

Mrs. Nupur Singh vs Rama Ram on 2 March, 2015

IN THE COURT OF MS. GEETANJLI GOEL, PO: MOTOR ACCIDENT
CLAIMS TRIBUNAL-2, PATIALA HOUSE COURTS, NEW DELHI

Suit No.75/14

Date of Institution: 25.03.2010

IN THE MATTER OF:

1. Mrs. Nupur Singh
W/o Late Shri Vinod Kumar Singh
R/o C/o Shiv Nayak Singh
23 (2nd Floor), Block-C
Paryawaran Complex
IGNOU Road, Saket
New Delhi.

2. Master Viraj Singh (Minor)
Through his mother
Petitioner No.1 being
Natural Guardian.

3. Master Naman Singh (Minor)
Through his mother
Petitioner No.1 being
Natural Guardian.

4. Mrs. Urmila Singh
(Mother of the Deceased)
R/o C/o Shiv Nayak Singh
23 (2nd Floor), Block-C
Paryawaran Complex
IGNOU Road, Saket
New Delhi.

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Nupur Singh v Rama Ram & Ors.

5. Shri Janardan Singh
(Father of the deceased)
R/o C/o Shiv Nayak Singh
23 (2nd Floor), Block-C
Paryawaran Complex
IGNOU Road, Saket
New Delhi.

Versus

1. Rama Ram
S/o Shri Ransod Ram Patel

R/o Village Doli
PS Jhawar
District Jodhpur
Rajasthan

2. Shri Bhaira Ram
S/o Shri Bhakar Ram Ji Patel
R/o Village Gobra (Kalan)
District Jodhpur
Rajasthan

3. National Insurance Co. Ltd.
Jodhpur Branch, Jodhpur
Rajasthan

4. Shri Rajender Singh
S/o Shri Harpal Singh
R/o B-530, Gadoli Dairy Farm
Mayur Vihar Phase-III
Delhi -110096.

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5. Shri Nitin Tuli
S/o Shri J.K. Tuli
R/o J-3/137A, Second Floor
Rajouri Garden
New Delhi - 110027.

6. IFFCO Tokio General Insurance Co. Ltd.
Lawrence Road, Delhi.

Final Arguments heard	:	16.
Award reserved for	:	02.
Date of Award	:	02.

AWARD

1. Vide this judgment ☐ cum ☐ award, I proceed to decide the petition filed u/s 166 and 140 of Motor Vehicle Act, 1988, as amended up ☐ to ☐ date (hereinafter referred to as the Act) for grant of compensation in a road accident.

2. It is the case of the petitioners that on 13.09.2009 the deceased Vinod Kumar Singh had gone to Udaipur on an official work of his company. He was using the vehicle bearing No.DL ☐ 4CAE ☐ 9634 (a private vehicle of his personal friend) along with Shri Rajat Arora. After completing his work they

were returning back to Jodhpur and the said vehicle was driven by Mr. Rajinder Singh. At about 9.15 p.m. they reached Sadar Kankani, suddenly a bus bearing No.RJ19PA-5105 which was coming from the side of Jodhpur with a very high speed, hit their vehicle. It is averred that the Innova car in which the Nupur Singh v Rama Ram & Ors. Page no. 3 of 64 deceased was traveling got fully damaged with the impact of the high speed bus and Mr. Vinod Kumar got grievous injuries on various parts of his body. A passerby called the ambulance No.108, which reached the spot and took Vinod Kumar to MDM Hospital, Jodhpur. It is averred that on reaching the hospital the doctor declared Mr. Vinod Singh to be brought dead. Shri Rajat Arora, the co-passenger of the deceased in the vehicle at the time of the accident was the eye witness of the accident and deposed the facts to the police and also in the FIR. He confirmed that the accident took place because of the rash and negligent driving of the bus driver involved in the accident. Besides the incident took place near a Hotel. It is averred that many persons present at the time of the accident near the Hotel or working in the said Hotel had seen the said incident. The matter was reported to local Police Station, PS Luni, which covered the accident, lodged FIR No.109/2009 under Sections 279/337/304A IPC and prepared the relevant documents in regard to the accident causing the death of Shri Vinod Singh. It is averred that the principle of res ipsa loquitur is attracted in the case. It is averred that the accident was caused due to the rash and negligent driving of the respondent No.1 and the respondent No.4 as the driver of the vehicle which was also involved in the accident and the respondents No.2 and 5 are the owners of the vehicles and the respondents No.3 and 6 are the insurer of both the vehicles involved in the accident and as such all the respondents are jointly and severally liable to pay the compensation.

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3. It is averred that the deceased was 38 years old at the time of his death. He was qualified and trained MBA, having experience of more than 15 years in managing one of the best reputed companies at Senior Executive level and he was working as Regional Area Manager with Philips Electronics India Ltd., Gurgaon, Haryana and was earning Rs.60,000/ p.m. approximately. It is averred that the deceased was having very promising future and inspired to become the CEO of the said company. It is stated that the deceased was the only son of a retired senior Defence Service Officer with a higher middle class status leading polished and socially well esteemed life. It is averred that the parents of the deceased were old ailing persons and his wife and 2 sons were totally dependent on the income of the deceased. It is averred that the deceased was of sound health and longevity of age in his family had been over 70 years. It is averred that the deceased had been living at Saket with his wife and two sons with his uncle for the previous over 2 years since the day he had been working at Gurgaon with the company. It is prayed that an amount of Rs.2,25,00,000/ be awarded as compensation in favour of the petitioners and against the respondents jointly and severally.

4. Written statement was filed on behalf of the respondents No.1 and 2 taking the preliminary objections that the amount of compensation claimed by the petitioners is very much excessive, exorbitant and without any basis. It is averred that the accident in question took place because of the sole negligence of the driver of vehicle bearing No.DL-4CAE-9634 who could not Nupur Singh v Rama Ram & Ors. Page no. 5 of 64 control his vehicle and collided with the vehicle bearing No.RJ-

19PA5105 which was driven by the respondent No.1 with utmost care and caution on his side of the road. It is averred that the site plan prepared by the police clearly reveals that the accident took place because of the negligence on the part of the driver of the vehicle bearing No.DL4CAE9634. It is averred that the respondents No.1 and 2 have no liability to pay any compensation to the petitioners as the vehicle bearing No.RJ9PA5105 was duly insured with the respondent No.3 on the date of the accident. It is averred that the respondent No.1 was holding a valid and effective driving license on the date of the accident and the vehicle bearing No.RJ9PA5105 was being used under a valid permit and as such only the respondent No.3 was liable to pay compensation to the petitioners, if granted. The averments made in the claim petition were denied. It is averred that the accident took place because of the sole negligence of the driver of vehicle bearing No.DL4CAE9634 and the respondent No.1 was not at all responsible for the accident and the other vehicle was being driven in careless manner. It is averred that the criminal case lodged by the police against the respondent No.1 was not at all based on any scientific investigation of the truth but had been done mechanically.

5. Amended written statement was filed on behalf of the respondent No.3 National Insurance Co. Ltd. taking the preliminary objections that the averments made in the claim petition were not true and correct. It is stated that the offending bus bearing registration No.RJ9PA5105 was insured with the Nupur Singh v Rama Ram & Ors. Page no. 6 of 64 respondent No.3 at the time of the alleged accident, vide policy No. 370500/31/09/6300000938 effective from 30.07.2009 to 29.07.2010. It is averred that the site plan prepared by the police clearly showed that the driver of the Innova Car bearing registration No.DL4CAE9634 was driving his car rashly and negligently at a very high speed and also on the wrong side and it clearly revealed that the bus bearing registration No.RJ9PA5105 was moving on the left side of the road as per the traffic rules, but the Innova car totally came to the wrong side due to which the alleged accident occurred. It is averred that the driver of the bus had tried his level best to avert the collision, but the car was completely moving on the right side of the road, which ended in an accident. Therefore, at the time of the alleged accident, the driver of the Innova car was solely and highly negligent in driving his vehicle and due to the said reason alone the accident occurred and as such the driver, owner and insurer of the offending Innova Car were liable to pay the compensation to the petitioners and the petition against the respondent No.3/National Insurance Co. was not maintainable. It is averred that Shri Jeta Ram son of Shri Mangla Ram and Shri Sukh Ram son of Shri Mangla Ram, who are the owners of the hotel in front of which the accident occurred had clearly admitted in their statement given to the police that at the time of the alleged accident, the driver of the Innova car was trying to overtake the Truck, which was going ahead of the Innova Car, ignoring the other traffic and due to the wrong overtaking, the accident occurred. It is averred that the petition is bad for non-joinder of necessary parties. It is averred that the property search and seizure form Nupur Singh v Rama Ram & Ors. Page no. 7 of 64 clearly revealed that at the time of search and seizure of the property, the back side right-hand tyre was punctured of the Innova car bearing registration No.DL4CAE9634 and it could be assumed that due to the high speed and overtaking of the truck, which was ahead, the driver of the Innova car had lost the control of his vehicle and hit the offending bus. Therefore, the petitioners could not claim compensation against the driver, owner and insurer of the bus bearing registration No.RJ9PA5105. It is averred that the site plan of the spot of the accident prepared by the police clearly showed that the accident occurred on the kachha road/portion, which was absolutely and clearly

outside the road. It is averred that the driver of the bus took the bus to the extreme left side to save the accident, but the driver of the Innova car kept on moving in high speed and hit the bus from the side. It is averred that the IO of the case, in the Crime Details Form had mentioned his observation that at the time of the alleged accident, both the drivers of the vehicles were negligent. The averments made in the claim petition were denied. It is averred that the amount claimed is exorbitant taking into consideration the age, dependency and various other factors. It is averred that there was a high degree of negligence on the part of the driver of the Innova car in which the deceased was travelling. It is averred that the accident was caused due to the rash and negligent driving of the respondent No.4/driver of Innova car bearing No.DL4CAE9634.

