain and Suffering: PW1 has proved that he sustained injuries but his medical documents have proved that the nature of his injuries was not so serious. As per MLC his Ex.PW3/1, he suffered only injuries like CLWs and abrasions on knee and thigh. Even his hospitalization was between the period from 13.12.13 to 16.12.13 i.e. only for three days. However, injured minutely escaped from this fatal accident which claimed three lives and also sustained injuries due to he is bound to suffer physical and mental pain and sufferings and shall be entitled for compensation under this head.

50. Conveyance & Special diet: Petitioner has not filed any bill of conveyance and special diet to prove that he spent any amount under these heads. However, injured sustained injuries and remained hospitalized for three days and also got follow up treatment thereafter as proved by his documents. He also must be provided some special diet due to he is entitled for some compensation under these heads of conveyance and special diet.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 51/57

51. Attendant charges: Petitioner has not proved that he availed the services of any attendant. Even his hospitalization was only for 3 days due to he is not entitled for any compensation under this head

52. Lose of Income during treatment period: Petitioner has not proved that he was earning something. Though he has alleged that he was earning Rs.6,000/- pm, yet he was minor student and was not supposed to do any work except to assist his family members in day to day work, due to there was no loss of earning to injured by this accident. Even otherwise his treatment period was only for 3 days between 13/12/13 to 16/12/13 and no loss of income of the injured was expected during this period. As such, injured is not entitled for any loss of earning on account of this accident. However, on average basis, he is awarded Rs.5000/- as consolidated amount under this head.

53. Lose of disability: Petitioner is not entitled for any compensation under this head being not suffered by any such injury.

54. Damages for convenience, hardship, discomfort, frustration and mental stress in life: Petitioner has not proved that he has suffered any disfigurement by this accident. However, some loss of amenities and enjoyment to such injured can be easily presumed who escaped from the accident which claimed the life of other occupants of the vehicle being traveled by him. As such, petitioner is entitled for compensation under these heads.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 52/57

55. As such, petitioner is entitled for the compensation as under:

1. Reimbursement of medical expenses: Rs. 18,531/-
2. Pain and Suffering: Rs. 15,000/-
3. Lose of Income during treatment period: Rs. 5,000/-
4. Conveyance & special diet: Rs. 5,000/-
5. Damages for convenience, hardship, Rs. 15,000/-

discomfort, frustration and mental stress in life:

Total =	Rs. 58,531/- (rounded Rs. 59,000/-)
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56. Keeping in view of the facts and circumstances of this case, Petition is allowed. Petitioners are entitled for compensation of Rs.59,000/- from the Respondents No. 3 & 6 i.e. The New India Assurance Co. Ltd. with interest @ 9% p.a. from the date of filing of the petition till its realization, subject to waiver of interest, if any as directed by this court during the pendency of this case and further with right of recovery of 50% of the entire award amount from Respondents No. 2, 4, & 5 jointly and severally. Respondents No. 3 & 6 i.e. The New India Assurance Co. Ltd. are directed to give notice regarding deposit of the said amount to the petitioner and their counsel. As such, MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 53/57 petitioners have successfully discharged the onus to prove the issue No. 2 and are entitled for the claim amount as above. The following award is passed as under:

AWARD This petition is allowed. Respondents No. 3 & 6 i.e. The New India Assurance Co. Ltd. is directed to pay a compensation of Rs.59,000/- with interest @ 9% p.a. from the date of filing of this petition till its realization to the Petitioners subject to waiver of interest, if any as directed by this court during the pendency of this case and to deposit the award amount within one month from the date of this award. However, Respondent No. 3 & 6 shall have right to recovery of 50% of total award amount from the Respondents No. 2, 4, and 5. Copy of Form V duly filled shall be treated as part of this award. Award amount be released to the injured / claimant after deposit by the Respondents No. 3 & 6 in terms of disbursement.

57. Disbursal of Award amount: Petitioner is minor in this case and his award amount has to be fixed by the way of FDR till attainment of majority. Thereafter, amount shall be released with the permission of the court. However, interest amount shall be released to his mother against transfer her account so that she may meet out the expenses of the treatment and other expenses of the injured.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 54/57

58. Now the terms of the conditions which shall be common to all the FDR are to be set out as under:

58.1. The FDR shall be renewed automatically and interest shall be payable on the FDR on quarterly basis credited to the saving account of the claimant/s. On maturity of the FDRs, the amount shall be credited automatically in the saving back account of the petitioner/s.

58.2. The Manager, UCO Bank or of any other bank as desired by the claimants shall open the saving bank account of the claimant/s or transfer to his/ her/ their existing accounts, if any nearest to her/his/their residence, after taking relevant documents.

58.3. The withdrawal from the aforesaid bank accounts of the petitioner/s / claimant/s shall be after due verification by the bank and the bank shall issue photo identity card to the petitioners to facilitate the identity.

58.4. The original FDR shall be retained by the bank in the safe custody. However, the original pass book shall be given to the petitioner/s alongwith the photocopies of the FDRs.

58.5. No loan, advance or withdrawal / pre-mature discharge shall be allowed on the above-said FDRs without the permission of this Tribunal. The bank shall not open any joint accounts of the petitioner/s.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 55/57 58.6. No cheque-book or debit card shall be issued to the claimants/ petitioner/s without the permission of this Tribunal and bank shall make an endorsement to this effect on the cheque book or passbook.

58.7. The petitioner shall furnish a copy of the pass book or endorsement to this effect before the court on next date of hearing, if amount is being transferred to the existing bank account of the claimant other than UCO Bank.

58.8. The bank shall prepare FDRs in its own name on the receipt of the award amount from the Respondents till petitioner approach to this Tribunal for release of amount and, thereafter, amount along with interest shall be released to the petitioner per award of this Tribunal.

58.9. On the request of the petitioners, the bank shall transfer the saving account to any other branch of UCO bank or any other bank according to the convenience of the petitioners. The claimants may operate the saving bank account with the nearest branch of UCO Bank and on the request of the claimant/s, the bank shall prove this facility.

58.10. The petitioners shall furnish all the relevant documents for opening of the saving bank account and FDR to Nodal Officer, UCO Bank, KKD, Delhi.

MAC No. 1333/16 Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 1334/16 Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors. MAC No. 405/16 Jitender Vs. Sudesh Kumar Rajora & Ors. MAC No. 1246/16 Manish Kumar & Ors Vs. Dharamveer Singh & Ors. 56/57

59. A copy of this judgment be given free of cost to the parties concerned and also be sent to the court of Ld. MM concerned as well as DLSA, Shahdara. Copy of Form V duly filled shall be treated as part of this award. File be consigned to record room and a separated file for compliance be maintained for 11.05.2018. Digitally signed by DEVENDER KUMAR DEVENDER Date:

KUMAR

2018.04.09

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Announced in open court
On 09.04.2018

(DEVENDER KUMAR)
PO-MACT/SHAHDARA
KARKARDooma COURTS, DELHI

MAC No. 1333/16
MAC No. 1334/16
MAC No. 405/16
MAC No. 1246/16

Smt. Santa & Ors Vs. Sudesh Kumar Rajora & Ors.
Smt. Rajo Devi & Ors Vs. Sudesh Kumar Rajora & Ors.
Jitender Vs. Sudesh Kumar Rajora & Ors.
Manish Kumar & Ors Vs. Dharamveer Singh & Ors.

57/57