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6. Written statement was filed on behalf of the respondent No.4 taking the preliminary objections that the petition had been filed on false and frivolous grounds and there was not even an iota of evidence to suggest any carelessness or negligent conduct on the part of the respondent No.4. It is averred that the petition has been preferred without any case of action. It is averred that as a matter of fact the accident in questioned occurred on account of sole rash and negligent driving of the driver of the offending bus bearing No.RJ19PA5105 and the said factum was very much clear from the contents of FIR bearing No.190/2009 which had been registered at the instance of one eye witness Shri Rajat Arora. It is averred that the vehicle bearing No.DL4CAE9634 was duly insured with IFFCO Tokio General Insurance Co. Ltd. vide cover note No.38460790 and was having a valid insurance cover at the time of accident and if the petitioners are held to be entitled for the compensation of any amount, it would be the liability of the insurance company to pay the compensation to the petitioners. It is averred that the petitioners are guilty of suppressio veri and the petitioners had willfully not disclosed that no fault was attributable to the respondent No.4 and further without any fault being attributable to the respondent No.4, they had been dragged into the litigation. The averments made in the claim petition were denied. It is averred that the compensation claimed is highly exaggerated and hence, untenable. It is averred that the alleged future prospects of the deceased cannot be taken into account. It was denied that the accident was caused due to any rash and negligent driving of the respondent No.4 as Nupur Singh v Rama Ram & Ors. Page no. 9 of 64 alleged. It is averred that the petitioners themselves had averred that the accident in question took place on account of rash and negligent driving of bus bearing No.RJ19PA5105 by the respondent No.1 which was driven by the respondent No.1 at a very high speed and due to that reason the said offending vehicle hit the Innova car bearing No.DL4CAE9634 which was being driven by the respondent No.4 by following all the traffic rules and accordingly the respondent No.4 was neither a necessary nor a proper party to the petition.

7. Written statement was filed on behalf of the respondent No.5 taking the preliminary objections that the petition had been filed on false and frivolous grounds and there is no cause of action against the respondent No.5 who is just the owner of Innova car and at the time of the alleged accident the said vehicle was driven by the respondent No.4. It is averred that the respondent No.4 is an experienced driver and having a valid driving license. It is averred that the petitioners themselves had averred that the accident in question took place on account of rash and negligent driving of bus bearing No.RJ19PA5105 by the respondent No.1 which was driven by the respondent No.1 at a very

high speed and due to that reason the said offending vehicle hit the Innova car bearing No.DL4CAE9634 which was being driven by the respondent No.4 by following all the traffic rules and accordingly the respondent No.5 was neither a necessary nor a proper party to the petition. Similar averments were made as in the written statement of the respondent No.4. It was admitted that the Nupur Singh v Rama Ram & Ors. Page no. 10 of 64 respondent No.5 is the owner of the Innova Car but it was denied that the said vehicle was the offending vehicle as alleged.

8. Written statement was filed on behalf of the respondent No.6 taking the preliminary objections that the petition does not disclose any cause of action against the respondent No.6. It is averred that the petition is liable to be dismissed qua the respondent No.6 as the concerned IO in his Crime Detail Form had specifically stated that the driver of the vehicle bearing registration No.RJ19PA5105 was driving the said vehicle in a rash and negligent manner and was solely responsible for causing the accident. It is averred that it is also the case of the petitioners that the said accident took place solely because of the rash and negligent driving of the vehicle bearing No.RJ19PA5105 insured by respondent No.3 and the said averments were supported by the statement of the eyewitness who was traveling with the deceased at the time of the accident namely Shri Rajat Arora who had specifically stated that the accident was caused solely due to the rash and negligent driving of the vehicle bearing registration No.RJ19PA5105 and there was no fault on the part of the vehicle bearing registration No.DL4CAE9634 insured by the respondent No.6. It is averred that the driver of the vehicle bearing No.DL4CAE9634 was an experienced driver having a valid DL. The averments made in the claim petition were denied. It is averred that the concerned IO after due investigation had reported in the Crime Details Form that the driver of bus bearing registration No.RJ19PA5105 was driving the said vehicle in a rash and Nupur Singh v Rama Ram & Ors. Page no. 11 of 64 negligent manner and had caused the alleged accident and the driver of the offending vehicle bearing No.RJ19PA5105 was charged. It was denied that the accident was caused due to rash and negligent driving of the respondent No.4 whose owner is respondent No.5. It was denied that the insurance company insuring the alleged vehicle bearing registration No.DL4CAE9634 was liable in any event towards any compensation to be paid to the petitioners as the insured vehicle bearing registration No.DL4CAE9634 was not the offending vehicle rather the vehicle bearing registration No.RJ19PA5105 was being driven in a rash and negligent manner and caused the said alleged accident resulting into the death of Shri Vinod Kumar.

9. Replication was filed on behalf of the petitioners to the written statement filed by the respondent No.6 denying the averments made in the written statement and reiterating and reaffirming the averments made in the claim petition. It is averred that the cause of action arose against the respondent No. 6 as the deceased died in the accident involving the vehicle bearing registration No.DL4CAE9634 in which he was travelling and the vehicle was insured on the day of the accident with the respondent No.6. It was stated that the accident occurred because of the rash and negligent driving of the vehicle bearing registration No.RJ19PA5105 by its driver, however the respondent No.6 was also jointly liable to pay the compensation to the deceased as the vehicle in which the deceased was travelling was also involved in the accident.

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10. Vide order dated 21.7.2011 the application under order 1 rule 10 CPC filed on behalf of the respondent No.3 was allowed and it was directed that the LR's of the driver (since deceased), owner and insurer of the vehicle bearing No.DL-4CAE-9634 be impleaded as parties. Vide order dated 1.6.2012 of my learned predecessor the respondents No.1 and 2 were proceeded ex-parte. On the said date award was passed in favour of the petitioners under Section 140 of the MV Act. Vide order dated 18.10.2012 of my learned predecessor the respondents No.4 and 5 were proceeded ex-parte. Vide order dated 16.4.2013 of my learned predecessor the applications under order 9 rule 7 CPC filed on behalf of the respondents No.4 and 5 were allowed. From the pleadings of the parties, the following issues were framed vide order dated 16.04.2013 of my learned predecessor:

1. Whether the deceased sustained injuries in the accident which occurred on 13.09.2009 at about 9.15 P.M. at Sarad Kankani, Jodhpur, Rajasthan, within jurisdiction of PS Luni caused by rash and negligent driving of vehicle No.RJ19PA5105 driven by respondent no.1, owned by respondent no.2 and insured with respondent no.3? OPP.
2. Whether the petitioners are entitled for compensation? If so, to what amount and from whom?
3. Relief?

Vide order dated 29.11.2013 of my learned predecessor the application under order 14 rule 5 CPC filed on behalf of the respondent No.3 for framing of Nupur Singh v Rama Ram & Ors. Page no. 13 of 64 additional issues was allowed and the following additional issue was framed:

Whether the accident was caused due to composite negligence of drivers of vehicles bearing no.RJ19PA5105 and Innova bearing no.DL-4CAE-9634 being driven by respondents no.1 and 4 respectively or the driver of Innova car bearing no.DL-4CAE-9634 contributed to the accident, if so, its effect?

11. On behalf of the petitioners the petitioner No.1 Smt. Nupur Singh appeared in the witness box as PW1 and led her evidence by way of affidavit which is Ex.PW1/A reiterating the averments made in the claim petition. She deposed that she is the wife of the deceased Late Shri Vinod Kumar Singh and was a house wife. She stated that her husband was serving as a General Manager (North) in Philips Electronic India Ltd., Gurgaon. She stated that she had been staying along with her complete family consisting of her father-in-law, mother-in-law, husband and two sons namely Viraj Singh (born on 22.11.2000) and Naman Singh (born on 12th March, 2004) at 23 (2nd Floor), Block C Paryawaran Complex, Saket, New Delhi. She stated that she had got married with Late Shri Vinod Kumar Singh on 11.05.1999 and their life was extremely happy as anybody would have liked. However, bad luck struck and on 14.09.2009 when her husband was out on an official company tour to Udaipur and Jodhpur from Udaipur, the accident was so severe that her husband died on the spot about which they were informed by Mr. Mahesh on 14.09.2009 at 22.30 hrs. She stated that after

the sudden demise of her Nupur Singh v Rama Ram & Ors. Page no. 14 of 64 husband, their family life got an unbearable jolt and the parents of her husband could not bear it and shifted to Pune after sometime. She stated that she chose to stay back because of the education of the children and had also shifted to a new accommodation at D 1006 Amba G Residency, Ahinsa Khand Indirapuram, Ghaziabad, U.P. 201014. She stated that both her sons were going to reputed school and they had a reasonably quality life. She stated that the loss of the only earning member in the family obviously hurt them economically besides emotional set back. She stated that it was really difficult to maintain the same standard and level of education of the two growing up sons for her. She stated that her husband being a Senior Executive at Philips Electronics India Ltd. at Gurgaon was earning a handsome salary of approximately Rs.80,000.00 per month including allowances and incentives.

She stated that her husband was an ambitious young man who had adequate qualifications and zeal to go to the top of his organization in the very near future. She stated that her husband was about 39 years of age at the time of the accident, resulting in his death. Copy of marriage certificate is Ex.PW1/1, copy of her Aadhar card is Ex.PW1/2, copy of birth certificates of her children are Ex.PW1/3 (colly), copy of All India Secondary School Examination Certificate issued by CBSE of her husband is Ex.PW1/5, copy of MBA certificate of her husband is Ex.PW1/5, certified copies of criminal record are Ex.PW1/6, affidavit filed in respect of residential proof is Ex.PW1/7, copy of pay slip of her husband and copy of Form 16 are Mark A (colly). She was not cross examined on behalf of the respondents No.4 and 5.

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12. The petitioner No.5 Shri Janardhan Singh appeared in the witness box as PW2 and led his evidence by way of affidavit which is Ex.PW2/A. He deposed that he is a retired Government servant, having served as a Senior Warrant Officer in the Ministry of Defence. He stated that he along with his wife Smt. Urmila Singh and son Late Shri Vinod Kumar Singh along with his wife Ms. Nupur Singh and two minor sons namely Viraj and Naman was staying at 23 (2nd Floor), Block C, Paryawaran Complex, IGNOU Road, Saket, New Delhi. He stated that Vinod was serving with Philips Electronic India Ltd. at Gurgaon till September 2009. He stated that Vinod Kumar Singh was their only son and had been very intelligent and enthusiastic young man. He was given best of the education in reputed schools. Having passed his Bachelor of Computer Science from Pune University, he did his Management Degree MBA from Bhartiya Vidhya Peeth, Pune and joined Onida Electronics as a Marketing Executive. He changed a couple of companies before joining Philips India Ltd. at Gurgaon as a Senior Executive in the year 2006 and was earning about Rs.80,000/- per month including his various allowances and incentives. He stated that Late Vinod Kumar Singh had been going out of town quite often on his official company tours and on 13.09.2009, similarly he proceeded on official tour/company to Udaipur. He took one of his friends also along with him namely Shri Rajat Arora. Having visited Udaipur when he was on his way to Jodhpur, he met with an accident on 14.09.2009 about which he was informed by Mahesh on 15.09.2009 at estimated time about 8.00 on telephone. He stated that it was obviously a shock for

him and the entire family. He stated Nupur Singh v Rama Ram & Ors. Page no. 16 of 64 that Vinod was a very healthy young man, aged about 40 years at the time of his death (having been born on 25.09.1969) and being a good sportsman took prize in keeping himself always physically fit. He stated that the average age in their family was over 75 years and they had no history of any chronic. He stated that the sudden death of their only son had left him and his wife completely shattered and his loss had not yet been completely reconciled. He stated that the mother of the deceased had taken more seriously and had gone into deep depression due to the sudden demise of her only son. Similarly the loss had been unbearable to Nupur and her two sons who were still struggling to admit the reality and face the cruel world on their own. He stated that he along with his wife had shifted to Pune after the death of his son in the month of September 2009. Nupur along with her two sons also shifted to a new accommodation since it was difficult for the family to stay at the same place after the demise of Late Shri Vinod Kumar Singh. Copy of his Ex-Service man identity card is Ex.PW2/1 and copy of Ex-Service man Contributory Health Scheme card of his wife is Ex.PW2/2. He was not cross-examined on behalf of the respondent No.6.

13. Shri Yashpal Mendiratta, Sr. Manager, Human Resources, Philips Electronics India Ltd. was produced in the witness box as PW3 and the authority letter in his favour is Ex.PW3/A. He stated that he personally knew the deceased Vinod Kumar Singh who was working as General Manager, Consumer Electronics Division. He joined the company on 05.09.2007. The Nupur Singh v Rama Ram & Ors. Page no. 17 of 64 certificate regarding his salary for August 2009 is Ex.PW3/B. He stated that the deceased was being paid Rs.2.4 Lakhs approximately per month. Copy of the appointment letter is Ex.PW3/C (colly). He was not cross-examined on behalf of the respondents No.4 and 5.

14. Shri Rajat Arora appeared in the witness box as PW4 and led his evidence by way of affidavit which is Ex.PW4/A. He stated that he was working in Philips India Ltd. situated at Gurgaon, Haryana as state head, Manager Sales since June 2009 till January, 2013. He stated that his office colleague Late Shri Vinod Kumar who was also working in Philips India Ltd. came to Jaipur from Ghaziabad on 13.09.2009 by Innova Car bearing registration No.DL4CAE9634 driven by driver namely Rajender Singh, for some official work and from Jaipur they both went to Udaipur to complete some other official assignment allotted to them by their company i.e. Philips India Ltd. He stated that after completing the official work of the company they were going from Udaipur to Jodhpur by the same vehicle i.e. Innova car driven by driver Rajender Singh, however around 9.15 p.m. when they reached at Sadar Kankani, suddenly bus bearing registration No.RJ19PA5105 which was coming from the Jodhpur side with a very high speed and was being driven by its driver in a rash and negligent manner, hit their vehicle i.e. Innova Car in which he and Late Vinod Kumar were traveling. As a result of the said accident, their vehicle got almost fully damaged by the impact of the high speed bus and due to such impact Vinod Kumar sustained grievous injuries on Nupur Singh v Rama Ram & Ors. Page no. 18 of 64 various parts of his body. He stated that he (PW4) was sitting on the right side of the Innova car exactly behind the driver Shri Rajinder Singh and as such he was also injured but was in a conscious state. He stated that at the same time Shri Vinod Kumar Singh who was sitting on the left side of the car with him was seriously injured as the vehicle was hit from the left side and was unconscious after the accident from the offending bus bearing registration No.RJ19PA5105. He stated that due to the accident, he remained hospitalized for some period. He

stated that the accident solely occurred on account of high speed and rash and negligent driving of the offending bus bearing No.RJ19PA5105, by its driver. He stated that the driver of their vehicle i.e. of Innova Car was driving within permissible limits of speed as well as by observing all the traffic rules and regulations. He stated that at the place of the accident there were some dhabas/hotels and the people at those dhabas/hotels helped them and took them out from the badly damaged Innova car. Thereafter, the ambulance on 108 was called and he took Shri Vinod Kumar to MDM Hospital by ambulance. However, unfortunately Vinod Kumar was declared brought dead by the doctors of MDM Hospital. He stated that the police officers from the Luni police station were also informed about the accident and the complaint was made to the police officials only on 15.09.2002 (ought to be 15.9.2009) and on the said complaint FIR bearing No.190/2009 u/s 279/337/304A was registered at Luni Police Station. He was not cross-examined on behalf of the respondents No.4 and 5. PE was closed on 4.9.2014.

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15. On behalf of the respondent No.3 Shri Rajesh Ranjan, Administrative Officer appeared in the witness box as R3W1 and led his evidence by way of affidavit which is Ex.R3W1/A. The insurance of the offending bus bearing registration number RJ19PA5105 at the time of the alleged accident with the company i.e. the respondent No.3 vide policy No. 370500/31/09/6300000938 effective from 30.7.2009 was admitted. He stated that the site plan prepared by the police clearly showed that the driver of the Innova car bearing registration number DL4CAE9634 was driving his car rashly and negligently at a very high speed and also on the wrong side. He stated that the site plan of the incident clearly revealed that the bus bearing registration No.RJ19PA5105 was moving on the left side of the road as per the traffic rules but the Innova Car totally came to the wrong side due to which the alleged accident occurred. He stated that the driver of the bus had tried his level best to avert the collision, but the car was completely moving in the right side of the road, which ended in an accident. Therefore, at the time of the alleged accident, the driver of the Innova car was solely and highly negligent in driving his vehicle and due to the said reason alone the accident occurred and in view of the same, the driver, owner and insurer of the offending Innova Car were liable to pay the compensation to the petitioners. He stated that Shri Jeta Ram s/o Shri Mangla Ram and Shri Sukh Ram s/o Shri Mangla Ram who were the owners of the hotel in front of which the accident occurred had clearly admitted in their statement given to the police that at the time of the alleged accident, the driver of the Innova car was trying to overtake the truck, which Nupur Singh v Rama Ram & Ors. Page no. 20 of 64 was going ahead of the Innova car, ignoring the other traffic and due to the said wrong overtaking, the accident occurred. He stated that in view of the same, the liability, if any was of the owner, driver and insurer of the Innova car bearing registration No.DL4CAE9634. He stated that the property search and seizure Form clearly revealed that at the time of search and seizure of the property, the back side right hand tyre was punctured of the Innova car and it could be assumed that due to the high speed and overtaking of the truck, which was ahead, the driver of the Innova car had lost the control of his vehicle and hit the offending bus. He stated that as such the petitioners could not claim the compensation against the driver, owner and insurer of the bus bearing registration No.RJ19PA5105 while the driver, owner and insurer of the Innova car were responsible for the accident. He stated that the site plan of the spot of the accident prepared by the police clearly showed that the accident occurred on the kaccha road/ portion which

was absolutely and clearly outside the road. He stated that it was clear that the driver of the bus took the bus to the extreme left side to save the accident but the driver of the Innova car kept on moving on high speed and hit the bus from the side. He stated that the IO of the case, in the Crime Details Form clearly mentioned giving his observation that at the time of the alleged accident, both the drivers of the vehicles were negligent and charge sheeted. Copy of insurance certificate consisting of terms and conditions is Ex.R3W1/1 and the certified copy of Crime Details Form available in the criminal proceedings is Ex.R3W1/2 (colly). He was not cross-examined on behalf of the petitioners.

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16. On behalf of the respondent No.4 Shri Dharmender Kumar DEO, Mayur Vihar Transport Authority was produced in the witness box as R4W1 and he had brought the report in respect of DL issued to Shri Rajender Singh on 22.11.13 which was valid till 21.11.16. He stated that the earlier license was issued on 14.09.07 and expired on 13.09.10. The reports Ex.R4W1/A (colly) were signed by the Inspector. He was not cross-examined on behalf of the petitioners and the respondent No.3.

17. On behalf of the respondent No.6 Shri Pankaj Jain, Manager (Claims) appeared in the witness box as R6W1 and deposed that the respondent No.5 Nitin Tuli had lodged an own damage claim regarding the Innova No.DL4CAE9634 and he had given the description of the accident in the same which is Ex.R6W1/A. He stated that the matter was also got surveyed by the company and the report of the surveyor is Ex.R6W1/B. He stated that the OD claim was approved by the company and had already been paid. He was not cross-examined on behalf of the petitioners and the respondents No.4 and 5. RE was closed on 4.9.2014.

18. I have heard the Learned Counsel for the petitioners as well as the Learned Counsels for the respondents No.3, 4, 5 and 6 and perused the record. Written arguments were also filed on behalf of the petitioners and the respondents No.3 and 4 and 5 which I have perused. The petitioners were also examined on 20.11.2014 in terms of the judgment of the Hon'ble High Nupur Singh v Rama Ram & Ors. Page no. 22 of 64 Court on 11.1.2013 in MACA No.792/2006 titled Oriental Insurance Co. Ltd. v. Ranjit Pandey and Ors.

19. My findings on the specific issues are as under:

Issue No. 1 and the additional issue

20. As the petition has been filed U/s 166 M.V Act it was incumbent upon the petitioners to prove that the deceased sustained injuries in an accident caused due to the rash and negligent driving by the driver of the offending vehicle/ vehicles. To determine the negligence of the driver of the offending vehicle it has been held in National Insurance Company Ltd. vs Pushpa Rana & Another 2009 Accident Claims Journal 287 as follows:

"The last contention of the appellant insurance company is that the respondents/claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the judgment of the Hon'ble Apex

Court in Oriental Insurance Company Ltd. V. Meena Variyal (supra). On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced: (i) certified copy of the criminal record of criminal case in FIR No.955 of 2004, pertaining to involvement of offending vehicle (ii) criminal record showing completion of investigation of police and issue of charge sheet under sections 279/304A, Indian Penal Code against the driver;

(iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of deceased.

Nupur Singh v Rama Ram & Ors. Page no. 23 of 64 These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under the Motor Vehicle Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on part of the driver."

It is established law that in a claim petition under Motor Vehicle Act, the standard of proof to establish rash and negligent driving by the driver of the offending vehicle is not at par with the criminal case where such rashness and negligence is required to be proved beyond all shadow of reasonable doubt. In Kaushnamma Begum and others v. New India Assurance Company Limited, it was inter alia held by the Hon'ble Supreme Court that the issue of wrongful act or omission on the part of the driver of the motor vehicle involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injury or death to a human being or damage to property would make the petition maintainable under Sections 166 and 140 of the Motor Vehicle Act.

21. The case of the petitioners is that on 13.09.2009 the deceased Vinod Kumar Singh had gone to Udaipur on an official work of his company. He was using the vehicle bearing No.DL-4CAE-9634 (a private vehicle of his personal friend) along with Shri Rajat Arora. After completing his work they were returning back to Jodhpur and the said vehicle was driven by Mr. Rajinder Singh. At about 9.15 p.m. they reached Sadar Kankani, suddenly a bus Nupur Singh v Rama Ram & Ors. Page no. 24 of 64 bearing No.RJ19PA-5105 which was coming from the side of Jodhpur with a very high speed, hit their vehicle. It was averred that the Innova car in which the deceased was traveling got fully damaged with the impact of the high speed bus and Mr. Vinod Kumar got grievous injuries on various parts of his body. A passerby called the ambulance No.108, which reached the spot and took Vinod Kumar to MDM Hospital, Jodhpur. It was averred that on reaching the hospital the doctor declared Mr. Vinod Singh to be brought dead. Shri Rajat Arora, the co-passenger of the deceased in the vehicle at the time of the accident was the eye witness of the accident and deposed the facts to the police and also in the FIR. He confirmed that the accident took place because of the rash and negligent driving of the bus driver involved in the accident. Besides the incident took place near a Hotel. It was averred that many persons present at the time of the accident near the Hotel or working in the said Hotel had seen the said incident. The matter was reported to local Police Station,

PS Luni, which covered the accident, lodged FIR No.109/2009 under Sections 279/337/304A IPC and prepared the relevant documents in regard to the accident causing the death of Shri Vinod Singh. It was averred that the accident was caused due to the rash and negligent driving of the respondent No.1 and the respondent No.4 as the driver of the vehicle which was also involved in the accident. The petitioner No.1 in her affidavit Ex.PW1/A had stated that on 14.09.2009 when her husband was out on an official company tour to Udaipur and Jodhpur from Udaipur, the accident was so severe that her husband died on the spot about which they were informed by Mr. Mahesh on Nupur Singh v Rama Ram & Ors. Page no. 25 of 64 14.09.2009 at 22.30 hrs. PW2 had also deposed to that effect. The petitioners in support of their case had produced PW4 in the witness box who had stated about the manner of the accident.

22. The petitioners had filed the certified copy of the criminal record consisting of copy of charge sheet; copy of FIR; copy of complaint of Shri Rajat Arora, copy of panchnama in respect of the dead body, copy of Crime Details Form, copy of site plan; copy of property search and seizure form, statements of Rajat Arora, Jeta Ram, Sukhram, copy of mechanical inspection reports of the two vehicles, copy of notice under Section 133 MV Act, copies of bail bonds, copy of post mortem report, copy of RC of the offending bus, fitness certificate, permit, copy of DL of the respondent No.1, copy of insurance policy of the offending bus, medical documents in respect of Rajat Arora, copy of DL of the respondent No.4 and copy of RC and insurance policy of the Innova car. As per the FIR No.190/2009 under sections 279/337/304A IPC, PS Luni, Jodhpur Rural the case was registered on the basis of complaint of Shri Rajat Arora who has been examined as PW4. As per the charge sheet the respondent No.1 and respondent No.4 have been charge sheeted for the offence under sections 279/337/304A IPC.

23. The respondent No.1 who is the driver of the alleged offending bus and the respondent No.2 who is the owner of the alleged offending bus had filed the written statement averring that the accident in question took place because Nupur Singh v Rama Ram & Ors. Page no. 26 of 64 of the sole negligence of the driver of vehicle bearing No.DL4CAE9634 who could not control his vehicle and collided with the vehicle bearing No.RJ19PA5105 which was driven by the respondent No.1 with utmost care and caution on his side of the road. It was averred that the site plan prepared by the police clearly revealed that the accident took place because of the negligence on the part of the driver of the vehicle bearing No.DL4CAE9634. It was averred that the respondent No.1 was not at all responsible for the accident and the other vehicle was being driven in a careless manner. It was averred that the criminal case lodged by the police against the respondent No. 1 was not at all based on any scientific investigation of the truth but had been done mechanically. However the respondents No.1 and 2 did not appear to cross-examine PWs nor to lead their own evidence and were proceeded ex-parte.

24. The respondent No.3 had disputed the manner of the accident and in support of the case of the respondent No.3 R3W1 was produced in the witness box who deposed that the site plan prepared by the police clearly showed that the driver of the Innova car bearing registration number DL4CAE9634 was driving his car rashly and negligently at a very high speed and also on the wrong side. He stated that the site plan of the incident clearly revealed that the bus bearing registration No.RJ19PA5105 was moving on the left side of the road as per the traffic rules but the Innova Car totally

came to the wrong side due to which the alleged accident occurred. He stated that Nupur Singh v Rama Ram & Ors. Page no. 27 of 64 the driver of the bus had tried his level best to avert the collision, but the car was completely moving in the right side of the road, which ended in an accident. Therefore, at the time of the alleged accident, the driver of the Innova car was solely and highly negligent in driving his vehicle and due to the said reason alone the accident occurred and in view of the same, the driver, owner and insurer of the offending Innova Car were liable to pay the compensation to the petitioners. He stated that Shri Jeta Ram s/o Shri Mangla Ram and Shri Sukh Ram s/o Shri Mangla Ram who were the owners of the hotel in front of which the accident occurred had clearly admitted in their statement given to the police that at the time of the alleged accident, the driver of the Innova car was trying to overtake the truck, which was going ahead of the Innova car, ignoring the other traffic and due to the said wrong overtaking, the accident occurred. He stated that the property search and seizure Form clearly revealed that at the time of search and seizure of the property, the back side right hand tyre was punctured of the Innova car and it could be assumed that due to the high speed and overtaking of the truck, which was ahead, the driver of the Innova car had lost the control of his vehicle and hit the offending bus. He stated that the site plan of the spot of the accident prepared by the police clearly showed that the accident occurred on the kaccha road/portion which was absolutely and clearly outside the road. He stated that it was clear that the driver of the bus took the bus to the extreme left side to save the accident but the driver of the Innova car kept on moving on high speed and hit the bus from the side. He stated that the IO of the case in the Crime Details Nupur Singh v Rama Ram & Ors. Page no. 28 of 64 Form clearly mentioned giving his observation that at the time of the alleged accident, both the drivers of the vehicles were negligent and charge sheeted. Copy of Crime Details Form available in the criminal proceedings is Ex.R3W1/2 (colly).

25. Written statement was filed on behalf of the respondent No.4 averring that there was not even an iota of evidence to suggest any carelessness or negligent conduct on the part of the respondent No.4. It was averred that as a matter of fact the accident in questioned occurred on account of sole rash and negligent driving of the driver of the offending bus bearing No.RJ19PA5105 and the said factum was very much clear from the contents of FIR bearing No. 190/2009 which had been registered at the instance of one eye witness Shri Rajat Arora. It was averred that the petitioners had willfully not disclosed that no fault was attributable to the respondent No.4. It was denied that the accident was caused due to any rash and negligent driving of the respondent No.4 as alleged. It was averred that the petitioners themselves had averred that the accident in question took place on account of rash and negligent driving of bus bearing No.RJ19PA5105 by the respondent No.1 which was driven by the respondent No.1 at a very high speed and due to that reason the said offending vehicle hit the Innova car bearing No.DL4CAE9634 which was being driven by the respondent No.4 by following all the traffic rules. Written statement was also filed on behalf of the respondent No.5 averring that the respondent No.4 was an experienced driver. Similar averments were made as Nupur Singh v Rama Ram & Ors. Page no. 29 of 64 in the written statement of the respondent No.4. Thus as per the case put forth by the respondents No.1 and 2 the accident had taken place due to the negligence of the driver of the Innova car i.e. the respondent No.4 while according to the respondents No.4 and 5 the accident had taken place due to the negligence of the driver of the bus i.e. the respondent No.1 and both have relied on the criminal record. In fact detailed submissions were made on the question of negligence on behalf of the insurance companies of both the vehicles.

26. It is the case put forth by the respondent No.6 that the accident had taken place on account of the negligence of the driver of the bus and in support of its case the respondent No.6 had produced R6W1 in the witness box who deposed that the respondent No.5 Nitin Tuli had lodged an own damage claim regarding the Innova No.DL4CAE9634 and he had given the description of the accident in the same which is Ex.R6W1/A. He stated that the matter was also got surveyed by the company and the report of the surveyor is Ex.R6W1/B. He stated that the OD claim was approved by the company and had already been paid.

27. During cross-examination by the learned counsel for the respondent No.3 PW1 stated that she was not an eye witness of the accident. During cross-examination by the learned counsel for the respondent No.6 PW1 stated that she had no personal knowledge about the contents of the accident as Nupur Singh v Rama Ram & Ors. Page no. 30 of 64 mentioned in the claim petition as she was not an eye witness of the accident. During cross-examination by the learned counsel for the respondent No.3 PW2 stated that he was not an eye witness of the accident. He stated that Shri Rajat Arora was a professional colleague of his son. During cross-examination by the learned counsel for the respondents No.4 and 5 PW2 stated that he had no personal knowledge about the facts of the accident as mentioned in the claim petition as he was not an eye witness of the accident. Thus PW1 stated that she was not an eye witness of the accident and she also stated that she had no personal knowledge about the contents of the accident as mentioned in the claim petition as she was not an eye witness of the accident. PW2 also stated that he was not an eye witness of the accident and that he had no personal knowledge about the facts of the accident as mentioned in the claim petition as he was not an eye witness of the accident. As such both PW1 and PW2 had not witnessed the accident taking place.

28. The petitioners in support of their case had produced PW4 Shri Rajat Arora in the witness box who was stated to be with the deceased at the time of the accident and was also injured in the accident and during cross-examination by the learned counsel for the respondent No.6 PW4 stated that no site plan was prepared by the police in his presence. He admitted that there was no negligence on the part of the driver of Innova car. He admitted that the negligence was entirely of the driver of the bus. During cross-examination by the learned counsel for the respondent No.3 PW4 stated that he could say that Nupur Singh v Rama Ram & Ors. Page no. 31 of 64 the bus was being driven rashly and negligently because the same was coming at a very high speed from the opposite direction and hit from the side. He stated that the Innova was being driven on the left side of the road. He admitted that the bus had hit the Innova from the left side volunteered the bus instead of moving to their right had come towards the Innova due to which the driver of the Innova turned the Innova a little towards the right. He stated that it was a very narrow road on which at the most one bus could pass at a time and when the bus came from the opposite direction, apprehending that there would be a head on collision the driver of the Innova had no option but to take the car on the right side kucha road. He did not remember what was there on the left side of the road. He denied the suggestion that the Innova was to drive on the left side as per traffic rules but the driver had taken the same on the right side due to which the collision had taken place with the offending bus or that the driver of the offending bus had taken all precautions to avoid the accident or that the accident did not take place due to the negligence of the bus driver or that he was deposing falsely in order to help the deceased who was his colleague. He stated that the site plan

correctly depicted the place of the accident.

29. PW4 thus stated that no site plan was prepared by the police in his presence though he stated that the site plan correctly depicted the place of the accident. He admitted that there was no negligence on the part of the driver of Innova car and that the negligence was entirely of the driver of the bus.

Nupur Singh v Rama Ram & Ors. Page no. 32 of 64 However it is significant that PW4 was travelling in the Innova at the time of the accident and the Innova belonged to a personal friend of the deceased and as such there would be reason for him to take a stand in favour of the driver and owner of the Innova car. It may be mentioned that even the petitioners had initially not impleaded the driver, owner and insurer of the Innova car as respondents to the claim petition and it was only on an application moved by the respondent No.3 in that regard that they were impleaded as respondents. Moreover it has been vehemently contended on behalf of the respondents No.4, 5 and 6 that they were unnecessarily impleaded as respondents in the present proceedings as even as per the case of the petitioners there was no fault attributable to the driver of the Innova car. However the case is to be decided not merely on what was pleaded or not pleaded by the petitioners but on the basis of the material on record. In the instant case the FIR was registered on the statement of PW4 but a perusal of the same shows that PW4 had not specifically stated about the manner of the accident in the same nor about the negligence of anyone and had merely stated that there was a collision between the car and the bus coming from the front. PW4 had admitted that there was no negligence on the part of the Innova driver. He stated that he could say that the bus was being driven rashly and negligently because the same was coming at a very high speed from the opposite direction and hit from the side. He stated that the Innova was being driven on the left side of the road. However a perusal of the site plan which has been placed on record shows that the Innova was towards the centre of Nupur Singh v Rama Ram & Ors. Page no. 33 of 64 the road from where it had moved to the right side of the road and not towards the left side of the road as was sought to be contended. In fact statements of Jeta Ram and Sukhram who are the owners of the hotel in front of which the accident had taken place, have been placed on record by the petitioners along with the criminal record as per which the Innova car had come at high speed and the driver of the Innova tried to overtake the truck moving ahead of the Innova and from the opposite side a bus was coming so the driver of the Innova immediately moved the Innova towards the hotel i.e. towards its right when the bus came at high speed and took the Innova in its fold. Thus if the Innova was trying to overtake the truck ahead of it, it would indicate that it was towards the middle of the road rather being towards the left of the road. It is also pertinent that as per the argument put forth, the high speed of the bus was evident from the fact that it braked 28 steps from the spot (as shown by the tyre marks) where it hit the car and thereafter dragged the car. However that also shows that there would have been some reason for which the driver of the bus had to brake it all of a sudden and clearly the reason was the Innova coming from the opposite side. It was sought to be contended on behalf of the respondents No.4 to 6 that the Innova had to move towards the right as there were bushes on the left side. The respondent No.3 had placed on record certain photographs which show some bushes. The respondents No.4 and 5 had argued that the driver of the Innova car had to move to his extreme right to avoid the head on collision with the bus as there were trenches on the left side of the road but neither the photographs nor the site Nupur Singh v Rama Ram & Ors. Page no. 34 of

64 plan indicate anything which prevented the Innova from moving towards the left rather than the right side in order to avoid the accident and that also indicates that it was towards the middle of the road while trying to overtake a truck and on seeing a bus coming from the opposite direction the driver of the Innova had no option but to move the Innova towards the right side as the truck would have been towards its left side. Even if the contention of the respondents No.4 and 5 was to be accepted that there were trenches on the left side, the same would have been on the kacha portion next to the road and there is nothing which prevented the driver of the Innova from taking it towards the left side of the road except that there was a vehicle on its left and there is nothing in the site plan to indicate that the bus had come towards what would be the left side of the road for the Innova car and had rather moved towards the right side of the Innova car.

30. PW4 admitted that the bus had hit the Innova from the left side volunteered the bus instead of moving to their right had come towards the Innova due to which the driver of the Innova turned the Innova a little towards the right. As regards what was volunteered by PW4 it is pertinent that if the bus had come to its right it would have hit against the truck if the statement of Jeta Ram and Sukhram is seen and that could be the reason that it moved towards the left and even otherwise it would have been expected to move towards the left side of the road in order to avoid the accident rather than coming on the wrong side of the road. PW4 stated that thereby the bus hit the Nupur Singh v Rama Ram & Ors. Page no. 35 of 64 Innova which had moved towards the kaccha area on its right side. However once both the bus and the Innova moved towards the right side of the Innova car the bus would have hit the Innova from the left side. PW4 also stated that it was a very narrow road on which at the most one bus could pass at a time and when the bus came from the opposite direction, apprehending that there would be a head on collision the driver of the Innova had no option but to take the car on the right side kucha road. However looking to the site plan the road does not appear to be so narrow that only one bus could pass at a time and in fact in the site plan it was stated that the road was 24 feet wide. There is no merit in what was said by PW4 that the driver of the Innova car had no option but to take the car on the right side kuccha road, which would be so only if there was a vehicle towards its left, otherwise the Innova would have moved towards its left. It is pertinent that PW4 stated that he did not remember what was there on the left side of the road. A suggestion was put to him that the Innova was to drive on the left side as per traffic rules but the driver had taken the same on the right side due to which the collision had taken place with the offending bus which he denied but it is evident on a perusal of the site plan and the material on record that the Innova was not on the left side and it was taken towards the right side. He also denied the suggestion that the accident did not take place due to the negligence of the bus driver. While it is clear that the driver of the Innova was responsible for the accident, it is equally true that the driver of the bus was also negligent. The driver of the bus had braked it 28 steps before the spot where it hit the Innova but if the bus was going at normal Nupur Singh v Rama Ram & Ors. Page no. 36 of 64 speed it would have been possible for the driver to control it in time or at least the impact of the accident would have been much less whereas it is clear that the bus after hitting the Innova dragged it for 25 steps which shows that it was moving at a high speed. Clearly the driver of the bus was not able to control the bus in time which resulted in the bus hitting the Innova car. The respondent No.1 and respondent No.2 who are the driver and owner of the bus have also not appeared to lead their evidence regarding the manner of the accident.

31. During cross-examination by the learned counsel for the respondents No.4 and 5 R3W1 stated that he had gone through the site plan Ex.R3W1/2. He admitted that he knew the investigation report of the IO which was on record. He did not know the distance of the marks caused by the brakes of the bus. He could not tell the distance of the dragging of the car by the bus after the impact as shown in the site plan. He had not placed any investigating report regarding the site plan along with the documents. He denied the suggestion that he had deliberately not placed the investigating report regarding the site plan along with the documents. During cross-examination by the learned counsel for the respondent No.6 R3W1 stated that he was not an eye witness to the accident. He stated that the investigator who investigated the present case was appointed by the Jodhpur office of National Insurance Company. He did not remember the name of the investigator. He stated that he had seen the investigation report. He denied the suggestion that Nupur Singh v Rama Ram & Ors. Page no. 37 of 64 he had never seen the investigation report or that the investigation report was not in favour of National Insurance Company Ltd. He had no personal knowledge of the statements as mentioned in para No.4 of his affidavit. He stated that the vehicle i.e. bus was duly insured. He admitted that the DL, fitness and permit of the bus bearing No.RJ19PA5105 were valid at the time of the accident. He denied the suggestion that he had deliberately filed only selected record along with his affidavit in the case. He denied the suggestion that the accident was caused entirely due to the negligence of bus bearing No.RJ19PA5105 or that there was no negligence on the part of the driver of Innova car bearing No.DL4CAE9634. Thus R3W1 stated that he had gone through the site plan Ex.R3W1/2. He admitted that he knew the investigation report of the IO which was on record. He however did not know the distance of the marks caused by the brakes of the bus and he could not tell the distance of the dragging of the car by the bus after the impact as shown in the site plan and it may be mentioned that he was not even an eye witness to the accident. He stated that he had not placed any investigating report regarding the site plan along with the documents. He did not remember the name of the investigator. He stated that he had seen the investigation report. However no such report is on record. He stated that he had no personal knowledge of the statements as mentioned in para No.4 of his affidavit wherein he had stated about the statements of Jeta Ram and Sukhram. However the petitioners had placed the said statements on record. Thus R3W1 was neither an eye witness to the accident nor any investigation report has been placed on record by the Nupur Singh v Rama Ram & Ors. Page no. 38 of 64 respondent No.3 in support of its contentions. At the same time the criminal record is there on record. The respondent No.3 had relied on the Property Search and Seizure Form placed with the criminal record which shows that the Innova car was extensively damaged from the left side and the bus was damaged from the front and left side. The back right side tyre of the Innova car was also punctured. However it would be difficult to draw a presumption from the same that the driver of the Innova car had lost the control of his vehicle and hit the offending bus as the damage to the vehicles would indicate that the bus had hit the Innova car but as observed above, the Innova had moved on the wrong side of the road to the kacha portion on the right side.

32. The respondent No.6 had relied upon the description of the accident given by the respondent No.5 i.e. the owner of the Innova car when he had lodged the own damage claim but quite clearly the respondent No.5 while raising the claim would not say anything which would incriminate him or his driver and he was not even an eye witness to the accident. In fact the respondents No.4 and 5 who are the driver and owner of the Innova car did not even step into the witness box to depose how

according to them the accident had taken place. The respondent No.6 has also relied upon the report of the surveyor on the basis of which the OD claim was approved by the company and had been paid but the surveyor has not been produced in the witness box. Moreover a perusal of the report shows that the surveyor had only relied upon the statement of the owner of the Innova car and there is Nupur Singh v Rama Ram & Ors. Page no. 39 of 64 nothing in the report to show that the surveyor tried to carry out any independent inquiry into the matter to ascertain the manner of the accident. Further the surveyor had inspected/ examined the Innova car and made the report of the damages to the Innova car and again there is nothing to show that the surveyor had done any inquiry at the spot of the accident. During cross-examination by the learned counsel for the respondent No.3 R6W1 stated that the form had been filled up by the insured Mr. Nitin Tuli. He admitted that Ex.R6W1/A did not bear the signatures of the driver Rajender Singh. He admitted that he was not the author of Ex.R6W1/A volunteered it was as per the record. Thus R6W1 stated that the form had been filled up by the insured Mr. Nitin Tuli. He admitted that Ex.R6W1/A did not bear the signatures of the driver Rajender Singh. As such the reliance placed by the respondent No.6 on the OD claim form and the report of the surveyor is misplaced as they cannot be relied upon for determining the manner of the accident.

33. It is thus clear that both the bus and the Innova car had contributed to the happening of the accident. The learned counsel for the petitioners had relied upon the judgment of the Hon'ble High Court of Gujarat in Abhrambhai Abdul Bhai Vora v. Jyotshnaben Rajobhai Amin 2013 (3) AICJ 223 (Gujarat) DB to contend that the evidence of the eye witness is final. However in the present case two vehicles were involved and as observed above the eye witness had reason to depose in favour of the driver and owner of the Innova Nupur Singh v Rama Ram & Ors. Page no. 40 of 64 car. Further the criminal record has been placed on record which shows that the respondent No.1 and respondent No.4 both have been charge sheeted for the offence under Sections 279/337/304A IPC. In Basant Kaur and others v. Chattar Pal Singh and others 2003 ACJ 369 MP (DB) it was observed that registration of criminal case against the driver of the offending vehicle was enough to record a finding that the driver of the offending vehicle was responsible for causing the accident. The respondents No.1 and 4 have also not led any evidence to prove any other version of the accident. There is nothing to disprove the involvement of both the Innova car bearing No.DL4CAE9634 and the bus bearing No.RJ 19PA 5105. In view of the testimony of the witnesses and the documents on record which have remained unrebutted, the negligence of the respondents No.1 and 4 has been prima facie proved. In the facts and circumstances of the case the negligence of the respondent No.1 is apportioned as 50% as also of the respondent No.4.

34. It was stated that due to the accident the Innova car in which the deceased was traveling got fully damaged and Mr. Vinod Kumar got grievous injuries on various parts of his body. A passerby called the ambulance No.108, which reached the spot and took Vinod Kumar to MDM Hospital, Jodhpur. It was averred that on reaching the hospital the doctor declared Mr. Vinod Singh to be brought dead. The post mortem report of the deceased is on record as per which the cause of death was chest injury associated with head injury. Thus it stands established that the deceased had sustained injuries in the Nupur Singh v Rama Ram & Ors. Page no. 41 of 64 alleged accident due to which he died. This issue is accordingly decided in favour of the petitioners and against the respondents and it is held that the accident was caused due to the composite negligence of the Innova car bearing

No.DL4CAE9634 and the bus bearing No.RJ 19PA 5105. Issue No.2

35. Since issue No.1 has been decided in favour of the petitioners they would be entitled to compensation as per the provisions of the Act. The learned counsel for the petitioners has relied upon the judgment of the Hon'ble High Court of Delhi in Sudershan Singh v. Ravinder Uppal & Ors. 180 (2011) DLT 78 wherein it was observed that the Motor Vehicles Act, 1988 being a beneficent piece of legislation, must be so construed so as to further the object of the Act which is clearly to provide compensation to the victims of a motor accident and if the grant of compensation to motor accident victims is hemmed in by procedural and other technicalities, the purpose of the Act is liable to be defeated. The law in this regard is well settled that the proceedings before the MACT are in the nature of an inquiry. It has also been contended that fair and reasonable compensation has to be granted and reliance has been placed on General Manager, Punjab Roadways, Nangal Depot v. Smt. Santosh Chadha AIR 1997 HP 36; National Insurance Co. Ltd. v. Bimla Devi & Ors. 2013 (1) TAC 631 (J&K) and on the judgment of the Hon'ble Supreme Court in Sarla Verma v. DTC Nupur Singh v Rama Ram & Ors. Page no. 42 of 64 AIR 2009 SC 3104 on the factors to be considered for grant of compensation. The factors to be considered while granting compensation are now well settled by various pronouncements of the Hon'ble Supreme Court.

36. The petitioners are the legal representatives of the deceased being the wife, two sons and parents of the deceased. It was stated that the deceased was the only son of a retired senior Defence Service Officer with a higher middle class status leading polished and socially well esteemed life. It was averred that the parents of the deceased were old ailing persons and his wife and 2 sons were totally dependent on the income of the deceased. PW1 deposed that she is the wife of the deceased Late Shri Vinod Kumar Singh and was a house wife. She stated that she had been staying along with her complete family consisting of her father-in-law, mother-in-law, husband and two sons namely Viraj Singh (born on 22.11.2000) and Naman Singh (born on 12th March, 2004). She stated that she had got married with Late Shri Vinod Kumar Singh on 11.05.1999 and their life was extremely happy as anybody would have liked. She stated that after the sudden demise of her husband, their family life got an unbearable jolt and the parents of her husband could not bear it and shifted to Pune after sometime. She stated that both her sons were going to reputed school and they had a reasonably quality life. She stated that the loss of the only earning member in the family obviously hurt them economically besides emotional set back. She stated that it was really difficult Nupur Singh v Rama Ram & Ors. Page no. 43 of 64 to maintain the same standard and level of education of the two growing up sons for her. PW2 deposed that he is a retired Government servant, having served as a Senior Warrant Officer in the Ministry of Defence. He stated that he along with his wife Smt. Urmila Singh and son Late Shri Vinod Kumar Singh along with his wife Ms. Nupur Singh and two minor sons namely Viraj and Naman was staying at 23 (2nd Floor), Block C, Paryawaran Complex, IGNOU Road, Saket, New Delhi. He stated that the sudden death of their only son had left him and his wife completely shattered and his loss had not yet been completely reconciled. He stated that the mother of the deceased had taken more seriously and had gone into deep depression due to the sudden demise of her only son. Similarly the loss had been unbearable to Nupur and her two sons who were still struggling to admit the reality and face the cruel world on their own. Copy of his Ex-Serviceman identity card is Ex.PW2/1 and copy of Ex-Serviceman Contributory Health Scheme card of his wife is Ex.PW2/2.

37. PW1 and PW2 were cross-examined on the point of dependency and during cross-examination by the learned counsel for the respondent No.3 PW1 stated that she was a housewife. During cross-examination by the learned counsel for the respondent No.3 PW2 stated that he was a retired Government official i.e. an ex-serviceman and he was getting pension. Thus PW1 stated that she was a housewife. During examination by the Tribunal the petitioner No.1 Smt. Nupur Singh stated that she was 38 years old. She Nupur Singh v Rama Ram & Ors. Page no. 44 of 64 stated that she had two children aged about 14 years and 10 years, both were studying in school. She stated that she was a housewife. Thus being the wife the petitioner No.1 would be regarded as dependent on the deceased and being the minor sons the petitioners No.2 and 3 would also be regarded as dependent on the deceased. PW2 had stated that he was a retired Government official and he was getting pension. During examination by the Tribunal the petitioner No.4 Smt. Urmila Singh stated that she was 68 years old. She stated that apart from the deceased she had three daughters and they all were married. She stated that she was a housewife. Being the mother the petitioner No.4 would be regarded as dependent on the deceased. The petitioner No.5 Shri Janardhan Singh stated that he was 72 years old. He stated that at the time of the accident he had retired from Central Government services and was getting pension of Rs.12,000/- per month. Thus the petitioner No.5 had his own source of income and as such he would not be regarded as dependent on the deceased. It was in fact argued on behalf of the respondent No.3 that both the parents cannot be treated as dependents but as per the well settled law the mother is regarded as a dependent. As such the petitioners No.1 to 4 being the wife, minor children and mother of the deceased would be regarded as dependent on the deceased.

38. The petitioners have claimed loss of dependency on the basis that the deceased was 38 years old at the time of his death. He was qualified and trained MBA, having experience of more than 15 years in managing one of Nupur Singh v Rama Ram & Ors. Page no. 45 of 64 the best reputed companies at Senior Executive level and he was working as Regional Area Manager with Philips Electronics India Ltd., Gurgaon, Haryana and was earning Rs.60,000/- p.m. approximately. It was averred that the deceased was having very promising future and inspired to become the CEO of the said company. It was averred that the deceased was of sound health and longevity of age in his family had been over 70 years. PW1 and PW2 had also deposed to that effect. PW1 stated that her husband was serving as a General Manager (North) in Philips Electronic India Ltd, Gurgaon. She stated that her husband being a Senior Executive at Philips Electronics India Ltd. at Gurgaon was earning a handsome salary of approximately Rs.80,000.00 per month including allowances and incentives. She stated that her husband was an ambitious young man who had adequate qualifications and zeal to go to the top of his organization in the very near future. She stated that her husband was about 39 years of age at the time of the accident, resulting in his death. Copy of All India Secondary School Examination Certificate issued by CBSE of her husband is Ex.PW1/5, copy of MBA certificate of her husband is Ex.PW1/5, copy of pay slip of her husband and copy of Form 16 are Mark A (colly). PW2 stated that Vinod was serving with Philips Electronic India Ltd. at Gurgaon till September 2009. He stated that Vinod Kumar Singh was their only son and had been very intelligent and enthusiastic young man. He was given best of the education in reputed schools. Having passed his Bachelor of Computer Science from Pune University, he did his Management Degree MBA from Nupur Singh v Rama Ram & Ors. Page no. 46 of 64 Bhartiya Vidhya Peeth, Pune and joined Onida Electronics as a Marketing Executive. He changed a couple of companies before joining Philips India Ltd. at

Gurgaon as a Senior Executive in the year 2006 and was earning about Rs.80,000/- per month including his various allowances and incentives. He stated that Late Vinod Kumar Singh had been going out of town quite often on his official company tours. He stated that Vinod was a very healthy young man, aged about 40 years at the time of his death (having been born on 25.09.1969) and being a good sportsman took prize in keeping himself always physically fit. He stated that the average age in their family was over 75 years and they had no history of any chronic. PW1 was not cross-examined in this regard. During cross-examination by the learned counsel for the respondent No.3 PW2 stated that he had not mentioned the name of previous companies in which his son had worked prior to joining M/s Phillips India Ltd. He admitted that he had not mentioned the income of his son in the previous companies before he joined M/s Phillips India Ltd. Thus PW2 stated that he had not mentioned the name of previous companies in which his son had worked prior to joining M/s Phillips India Ltd. nor he had mentioned the income of his son in the previous companies before he joined M/s Phillips India Ltd. but that would not even be material as the income of the deceased on the date of the accident has to be taken into consideration while computing the income for the loss of dependency.

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39. The petitioners in support of their case had produced PW3 in the witness box who stated that he personally knew the deceased Vinod Kumar Singh who was working as General Manager, Consumer Electronics Division. He joined the company on 05.09.2007. The certificate regarding his salary for August 2009 is Ex.PW3/B. He stated that the deceased was being paid Rs.2.4 Lakhs approximately per month. Copy of the appointment letter is Ex.PW3/C (colly). During cross-examination by the learned counsel for the respondent No.3 PW3 denied the suggestion that the variable HRA was not fixed volunteered variable implied that it varied from city to city. He admitted that the deceased was on a transferrable post. He admitted that if the deceased was transferred to another city there would be an increase or decrease in the HRA depending on the city. He stated that Variable pay plan in para 4 of the summary of compensation and benefits referred to the scheme by which depending on the performance of an individual, his pay may vary. He stated that the said clause was applicable to the deceased and the variable performance pay would vary according to the performance of the deceased. He stated that the variable performance pay was payable annually and was computed from January to December and was payable in April of the next year. He stated that the amount of Rs.4,94,340/- mentioned in Ex.PW3/B would be for the whole year and not for the period for which the deceased had worked in 2009. He could not tell how much variable performance pay was given to the family of the deceased for the year 2009 at the time of final settlement. He stated that in the certificate Ex.PW3/B, basic salary, HRA, Nupur Singh v Rama Ram & Ors. Page no. 48 of 64 variable HRA and additional personal pay would count towards fixed pay given to the deceased while retiral amount included gratuity which could not be monthly and contribution to PF was monthly. He could not tell the amount of tax which was deducted. He stated that their company had issued Form 16 which was Mark A and was Ex.PW3/D. He admitted that as per Ex.PW3/B, the basic salary of the deceased was Rs.61,782/- for August 2009. He denied the suggestion that as the Form 16 showed the gross salary to be Rs.19,43,281/- what he had stated that day that the deceased was drawing a salary of Rs.2.4 Lakhs p.m was incorrect volunteered the components for computation of gross salary as per the Form 16 would be different than those stated in Ex.PW3/B which showed the

monthly payment to the deceased. He could not tell about loss of house property mentioned in Form 16 for an amount of minus Rs. 36,255/-. He denied the suggestion that he was concealing about the said head so as to help the family of the deceased. During cross-examination by the learned counsel for the respondent No.6 PW3 stated that the deceased had done MBA. He stated that the variable pay was not reduced during recession in 2008 to 2010 as it depended upon the individual's performance. He stated that no retrenchment had taken place during the said period.

40. PW3 was thus cross-examined on the various components which formed part of the salary of the deceased. The petitioners had placed on record the pay slip of the deceased and copy of Form 16 and PW3 had produced the pay certificate which is Ex.PW3/B besides the appointment Nupur Singh v Rama Ram & Ors. Page no. 49 of 64 letter. As per both the pay slip which is Mark A and the certificate Ex.PW3/B the basic salary of the deceased for the month of August, 2009 was Rs. 61,782/-. Further HRA of Rs.10,000/- was payable. An amount of Rs.22,000/- was shown towards Variable HRA and during cross-examination PW3 denied the suggestion that the variable HRA was not fixed and volunteered that variable implied that it varied from city to city. It is pertinent that PW3 admitted that the deceased was on a transferrable post and that if the deceased was transferred to another city there would be an increase or decrease in the HRA depending on the city. Thus being a variable amount, the Variable HRA cannot be included for computing the income of the deceased. The pay slip Mark A shows an amount of Rs.1169/- towards medical reimbursement but the same cannot be included while computing the income. Ex.PW/B shows Rs.19,647/- per month towards retiral amount but the same cannot be included towards the income of the deceased for computing loss of dependency. It also shows Leave Travel Allowance of Rs.25,000/- per annum but the same cannot also be included. PW3 stated that in the certificate Ex.PW3/B, basic salary, HRA, variable HRA and additional personal pay would count towards fixed pay given to the deceased while retiral amount included gratuity which could not be monthly and contribution to PF was monthly. However as observed above variable HRA cannot be included.

41. Ex.PW3/B also mentions an amount of Rs.4,94,340/- per annum towards Variable Performance Pay and during cross-examination PW3 stated Nupur Singh v Rama Ram & Ors. Page no. 50 of 64 that Variable pay plan in para 4 of the summary of compensation and benefits referred to the scheme by which depending on the performance of an individual, his pay may vary. He stated that the said clause was applicable to the deceased and the variable performance pay would vary according to the performance of the deceased. PW3 stated that the variable pay was not reduced during recession in 2008 to 2010 as it depended upon the individual's performance. Thus PW3 himself had stated that the variable performance pay would vary according to the performance of the deceased. He stated that the variable performance pay was payable annually and was computed from January to December and was payable in April of the next year. He also stated that the amount of Rs.4,94,340/- mentioned in Ex.PW3/B would be for the whole year and not for the period for which the deceased had worked in 2009. However if the same was dependent on the performance of an employee, the same could not have been assessed in September when the deceased had not worked for the whole year. PW3 could not tell how much variable performance pay was given to the family of the deceased for the year 2009 at the time of final settlement. Thus the amount of Variable Performance Pay cannot be included for computing the income of the deceased.

42. PW3 had deposed that the deceased was getting Rs.2.4 lacs per month and during cross examination he denied the suggestion that as the Form 16 showed the gross salary to be Rs.19,43,281/□ what he had stated that day that the deceased was drawing a salary of Rs.2.4 Lakhs p.m was Nupur Singh v Rama Ram & Ors. Page no. 51 of 64 incorrect and volunteered that the components for computation of gross salary as per the Form 16 would be different than those stated in Ex.PW3/B which showed the monthly payment to the deceased. However the difference could not be to the extent as stated by him. The Form 16 Ex.PW3/D pertains to the period 1.4.2008 to 31.3.2009 and as per the same the salary of the deceased was Rs.19,43,281/□ The accident had taken place in September, 2009 and it would be argued on behalf of the petitioners that the income of the deceased should be taken as per the pay certificate Ex.PW3/B. However, it is seen that there are discrepancies between the pay slip which has not been got duly proved and the certificate produced by PW3 and that no other documents have been produced to corroborate both. Mark A shows APP/HMA of Rs. 58,836/□while Ex.PW3/B shows Addl. Personal Pay as Rs.86,106/□per month and there is no such figure given in the salary slip Mark A. Even if the projected computation for the whole year given in Mark A for purposes of tax is seen, it would not tally with the income of the deceased as stated in Ex.PW3/B and there is nothing to explain the marked differences between Mark A which is the salary slip for August, 2009 and Ex.PW3/B. The computation for the whole year in Mark A also does not show any amount of Rs. 4,94,340/□and in fact as per the same, the income for the whole year would be Rs. 18,54,504.40. Thus, the income is taken as per Form 16 i.e. Rs.19,43,281/□from which medical reimbursement of Rs.12,246/□is liable to be deducted. It was contended on behalf of the respondents No.3 and 6 that income tax was liable to be deducted from the income. The same is also as per the well settled Nupur Singh v Rama Ram & Ors. Page no. 52 of 64 law that the actual income to be taken is the income after deduction of the income tax. PW3 could not tell the amount of tax which was deducted. He stated that their company had issued Form 16 which was Mark A and was Ex.PW3/D. He could not tell about loss of house property mentioned in Form 16 for an amount of minus Rs.36,255/□ Form 16 shows the tax including surcharges to be Rs.4,60,902/□which would be liable to be deducted from the total income shown which would leave the income to be Rs.14,82,379/□ After deducting the amount towards medical reimbursement and making some allowance for increase in the salary the income of the deceased for computation of loss of dependency is taken as Rs.15,00,000/□p.a.

43. It is the case of the petitioners that the deceased was 38 years old and it was so stated in the claim petition. The class 10th certificate of the deceased which is Ex.PW1/4 shows his date of birth to be 25.9.1969. As such the deceased would have been more than 39 years old on the date of the accident i.e. 13.9.2009. As per the judgment of the Hon'ble Supreme Court in Sarla Verma and others v. Delhi Transport Corporation and others 2009 ACJ 1298 (SC) the multiplier of 15 applies where the age of the deceased is 36 to 40 years. As such the multiplier applicable in the instant case would be

15. The learned counsel for the petitioners had argued that the Hon'ble High Court of Gujarat in National Insurance Co. Ltd. v.Urmilaben Hirabhai Patel 2013 ACJ 2626 Gujarat had applied the multiplier of 16 where the age of the deceased was 38 years. However the law is well settled by the judgment of the Nupur Singh v Rama Ram & Ors. Page no. 53 of 64 Hon'ble Supreme Court in Sarla Verma's case regarding the multiplier to be applied and as such the multiplier applicable in the

instant case would be of

15.

44. As observed above the dependents on the deceased were his wife, two children and mother. The learned counsel for the petitioners has relied upon the judgments in National Insurance Co. Ltd. v. Urmilaben Hirabhai Patel 2013 ACJ 2626 Gujarat, Chandrawati v. Sat Narain 2013 ACJ 267 and on the judgment in Sarla Verma's case regarding the deduction to be made. As per the judgment of the Hon'ble Supreme Court in Sarla Verma's case as the number of dependents was 4 there would be 1/4th deduction towards personal and living expenses of the deceased. The learned counsel for the petitioners has relied upon the judgments in Neelam Singh v. Dolphin International & Ors. 2013 (2) TAC 442 Del; National Insurance Co. Ltd. v. Bimla Devi & Ors. (supra); National Insurance Co. Ltd. v. Urmilaben Hirabhai Patel 2013 ACJ 2626 Gujarat and on the judgment in Sarla Verma's case regarding future prospects. As regards the future prospects in HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors. MAC. APP.189/2014 decided on 12.1.2015 which has been further relied on in Shriram General Insurance Co. Ltd. v. Preeti & Ors. MAC. APP. 1145/2013 decided on 28.1.2015 and U.P. State Road Transport Corporation v. Shahida & Ors. MAC. APP. 325/2013 decided on 28.1.2015 it was held that the judgment in Reshma Kumari & Ors. v. Madan Mohan & Anr. (2013) 9 SCC 65 shall be taken as a binding Nupur Singh v Rama Ram & Ors. Page no. 54 of 64 precedent in which judgment the Hon'ble Supreme Court while approving the ratio with regard to future prospects in Sarla Verma (Smt.) & Ors. (supra) held as under: "38. With regard to the addition to income for future prospects, in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], this Court has noted the earlier decisions in Susamma Thomas [Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335], Sarla Dixit [(1996) 3 SCC 179] and Abati Bezbaruah [Abati Bezbaruah v. Geological Survey of India, (2003) 3 SCC 148 : 2003 SCC (Cri) 746] and in para 24 of the Report held as under: (Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], SCC p. 134) "24. ... In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as actual salary less tax). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased Nupur Singh v Rama Ram & Ors. Page no. 55 of 64 was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

39. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the

age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases." As the deceased was less than 40 years of age the petitioners would be entitled to addition of 50% of the income towards future prospects. Accordingly the loss of dependency as per the annual income i.e. Rs. 15,00,000/- is calculated as under :

Nupur Singh v Rama Ram & Ors. Page no. 56 of 64 Rs.15,00,000/- + Rs.7,50,000/-(50% towards future prospects) = Rs. 22,50,000/- Rs.5,62,500/-(i.e. 1/4th towards personal expenses) = Rs. 16,87,500/- X 15 (multiplier) = Rs.2,53,12,500/- rounded off to Rs. 2,53,13,000/-

The learned counsel for the petitioners had argued that compensation more than the claimed amount can be awarded by the Tribunal and he has placed reliance on the judgment of the Hon'ble High Court of Andhra Pradesh in Tathasreevani & Ors. v. B. Vijaya Kumar & Ors. 2014 ACJ 516 AP where relying upon the judgment of the Hon'ble Supreme Court in Nagappa v. Gurudayal Singh 2003 ACJ 12 (SC) it was observed that in the absence of any bar in the Motor Vehicles Act, the court has got the power to award higher compensation to victims of accident. The only restriction being the amount awarded should be just and reasonable. In the instant case the petitioners had claimed an amount of Rs.2,25,00,000/- as compensation, however the compensation has to be determined as per the principles which have been laid down in a catena of decisions.

45. The petitioners are also entitled to compensation for loss of love and affection, loss of consortium, loss of estate and funeral expenses. The learned counsel for the petitioners had argued that the same should be awarded at the rate of Rs.1,00,000/- per claimant/ heir of the deceased. Reliance has been placed on the judgment in DTC v. Rajeshwari Shankar 2013 (5) RCR (Civil) 834 Del and on the judgment of the Hon'ble Supreme Court in Rajesh v.

Nupur Singh v Rama Ram & Ors. Page no. 57 of 64 Rajbir Singh (2013) 9 SCC 54. However in the latter judgment while an amount of Rs.1 lac was awarded towards loss of consortium an amount of Rs. 1 lac was awarded towards loss of care and guidance for minor children who were three in number and Rs.1 lac was not awarded for each child. The total compensation is determined as under:

Loss of dependency	:	Rs .
Loss of consortium	:	Rs .
Love and affection	:	Rs .
Loss of Estate	:	Rs .
Funeral expenses	:	Rs .
Total :		Rs .

Thus, the total compensation would amount to Rs.2,55,48,000/□ RELIEF

46. It was contended on behalf of the petitioners that interest at the rate of 12% be awarded and reliance was placed on *Saberabibi Yakubhai Shaikh v. National Insurance Co. Ltd.* 2014 ACJ 467 (SC). However in *Rajesh v. Rajbir* (supra) interest at the rate of only 7.5% was awarded. It was further contended that the interest should be awarded from 30 days after the date of the accident and reliance was placed on *Oriental Insurance Co. Ltd. v. Manju & Ors.* 2014 ACJ 253 (ALL), *United Insurance Co. Ltd., Bangalore v.*

Nupur Singh v Rama Ram & Ors. Page no. 58 of 64 *Gururaj & Ors.* 2012 (2) TAC 861 (Kant) and also on *Saberabibi* (supra). However in *Sarla Verma's* case and even in *Rajesh v. Rajbir* (supra) interest has been awarded from the date of filing of the petition. The petitioners are thus awarded a sum of Rs.2,55,48,000/□(Rs.Two crores fifty five lacs forty eight thousand only) with interest at the rate of 7.5% per annum from the date of filing the claim petition till its realization, including, interim award, if any already passed in favour of the petitioners and against the respondents. The petitioners No.2, 3 and 4 Master Viraj Singh, Master Naman Singh and Smt. Urmila Singh would be entitled to 15% share each in the awarded amount and the petitioner No.5 Shri Janardan Singh (as the deceased would have discharged some obligations towards his father) would be entitled to 5% share in the awarded amount. The petitioner No.1 Smt. Nupur Singh would be entitled to 50% share in the awarded amount.

47. For safeguarding the compensation amount from being frittered away by the claimants, directions have been given by Hon'ble Supreme Court for preserving the award amount in the case of *Jai Prakash Vs. National Insurance Co. Ltd. and Others* (2010) 2 Supreme Court Cases 607. In view of the directions contained in the above judgment the award amount is to be disbursed as follows:

a) The entire amount awarded in favour of the petitioners No.2 and 3 be kept in FDRs in UCO Bank, Patiala House Court, New Delhi till they attain majority and for 3 years thereafter. The entire amount awarded in favour of the *Nupur Singh v Rama Ram & Ors.* Page no. 59 of 64 petitioner No.5 be released to him by transferring it into his savings account in UCO Bank, Patiala House Court, New Delhi. 20% of the share of the petitioners No.1 and 4 be released to them by transferring it into their savings account and the remaining amount out of their share be kept in FDRs in UCO Bank, Patiala House Court, New Delhi in the following manner:

1. Fixed deposit in respect of 10% for a period of one year.
2. Fixed deposit in respect of 10% for a period of two years.
3. Fixed deposit in respect of 10% for a period of three years.
4. Fixed deposit in respect of 10% for a period of four years.

5. Fixed deposit in respect of 10% for a period of five years.
6. Fixed deposit in respect of 10% for a period of six years.
7. Fixed deposit in respect of 10% for a period of seven years.
8. Fixed deposit in respect of 10% for a period of eight years.

b) The respondents No.3 and 6 are directed to deposit the amount in equal shares directly by way of crossed cheques in terms of the above order in UCO Bank, Patiala House Court, New Delhi in the name of UCO Bank, Patiala House Court, New Delhi A/c Smt. Nupur Singh, Master Viraj Singh, Master Naman Singh, Mrs. Urmila Singh and Shri Janardan Singh within 30 days of the passing of the award.

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c) Cheques be deposited within thirty days herefrom under intimation to the petitioners. In case of default, the respondents No.3 and 6 shall be liable to pay further interest @ 12% per annum for the period of delay.

d) On the deposit of the award amount, the Branch Manager of UCO Bank, Patiala House Court, New Delhi is directed to prepare Fixed Deposit Receipts as ordered above and the balance amount be released.

e) The interest on the fixed deposits shall be paid monthly by automatic credit of interest in the saving account of the petitioners No.1 and 4.

f) The withdrawal from the aforesaid account shall be permitted to the petitioners No.1 and 4 after due verification and the bank shall issue photo identity cards to the petitioners No.1 and 4 to facilitate their identity.

g) No cheque book shall be issued to the petitioners No.1 and 4 without the permission of the court.

h) The original fixed deposit receipts shall be retained by the bank in safe custody. However, the original pass book shall be given to the petitioners No.1 and 4 along with the photocopy of the fixed deposit receipts. Upon the expiry of period of FDR the bank shall automatically credit the maturity amount in the saving account of the beneficiary.

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i) The original fixed deposit receipts shall be handed over to the petitioners No. 1 and 4 on the expiry of the period of the fixed deposit receipts.

j) No loan, advance, or withdrawal shall be allowed on the said FDRs without the permission of the court.

k) On the request of the petitioners, the bank shall transfer the saving account to any other branch/bank, according to the convenience of the petitioners.

l) The petitioners shall furnish all the relevant documents for opening of the saving bank account and Fixed Deposit to Senior Manager of UCO Bank, Patiala House Court, New Delhi.

48. The petitioners shall file two sets of photographs along with their specimen signatures, out of which one set to be sent to the Nodal Officer, UCO Bank, Patiala House Court, New Delhi along with copy of the award by Nazir and the second set be retained to the court for further reference. The photographs be stamped and sent to the bank. The petitioners shall also file the proof of residence and furnish the details of the bank account with the Nazir within a week. The petitioners shall file their complete address as well as address of their counsel for sending the notice of deposit of the award amount.

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APPORTIONMENT OF LIABILITY:

49. The respondent No.1 is the driver, the respondent No.2 is the owner and the respondent No.3 is the insurer of the bus No.RJ□9PA□5105 and the respondent No.4 is the driver, respondent No.5 is the owner and the respondent No.6 is the insurer of the Innova car No.DL□4CAE□9634. Thus all the respondents are held jointly and severally liable. The respondent No.4 had produced R4W1 in the witness box who had brought the report in respect of DL issued to Shri Rajender Singh on 22.11.13 which was valid till 21.11.16. He stated that the earlier license was issued on 14.09.07 and expired on 13.09.10. The reports Ex.R4W1/A (colly) were signed by the Inspector. During cross□examination by the learned counsel for the respondent No.6 R4W1 stated that the license was issued for commercial vehicle. Respondent No.3 i.e. National Insurance Company Limited and the respondent No.6 i.e. IFFCO Tokio General Insurance Co. Ltd. being the insurance companies in their reply had not disputed the insurance policies. There is no evidence on behalf of the respondents No.3 and 6 to show that there was any violation of the terms and condition of the policy by the respondents No.1 and 2 and respondents No.4 and 5 respectively. Hence, the respondents No.3 and 6 being the insurance companies in respect of the offending vehicles would be liable to pay the compensation on behalf of the respondents No.1 and 2 and 4 and 5. The respondents No.3 and 6 being the insurer are directed to deposit the award amount in equal proportion in the bank account of the claimants in UCO Bank, Nupur Singh v Rama Ram & Ors. Page no. 63 of 64 Patiala House Court, New Delhi within 30 days of the passing of the award with interest at the rate of 7.5% from the date of filing of the claim petition till its realization failing which they would be liable to pay interest at the rate of 12% per annum for the period of delay.

50. Nazir to report in case the cheques are not deposited within 30 days of the passing of the award/judgment. Nazir is directed to note the particulars of the award amount in the register today itself. The respondents No.3 and 6 shall deposit the award amount along with interest upto the date of notice of deposit to the claimants with a copy to their counsel and the compliance report shall be filed in the court along with proof of deposit of award amount, the notice of deposit and the calculation of interest on 03.6.2015. An attested copy of the award be given to the parties (free of cost) and a copy be also sent to the Nodal Officer, UCO Bank, Patiala House. File be consigned to Record Room.

Announced in open court
on this 2nd day of March, 2015

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